

IN THE COURT OF WAJID ALI,
ADDITIONAL SESSIONS JUDGE /JUDGE SPECIAL COURT,
HARIPUR AT GHAZI

Case No. 22/3
Date of commencement of trial: 11.05.2023
Date of Decision: 12.08.2023

The State through Ejaz Ahmad SHO of Police Station Ghazi.

Complainant

VERSUS

Azeem Khan s/o Arif Shah caste Pathan r/o Mubeen Banda Tehsil Ghazi District Haripur.

Accused

CASE FIR NO. 115 DATED 12.03.2023 U/S 9 (d) OF THE KHYBER PAKHTUNKHWA CONTROL OF NARCOTICS SUBSTANCES ACT (CNSA), 2019 POLICE STATION GHAZI TEHSIL GHAZI DISTRICT HARIPUR.

Order # 16
12.08.2023

Javed Yousaf, learned APP for State present. Accused Azeem Khan produced in custody from Central Prison Haripur.

2. Vide my detailed judgment of today consisting of (13) pages wherein reasons are recorded, it is held that the prosecution have proved their case beyond any reasonable doubt and the accused is proved to be guilty of offence punishable u/s 9(d) of the KPK CNSA 2019. Resultantly the accused namely; *Azeem Khan s/o Arif Shah caste Pathan r/o Mubeen Banda Tehsil Ghazi District Haripur* is hereby convicted for committing the offence u/s 9(d) of the KPK CNSA. Therefore, by taking lenient view the convict/ accused *Azeem Khan s/o Arif Shah caste Pathan r/o Mubeen Banda Tehsil Ghazi District Haripur* is sentenced u/s 9(d) CNSA to undergo rigorous imprisonment (RI) of 05 years and a fine of Rs. 500,000/- (Five Lacs). In case of non-payment

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of fine the accused shall further undergo 06 months simple imprisonment (SI). The benefit of section 382 (B) of the Cr.PC is extended to the accused.

3. Copy of the judgment is handed over to the accused/convict free of cost within the meaning of section 371 of the Cr.PC. He is also apprised about his right of appeal. The accused is already in custody therefore he alongwith his conviction / sentence warrant is sent back to Central Prison Haripur to undergo the awarded sentence.
4. Case property/narcotics 4110 grams *charas* be destroyed after the period of appeal/revision. Copy of this judgment is also sent to the officer in-charge of prosecution Haripur as per section 373 of the Cr.PC. File be consigned to the record room after its necessary completion, compilation and scanning while record be returned to the quarters concerned.

Received

Copy



نشان انگشت عظیم خان

Announced
12.08.2023

Wajid Ali
Add: District & Sessions Judge
Judge Special Court, Ghazi
(Wajid Ali)
ASJ/Judge Special Court
Haripur at Ghazi

IN THE COURT OF WAJID ALI,
ADDITIONAL SESSIONS JUDGE /JUDGE SPECIAL COURT,
HARIPUR AT GHAZI

Case No. 22/3
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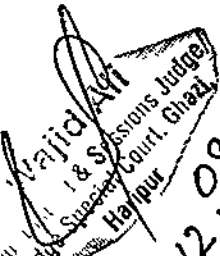
CASE FIR NO. 115 DATED 12.03.2023 U/S 9 (d) OF THE KHYBER PAKHTUNKHWA CONTROL OF NARCOTICS SUBSTANCES ACT (CNSA), 2019 POLICE STATION GHAZI TEHSIL GHAZI DISTRICT HARIPUR.

JUDGMENT

12.08.2023

Accused Azeem Khan s/o Arif Shah faced trial in the above referred crime report, under section 9 (D) of the Khyber Pakhtunkhwa Control of Narcotics Substances Act (CNSA), 2019 for having in possession 4130 grams of *charas*.

2. Per Murasila, Ejaz Ahmad SHO of PS Ghazi on 12.03.2032 at 18:40 hours along with Constable Habeeb Nawaz No. 377 and Imran No. 711 were on patrolling in private vehicle bearing No. 302/Islamabad in Ghazi Bazar. There the complainant received spy information that the accused in possession of huge quantity of narcotics is about to come towards village Mubeen Banda from canal side. Upon this information, he along with the raiding party went towards Link Road, Mubeen Banda near Ghazi Tube Well where he came across a suspicious person holding a shopping bag in his right hand matching the


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countenance narrated by informer. As soon as the vehicle stopped, he (accused) turned back and ran away however was nabbed with the help of raiding party. The aforesaid shopping bag was checked wherein four packets of *charas* were recovered. On weighing the packets via digital scale these were found to be 1020, 1040, 1050 and 1020 grams respectively making a total of 4130 grams. Five grams from each packet were separated for onward transmission to the FSL Peshawar and sealed into Parcel No. 01 to 04 while the rest was sealed into Parcel No. 05 weighing 4110 grams. For safe custody and safe transmission of the parcels, requisite stamps of monogram *EA* were also inserted and embossed on the parcels. The accused was booked in the instant case who disclosed his above name and address. The murasila was sent to the PS through Constable Habeeb Nawaz No. 377 for registration of the instant case. Accordingly, FIR which is Ex.PA was lodged against the accused.

3. The investigation was conducted by the SI/OII Fazal-e-Manan. On completion of investigation, charge-sheet u/s 173 of the Cr.P.C was submitted against the accused. Accused was in custody. He was handed over the necessary documents under section 265-C of the Cr.P.C. Charge was framed on 29.05.2023 to which he pleaded "*not guilty*" and claimed trial. The prosecution was put to evidence.

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4. Prosecution produced 06 PWs in support of their case while PW namely; Constable Imran No. 711 was abandoned and thereafter closed evidence. The brief résumé of the prosecution evidence is as follows:

4.1. The MHC Tariq Mehmod was examined as PW-01.

On 12.03.2023, the complainant handed over to him parcels of the instant case. He made necessary entries in Register No. 19 and kept the parcels in safe custody. On 14.03.2023, he handed over the parcel No. 01 to 04 to Constable Imran Shah No. 565 through Road Certificate No. 42/21 Ex.PW1/1 for onward submission to FSL Peshawar for chemical analysis who upon his return handed him the receiving certificate.

4.2. The SHO Ejaz Ahmad was examined as PW-02; he is

the complainant and star witness of the occurrence. He narrated the story of seizing process as per Murasila Ex.PB. He prepared recovery memo Ex.PW2/1, issued card of arrest Ex.PW2/2. In this regard, his arrival and departure DDs are Ex.PW2/3 and Ex.PW2/4. He also submitted complete challan Ex.PW2/5.

4.3. The SI/OII Fazal-e-Manan was examined as PW-03.

He is the Investigating Officer (IO) of the instant case. He prepared recovery sketch Ex.PW3/1. He prepared docket regarding recovered contraband Ex.PW3/4, produced the accused before Judicial Magistrate-I, Ghazi vide application dated 13.03.2023 Ex.PW3/5. He endorsed the entries on Register No. 19 and produced extract of it as Ex.PW3/6. He placed on file the DDs of the

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constable who took the parcels to the FSL Ex.PW3/7. On receipt of FSL report, he annexed it with the file as Ex.PW3/8. He also placed on file previous history of accused Ex.PW3/10. In this regard, his arrival and departure DDs are Ex.PW3/2, Ex.PW3/3 and Ex.PW3/9.

4.4. The ASI Muhammad Yousaf was examined as PW-04; he incorporated the contents of Murasila into FIR Ex.PA.

4.5. The Constable Imran Shah No. 565 was examined as PW-05; he took the parcels of the instant case to the FSL for chemical analysis.

4.6. The Constable Habeeb Nawaz No. 377 was examined as PW-06; he is the marginal witness to recovery memo Ex.PW2/1. He also took Murasila of the instant case to the PS for registration of FIR.

5. After closing the prosecution evidence, statement of the accused was recorded u/s 342 of the Cr.P.C. He denied the charges leveled against him and professed innocence. He stated that the case property produced before the court is fake and planted as it was produced in case FIR No. 109 dated 10.03.2023. However, did not opt to produce any further evidence in defense or be examined on oath.

6. I heard learned APP for the State and counsel for the accused. Learned APP supporting the indictment argued that the recovery of narcotics is proved beyond any doubt as is evident from the testimony of the PW-02 & PW-06. The recovery memo EX.PW-2/1 is proved to be correct and testimony of PWs in this regard has no contradictions on material particulars;


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that there are confirmatory questions during the course of cross-examination which further strengthen the prosecution version regarding the recovery of narcotics from the accused in the alleged mode and manner; that prosecution has succeeded to prove the safe transmission of narcotics from the place of occurrence to the police station and then to the FSL Peshawar for its chemical analysis and positive FSL report is another strong piece of evidence against the accused which confirms that the substance transmitted was *charas* in the shape of brown solid and such report is rendered after due observance of the protocols; that there is nothing on record, which could show any kind of *malafide* on part of the police in charging the accused facing trial. He further added that prosecution has been able to prove the charges levelled against the accused beyond any reasonable doubt and he deserves full punishment.

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Adml. District & Sessions Judge
Judge Special Court, Ghazni
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7. Naysaying the above submissions, learned defence counsel contended that the prosecution has failed to establish the charge against the accused facing trial; that they have failed to prove the mode and manner of the alleged recovery; that the case of the prosecution is based on recovery of narcotics detailed per recovery memo Ex.PW2/1 however failed to substantiate the same. Further contended that the testimony of the PWs is contradictory to each other on material particulars regarding the place of occurrence and proceedings on the spot conducted by the complainant as well as the IO, it therefore cannot be held to

have been proved beyond any doubt and the benefit of slightest doubt shall go to the accused as of right. It was maintained that no independent witness was associated with the recovery proceedings though the incident allegedly took place in a populated area; that the mandatory provisions of law have not been complied with and case of the prosecution is clouded by doubts hence accused facing trial may be acquitted. To buttress these submissions, reliance was placed on reported judgments 2022 PCr.LJ 872, 2022 PCr.LJ Note 123, 2022 PCr.LJ 173, 2018 YLR 860, PLD 2003 Karachi 606, and 2000 PCr.LJ 760.

8. On previous date once again learned counsel for the accused facing trial submitted written arguments and contended that the FSL report is not in accordance with the mandatory provisions of Rule 6 and Form II of the Control of Narcotics Substances (Government Analyst) Rules, 2001 and the protocol on samples have not been complied with thus the report is not worthy of credence. Reliance was placed on reported judgment of august Supreme Court of Pakistan 2018 SCMR 2039 and 2020 YLR 2010. It was re-iterated that the prosecution has miserably failed to establish their case and the benefit of slightest doubt shall be extended to the accused.

9. Having heard learned counsel for the parties and perused the case file, it is observed that the prosecution case primarily rests upon the statements of complainant/seizing officer PW-02 and the alleged eye-witness PW-06 regarding the mode and manner

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Judge Special Cr. Ct., Ghazi
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of the recovery of contraband from the accused, the safe custody and transmission of the case property for chemical examination and its positive FSL report Ex.PW3/8; the recovery allegedly effected from the direct possession of the accused, which was documented as per recovery memo Ex.PW2/1 and the site plan Ex.PW3/1.

10. Per record PW-02 and PW-06 are the witnesses of seizing proceedings at the spot. They have alleged a specific mode and manner in which the alleged recovery of narcotics was affected from possession of the above named accused. The complainant as PW-02 in his examination-in-chief reiterated the same story as he had recounted in the murasila Ex.PB further culminated into FIR Ex.PA that the accused was encountered at the stated place and time and upon search of the shopping bag in presence of the witnesses, *charas* weighing 4130 grams was recovered from his direct possession. After weighing the recovered items and separation of samples therefrom the same were sealed into Parcels No. 01 to 04 and 05. The eye-witness /marginal witness to the recovery memo PW-06 in his statement also verified the same facts regarding recovery from direct possession of accused. The accused was nabbed on the spot, card of arrest Ex.PW2/2 was issued and the recovery was documented through recovery memo Ex.PW2/1.

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11. Record shows that the complainant/seizing officer as PW-02 and the eye witness PW-06 narrated the facts of the case in

clear words that the accused was intercepted and on search of the shopping bag held in right hand of the accused, the narcotics were recovered. These witnesses were subjected to lengthy cross-examination but they remained unison in their depositions regarding the date, time, place and manner in which they intercepted the accused. These witnesses unwaveringly deposed about the time at which they left the PS for patrolling. The abstract of DD No. 10 dated 12.03.2023 placed on file Ex.PW2/3 also demonstrates that the complainant alongwith PW-06 and other police personnel left the PS at 08:40 hours which supports the statement of both complainant and the eye-witness when they deposed about the time of their departure on the relevant day. The statements of these witnesses are free from any paradoxical depositions to challenge each other at the point of date, time, place or the mode and manner of recovery of narcotics from direct possession of the accused facing trial. The accused was arrested on the spot and during the course of cross-examination on PWs he could not refute the mode & manner and date and place of his arrest. The accused during the course of cross-examination of the PWs also failed to seriously challenge the depositions of complainant and other eye-witness. Rather at some stages the cross-examination seems to be further confirmatory about the date, time, mode & manner of the recovery proceedings. The stance of defence regarding *malafide* of the seizing officer remained unsubstantiated and no reason

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could be pointed out that why the police would plant such huge quantity of narcotics to implicate the accused, if he was innocent. During the course of cross-examination PW-02 stated that:

"After seeing the accused I overpowered him. Thereafter I seized the shopping bag and searched the same."

"I separated the samples through my own knife and prepared the parcels."

It was further stated that:

"I consumed 15/17 minutes from arrest to preparation of the parcels, thereafter prepared recovery memo, issued card of arrest and drafted Murasila."

Even the place of occurrence is confirmed through the cross-examination on PW-06 when the witness in response to suggestion stated that:

"It is correct there is a tube well near the place of occurrence."

This fact is in harmony with the site plan. In view of this evidence, the difference between the statements of the witnesses regarding tube-well to be situated on the left side or on right side seldom makes any difference nor on this score such convincing evidence can be brushed aside. Even otherwise when the recovery of case property is proved then the minute details and slight contradictions in the narration of events by the PWs would not be that much material. The

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weighment of the contraband in the same manner as alleged was also confirmed through PW-02 and PW-06.

12. Admittedly the IO as PW-03 stated that the statements of the witnesses were recorded in the PS due to late hours. Learned counsel for the accused facing trial stated that this fact is found in contradiction with the complainant PW-02 however it is observed that the complainant has never stated that the statements were recorded on the spot nor recording the statements in the place of occurrence was mandatory.

13. The seizing officer in his cross-examination admitted to have not associated any private person as witness to search / recovery proceedings however, he has given plausible explanation that there was no private witness present at the spot. Nevertheless, I may observe that section 25 of the Control of the Narcotics Substance Act 1997 and now Section 31 of the KPK CNS Act 2019 has done away with such formalities and police officials are as good witnesses as any other private person although, their testimony is to be accepted with great care and caution. The presence and association of private witnesses is compulsory within the meaning of Proviso to Section 31 of the KPK CNSA 2019 where search of the dwelling house is to be made therefore, non-association of private witnesses with search and recovery proceedings in the instant matter is not fatal to the case of prosecution.


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Addl. Dy. Judge
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Court Ghazi

14. Record also shows that the case property was deposited in the *malakhana* as is evident from extract of Register No. 19 and later on dispatched for FSL examination through application Ex.PW3/4 and the road certificate is Ex.PW1/1. IO of the case as PW-03 confirmed that on 14.03.2023 he chalked out docket as Ex.PW1/1 and handed over to Constable Imran Shah No. 565 alongwith Parcel No. 01 to 04 for FSL. The said parcel carrier Constable Imran Shah No. 565 was examined as PW-05. He has also narrated the same facts that on 14.03.2023 via Road Certificate No. 42/21 the parcels were handed over to him which he took to the FSL Peshawar and handed over to the in-charge FSL against his endorsement over the road transit receipt No. 42/21, the copy of which is placed on file as Ex.PW1/1. It may be noted that extract of Register No. 19 and register No. 21 are quite in consonance with each other which are found to be in natural course that rule out the possibility of any sort of manipulation of false documents or entries in the relevant record. The IO has also placed on file the departure and arrival DDs of Constable Imran Shah No. 565. Similarly there is no break in the chain of recovery of narcotics from accused, its depositing in the *maalkhana* and dispatch to the FSL. The depositions of PWs supported by documentary proof further strengthen the safe custody and shipment of sample to the FSL. The FSL report Ex.PW3/8 was then received in affirmative. It confirmed the nature of the case property as *charas* (brown

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solid). This FSL report also reflects sufficient details of test applied for determination of narcotics character of the contraband carried out over the sample transmitted from safe custody and as such the FSL report also qualifies the observance of protocol as contemplated in Rule 6 of the Control of Narcotics Substances (Government Analyst) Rules 2001 and support the case of prosecution. In view of these facts the rulings relied upon by learned defence counsel are found to be based on distinguishable facts therefore with utmost respect, the benefit of which cannot be stretched to the case of accused facing trial.

15. For the above mentioned reasons it is observed that all the prosecution witnesses remained consistent on salient features of the case and matters corollary there with. The witnesses are unison to inspire the confidence whereas no fatal discrepancies or contradictions in the events could be brought on record to create reasonable doubt *qua* the guilt of accused. Therefore, it is held that the prosecution has proved their case beyond any reasonable doubt and the accused is proved to be guilty of offence punishable u/s 9(d) of the KPK CNSA 2019. Resultantly the accused namely; *Azeem Khan s/o Arif Shah caste Pathan r/o Mubeen Banda Tehsil Ghazi District Haripur* is hereby convicted for committing the offence u/s 9(d) of the KPK CNSA. Therefore, by taking lenient view the convict/ accused *Azeem Khan s/o Arif Shah caste Pathan r/o Mubeen*

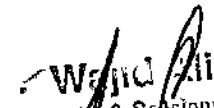

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Haripur
Sess-oms Judge
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Banda Tehsil Ghazi District Haripur is sentenced u/s 9(d) CNSA to undergo rigorous imprisonment (RI) of 05 years and a fine of Rs. 500,000/- (Five Lacs). In case of non-payment of fine the convict shall further undergo 06 months simple imprisonment (SI). The benefit of section 382 (B) of the Cr.PC is extended to the accused.

16. Copy of the judgment is handed over to the accused/convict free of cost within the meaning of section 371 of the Cr.PC. He is also apprised about his right of appeal. The accused is already in custody therefore he alongwith his conviction/sentence warrant is sent back to Central Prison Haripur to undergo the awarded sentence.


17. Case property/narcotics i.e. 4110 grams of *charas* be destroyed after the period of appeal/revision. Copy of this judgment is also sent to the officer in-charge of prosecution Haripur as per section 373 of the Cr.PC. File be consigned to the record room after its necessary completion, compilation and scanning while record be returned to the quarters concerned.

Announced
12.08.2023


Addl. District & Sessions Judge/
Judge (Wajid Ali) Ghazi
ASJ/Judge Special Court,
Haripur at Ghazi.

CERTIFICATE

Certified that this judgment consists of (13) pages. Each page has been read, signed and corrected by me wherever necessary.


ASJ/Judge Special Court,
Judge Special Court, Ghazi
Haripur at Ghazi.