IN THE COURT OF HAQ NAWAZ,
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO.	:	43/3 OF 2025
DATE OF ORIGINAL	:	02.09.2025
DATE OF DECISION	:	03.11.2026

STATE THROUGH SHO, SHAL MUHAMMAD, POLICE STATION KALAYA

.....(COMPLAINANT)

-VERSUS-

KHAMIN ULLAH S/O ANAR BADSHAH, CASTE UTMAN KHEL, DISTRICT ORAKZAI

..... (ACCUSED)

Present : Abul Qasim, Senior Public Prosecutor for the state.
: Khursheed Alam Advocate for accused.

FIR No. 27 **Dated:** 29.03.2025 **U/S:** 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
03.11.2026

This case was registered against the accused **Khamin Ullah** S/O Anar Badshah vide FIR No. 27, Dated 29.03.2025 at Police Station Kalaya u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

2. According to averments of the FIR, the SHO Police Station Kalaya along with other police contingent, during surveillance duty in the area, intercepted a person on suspicion near Headquarter Chowk at 06:30 hours on 29.03.2025. He was subjected to personal search and a packet of chars, wrapped in yellow scotch tape, was recovered from his trouser-fold. It was found to be 1000 grams. The complainant separated 10 grams as sample from the recovered

packet and sealed it into parcel No. 1. The remaining 990 grams was packed and sealed into parcel No. 2. Videography of the occurrence was carried out and sealed into parcel No. 3 by affixing the monogram of "SH" on the same. The Murasila and other documents were sent to police station; hence, the present FIR was registered.

3. After completion of investigation, complete challan was put in court. The accused was summoned and copies were provided to him under section 265-C CrPC. He was formally charged but the accused pleaded not guilty and claimed trial. The prosecution produced a total of 05 witnesses. A brief resume of the depositions of the prosecution witnesses is as under;

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

I. Constable Iftikhar Hussain stood in the witness box as PW-1. He stated that he took the parcel No. 1 to FSL for chemical analysis on 07.04.2025 and deposited the same against a proper receipt. His statement was recorded by the IO u/s 161 CrPC.

II. Moharrir Asmat Ali appeared in the witness box as PW-2. He stated that he incorporated the contents of Murasila into FIR Ex. PA. He received the case property from the complainant in duly packed and sealed condition which was safely kept by him in Malkhana. He made entries of the same in Register No. 19 Ex. PW 2/1. He handed

over parcel No. 1 to IO for its transmission to FSL on 07.04.2025. The PW made entries in the daily diary Ex. PW 2/2. His statements were recorded by the IO u/s 161 CrPC.

III. The complainant, SHO, Shal Muhammad, appeared before the court as PW-3. He stated that he along with constables Alam Jan and Muhammad Irshad were on surveillance duty in the area in official vehicle and stopped a pedestrian near Headquarter Chown on 29.03.2025 at 06:30 am. The complainant recovered a packet of chars, weighing 1000 grams, from trouser-fold of the accused. The PW separated 10 grams from the packet for FSL examination which was packed and sealed into parcel No. 1. The remaining 990 grams was sealed into parcel No. 2 (Ex. P1). Constable Muhammad Irshad carried out videography of the occurrence which was sealed by the complainant into parcel No. 3 (Ex. P2). The person disclosed his name as Khamin Ullah. Three monograms of "SH" were affixed on the parcels. The recovery was affected through recovery memo Ex. PW 3/2. The complainant issued card of arrest of the accused which is Ex. PW 3/3. He prepared the Murasila

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

Ex. PW 3/4 and sent it along with other documents to police station through Constable Muhammad Irshad for registration of FIR. He pointed out the place of occurrence to the IO on his arrival to the spot and shown the case property along with the accused to him. Thereafter, the complainant took the accused and case property to police station and handed it over to Moharrir. He submitted complete challan Ex. PW 3/5 against the accused after complete of investigation. He verified the contents of all the documents prepared by him and submitted that his signatures are correctly affixed on the same.

IV. Investigating Officer Aftab Hassan was examined as PW-4. He stated that after entrustment of the investigation to him in the instant case, he proceeded to the spot and prepared the site plan Ex. PW 4/1 on the pointation of complainant. He recorded the statements of witnesses on the spot. The PW produced the accused before the court of Judicial Magistrate vide application Ex. PW 4/2 on 29.03.2025 for recording his confessional statement but the accused refused to confess his guilt and he was sent to judicial lock-up. The IO sent the test sample in parcel No. 1 to FSL along

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

with application Ex. PW 4/3 and route certificate Ex. PW 4/4 on 07.04.2025, after Eid holidays, through Constable Iftikhar Hussain. The FSL result was placed on file by him as Ex. PW 4/5. He submitted the case file to SHO for onward proceedings after completion of investigation.

V. The Constable Muhammad Irshad is PW-5. He is marginal witness to the recovery memo Ex. PW 3/2 vide which the complainant took into possession the recovered contraband. He verified the contents of recovery memo and submitted that it correctly bears his signature. He also made videography of the occurrence through a cell phone which was converted into a USB and sealed into parcel No. 3. The PW further stated that he took the Murasila to police station for registration of FIR. His statement was recorded by the IO u/s 161 CrPC.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

4. After completion of prosecution's evidence, statement of the accused was recorded u/s 342 Cr.P.C. He claimed innocence; however, he neither wished to be examined on oath nor opted to produce any evidence in defence. I have heard learned Sr. PP and counsel for the accused.

5. After hearing both the parties and perusal of the record, it was found that the occurrence was taken place on 29.03.2025

when the accused was intercepted on the spot by the local police and the recovery of 1000 grams of chars was affected from his trouser-fold at 06:30 hours. Sample of 10 grams was separated from the recovered contraband which was packed and sealed into parcel No. 1. The statements of PWs in juxtaposition with the FSL report Ex. PW 4/5 show that the test parcel was sent for chemical examination to FSL on 07.04.2025, beyond the prescribed period of time. Thus, the report of FSL cannot be taken into consideration for the prosecution's case. The transmission of the test sample after 08-days of the occurrence cannot be held to be the safe transmission within the prescribed period of time. Further that, the place of occurrence, as depicted in the site plan Ex. PW 4/1, is almost a straight road surrounded by fields. In such circumstances, the story of going by the accused on foot on a main road, having contraband in his possession, with the possibility of presence of police instead of taking an alternate path, does not appeal to a prudent mind. These facts create serious doubts in the prosecution's case.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

6. In view of above, the accused **Khamin Ullah** S/O Anar Badshah, Caste Utman Khel, District Orakzai is acquitted of the charges levelled against him by extending benefit of doubt in his favour. The accused is on bail. His bail bonds stand cancelled and the sureties stand discharge of the liabilities of bail bonds. The case property be destroyed after

the expiry of period of appeal/revision. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:
03.11.2026

(HAQ NAWAZ)
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgement consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 03.11.2026

(HAQ NAWAZ)
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela