

**IN THE COURT OF NOOR UL HAQ JUDICIAL MAGISTRATE-II, KALAYA,
ORAKZAI**

State vs Abdul Nazir

Case No4/3 of 2025.

Date of institution.....26.03.2025.

Date of decision.....12.08.2026.

Case FIR No. 68 Dated: 03.12.2024 U/S 15-AA, PS Mishti Mela

Order. No. 23

12.08.2026

Accused on bail alongwith counsel present. Today, the case was evidence of prosecution, however, however, counsel for accused filed an application under 249-A Cr.PC, therefore, notice u/s 249-A Cr.PC given to prosecution. Arguments on behalf of counsel for accused and Public Prosecutor heard.

Brief facts of the case are that on 03.12.2024 at 13:00 hours ASHO alongwith constables Muhammad and Shah Faisal were present on the barricade at main road Mishti Mela to Kalaya. In the meantime, one-person pedestrian came from Mishti Mela in suspicious condition was stopped for the purpose of checking. On his body search, one Kalashnikov folding butt bearing no. 1968 TE8151 without magazine and without live rounds from the left armpit was recovered and took into possession. Accused could not produce any valid license/permit. ASHO concerned signed the Kalashnikov with sharp object packed and sealed into parcel no. 01 and one seal was put inside the parcel while affixed 3/3 seals of monogram with the name of AR. On further investigation accused disclosed his name

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Orakzai at Kalaya
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as Abdul Nazeer. Murasila, card of arrest and recovery memo was sent to the PS through constable Muhammad Nawaz for registration of the case.

Accused was formally arrested. After completion of investigation, complete challan was put in court against accused.

Sub Inspector Abdul Mateen appeared and deposed as PW-01. He stated that during the day of occurrence he was posted as ASHO PS Mishti Mela. On 03.12.2024, he along with constables Muhammad Nawaz belt no. 1238 and Shah Faisal were present on the barricade laid down at main road Mishti Mela to Kalaya. In the meantime, one-person pedestrian came from Mishti Mela in suspicious condition was stopped for the purpose of checking. On his body search, he recovered and took into possession one Kalashnikov folding butt bearing no. 1968 TE8151 without magazine and without live rounds from the left armpit to which the accused could not produce any valid license/permit in the presence of marginal witnesses, vide recovery memo is Ex. PC. He signed the Kalashnikov with sharp object. He packed and sealed into parcel no. 01. Parcel no.01 is produced before the court today which is Ex. P-1. One seal was put inside the parcel while affixed 3/3 seals of monogram with the name of AR. The accused disclosed his name as Abdul Nazeer son of Lal Wazir. He charged the accused for the commission of offence. He arrested the accused on the spot and issued his card of arrest which is Ex. PW-1/1. Murasila was drafted on the spot which is Ex. PW-1/2. He sent the Murasila, card of arrest and recovery memo through constable Muhammad Nawaz to the PS. On

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10.12.2024, he submitted complete challan against the accused which is Ex. PA/1.

Muhammad Saeed MIIC appeared and deposed as PW-02. He stated that during the day of occurrence he was posted as MIIC PS Mishti Mela. On 03.12.2024, he was present in the office of DD when Constable Muhammad Nawaz Khan brought Murasila, recovery memo and card of arrest from complainant ASIIO Abdul Mateen. He incorporated the contents of Murasila into FIR Ex. PA. Case property was also brought to PS along with accused by the complainant on his return and it was handed over to him. He made entry in register no. 19, copy is Ex. PW-2/1. Case property was kept in safe custody. Accused was sent to police lock up after his body search. On 04.12.2024, he handed over the case property in sealed condition to IO for obtaining physical custody of accused. On 03.01.2025, case property was handed over to IO for the purpose of sending to FSL.

Constable Shah Faisal appeared and depose as PW-03. He stated on that during the day of occurrence he was posted as constable PS Mishti Mela. On 03.12.2024, he accompanied with ASIIO Abdul Mateen and constable Muhammad Nawaz belt no. 1238 were present on the barricade laid down at main road Mishti Mela to Kalaya. In the meantime, one-person pedestrian came from Mishti Mela in suspicious condition was stopped for the purpose of checking. On his body search, ASIIO/complainant recovered and took into possession one Kalashnikov folding butt bearing no. 1968 TT8151 without magazine and without live rounds from the left armpit to which the accused could not produce any

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valid license/permit, vide recovery memo is already exhibited as Ex. PC. ASIHO/complainant signed the Kalashnikov with sharp object. He packed and sealed into parcel no. 01. One seal was put inside the parcel while affixed 3/3 seals of monogram with the name of AR. The accused disclosed his name as Abdul Nazeer son of Lal Wazir.

Sub Inspector Murtaza appeared and deposed as PW-04. He stated that during the day of occurrence he was posted as IO PS Kalaya. After registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. On 03.12.2024, he alongwith police officials proceeded to the spot and prepared site plan Ex. PB on pointation ASIHO/complainant Abdul Mateen. he recorded statements of all the PWs under section 161 Cr. PC. He also annexed DD which is Ex. PW-4/1. On 04.12.2024, he produced the accused before the Illaqa Magistrate for obtaining physical custody of accused vide his application is Ex. PW-4/2, which was turned down and accused was sent to Judicial Lock up Orakzai.

On 03.01.2025, he handed over the case property alongwith application and route certificate to constable Muhammad Riaz belt no. 54 for the purpose of sending to FSL Peshawar vide his application is Ex. PW-4/3 alongwith route certificate which is Ex. PW-4/4. FSL report is received and placed on judicial file which is Ex. PZ.

Perusal of record reveals that the prosecution version, however, does not inspire confidence when examined in the light of ordinary human conduct and the surrounding circumstances. The alleged place of occurrence is a public road, namely Pukhta Road Khwaja Khizar, and the

prosecution itself claims that the accused was intercepted in connection with police Naka Bandi. It does not appeal to a prudent mind that a person would openly proceed on a public road with a Kalashnikov hanging of his right shoulder while approaching a police naka/checking point, fully knowing or reasonably expecting that police personnel were present there. The alleged conduct of the accused, therefore, appears unnatural and creates a serious doubt regarding the prosecution story.

Another important circumstance is the delay in submission of the challan. The FIR was registered on 03.12.2024, whereas the challan was submitted before the Court on 26.03.2025. Thus, there was a substantial lapse of time between registration of the FIR and submission of the challan. The prosecution has not furnished any satisfactory explanation for this delay.

It is a fundamental principle of criminal jurisprudence that the prosecution must stand on its own legs and prove its case against the accused beyond reasonable doubt. The accused is not required to prove his innocence. If, from the prosecution evidence itself, reasonable doubt arises regarding the alleged recovery, possession or the truthfulness of the prosecution version, the accused is entitled to the benefit of such doubt as a matter of right.

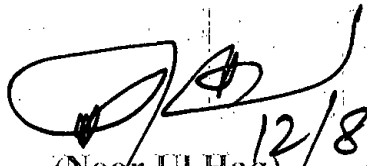
In view of the foregoing discussion and after careful appraisal of the evidence and circumstances available on record, there are so many dents and doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings

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would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial Abdul Nazir is acquitted from the charges levelled against him in case FIR No. 68 dated: 03.12.2024 U/S 15-AA registered at police station Mishti Mela. He is on bail. His sureties stand discharged from his liability. Case property if any be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
12.08.2026


(Noor Ul Haq)
12/8/26.
Judicial Magistrate-II,
Tehsil Kalaya, Orakzai