

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**CHECK LIST**

Case Title: Anwar Khas VS Government

S#	CONTENTS	YES	NO
1	This Appeal has been presented by <u>Zaharat Yllah Adv</u>	✓	
2	Whether counsel / appellant/ respondent/ deponent have signed the requisite document?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent oath commissioner?	✓	
8	Whether Appeal / Annexures are properly paged?	✓	
9	Whether Certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/ clear?	✓	
13	Whether copy of appeal is delivered to AG/ DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by Petitioner/ Appellant / Respondents?	✓	
15	Whether number of referred cases given are correct?	✓	
16	Whether appeal contains cutting / overwriting?		✓
17	Whether list of books has been provided at the end of the appeal?		N/A
18	Whether case relate to this Court?	✓	
19	Whether requisite number of spare copies are attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether security and process fee deposited? On _____		N/A
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, Notice along with copy of Appeal and annexures has been sent to Respondents? On _____		N/A
26	Whether copies of comments / reply / rejoinder submitted? On _____		N/A
27	Whether copies of comments/ reply/ rejoinder provided to opposite party? On _____		N/A

It is certified that formalities /documentations as required in the above table, have been fulfilled.

Name:- Zaharat Yllah Advocate

Signature:- 15/7/2022 Zeh

Dated:- 15/7/2022

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE  
TRIBUNAL, PESHAWAR**

Service Appeal No. 1116 /2022

Anwar Khan.....(Appellant)

**V E R S U S**

District Police Officer, Khyber and  
another.....(Respondents)

**INDEX**

S.No	Description of Documents	Annex	Pages
1.	Memo of Appeal		1-4
2.	Affidavit		5
3.	Addresses of the Parties		6
4.	Copy of the judgment	A	7-31
5.	Copy of the dismissal order, charge sheet etc	B.	32-36
6.	Copy of departmental appeal	C	37
7.	Wakalat Nama		38

*Anwar Khan*  
Appellant

Through

Dated: 05/07/2022

*Zaharat Ullah*  
**Zaharat Ullah**

*Moamar Jalal*  
**Moamar Jalal**  
Advocates High Court,  
Peshawar.

& *Muhammad Adeel Ilyas*  
**Muhammad Adeel Ilyas**  
Advocate, Peshawar.  
Cell No. 0333-9554519

(1)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE  
TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2022.

Anwar Khan S/o Shah Said R/o Sipah Ghaibikhel, Village  
Malang Ghari, P.O Box Bara, Tehsil Bara, District Khyber.

.....(Appellant)

**V E R S U S**

1. District Police Officer, Khyber.
2. Inspector General of Police, Khyber Pakhtunkhwa,  
Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER  
PUKHTUNKHWA SERVICE TRIBUNAL ACT  
1974, AGAINST THE IMPUGNED  
TERMINATION ORDER DATED 21-04-2020,  
COMMUNICATED TO THE APPELLANT ON  
02-04-2022, VIDE WHICH THE APPELLANT  
WAS DISMISSED FROM SERVICE.**

**PRAYER IN APPEAL:**

*On the acceptance of this appeal, the impugned  
order dated 21-04-2020 may graciously be set aside  
and the respondents may kindly be directed to  
reinstate the appellant on his job with all back  
benefits.*

**Respectfully Sheweth:**

1. That the appellant joined the service of the Police  
Department as Constable in year 2010.

2. That the services of the appellant were handed over by the then Political agent to one Imran Afridi (Malik) so on the directions/orders of the superiors, the appellant was performing his duties with him.
3. That on dated: 09-09-2019 while performing his duties with the above name Malik, the appellant was arrested with his sons by the ANF officials and planted a fake F.I.R against the appellant along with others.
4. That since then the appellant was behind the bars at Adyala jail.
5. That after concluding of the Trial of the said case, Judge Special Court, Islamabad on dated: 30-03-2022, has acquitted the appellant from the charges leveled against him. (Copy of the judgment is attached as annexure "A").
6. That thereafter the appellant approached the respondents and informed them regarding his absence from duty.
7. That on dated: 02-04-2022, the respondents handed over the dismissal order of the appellant to him. (Copy of the dismissal order, charge sheet etc are attached as annexure "B").

8. That the appellant moved departmental appeal to the respondent No.2 on dated: 02-04-2022 but till date no decision has been taken on the said application, hence the present appeal on the following grounds: (Copy of departmental appeal is attached as annexure "C").)

**GROUNDS:**

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice, therefore, the impugned order is not tenable under the law.
- C. That the impugned order is suffering from legal infirmities and as such the same is bad in law.
- D. That the absence of the appellant was not willful but was due to his arrest in a fake F.I.R and the appellant was acquitted of all the charges after the conclusion of trial.

- E. That the appellant has at his credit a long and spotless service career at his credit the penalty awarded to him is too harsh and liable to be set aside.
- F. That the appellant is jobless since the imposition of illegal penalty of removal from service.
- G. That the appellant seeks the permission of this Hon'ble Tribunal to rely on additional grounds at the hearing of this appeal.

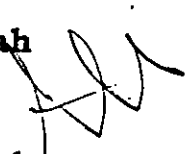
It is, therefore, humbly prayed that on acceptance of this appeal the impugned order dated 21-04-2020 may be set aside and the appellant may kindly be reinstated into service with all back benefits.

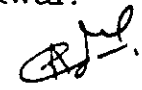
  
Appellant

Through

  
Zahanat Ullah

Dated: 05/07/2022

  
Moamar Jalal  
Advocates High Court,  
Peshawar.

&   
Muhammad Adeel Ilyas  
Advocate, Peshawar.

(5)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE  
TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2022

Anwar Khan.....(Appellant)

**VERSUS**

District Police Officer, Khyber and  
another.....(Respondents)

**AFFIDAVIT**

I, Anwar Khan S/o Shah Said R/o Sipah Ghaibikhel,  
Village Malang Ghari, P.O Box Bara, Tehsil Bara, District  
Khyber, do hereby solemnly affirm and declare on oath that  
the contents of the **Service Appeal** are true and correct to the  
best of my knowledge and belief and nothing has been  
concealed from this Hon'ble Court.



**DEPONENT**

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2022

Anwar Khan.....(Appellant)

**V E R S U S**

District Police Officer, Khyber and another.....(Respondents)

**ADDRESSES OF THE PARTIES**

**APPELLANT:**

Anwar Khan S/o Shah Said R/o Sipah Ghaibikhel, Village Malang Ghari, P.O Box Bara, Tehsil Bara, District Khyber.


**RESPONDENTS:**

- 1. District Police Officer, Khyber.
- 2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

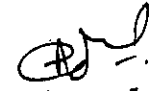
 Appellant

Through

Dated: 05/07/2022

  
**Zahanat Ullah**

**Moamar Jalal**  
Advocates High Court,  
Peshawar.

&   
**Muhammad Adeel Ilyas**  
Advocate, Peshawar.



7

**IN THE COURT OF MR. WAJID ALI**  
**JUDGE, SPECIAL COURT (CONTROL OF NARCOTIC SUBSTANCES),**  
**ISLAMABAD.**

Special case No.15 dated 25.02.2020

Date of Institution: 25.02.2020

Date of Decision:30.03.2022

The State, through ANF.

Versus:

1. Kamran Afridi son of Imran Khan, caste Afridi, age 33 years, profession transport business, resident of Bar Qambarkhel, Wand Garay Kajori, Wali Abad P.O.Box Bara District Khyber Agency.
2. Faizan Johar son of Johar Khan, caste Afridi, age 30 years, Student, resident of Bar Qambarkhel, Wand Garay Wali Abad Sam Baba P.O.Box Bara Tehsil Bara District Khyber Agency.
3. Abdullah son of Haji Malik Jan, Caste Afridi, age 35 years, profession ANF employee, resident of Bar Qambarkhel, Speen dand Kanday Turki Khel Soorkas No. 2, P.O.Box Bara Tehsil Bara District Khyber Agency.
4. Anwar Khan son of Shah Syed. Caste Afridi, age 34 years, profession employee of Levies Force, resident of Sipah Ghaibikhel village Malang Garhi P.O.Box Bara Tehsil Bara District Khyber Agency.
5. Irfan Afridi son of Imran Khan, Caste Afridi, age 31 years, Student, resident of Bar Qambarkhel, Wand Garay Kajori, Wali Abad Sam Baba P.O.Box Bara District Khyber Agency.
6. Abdul Hanan son of Saleem Jan, Caste Afridi, age 31 years, profession Shopkeeper, permanent resident of Bar QambarKhel Wand Garay Kajori Soorkas No. 2, P.O.Box Bara District Khyber Agency.

(Accused)

FIR No. 185/19, dated 09.09.2019, offence u/s 6/9 (c), and 14, 15, 16 of CNSA 1997, P.S ANF-RD, North Rawalpindi.

Heard: . Mr. Nasir Khan Afridi advocate-learned counsel for the accused Kamran Afridi, Irfan Afridi and Faizan Johar is present. Mr. Nasir Khan Banozai advocate-learned counsel for the accused Abdullah, Abdul Hanan and Anwar Khan. Mr. Shah Nawaz adyocate-learned SPP is present.

**JUDGMENT**

30.03.2022

Report u/s 173 Cr.P.C was submitted against the above named accused to face trial in case FIR No. 185/19, dated 09.09.2019,

  
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Special Court (CNS)  
ISLAMABAD

(2)

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

offence u/s 6/9 (c), read with section 14, 15 & 16 of CNSA 1997, P.S ANF-RD, North Rawalpindi.

02. Brief facts of the prosecution case are that on 08.09.2019 at about 21:00 hours, Inspector Allah Bux was present in PS ANF RD North Rawalpindi. The high ups received information to the effect that the inter-provincial narcotics smugglers namely Imran Khan and Johar Khan Afridi (both sons of Haji Hashim Khan Afridi resident of Bara) through their sons and agents namely Kamran Afridi, Irfan Afridi, Faizan Johar Afridi and agents Abdullah, Anwar Khan, Abdul Hanan will smuggle huge quantity of narcotics through vehicle BMW car bearing registration No.ANT-525, vehicle Toyota Surf bearing registration No.BD-7941 having silver colour and vehicle BMW Jeep bearing registration No.LEA-06-188 having gun metallic colour through motorway and will pass through M-1 Toll plaza Islamabad at about 22:00 hours to smuggle narcotics from Peshawar to interior Punjab. Believing the information credible, as per directions of the high ups, Inspector Allah Bux/I.O constituted a raiding party which included him, Ufqad Khalid, Amir Nawaz, Asad Shah, Muhammad Imran and Irfan Mehmood Constables. The raiding party boarded in official vehicle bearing registration No.GAB-431 driven by constable driver Avid Saleem, duly equipped with arms, left the police station at about 21:15 hours and at about 22:15 hours reached the M-1 Toll Plaza Islamabad, (place regarding which information was received) and established Naaka and started surveillance of the vehicles regarding which information was received. At about 23:05 hours, the vehicle BMW car having blue colour bearing registration No.ANT-525 wherein two persons were sitting was seen coming from Peshawar side. With the help of accompanying officials, the said vehicles was stopped and the persons sitting in the vehicle were de-boarded. The person de-boarded from the front seat of said vehicle was having a black colour travelling bag in his right hand. On asking about their names and addresses, the person de-boarded from the driving seat disclosed his name as Kamran Afridi son of Imran Afridi and the person de-boarded from the front seat disclosed his name as Faizan Johar son of Johar Khan Afridi. Both the accused were found to be the same persons regarding whom information was received. On interrogating them regarding the presence of narcotics with them,

9

The State ... Vs... Kamran Afridi etc.

Judgment

30.03.2022

Faizan Johar disclosed regarding the presence of narcotics in the travelers bag having black colour in his possession. Kamran Afridi disclosed regarding the presence of narcotics in the trunk of the vehicle. On further interrogation, both of them disclosed regarding the presence of narcotics in the vehicles bearing registration No.BD-7941 and LEA-06-188 and further disclosed that the said vehicles shall pass after some time. As per disclosure of the accused persons, to intercept the other vehicles, the accused already apprehended and their vehicle and travelers bag were handed over to the ANF officials namely Muhammad Imran and Asad Shah. Other officials again took position on the Naka for the surveillance of other vehicles regarding which information was received. At about 23:15 hours, the vehicle Toyota SURF bearing registration BD-7941 followed by the vehicle bearing registration No. LEA-06-188 wherein 02 persons were sitting in each vehicle, were seen coming which were stopped with the help of accompanying officials. The persons sitting in the vehicles were overpowered and de-boarded from the vehicles. On asking about their names and addresses, the person de-boarded from driving seat of the vehicle bearing registration No.BD-7941 disclosed his name as Abdullah son of Haji Malik Jan and the person de-boarded from the front seat of the said vehicle disclosed his name as Anwar Khan son of Shah Said. The person de-boarded from the driving seat of vehicle BMW Jeep having gun metallic colour bearing registration No.LEA-06-188 disclosed his name as Irfan Afridi son of Imran Khan whereas the person de-boarded from the front seat disclosed his name as Abdul Hanan son of Saleem Khan who was dressed in the ANF uniform. On interrogating the persons apprehended regarding the information of presence of narcotics, all the accused separately disclosed and made pointation regarding the presence of narcotics in the trunks of the vehicles in their possession. On checking the traveling bag in the possession of accused Faizan Johar, 14 packets wrapped in khaki insulation tape were recovered. On opening and checking, charas wrapped in polythene bags was found present in each packet. The recovered packets of charas were weighed and weight of each packet come out to be 1200/1200 grams and thus the total weight of the 14 recovered packets came out to be 16 kilograms and 800 grams of charas. 10/10 grams of charas was separated from each recovered packets for chemical analysis and 14 sample parcels having serial numbers 01 to 14 were prepared, whereas the remaining case property


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Chief,  
Special Court (CNS)  
Islamabad

(10)

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

i.e. charas was sealed in parcel No.15. All the parcels were sealed with seal ABN. As per disclosure of accused persons of vehicle BMW car having blue colour bearing registration No.ANT-525, the trunk of the said vehicle was checked with the help of torch and a secret cavity was found present at the place for spare wheel. The secret cavity was opened with the help of tools and 30 packets, wrapped in khaki insulation tape were recovered. On checking the said packets, charas wrapped in polythene bag was found inside the packets. All the recovered packets were separately weighed and weight of each packet came out to be 1200/1200 grams each. The total weight of the 30 packets came out to be 36 kilograms of charas. 10/10 grams of charas was separated from each recovered packet and 30 sample parcels bearing serial numbers 16-45 were prepared whereas the remaining case property i.e. charas was packed in a separate parcel having Serial No.46. All the parcels were sealed with the seal ABN. On further search of the vehicle, a screw driver was recovered from the dashboard of the said vehicle. The recovered narcotics parcels No.01 to 14, parcel No.15 Ex.P-1, parcels No.16 to 45 and parcel No.46 Ex.P-2, the travelers bags Ex.P-3, vehicle Ex.P-4, remote control of vehicle Ex.P-5 and screw driver Ex.P-6 were taken into possession by Inspector Allah Bux through recovery memo Ex.PD witnessed by witnesses Ufqad Khalid and Amir Nawaz Constables.

03.  As per disclosure of accused Abdullah and Anwar Khan, the trunk of the vehicle Toyota Surf having silver colour bearing registration No.BD-7941 was opened and checked where a secret cavity was found which was opened with the help of tools. 30 packets wrapped in khaki insulation tape were recovered which were opened and on checking, opium wrapped in polythene bags was found present in the said packets. All the recovered 30 packets of opium were weighted at the spot and weight of each came out to be 1200/1200 grams and the total weight of 30 packets came out to be 36 kilograms of opium. 10/10 grams of opium was separated from each recovered packet in 30 sample parcels having serial Nos.47 to 76 and the remaining case property i.e. opium was packed in a separate parcel bearing serial No.77. All the parcels were sealed with the seal ABN. The 30 sample parcels bearing serial Nos.47 to 76, the parcel No.77 Ex.P-7, the vehicle Ex.P-8 and the key of the vehicle Ex.P-9 were taken into possession by Inspector Allah Bux through recovery memo Ex.PE witnessed by witnesses Ufqad Khalid and Amir Nawaz Constables.

11

The State ... Vs... Kamran Afridi etc.

5

Judgment  
30.03.2022

As per disclosure of accused Irfan Afridi and Abdul Hanan, trunk of the vehicle BMW Jeep bearing registration LEA-06-188 was opened and a secret cavity was found at the place for spare wheel which was opened with the help of tools. 33 packets wrapped in khaki insulation tape were recovered from the secret cavity which were opened. On checking, opium wrapped in polythene bags was found inside the said packets. All the packets were weighed and weight of each packet came out to be 1200/1200 grams and thus the weight of all the 33 packets of opium came out to be 39 kilograms and 600 grams. 10/10 grams of opium was separated from each recovered packet for the purpose of chemical analysis in 33 sample parcels having serial Nos.78 to 110, whereas the remaining case property i.e. opium was packed in a separate parcel having serial No.111. All the parcels were sealed with the seal ABN. On further search of the vehicle, from the dashboard of the vehicle a coloured copy of the registration certificate was recovered. All the sample parcels No.78 to 110, parcel of remaining case property parcel No.111 Ex.P-10, vehicle Ex.P-11, key Ex.P-12 and coloured copy of registration certificate Ex.P-13 were taken into possession by Inspector Allah Bux through recovery memo Ex.PF witnessed by the witnesses Ufqad Khalid and Amir Nawaz Constables.

04.



Inspector Allah Bux/I.O conducted the personal search of the accused persons. As a result of personal search of accused Kamran Afridi, Pakistani Currency Rs.7000/- (07 notes of 1000 denomination) Ex.P-14, his CNIC Ex.P-15, one mobile phone Ex.P-16, one internet device of Zong company Ex.P-17 were recovered which were taken into possession by the I.O through recovery memo Ex.PG witnessed by the witnesses Ufqad Khalid and Amir Nawaz constables. As a result of personal search of accused Faizan Johar, Pakistani Currency Rs.6000/- (06 notes of 1000 denomination) Ex.P-18, his CNIC Ex.P-19, one mobile phone Ex.P-20 were recovered which were taken into possession by Inspector Allah Bux/I.O through recovery memo Ex.PH witnessed by the witnesses Ufqad Khalid and Amir Nawaz constables. As a result of personal search of accused Abdullah, Pakistani Currency Rs.5000/- (05 notes of 1000 denomination) Ex.P-21, his CNIC Ex.P-22, one mobile phone Ex.P-23, his driving license Ex.P-24 and colour copy of service card of ANF Ex.P-25 were recovered which were taken into possession by Inspector Allah Bux through recovery memo Ex.PJ witnessed by the witnesses Ufqad

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Captest,  
Special Court (CNS)  
Islamabad

Judgment  
30.03.2022

Khalid and Amir Nawaz constables. As a result of personal search of accused Anwar Khan, Pakistani Currency Rs.3000/- (03 notes of 100 denomination) Ex.P-26, his CNIC Ex.P-27 and one service card of levies force Ex.P-28 were recovered which were taken into possession by the I.O through recovery memo Ex.PK witnessed by the witnesses Ufqad Khalid and Amir Nawaz constables. As a result of personal search of accused Irfan Afridi, Pakistani Currency Rs.6000/- (06 notes of 1000 denomination) Ex.P-29, his CNIC Ex.P-30 and one mobile phone Ex.P-31 were recovered which were taken into possession by me through recovery memo Ex.PL witnessed by the witnesses Ufqad Khalid and Amir Nawaz constables. As a result of personal search of accused Abdul Hanan, Pakistani Currency Rs.2000/- (02 notes of 1000 denomination) Ex.P-32, his original CNIC Ex.P-33 and driving license Ex.P-34 were recovered which were taken into possession by Inspector Allah Bux through recovery memo Ex.PM witnessed by the witnesses Ufqad Khalid and Amir Nawaz constables. At the place of occurrence, Inspector Allah Bux demanded the service card from accused Abdul Hanan who could not produce the same and told that he smuggles the narcotics in the uniform of ANF. Inspector Allah Bux prepared the complaint already exhibited as Ex.PB and sent the same to the police station for registration of FIR through constable driver Abid Saleem.

05. Inspector Allah Bux recorded the statements of witnesses at the spot. Inspector Allah Bux prepared the unscaled site plan of the place of occurrence as Ex.PN. Inspector Allah Bux interrogated the accused persons at the spot. In the meantime, Abid Saleem constable reach at the spot along with original reported complaint and copy of FIR. The accused were formally arrested and completed the head notes of all the prepared documents and parcels. Inspector Allah Bux issued the cards of arrest of accused persons. Inspector Allah Bux along with the raiding party, the case property and the arrested accused persons left the spot for the police station. On reaching the police station, the vehicles of the accused were parked in the MT of the police station and handed over the custody of seized vehicles to Moharrar Maalkhana. The accused persons were confined in hawalat. Inspector Allah Bux handed over the case property, articles of personal search as per recovery memo to the Moharrar Maalkhana. On 10.09.2019, the accused persons were produced before the learned judicial magistrate and got 02 days physical remand of the accused persons. On

13

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

11.09.2019, the sample parcels were sent to the NIH Islamabad for chemical analysis through Constable Mazhar Ali. Inspector Allah Bux recorded the statements of Mazhar Ali constable and HC Abdul Razzaq/ Moharrar Maalkhana. A letter was written to the RD North for obtaining the CDR of the accused persons. On the same day, a letter was also written to DPO Sargodha for criminal record of accused Abdullah. On 12.09.2019, the accused were sent to jail on judicial remand. On 18.09.2019, a letter was written to FWO for obtaining the E-Tag record of the vehicles seized from the accused persons. On 24.09.2019, a letter was written to Political Agent Khyber Agency for the service record of accused Anwar Khan and a letter was also written to RD ANF KP for the service record of accused Abdullah. The Assets proformas were also sent to RD ANF North Rawalpindi for Assets investigation of the accused persons. Notices were issued to Johar Afridi, Imran Khan Afridi, Shakir Afridi, Rizwan Afridi and Rehmat Afridi for joining investigation in connection with this case. Letters were written to the ETOs Lahore, Sindh and Islamabad for the verification of the ownership of the seized vehicles. On 30.09.2019, the E-Tag record of vehicle bearing registration No. BD-7941 was received from FWO. The mobile phones taken into possession from accused Kamran Afridi, Abdullah, Irfan Afridi and Faizan Johar were sent to Cyber Crimes FIA for forensic of WhatsApp data. On 19.11.2019, the reports of NIH Islamabad Ex.PO, Ex.PP, Ex.PQ, Ex.PR, Ex.PS, Ex.PT, Ex.PU, Ex.PV, Ex.PW, Ex.PX, Ex.PY, Ex.PZ, Ex.PAA, Ex.PAB, Ex.PAC, Ex.PAD, Ex.PAE, Ex.PAF, Ex.PAG, Ex.PAH, Ex.PAJ and Ex.PAK regarding the sample parcels were received in positive. The same was made part of the record. The forensic report to the extent of 04 mobiles recovered from the accused persons was received from FIA Cyber Crime and was made part of the record. The service record of accused Abdullah was received from RD KP and according to that record the accused was employee of ANF. On 25.11.2019, one Afaq Ahmad joined investigation to the extent of vehicle ANT-525. On 17.12.2019, the report under section 173 Cr.P.C was submitted in the court of law by Incharge Police Station ANF-RD North Rawalpindi. On 22.01.2020, separate Challan to the extent of accused Abdul Hanan was submitted before the learned Judicial Magistrate for trial of the accused Abdul Hanan.

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Special Court (CNS)  
Islamabad

14

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

06. During investigation, accused were found guilty and report u/s 173 Cr.P.C was submitted in Court against the accused. On 08.12.2020, as required u/s 265-C Cr.P.C, copies of documents and statements were supplied to the accused and on 04.01.2021, Charge against the accused persons was framed under Sections 9-C/15 CNSA, 1997. to which accused pleaded not guilty and claimed trial.
07. To establish Charge, prosecution examined the following witnesses.

**PW-01: Abdul Razzaq HC** has deposed on oath that on 09.09.2019, he was posted at PS ANF RD North, Rawalpindi. On the same day, Inspector Allah Bux handed over to him 44 sealed sample parcels said to contain 10/10 grams charas and 63 sealed sample parcels of Opium weighing 10/10 grams each sealed with the seal ABN, 02 sealed parcels of remaining case property of charas and 02 sealed parcels of remaining case property of Opium sealed with seal ABN. The articles of personal search of accused, 01 traveler's bag of black colour and other articles, along with 03 vehicles, remote of 01 vehicle and keys of 02 vehicles, 01 registration book and 01 screw driver were also handed over to me according to recovery memos. He made entry in register No.19 regarding the above said articles and parcels. He produce the original register before the court and the copy of the relevant entry from the said register as Ex.PA and Ex.PA/1. (Original register seen and returned). He parked the above said vehicles in MT of the police station. He kept all the sealed sample parcels and sealed parcels of case property, articles of personal search and other articles in Maalkhana in safe custody.

On 11.09.2019, Constable Mazhar Ali went to him along with application in Urdu, docket English and sample seal and asked for providing him sealed sample parcels of this case. He handed over to him 44 sealed sample parcels said to contain charas, 10/10 grams each and 63 sealed sample parcels said to contain Opium, 10/10 grams each sealed with seal ABN to Mazhar Ali constable along with road certificate intact for onward transmission to the office of NIH, Islamabad. Mazhar Ali constable returned to police



15

9

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

station after depositing the sealed sample parcels and handed over to him road certificate. IO recorded his statement under Section 161 Cr.P.C.

**PW-02: Azhar Ur Rehman Head Constable** has deposed on oath that on 09.09.2019, he was posted as Duty Officer at PS ANF RD North, Rawalpindi. On the same day, he received a complaint / Istighasa Ex.PB sent by Inspector Allah Bux through Abid Saleem driver upon which he recorded FIR No.185 of 2019 Ex.PC. He handed over the carbon copy of the FIR Ex.PC and original reported complaint to driver Abid Saleem to take the same to Inspector Allah Bux for investigation. His report and signature on complaint is Ex.PB/1.

**PW-03: Mazhar Ali Constable** has deposed on oath that on 11.09.2019, he was posted at police station ANF-RD North, Rawalpindi. Inspector Allah Bux/IO handed over to him application Urdu, docket English and Sample seal and directed him to collect sealed sample parcels of this case from Moharrar Maalkhana namely Abdul Razzaq HC for onward transmission to the office of NIH, Islamabad. On the same day i.e. 11.09.2019, he met Moharrar Maalkhana Abdul Razzaq HC who handed over to him 44 sealed sample parcels of charas and 63 sealed sample parcels of Opium, weighing 10/10 grams each sealed with the stamp of (ABN) along with road certificate. PW-3 deposited the sample parcels in the office of NIH, Islamabad intact and nobody interfered with it during the period the same remained in his custody. After depositing the sample parcels in the NIH Islamabad, he returned to the police station and returned the road certificate to Moharrar Maalkhana. He joined investigation with Inspector Allah Bux who recorded his statement under section 161 Cr.P.C.

**PW-04: Allah Bux Inspector** is the Investigation Officer of this case. In his statement recorded on oath before this court, PW-4 narrated almost the same facts as mentioned in para No.02 to 05 of this judgment.

C.T.C  
Magist.  
Special Court (CNS)  
Islamabad

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

**PW-05: Ufqad Khalid Head Constable** has deposed on oath that on 08.09.2019, he was posted in PS ANF RD North Rawalpindi. At about 21:00 hours, the high ups received information that interprovincial narcotics smugglers namely Imran Khan and Johar Khan sons of Haji Hashim Khan residents of Khyber Agency will smuggle huge quantity of narcotics from Peshawar to interior Punjab through their sons namely Kamran, Irfan and Faizan along with their workers namely Abdullah, Abdul Hanan and Anwar Khan through BMW car bearing registration No.ANT-525 having blue colour, Toyota Surf bearing registration No.BD-7941 having silver colour and BMW Jeep bearing registration No.LEA-06-188 having gun metallic colour and will pass the Islamabad Toll plaza M-1 at about 23:00 hours. On receiving this information, on the direction of high ups, a raiding party was constituted which included him, Inspector Allah Bux, Asad Shah, Muhammad Imran, Amir Nawaz and Irfan Mehmood constables. At about 21:15 hours, the raiding party left the police station in the official vehicle bearing registration No.GAB-431 driven by a driver Abid Saleem and reached the place regarding which information was received i.e. the Exit Way and reached there at about 22:15 hours, established Naaka there with effective strategy and started surveillance of the vehicle regarding which information was received. At about 23:05 hours, the vehicle BMW car having blue colour bearing registration No.ANT-525, wherein 02 persons were boarded, was seen coming from Peshawar side. Inspector Allah Bux, with the help of accompanying officials, stopped the said vehicle at the spot. The persons sitting in the vehicle were de-boarded from the vehicle and, in presence of PW-5 and Constable Amir Nawaz, on asking about their names and addresses, the person de-boarded from the driving seat stated his name as Kamran Afridi son of Imran Khan resident of Bara Khyber Agency whereas the second seater who was having in his right hand a travelers bag of black colour told his name as Faizan Johar son of Johar Khan resident of Bara Khyber Agency. On asking questions by Inspector Allah Bux regarding the information received, both the persons made




17

11

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

separate disclosures regarding the presence of narcotics in the trunk of the vehicle in their possession and in the travels bag having black colour. They further disclosed that the vehicles Toyota Surf having registration No.BD-7941 and BMW Jeep bearing registration No.LEA-06-188 having narcotics will also pass from there after sometime. As per their disclosure, the said 02 persons, vehicle BMW bearing registration No.ANT-525 and the travelers bag having black colour were handed over to Constable Muhammad Imran and Asad Shah and Naaka was established again for intercepting the other 02 vehicles. At about 23:15 hours, the other two vehicles, firstly the vehicle Toyota Surf bearing registration No.BD-7941 having silver colour wherein two persons were boarded followed by vehicle BMW Jeep bearing registration No.LEA-06-188 were seen coming. Both the said vehicles were stopped by Inspector Allah Bux with the help of accompanying officials with strategy and the persons boarded therein were de-boarded from the said vehicles. In his presence and in the presence of Amir Nawaz Constable, on asking about names and addresses of the persons de-boarded from the said vehicles, the person de-boarded from the driving seat of vehicle Toyota Surf bearing registration No.7941 told his name and address as Abdullah son of Haji Malik Jan resident of Bara Khyber Agency whereas the second seater of the said vehicle disclosed his name and address as Anwar Khan son of Shah Said resident of Bara Khyber Agency. The person de-boarded from the driving seat of the vehicle BMW Jeep having gun metallic colour bearing registration No.LEA-06-188 disclosed his name as Irfan Afridi son of Imran Khan resident of Bara Khyber Agency whereas the second seater of the said vehicle stated his name and address as Abdul Hanan son of Saleem Khan resident of Hayat Abad Peshawar who was wearing ANF uniform. They were found to be the persons regarding whom information was received. On asking regarding the presence of narcotics by Inspector Allah Bux, Abdullah and Anwar Khan disclosed separately regarding the presence of narcotics in the secret cavity of the trunk of Toyota Surf bearing registration No.BD-7941. Thereafter,

C.T.C

Captest, -  
Special Court (CNS)

(18)

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

Irfan Afridi and Abdul Hanan also disclosed separately, after some hesitation, regarding the presence of narcotics in secret cavity made in the trunk at the place for spare Tyre. All the 06 accused persons present in the court disclosed regarding the presence of narcotics in all the three vehicles and in the traveler's bag. As per disclosure of above mentioned persons, in presence of witnesses namely Amir Nawaz and PW-5, Allah Bux Inspector took traveler bag from Faizan Johar, opened the same and on checking 14 packets wrapped in khaki insulation tape were recovered. The packets were opened and checked and on checking Charas wrapped in polythene bag was found inside the packets. All the 14 packets were weighed at the spot and each packet came out to be 1200/1200 grams. Total weight of 14 packets came out to be 16.800 kilograms. 10/10 grams of Charas was separated from each recovered packet and 14 sample parcels from serial No.1 to 14 were prepared for the purpose of chemical analysis while the remaining Charas was packed in the parcel of remaining case property having serial No.15. All the parcels were sealed with the seal ABN. On further search of the vehicle by Inspector Allah Bux with the help of torch, secret cavity was found in the trunk of the vehicle bearing registration No.ANT-525 BMW Car at the place for spare tyre which was opened with the help of tools and 30 packets wrapped in khaki insulation tape were recovered which were opened and checked. On checking, Charas wrapped in polythene bag was found inside the packets. All the 30 packets were weighed separately at the spot and each packet came out to be 1200/1200 grams. Total weight of the 30 packets came out to be 36 kilograms. 10/10 grams Charas was separated from each packet and 30 sample parcels from serial No.16 to 45 were prepared for the purpose of chemical analysis while the remaining Charas was packed in the parcel of remaining case property having serial No.46. All the sample parcels and parcels of remaining case property were sealed with the seal ABN. All the sample parcels and parcels of remaining case property having serial No.15 Ex.P-1 and parcel serial No.46 Ex.P-2 vehicle bearing registration No.ANT-525 Ex.P-4, screw driver Ex.P-6

19

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

recovered from the dashboard of the vehicle, remote of the vehicle Ex.P-5 and travelers bag of black colour Ex.P-3 were taken into possession by Inspector Allah Bux through recovery memo Ex.PD witnessed and signed by PW-5 and Amir Nawaz constable. His signature on Ex.PD is Ex.PD/1. As per disclosure of Abdullah and Anwar Khan, a secret cavity was found in the trunk of vehicle bearing registration No.BD-7941 Toyota Surf which was opened with the help of tools and on checking 30 packets wrapped in khaki insulation tape were recovered. All the packets were opened and checked and opium wrapped in polythene bags was found inside the packets. On weighing at the spot, the weight of each recovered packet came out to be 1200/1200 grams and total weight of the 30 packets came out to be 36 kilograms of opium. From each recovered packet of opium, 10/10 grams opium was separated for the purpose of chemical analysis in 30 sealed parcels having serial No.47 to 76 whereas the remaining case property was packed in a parcel of remaining case property bearing serial No.77 Ex.P-7. All the parcels were sealed with the seal ABN. All sample parcels, parcel of remaining case property, vehicle bearing registration No.BD-7941 Toyota surf Ex.P-8 along with key Ex.P-9 were taken into possession by Inspector Allah Bux through recovery memo Ex.PE witnessed by PW-5 and Amir Nawaz constable. His signature on Ex.PE is Ex.PE/1. As per the disclosure of Irfan Afridi and Abdul Hanar from the vehicle in their possession bearing registration No.LEA-06-188, the secret cavity made in the trunk of the said vehicle at the place of spare tyre was found. Which was opened with the help of tools and on checking 33 packets wrapped in khaki insulation tape were recovered which were opened and checked. On checking, opium wrapped in polythene bag was found inside packets. All the packets were weighed at the spot and each packet came out to be 1200/1200 grams. Total weight of 33 packets came out to be 39 kilograms and 600 grams. 10/10 grams was separated from each recovered packet and 33 sample parcels from serial No.78 to 110 were prepared while the remaining opium was packed in parcel of remaining case property



C.I.C.  
Caretaker,  
Special Court (C.M.S.)  
Islamabad

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

having serial No.111. All the parcels were sealed with the seal ABN. Sample parcels, parcel of remaining case property having serial No.111 Ex.P-10, vehicle bearing registration No.LEA-06-188 Ex.P-11 along with key Ex.P-12 and colour copy of registration book of the vehicle recovered from the dashboard of the vehicle Ex.P-8 were taken into possession by Inspector Allah Bux through recovery memo Ex.PF witnessed by PW-5 and Amir Nawaz Constable. His signature on Ex.PF is Ex.PF/1. The personal search of all the accused persons was conducted by Inspector Allah Bux in presence of PW-5 and articles recovered from the accused persons as a result of their personal search were taken into possession by Inspector Allah Bux through separate recovery memos witnessed by PW-5 and Amir Nawaz constable. His signatures on Ex.PG, Ex.PH, Ex.PJ, Ex.PK, Ex.PL and Ex.PM are Ex.PG/1, Ex.PH/1, Ex.PJ/1, Ex.PK/1, Ex.PL/1 and Ex.PM/1 respectively. On asking about service card from accused Abdul Hanan, he could not produce any service card and stated that he facilitates the other accused in smuggling of narcotics by using the ANF uniform. IO recorded statement of PW-5 at the spot.

08. On 20.01.2022, Mr. Shah Nawaz advocate-learned SPP gave up PW Amir Nawaz being unnecessary. Learned SPP also produced chemical analysis reports Ex.PO, Ex.PP, Ex.PQ, Ex.PR, Ex.PS, Ex.PT, Ex.PU, Ex.PV, Ex.PW, Ex.PX, Ex.PY, Ex.PZ, Ex.PAA, Ex.PAB, Ex.PAC, Ex.PAD, Ex.PAE, Ex.PAF, Ex.PAG, Ex.PAH, Ex.PAJ and Ex.PAK and closed the prosecution evidence.

09. After examination of the prosecution witnesses, for the purpose of enabling the accused to explain the circumstances appearing in the evidence against them; the statements of accused as mandated by Section 342 Cr.P.C were recorded wherein they denied the allegations of the prosecution and pleaded innocence. During their statements recorded u/s 342 Cr.P.C on 02.02.2022, accused produced certified copy of petition U/S 22-A, 22B Cr.P.C Ex.DD, Roznamcha Rapt No.31 of police station University Town Peshawar pages (01-09), CD of CCTV footage of cameras installed outside the house of accused

21

The State ... Vs... Kamran Afridi etc.

15

Judgment  
30.03.2022

Faizan Afridi, Faizan and Irfan Ex.DE and the accused also wished to produce defense witnesses.

10. Defense produced the following witnesses:

**DW-01: Wilayat Shah ASI Additional Moharrar Police Station University Town Peshawar** recorded his statement on oath that he produce roznamcha register / daily diary of the police station regarding rapt No.31 dated 09.09.2019, copy of which is placed on the record as Ex.DF.

**DW-02: Tanzeem Sarwar Assistant Director** recorded his statement on oath that on 09.09.2019, he was posted as Incharge at police station RD ANF Peshawar. On the same day, at about 14:00 hours, he got orders from the high ups that accused Imran Afridi and Johar Afridi residents of University Town Peshawar were required in case FIR No.185/2019 of police station RD ANF North Rawalpindi so, he should make efforts for their arrest. On the stated orders, he along with other officials of the police station ANF as well as intelligence team went to police station university town where they reached at 15:30 hours. He asked SHO Bilal of the stated police station to accompany them and assist them in the raid. The ANF team accompanied by the team of local police of police station university town reached at the house of Johar Afridi and Imran Afridi and search for the stated accused but none of the stated accused was found there however, the local police recovered certain weapons and ammunition from their house. Thereafter, they returned to the police station ANF RD Peshawar.

11. Mr. Shah Nawaz, advocate-learned SPP has contended that prosecution has proved Charges against the accused persons through cogent and confidence inspiring evidence beyond any reasonable doubt. Narcotic was recovered from the vehicles and possession of the accused persons and the reports Ex.PO, Ex.PP, Ex.PQ, Ex.PR, Ex.PS, Ex.PT, Ex.PU, Ex.PV, Ex.PW, Ex.PX, Ex.PY, Ex.PZ, Ex.PAA, Ex.PAB, Ex.PAC, Ex.PAD, Ex.PAE, Ex.PAF, Ex.PAG, Ex.PAH, Ex.PAJ and Ex.PAK of National Institute of Health, Islamabad are positive which confirm that accused have committed


C.T.C

Chief,  
Special Court (CNSI)  
Islamabad

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

reaching at the spot of occurrence, time of interception of the vehicles, description of the vehicles from which recovery was effected, the occupiers of the vehicles, the manner of recovery of contraband, the weight of contraband recovered, the taking of samples from the contraband recovered, the number of samples taken, the preparation of recovery memos, the drafting of Murasla / complaint, the personal search of the accused, preparation of site plan, recording of statements at the spot of the recovery, return to the police station, the handing over of the case property to the Moharrar Maalkhana etc. It is noteworthy, that the stated witnesses were subjected to lengthy cross-examination but remained consistent and could not be shattered on any material fact. No discrepancy could be brought on the record in the statements of PW-4 & PW-5 in comparison to each other. So, the stated witnesses not only remained consistent and unshaken to the extent of their own statements but also supported and corroborated each other on each and every material fact in the present case. As such, this court has found PW-4 & PW-5 to be reliable, credible and confidence inspiring in their evidence in support of the prosecution charge.

15.  The unscaled site plan was also prepared by the complainant/IO wherein, the place of recovery shown and its surroundings as mentioned in the site plan fully supported and corroborated the prosecution version. Moreover, PW-2 also supported and corroborated the prosecution case to the extent of time of occurrence / recovery, drafting of complaint / Murasla and lodging of FIR.

16. It was contended on behalf of defense that complainant/IO in the present case are one and the same person, which excludes the possibility of impartial investigation. In this context, it is to be noted, that the job of IO in a recovery of narcotics case is only confined to preparation of site plan and recording of statements of witnesses under section 161 Cr.P.C, which are not substantive piece of evidence. Moreover, after effecting recovery, preparation of recovery memos and complaint, there remains no need to wait for a long period of 03/04 hours at the spot for arrival of the IO. Furthermore, when a higher authority deposes a complainant as an IO, the complainant is in no position to refuse investigation especially, when there is no bar in the Control of Narcotics substance Act, 1997 to this effect.

C.T.C

Chief,  
Special Court (CNS)  
Islamabad



(24)

Judgment  
30.03.2022

17. Learned counsel for the defense vehemently argued that the place of recovery in the present case is a busy place where people and vehicles are available round the clock besides, the officials working at the toll plaza so, the complainant / I.O should have made the recovery in presence of private / independent witnesses. No doubt, the place of occurrence is a busy place but unconcerned people will never like to bind themselves down in criminal cases as witnesses. Moreover, most of the people of the society in Pakistan are reluctant to involve themselves as witness against criminals. So, it is not strange that the ANF authorities could not arrange independent witnesses to prove the recovery in the present case. Furthermore, it is by now settled law that police officials are as good witnesses as any other person unless, some specific ill will or malice is attributed against them. No such malice or ill will has been attributed to the ANF officials in the present case. The factum of any ill will or malice is especially out of question in the present case because one of the accused namely Abdullah is an official of the ANF thus, it cannot be expected from the complainant/I.O as well as other witnesses in the present case to falsely implicate their colleague. So, this argument of the defense has no force.

18. The main defence of the accused in the present case is that they were actually apprehended by the ANF officials of police station RD Peshawar on 09.09.2019 and later on, were brought to Islamabad and handed over to complainant of the present case, who implicated them in this case. In support of this stance, the defence referred to the entries in the daily diary register of the police station Ex.DA and argued that the names of the accused and registration numbers of their vehicles were not mentioned while recording departure from the police station. In this respect, it is observed that the entry regarding departure of the raiding party headed by the complainant sufficiently proves the allegations of the prosecution in the present case because details of the spy information were not required to be entered in the daily diary register rather, recording of such details would always create a possibility of leakage of the raid to the concerned accused especially, in the present case where one of the accused was an official of the ANF itself.

19. The defence also produced DW-1 and DW-2 to prove that the accused were actually arrested at Peshawar in a raid conducted on 09.09.2019 at the house of accused Kamran Afridi, Irfan Afridi and Faizan Johar. According to the record produced by DW-1 and ocular evidence of DW-2, the stated raid was conducted by the officials of police station ANF RD Peshawar in collaboration with the local police of police station University Town Peshawar on request / direction received from the high ups of RD North Rawalpindi regarding arrest of Imran.

25

Judgment  
30.03.2022

Afridi and Johar Afridi, fathers of accused Kamran Afridi and Faizan Johar being co-accused with them in the present case. In this respect, the record of police station University Town Peshawar as well as ocular evidence of DW-2 are clear and further reveals that Imran Afridi as well as Johar Afridi were not found as a result of raid / search in their house so, no arrest was made as a result of such raid. The CD clips, produced to prove the said raid also do not show apprehension of any of the accused facing trial in the said raid. As such the documents and ocular evidence adduced by DW-1 and DW-2 do not support the defence version as to their arrest from their house at Peshawar. Moreover, the stance of defence in this respect is illogical as the defence has not disclosed any reason as to why the accused facing trial were brought from Peshawar to Rawalpindi for false implication in the present case when such purpose could easily be achieved in the raid on their house at Peshawar where, according to the defence, all the accused facing trial were actually present and even CCTV footages could also be retrieved and the evidence of local police of police station University town was also available in support of the raid. So, the defence taken by the accused facing trial is flimsy and illogical.

20.

It is also noteworthy that the documents produced as **Ex.DD** and **Ex.DF** support the prosecution version rather than the defence version because it is recorded in the stated documents by the local police of police station University Town Peshawar that the raid conducted by the ANF officials of police station ANF RD Peshawar in collaboration with the local police was for arrest of Imran Afridi and Johar Afridi, who were required in the present case. So, the stated documents make it clear that at the time of receiving request / direction for arrest of the co-accused, the present case was already registered at police station ANF RD North Rawalpindi. The stated documents are further supported and corroborated by the ocular evidence of DW-2 as well as the CCTV clips provided by the defence. As such, even the defence evidence proves that the present case was registered at police station ANF RD North Rawalpindi before the raid was conducted by the ANF officials of RD Peshawar in collaboration with the local police of Peshawar at the house of accused and thus, the defence evidence actually negates the defence version and supports the prosecution version.

21.

In view of the discussion in the preceding paras, the court has formed the opinion that the evidence of PW-4 & PW-5, fully corroborated by the unscaled site plan and PW-2 is credible, reliable and confidence inspiring and thus, the prosecution has proved through cogent, credible and reliable evidence that the ANF raiding party had actually

C.P.C

Chief Justice,  
Special Court (CNS)  
Islamabad

(26)

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

intercepted vehicles bearing registration No.ANT-525, driven by accused Kamran Afridi while, accused Faizan Johar was sitting with him on the front passenger seat, vehicle Toyota Surf bearing registration No.BD-7941, driven by Abdullah while, Anwar Khan was sitting with him on the front seat, vehicle bearing registration No.LEA-06-188, driven by Irfan Afridi while, Abdul Hanan was sitting with him on the front seat and from the trunks of the stated vehicles, 36 kilograms of charas, 36 kilograms of opium, 39 kilograms & 600 grams of opium were recovered respectively besides, the recovery of 16 kilograms & 800 grams of charas from the travelers bag in possession of accused Faizan Johar, on 08.09.2019, at about 23:05 hours and 23:15 hours, at the Motorway M-1 toll plaza Islamabad.


22. So far as the factum of nature of contraband is concerned, the first point for consideration is as to whether the contraband was kept at police station and transmitted to the NIH in safe custody or not? In this respect, PW-4, PW-1 & PW-3 furnished the details about the date and time of receiving the case property at the police station, the number and nature of parcels, its safe custody at the police station, the date and time of its transmission to NIH in safe custody of PW-3 and return of PW-3 to the police station along with the necessary receipts. No discrepancy could be brought on the record in the statements of PW-4, PW-1 & PW-3 and all the stated witnesses remained consistent and unshaken in their evidence before the court.

23. Learned counsel for the defence pointed out that serial numbers of the parcels of the remaining case property and sample parcels have not been mentioned while making entries regarding receiving of case property in register No.19. In this respect, it is observed that number of parcels with contents of the parcels along with its weight have clearly and correctly been mentioned in register No.19 Ex.PA, which sufficiently prove the receiving of the contraband and its sample parcels at the Maalkhane of the police station. Moreover, serial numbers of the sample parcels would only be relevant if the result of chemical analysis of some of the parcels would be in the negative and of some of the parcels would be in the positive. When all the sample parcels were found to be of narcotics, the question of serial numbers of the sample parcels would become irrelevant. It was also contended on behalf of the defence that signatures of the complainant / I.O was

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

not obtained in column No.8 of register No.19 Ex.PA to prove that the case property was handed over by him to Moharrar Maalkhana. This is a flimsy argument as column No.8 of register No.19 does not require obtaining of signatures of any person rather, the signatures of the complainant/I.O has to be obtained in column No.7 of register No.19, which were duly obtained on Ex.PA/2 which is next page of Ex.PA. The learned defence counsel also pointed out that signatures of PW-3 have not been obtained in column No.8 of register No.19 as token of receiving of sample parcels but, this court did not find any such requirement in column No.8 of register No.19. So, the requirements of register No.19 have been duly fulfilled. Moreover, the reports of chemical analysis, available on the record provide independent corroboration and support to the person who took the sample parcels to the NIH Islamabad, its date and time of receiving at the NIH. As such transmission of the case property along with samples from the spot of recovery to the police station on 09.09.2019, its safe custody at Maalkhana of the police station, its transmission to the NIH on 11.09.2019 and receiving at the NIH on 11.09.2019 have successfully been proved by the prosecution.

24.  The next question for consideration in the present case is nature of the contraband recovered. In this respect, reports of the NIH, Islamabad Ex.PO, Ex.PP, Ex.PQ, Ex.PR, Ex.PS, Ex.PT, Ex.PU, Ex.PV, Ex.PW, Ex.PX, Ex.PY, Ex.PZ, Ex.PAA, Ex.PAB, Ex.PAC, Ex.PAD, Ex.PAE, Ex.PAF, Ex.PAG, Ex.PAH, Ex.PAJ and Ex.PAK make it clear that the contraband recovered from the vehicles was in fact narcotic substances Charas and Opium.

25. In light of discussion on various aspects of the case, it is proved on the record beyond the shadow of reasonable doubt that the ANF raiding party had actually intercepted vehicles bearing registration No.ANT-525, driven by accused Kamran Afridi while, accused Faizan Johar was sitting with him on the front passenger seat, vehicle Toyota Surf bearing registration No.BD-7941, driven by Abdullah while, Anwar Khan was sitting with him on the front seat, vehicle bearing registration No.LEA-06-188, driven by Irfan Afridi while, Abdul Hanan was sitting with him on the front seat and from the trunks of the stated vehicles, 36 kilograms of charas, 36 kilograms of opium, 39 kilograms & 600 grams of opium were recovered, respectively besides, the recovery of 16 kilograms & 800 grams of charas from the travelers bag in possession of accused Faizan Johar, on 08.09.2019, at about 23:05 hours and 23:15 hours, at the Motorway M-1 toll plaza Islamabad.

  
C.J.C  
Chief,  
Special Court (CNC)  
Islamabad

Judgment  
30.03.2022

26. It was also contended on behalf of the accused that the contraband in the present case was found in secret cavities of the vehicles and there is no evidence on the record to connect any of the accused facing trial with ownership of the vehicles in question. In this respect, it is observed that the accused Kamran Afridi was driving vehicle bearing registration No.ANT-525 BMW, accused Abdullah was driving vehicle bearing registration No.BD-7941 and accused Irfan Afridi was driving vehicle bearing registration No.LEA-06-188. So, the stated accused were in actual control of the stated vehicles. They never took the stance that they were supposed or directed to hand over the vehicles in question to anyone nor, they took the stance that the vehicles were handed over to them by some other person, so as to make out a case that the vehicles and the contraband recovered from the vehicles in question belonged to some other person. Furthermore, none of the stated accused took the stance of preparation of the secret cavities in the vehicles in question by some other person. In the absence of any such plea, the question of conscious possession would not arise once it was proved that accused Kamran Afridi, Irfan Afridi and Abdullah were in actual control of the vehicles in question. In such circumstances, connection of the accused facing trial with ownership of the vehicles in question loses its value and it will be presumed that everything contained in the vehicles while in control of accused Kamran Afridi, Irfan Afridi and Abdullah, belonged to them. In view of section 29 of CNSA 1997, the burden to avoid such presumption was upon the defence but the defence has not produced any evidence in this respect to dispel the stated presumption. So, it is held that the narcotic substance recovered from each vehicle in the present case belonged to the driver of each vehicle whereas the 16 kilograms and 800 grams charas recovered from the personal possession of accused Faizan Johar belonged to him.

7. So, far as the factum of conscious knowledge of accused Abdul Hanan regarding the presence of contraband in vehicle bearing registration No.LEA-06-188 driven by accused Irfan Afridi is concerned, no doubt the contraband was recovered from secret cavity of the stated vehicle and accused Abdul Hanan was sitting on front passenger seat of the said vehicle but it is noteworthy that according to the complaint and evidence recorded during trial, it has been established that he was wearing ANF uniform at the time of occurrence and that he could not produce any proof of his service in ANF on demand of the complainant. The stated facts have not been challenged during cross-

29

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

examination by the defence so, are to be considered as not disputed. The stated facts make it clear that he was actually impersonating himself to be an official of the ANF regarding which, a separate case has also been registered against him. It cannot be disputed, that the said impersonation by accused Abdul Hanan during the occurrence was not for the purpose of fun rather, the said impersonation was adopted for facilitating the main accused Irfan Afridi in transportation of the narcotics in the vehicle. There was no occasion for such impersonation except, that he was in knowledge of the presence of the contraband in the vehicle and intended to provide protection to its transportation from the clutches of law enforcing agencies. As such, the false impersonation adopted by accused Abdul Hanan in the present case clearly and conclusively proves his conscious knowledge about the presence of contraband in the vehicle. Thus, he cannot escape the responsibility regarding keeping and transporting the narcotics in the vehicle bearing registration No.LEA-06-188. As such, the prosecution has succeeded in bring home the charge levelled against accused Kamran Afridi, Faizan Johar, Abdullah, Irfan Afridi and Abdul Hanan to the hilt.

28. However, no recovery of contraband has been proved against the accused Anwar Khan son of Shah Syed in the present case. Moreover, the prosecution has miserably failed to bring any evidence on the record to connect accused Anwar Khan son of Shah Syed with the offence committed by accused Kamran Afridi, Faizan Johar, Abdullah, Irfan Afridi and Abdul Hanan or the recovered contraband from the secret cavities of the vehicles in the present case. Similarly, no evidence regarding abetment, facilitation or support of accused Anwar Khan to the main accused Kamran Afridi, Faizan Johar, Abdullah, Irfan Afridi and Abdul Hanan in commission of the offence has been brought on the record by the prosecution. So far as the joint disclosure and its effect under article 40 of Qanun-e-Shahadat Order 1984 is concerned, it is noteworthy that PW-4 & PW-5, made it clear that all the accused had made joint disclosure and thus, none of the accused including Anwar Khan can be held liable on the basis of such disclosure as, joint disclosure has no legal effect. It is also noteworthy, that the contraband in the present case was recovered from the secret cavity of the vehicles so, from mere presence of accused Anwar Khan in the vehicle, he cannot be presumed to have knowledge of the secret cavity or the contraband present therein. In the absence of positive proof regarding conscious knowledge, the passenger in the vehicle cannot be saddled with responsibility of any contraband recovered

*[Handwritten signature]*

C.T.C

Chief Justice,  
Special Court (CNSI)  
Islamabad

The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

from the secret cavities of the vehicle. As such, the prosecution has miserably failed to prove any charge against the accused Anwar Khan son of Shah Syed in the present case. Similarly, there is no evidence on the record to establish connivance, conspiracy or mutual consent between accused Kamran Afridi, Faizan Johar, Abdullah, Irfan Afridi and Abdul Hanan so the stated accused persons also, cannot be held responsible for the contraband recovered from the vehicles of each other rather, their responsibility would be confined to the contraband recovered from the vehicle driven / occupied by each of them, respectively.

29. For the reasons stated, this court has come to the conclusion that the prosecution has succeeded in proving the charge against accused Kamran Afridi, Faizan Johar, Abdullah, Irfan Afridi and Abdul Hanan only, beyond the shadow of reasonable doubt. Therefore, this court found accused Kamran Afridi son of Imran Khan, caste Afridi, resident of Bar Qambarkhel, Wand Garay Kajori, Wali Abad P.O. Box Bara District Khyber Agency, Faizan Johar son of Johar Khan, caste Afridi, resident of Bar Qambarkhel, Wand Garay Wali Abad Sam Baha P.O.Box Bara Tehsil Bara District Khyber Agency.

Bara Tehsil Bara District Khyber Agency, Irfan Afridi son of Imran Khan, Caste Afridi, resident of Bar Qambarkhel, Wand Garay Kajori, Wali Abad Sam Baba P.O. Box Bara District Khyber Agency and Abdul Hanan son of Saleem Jan, Caste Afridi, permanent resident of Bar QambarKhel Wand Garay Kajori Soorkas No. 2, P.O.Box Bara District Khyber Agency temporary resident of Hayatabad Phase-7, House No. 936, Street No. 26, Sector-E-5, Peshawar guilty of the offence under section 9 (c) of CNSA, 1997 for keeping 36 kilograms of charas, 16 kilograms & 800 grams of charas, 36 kilograms of opium and 39 kilograms & 600 grams of opium, respectively in their possession. So, accused Kamran Afridi, Faizan Johar, Abdullah, Irfan Afridi and Abdul Hanan are hereby convicted under sections 9 (c) of CNSA, 1997 and each of them sentenced to Rigorous Imprisonment for Life, with fine of Rs.100,000/- (Rupees One Hundred Thousand only). In case of default in payment of fine, each of the convicts shall further undergo 05 (Six) months simple imprisonment. The benefit of Section 382 B Cr.P.C. is hereby denied to the accused persons.


The State ... Vs... Kamran Afridi etc.

Judgment  
30.03.2022

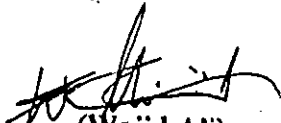
Abdul Hanan are already in Central Jail Adyala Rawalpindi so, in order to serve out the period of sentence awarded to them, their conviction warrants be sent forthwith. Whereas accused Anwar Khan son of Shah Syed is hereby acquitted of all the charges levelled against him in the present case so, he be released forthwith, if not required in any other case.

- 30. Absconding accused Imran Khan son of Hashim Khan, Johar Khan son of Hashim Khan, Shakir Khan son of Imran Khan, Rizwan Khan son of Imran Khan and Rehmat Khan son of Imran Khan have already been declared absconders and the prosecution has successfully made out a prima-facie case against them so, they are hereby declared as proclaimed offenders. Perpetual warrants of arrest against them be issued with the direction to arrest and produce them before the court. The SHO is directed to enter their names in the register of P.Os maintained in the police station.
- 31. The entire case property be kept intact till the arrest and trial of the proclaimed offenders in the present case, in safe custody of the police station.
- 32. Copy of this judgment be sent to the Central Jail Adyala Rawalpindi for providing to the convicts free of cost as, the judgment has been announced to them online via Skype because, the accused were not produced from jail due to law and order situation and the case in hand was a direction case. Copy of the judgment be also sent to the prosecution free of cost.
- 33. File be consigned to record room after completion.

Announced  
31.03.2022

  
(Wajid Ali)  
Judge, Special Court (CNS),  
Islamabad.

Certified that this judgment consists of 25 pages, each page has been corrected wherever necessary and signed by me.

  
(Wajid Ali)  
Judge, Special Court (CNS),  
Islamabad.





32


Office of the District Police Officer  
Khyber



ORDER

Constable Anwar Khan s/o Shah Said Trihe Sipah at Bara Police Station is hereby suspended with immediate effect due to his absence from lawful duty from 06/08/2019 and involvement in narcotics paddling as he was arrested in Uniform by Anti Narcotics Force at Islamabad Toll Plaza alongwith other accused on 12/09/2019.

Mr. Muhammad Nawaz Acting SDPO/Hqrs (designate) Khyber is nominated as enquiry officer to conduct proper enquiry in this regard and submit his report within 07 days. Charge Sheet and Summary of allegation will be issued separately.

  
(MUHAMMAD HUSSAIN) PSP,  
District Police Officer  
Khyber.

No. 1555-56/Khyber, dated 27/09/2019.

Copy of above is forwarded for information to the:-

1. SDPO/HQrs, Khyber (Designate).
2. SHOs/PS Bara.

9/11/19  
D8(5)

محمد نواز  
27/09/19

27/09/19

Office of the District Police Officer  
Khyber



**CHARGE SHEET U/S 6(1) (A) POLICE RULES 1975**

You Constable Anwar Khan s/o Shah Said Tribe Sipah, while on duty at Police Station Bara, District Khyber is hereby charged for committing the following omission/commissions:-

"You are absent from lawful duty from 06/08/2019 and on 12/09/2019 you were arrested in uniform by Anti Narcotics Force at Islamabad Toll Plaza on 12/09/2019 with other accused and 128 KG of narcotics".

You are hereby called upon to submit your written defense against the above charges before the Enquiry Officer:

Your reply should reach the Enquiry Officer within seven (7) days from the date of receipt of this charge Sheet, failing which ex-parte action shall be taken against you.

Summary of allegations is enclosed herewith.

  
DISTRICT POLICE OFFICER,  
KHYBER

Office of the District Police Officer  
Khyber



**ORDER**

**UNDER SUB-SECTION-3 & SECTION 5 OF POLICE RULES, 1975.**

I, District Police Officer, Khyber as competent authority, charge you Constable Anwar Khan s/o Shah Sair' Tribe Sipah of Police Station Bara is prima facie guilt of the following acts to be dealt with u/s 5 (3) of the NWFP, (now Khyber Pakhtunkhwa) Police Rules, 1975.

"You are absent from lawful duty from 06/08/2019 and on 12/09/2019 you were arrested in uniform by Anti Narcotics Force at Islamabad Toll Plaza on 12/09/2019 with other accused and 128 KG of narcotics".

The act of delinquent officer falls within the ambit of gross misconduct and is liable to be proceeded under the NWFP (now Khyber Pakhtunkhwa) Police Rules 1975.

For the purpose of scrutinizing the conduct of the said defaulter with reference to the above allegations, I, District Police Officer, Khyber being authorized officer hereby nominate Enquiry Officer as below to enquire into the charges within the meaning of 2 (iii) under the NWFP (now Khyber Pakhtunkhwa) Police Rules, 1975.

**MR. Muhammad Nawaz (Acting SDPO/Hqrs) Khyber**

The enquiry officer after completing all enquiry proceedings, should submit findings to the undersigned within stipulated period of (5) days per u/s 6 (5) of Police Rules.

Charge Sheet and Statement of Allegations are issued against the defaulter officer separately. Reply should submit before the Enquiry Officer within the period of (03) days from the date of receipt.

  
**DISTRICT POLICE OFFICER,  
KHYBER**

No. 313114 /Khyber, dated Peshawar, the 08/10/2019.

Copy to:-

1. Acting SDPO/Hqrs Khyber for initiating proceedings against defaulter under the provisions of the Police Rules 1975.
2. Constable Anwar Khan with the direction to appear before the Enquiry Officer on the date, time and place fixed by the Officer.

Office of the District Police Officer  
Khyber

35



**SUMMARY/STATEMENT OF ALLEGATION U/S 6(1) (A) POLICE  
RULES 1975.**

Constable Anwar Khan s/o Shah Said Tribe Sipah while on duty at Police Station Bara has committed the following:-

"You are absent from lawful duty from 06/08/2019 and 12/09/2019 you were arrested in uniform by Anti Narcot Force at Islamabad Toll Plaza on 12/09/2019 with other accusations and 128 KG of narcotics".

Your this act falls within the purview of misconduct as contained u/s 2 (iii) of NWFP (now Khyber Pakhtunkhwa) Police Rules 1975.

  
DISTRICT POLICE OFFICER,  
KHYBER



OFFICE OF THE  
DISTRICT POLICE OFFICER  
KHYBER



**ORDER**

Constable Anwar Khan of PS Bara remained absent from Lawful duty from 06/08/2019 and arrested by ANF at Islamabad Toll Plaza on 12/09/2019 with 128 KGs Narcotics. Proper FIR by PS ANF North Rawalpindi was registered where Constable Anwar Khan was directly charged alongwith other accused and his involvement in drug peddling consequent upon which the undersigned being a competent authority under Government Servants Service & Efficiency Rules 1975 issued a Show Cause Notice with the opportunity to be heard in person which the defaulter official did not avail.

In reply of the Show Cause notice the defaulter constable failed to submit any cogent reason regarding the allegations leveled against him consequently a Charge Sheet with Summary of Allegations was issued & Acting SDPO Hqs Khyber was appointed as Enquiry Officer in this office No. 313-14/Khyber, dated 08/10/2019.

The Enquiry Officer in his finding report stated that the defaulter Constable in his written statement in his defense failed to submit any cogent reason and due to in prison did not appear before the enquiry officer. Furthermore, enquiry made locally at Bara related that the constable is ill reputed and involve in heinous crimes including drugs peddling. After which the defaulter constable was issued a Final Show Cause Notice by the undersigned with an opportunity to be heard in person. In reply of the Final Show Cause Notice the defaulter constable again failed to submit any reply.

Keeping in view the recommendations of the Enquiry Officer & available record and taking an ex-parte action, the Constable Anwar Khan is hereby awarded a major punishment of Dismissal from service with immediate effect.

**DISTRICT POLICE OFFICER,**  
**KHYBER**

No. 1227 /PSO Khyber, dated Khyber

21 / 04 / 2020.

Copies to all concerned for further necessary action.

# خدمت جناب اسپیکر جنرل آئی ڈی اے

(37)

اپیل / درخواست برائے

314 کوآپریٹو

جناب عالی! سائل حسب ذیل عرضی ارسال ہے۔

1۔ یہ کہ سائل عمر صد سال 2010 سے لے کر 7 Levis فرم

میں ڈیوٹی کر رہا تھا۔

2۔ یہ تھا کہ جب کبھی کچھ وہ میں صبح سویرا آتا کہ اس ٹل فیلڈ

کو کسی کا مہارت بیٹھا۔

3۔ یہ کہ سائل نے اس ڈیوٹی ایجنسی سے کسرا بھی دیا ہے۔

4۔ یہ کہ سائل 9/6/50 کو اس ایجنسی اور اسے ایسا لکھو کہ

صرف FIR No 185/19 میں گرفتار ہوا۔

5۔ یہ کہ سائل کو اب مذکورہ سٹی میں پوری سہولت ہے۔ اسکی

دوران سائل کو فونڈی سہولت کر دیا گیا ہے۔

6۔ یہ کہ سائل نے تمام تمام لکھوئے مقدمے میں سائل کو ملوث کیا

7۔ سائل نے عدالت تکلیف نہ کرنے کی شہی ہے۔

لکھوئے کے بعد عدالت سے التماس ہے کہ سائل

کو فونڈی سہولت کے لئے لکھوئے (مٹا) فوراً

کے اور اسے لکھوئے کرے۔

معرّفہ: 2/4/2022

سائل  
انور خان  
داہلہ

38

قیمت  
50 روپے

29145



ایڈوکیٹ: \_\_\_\_\_  
بار کونسل / ایسوسی ایشن نمبر: Bc 107960  
رابطہ نمبر: 03150266166

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: کنیٹر چنگیز گل خانہ لہرس ٹریڈنگ کمپنی KPK

منجانب: <u>سٹیٹ پیٹیشنر</u>	دعویٰ: <u>Appeal</u>
الذ بنام: <u>DP</u>	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____

**باعث تحریر آنگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
 آن مقام پشاور کیلئے ڈیپٹی سیکریٹری اور ایڈووکیٹ کو ذیل مقرر محمد عمر علی ایس ایچ ایڈووکیٹ  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کر کے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیار انت حاصل ہوں گے اور اس کا سناختہ پر داخستہ منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب یا ہندسہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المقام

کے لیے منظور ہے

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

الذ خاں - شاہ سید

فید

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 1116 /2022 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/07/2022	<p>The appeal of Mr. Anwar Khan presented today by Mr. Zahanat Ullah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on . Parcha peshi is given to the appellant/counsel.</p> <p>By the order of Chairman</p> <p>REGISTRAR</p>
2-		