

FORM OF ORDERSHEET

Court of _____

Case No. _____ 795/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.04.2023	<p>As per direction of the Worthy Chairman the present appeal is fixed for preliminary hearing and decision on office objections before Single Bench at Peshawar on 11-04-2023. Counsel for the appellant be informed accordingly.</p>


REGISTRAR


Respected Sir,


It is submitted that the present appeal was received on 27.03.2023, which was returned to the counsel for the appellant for removing objections (Flag-A). Today i.e. 04.04.2023 he re-filed the same without removing the objection no.1 & 2.

The appeal is now submitted to your honor under rules 7 (c) of the Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.


REGISTRAR ^{cw}
04/04/23

Worthy Chairman


P/H Be final

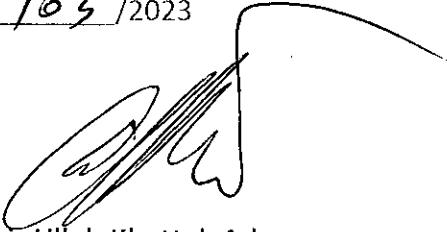

10/4/23

The appeal of Mr. Shahid Ali Forest son of Muhammad Nabi Guard Orakzai Forest Range Forest Division Hangu received today i.e. on 27.03.2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.


- 1- Copy of dismissal order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of departmental against the dismissal order is not attached with the appeal.
- 3- Annexure-A of the appeal is illegible which may be replaced by legible/better one.

No. 1023 /S.T.

Dt. 28/03 /2023



Mr. Kabir Ullah Khattak Adv.
High Court at Peshawar.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

In Response of objection
No 1 and 2 the dismissal order of Department
is not available while
in response of object No 3
the A^y is a court order
which is verible


21/4/23

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR.**

Appeal No. 795 of 2023

Sahid Ali Forest Guard Orakzai Forest Range Forest Division
Hangu

..... APPELLANT

VERSUS

- 1) Secretary through Government Environment Forest and World Life KPK Peshawar.
- 2) Conservator of Forest Merged Area Peshawar.
- 3) Chief Conservator of Forest Central Southern Forest Region-I Peshawar.

..... RESPONDENTS

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Appellant

Through

Kabir Ullah Khattak


Roeda Khan

Advocates High Court

(1)

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR.**

Appeal No. 795 of 2023.

Sahid Ali Forest S/o Muhammad Nabi Guard Orakzai Forest
Range Forest Division Hangu

..... appellant

VERSUS

- 1) Secretary through Government Environment Forest and
World Life KPK Peshawar.
- 2) Conservator of Forest Merged Area Peshawar.
- 3) Chief Conservator of Forest Central Southern Forest
Region-I Peshawar.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KPK
SERVICE TRIBUNAL ACT, 1974, AGAINST
THE ORDER DATED 08/12/2021 WHEREBY
THE APPELLANT WAS REINSTATED IN HIS
SERVICE AND THE INTERVENING PERIOD
W.E.F 03/09/2019 TO 16/09/2021 (743
DAYS) BETWEEN DISMISSAL FROM
SERVICE AND REINSTATEMENT IS HERE BY
TREATED AS (LEAVE WITHOUT PAY)
AGAINST WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL DATED 23/12/2021
WHICH HAS NOT BEEN DECIDED WITHIN
THE STATUTORY PERIOD.**

PRAYER:

On acceptance of this Service Appeal the
impugned order 08/12/2021 to the extent of
intervening period w.e.f 03/09/2019 to 16/09/2021
may kindly be set aside and the said period may
kindly be treated as full pay spent on duty with all

-2-

Any other remedy which relief deemed appropriate in the circumstances of the case, not specially ask for, may also be granted to the appellant.

Respectfully Sheweth:

Short Facts given rise to the present appeal are as under:-

The appellant respectfully submits as under:

- 1) That the appellant is working in Forest Department as Forest Guard since long time and after appointment the appellant performed his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant.
- 2) That while posted as a Forest Guard Aurakzai District a false and fabricated criminal case FIR No. 46 U/S 9-C (CNSA) dated 10/11/2015 Police Station ANF Kohat has been lodged against the appellant.
- 3) That in the above instant case investigation was completed and challan was submitted for the trial of accused and ultimately, the Hon' able Special Judge CNS Peshawar Judgment dated 10/07/2019 and convicted the appellant and sentenced to redress imprisonment for life and also burdened with fine of Rs 10,00000/- (one Million) each. In default of payment of defaulter of fine defaulter

accused suffer SI for one year. (Copy of Judgment as attached as Annexure-A).

- 4) That the appellant left aggrieved by the said order invoked the jurisdiction of Hon' able Peshawar High Court Peshawar by way of filing criminal appeal No 919/2019 against the conviction Judgment dated 10/07/2019 by praying that the impugned Judgment dated 10/07/2019 may kindly be set aside and the appellant may very graciously be acquitted of the charges leveled against him so as to met the end of justice.
- 5) That the Hon' able Peshawar High Court Peshawar vide order Judgment dated 16/09/2019 accepted the appeal, conviction and sentence rendered by the special Judge CNS Peshawar Judgment dated 10/07/2019 was set aside and the appellant was ordered to be acquitted of the charge and released him forthwith. (Copy of the Judgment of Peshawar High Court Peshawar is attached as Annexure-B).
- 6) That after the acquittal the respondent Department reinstated the appellant on 08/12/2021 with immediate effect and intervening period from w.e.f 03/09/2019 to 16/09/2021 (743 days) between dismissal from service and reinstatement is hereby treated is leave without pay. (Copy of impugned order is attached as Annexure-C).

- 7) That the appellant being dissatisfied by the said order dated 08/12/2021 to the extent of intervening period w.e.f 03/09/2019 to 16/09/2021 filed Departmental Appeal on 23/12/2021 which has not been decided within the statutory period. (Copy of Departmental Appeal is attached as Annexure-D).
- 8) That the appellant now filed this appeal before this Hon' able Tribunal inter alia on the following grounds.

GROUND OF APPEAL

- A). That the respondents have not treated the appellant in accordance with law rules, and policy which is a clear cut violation of Article-04 of the Constitution of the Islamic Republic of Pakistan 1973 therefore the intervening period 03/09/2021 to 16/09/2021 between dismissal from service and reinstatement is hereby treated as leave without pay is not sustainable in the eyes of law.
- C). That the appellant has not been treated accordance to law and rules and also violation of 54-A of fundamental rules.

- D). That the order of respondent Department to the extent of period 03/09/2021 to 16/09/2021 as leave without pay is illegal, void ab initio and is also liable to be set aside.
- E) That as per Judgment of Supreme Court of Pakistan the employee who was in reinstatement into service shall be allowed back benefits only exception to this rules in that if the employ is remain gainfully during intervening period shall not be allowed that.
- F). That the appellant would like to seek permission of this Hon' able court tribunal to advance some more grounds at the time of arguments.
- G). That according to the Judgment passed in Service Appeal No 1098/2015 decided on 08.11.2017 and Service Appeal No. 669/2014 decided on 25/10/2017 by this Hon' able Tribunal, A Civil Servant is entitled for full salary for a period spend between dismissal and reinstatement if he is dismissed on the grounds of involvement of criminal case.

In the view of above narrated facts and grounds.

J). Any other grounds will be raised at the time of arguments with prior permission of this Hon' able Tribunal.

It is therefore most humbly prayed on acceptance of this Service Appeal the impugned order 08/12/2021 to the extent of intervening period w.e.f 03/09/2019 to 16/09/2021 may kindly be set aside and the said period may kindly be treated as full pay spent on duty with all back on consequential benefits

Sahar Ali
Appellant

Through

Kabir Ullah Khattak
Roeeda Khan
**Kabir Ullah Khattak
&
Roeeda Khan
Advocates, High Court,
Peshawar.**

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR.**

Appeal No. _____ of 2023

Sahid Ali Forest Guard Orakzai Forest Range Forest Division
Hangu

..... APPELLANT

VERSUS

- 1) Secretary through Government Environment Forest and World Life KPK Peshawar.
- 2) Conservator of Forest Merged Area Peshawar.
- 3) Chief Conservator of Forest Central Southern Forest Region-I Peshawar.

..... RESPONDENTS

APPLICATION FOR CONDONATION OF DELAY (IF ANY).

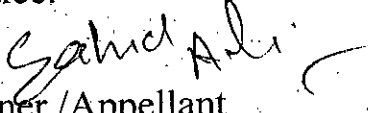
Respectfully Sheweth:

- 1) That the petitioner/appellant has filed the accompanied appeal today in which no date has yet been fixed.
- 2) That petitioner/appellant has a good prima facie case and is hopeful for its success and the grounds mentioned in appeal may be treated as integral part of this application.
- 3) That the dispute of the appellant is come under the definition of financial matter against which no limitation has been run.

(8)


- 4) That the appellant has not been treated according to law and rules as such violation of Rule 54-A of fundamental rules.
- 5) That the appellant has already been acquitted from the charges level against him by the court concerned.
- 6) That there are many Judgment of the Supreme Court that cases should be decided on merit rather than on technicality.

It is, therefore, most humbly prayed that on acceptance of this application the delay if any may be condoned in the interest of justice.


Petitioner / Appellant

Through


Kabir Ullah Khattak


&
Rooeda Khan
Advocates, High Court
Peshawar

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR.**

Appeal No. _____ of 2023

Sahid Ali Forest S/o Muhammad Nabi Guard Orakzai Forest
Range Forest Division Hangu

..... appellant

VERSUS

- 1) Secretary through Government Environment Forest and
World Life KPK Peshawar.
- 2) Conservator of Forest Merged Area Peshawar.
- 3) Chief Conservator of Forest Central Southern Forest
Region-I Peshawar.

..... **RESPONDENTS**

ADDRESSES OF THE PARTIES

Appellant

Sahid Ali Forest S/o Muhammad Nabi Guard Orakzai Forest
Range Forest Division Hangu

Respondents

- 1) Secretary through Government Environment Forest and
World Life KPK Peshawar.
- 2) Conservator of Forest Merged Area Peshawar.
- 3) Chief Conservator of Forest Central Southern Forest
Region-I Peshawar.

Sahid Ali
Appellant

Through

Kabir Ullah Khattak
Kabir Ullah Khattak

Rooeda Khan
&
Rooeda Khan

Advocate High Court
Peshawar

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR.**

Appeal No. _____ of 2023

Sahid Ali Forest Guard Orakzai Forest Range Forest Division
Hangu

..... **APPELLANT**

VERSUS

- 1) Secretary through Government Environment Forest and World Life KPK Peshawar.
- 2) Conservator of Forest Merged Area Peshawar.
- 3) Chief Conservator of Forest Central Southern Forest Region-I Peshawar.

..... **RESPONDENTS**

AFFIDAVIT

I, Sahid Ali Forest Guard Orakzai Forest Range Forest Division Hangu do hereby solemnly affirm and declare on oath that the content of the above application are true and correct to the best of my knowledge and belief and nothing has been kept secret and concealed from this Hon'ble Tribunal.

Sahid Ali
DEPONENT

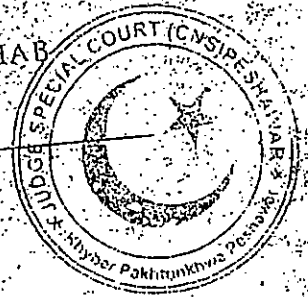
Identified by

Kabir Ullah Khattak
Kabir Ullah Khattak

Roecda Khan
&
Roecda Khan

Advocates High Court Peshawar

(A) 11
IN THE COURT OF Mrs. NUSRAT YASMEEN INTEKHAB
JUDGE SPECIAL COURT (CNS) PESHAWAR



Case File No. 206/2015

State Through Insp. Mehmood-UI-Hassan. PS ANF, Kohat
(Complainant)

Versus

1. Ahmad Asker s/o Ghulam Asker Caste Belramzai r/o Dary Satar
Kaly PO Kalapa Tehsil Lower Distt Orakzai Agency
2. Sahid Ali s/o Mohammad Nabi Caste Mani Khel r/o Tapa Zikria
Khel Tehsil Lower Distt Orakzai Agency (Accused)

Charged U/S 9 (C) CNSA
Vide FIR-NO. 46 Dated 10.11.2015
Of PS ANF Kohat.

Date of Institution 12.03.2016

Date of Decision 10.07.2019

JUDGMENT

1. Ahmad Asker and Sahid Ali (accused) have been challaned to this court to face trial in the case mentioned above.

2. Precisely stated case of prosecution is that the complainant of the case received information that the accused named above are involved in the detestable business of narcotics and are available at the spot of occurrence with a huge quantity of narcotics, and in case of immediate action, recovery of narcotics is sure. Upon this information PW-1 complainant/I.O along with his team consisting of PW-2 & others, rushed to the place of occurrence i.e. House # 51 sector C-1 KDA Kohat and skillfully opened the door of the house, where, two persons were found present. The persons upon query disclosed their names as Ahmad Asker & Sahid Ali and both of them accepted the presence of contraband in the subject house, and led the

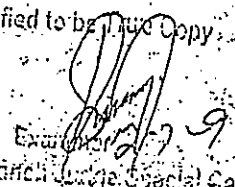
10/7/19
Judge Special Court

packets of "charas" contained in plastic sacks lying underneath the bed, were recovered. The charas recovered from 30 packets came out to be 1200/1200 gms each making 36 kgs. PW-1 prepared recovery memo Ex.PW 1/1 marginally witnessed by PW-2 and Ikhtia Hussain (not examined). PW-1/IO prepared site plan Ex.PW 1/3 and also drafted Murasila Ex.PW 1/2 which PW-2 took to PS and handed over to PW-4, who after chalking of FIR Ex.PW 4/1, returned its two copies & original Murasila the IO, who also separated 10/10 gms each from each packet as sample for FSL and sealed in parcels No. 1 to 30. The samples separated as well as the remaining charas were separately sealed into parcels with MH monogram. PW-1/IO arrested the accused vide cards of arrest Ex.PW 1/5 and Ex.PW 1/6; and thereafter took the accused to Seth Saif Ullah Hotel, where the hotel record Ex.PW 1/7 and also vehicle No. RIV-1214 belonging to accused Ahmed Askar was taken in to custody and thereafter took the accused as well as the case property and other recoveries to the PS where PW-4 kept the samples as well as remaining case property in safe custody of the PS Malkhana and made its entry in the relevant register. On 11.11.2015 CT Ibad Ullah (since deceased) took 30 sealed sample parcels to FSL and returned its acknowledgment to PW-4. PW-3 also marginally witnessed personal search memo of the accused, while articles were deposited by PW-4 in Malkhana. PW-3 conducted partial investigation and collected ownership / rent documents Ex.PW 3/1 in respect of the house (wherefrom recovery of contraband was made); got the statements of the witnesses recorded u/s 164 Cr.PC through his application Ex.PW 3/2 to the learned Magistrate. PW-1 received positive FSL report Ex.PW 1/16, and submitted incomplete chalan Ex.PW 1/17, while PW-3 submitted complete challan Ex.PW 3/3.

3. Accused attended the court, compliance of 265-C-Cr.PC was made, accused were charge sheeted who refuted allegations and claimed trial.

4. Prosecution examined 04 PWs, who recorded detail statements supported by relevant documents available on record and also duly exhibited during their statements. Moreover the remaining case property charas was brought and exhibited during the trial.

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Magistrate, District Court

5. At the end of the prosecution evidence statements u/s 342 Cr. PC of the accused were recorded, wherein the accused out-rightly negated the prosecution version. Accused Ahmed Askar also opted to depose on oath and to produce defence evidence, whereas, accused Sahid Ali, waived his right of adducing evidence in defense or of recording his statements under oath.

6. Accused Ahmed Askar was examined under oath and he also produced defence witnesses, whose statements were recorded as DW-1 and DW-2.

7. Learned defence counsel for the accused and learned SP for the State were heard at sufficient length. Record of the case is perused.

8. This Court finds as following:-

9. At the cost of repetition, prosecution case against the accused facing trial in a precise manner stated is that, upon information, House # 51 sector C-I KDA Kohat was raided, accused were apprehended and upon their disclosure recovery of 36 kgs "charas" was made from the betak of the said house, and the accused having been booked in the case in hand, have been sent to this court to face trial.

10. Record shows that PW-1 IO of the case has fully narrated the episode and also exhibited on record all the documents, mentioned here-in-above. Remaining case property in parcels No. 31 & 32 Exhibit P-1 and P-2, was also produced in the court. From the accused their CNICs as well as cell phones and wireless phones besides other articles were also taken into possession, while upon pointation of accused Ahmed Askar his vehicle No. RIV-1214 parked in Saith Saif Ullah hotel alongwith hotel record, was also taken into possession, through recovery memo Ex.FW 1/4. All these recoveries were made by PW-1 and duly witnessed by PW-2. These recoveries were then handed over to PW-4 who kept the same in safe custody in the PS Malkhana and on 11.11.2015 CT Ibad Ullah (since deceased) took 30 sealed sample parcels to FSL for analysis. PW-3 Mulla Muhammad Ayub obtained the ownership / lease documents in respect of the house / crime venue and exhibited the same during trial. PW-1 received FSL report in positive which is Ex.PW 1/16.

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[Signature]
1-9
Chief Justice Special Court
Hyder Pablu Khiva

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The prosecution witnesses recorded their detail statements exhibiting therein all the documents and accounting therein for each and every aspect of the case. The PWs have been subjected to extremely lengthy, taxing and awfully subjective cross-examination, however nothing damaging to prosecution case and/or beneficial to defense can be extracted or elicited from their mouth. The suggestions put to the PWs in the cross examination mainly relate to high technicalities. More so the trend of cross examination seems self-contradictory because on one hand the impression is given as if the accused had nothing to do with the house / crime venue wherefrom huge quantity of contraband has been recovered and that no occurrence at all has taken place in the manner shown by the prosecution, whereas on the other hand, while negating the above impression it is suggested that the proceedings conducted by the IO are not up to the mark and could not have been completed during the time shown by the prosecution in this respect. If the first impression of the defense is considered or believed then there is no need of questioning and challenging the procedure pertaining to weighment and sampling of the recovered narcotics and other proceedings conducted by the IO. It is highly important to highlight here that massive number of positive suggestions have been given to the PWs, which amounts to admission, and very important portions of the statements of the PWs have not been subjected to cross-examination, which again amounts to admission, and thus, considerable portion of prosecution evidence both ocular as well as documentary has been admitted/accepted.

12. The prosecution witnesses have got no motive to falsely implicate the accused in the case because they have got no ill will or malafide against the accused. The recovered substance is of such a big magnitude/volume that a prudent mind cannot believe that it could have been falsely planted against the accused. The prosecution witnesses who have recorded their evidence against accused are apparently quite disinterested witnesses because they have no grudge against the accused. Hence the testimony of the prosecution witnesses is as good as a testimony of anyone else. Not only the recovery of narcotics has been proved by the confidence inspiring evidence of the above mentioned PWs, it is also substantiated by the FSL

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Copy to Branch Justice Special Court

report Ex PW 1/16 on the file. Safe custody and safe transit of the samples to the FSL, too, is proved on the record by the PWs. There is no proof with the defense that the samples have been changed or tampered with during the transit.

There are no contradictions in the statements of the PWs. In fact, they are consistent on all material points and even on very minute details they are consistent. Learned counsel for the accused could not really point out even a minor difference and/or contradiction in the statements of the PWs, who stood the test of cross-examinations very successfully.

14. As far as the connection of the accused with the house or with the recovery made there-from, is concerned, it is established on record that both the accused have been arrested from the said house and they themselves led the raiding party and upon their pointation the recovery was effected from the betak of the said house. During the course of investigation, the other IO PW 3 collected documents in respect of the said house from KDA. As per the documents Ex PW 3/1 one Zafar Mehmood is the owner of the house, who is in Dubai and has appointed one Inayat Ali as his attorney. The attorney has executed rent deed with one Raziq Ali, as tenant whereas one Hakim Ali along with other is witness to the rent deed. It is in the evidence that Mst Riaz Begum is real sister of accused Sahid Ali and is the Paternal Aunt of Hakim Ali. During the course of investigation Hakim Ali was examined u/s 164 Cr.PC by the learned Judicial Magistrate, and in his statement Hakim Ali stated that he got the house on rent for his paternal cousin's i.e. Raziq Ali and his family. Raziq Ali is the son of Mst Riaz Begum, sister of accused Sahid Ali. It is also obvious from the permanent addresses of both the accused that they belong to the same village and it is very pertinent to note that the tenant Raziq Ali and the witness Hakim Ali are also of the same village to which both the accused belong. It is also very important to note that the house has been hired on rent on 01.11.2015 just 09 days before the occurrence. These un-rebutted facts coupled with the arrest of both the accused from the house and recovery upon their pointation is sufficient to establish strong connection of accused with the house as well as with the recovery. The hiring of a room in a hotel near to the crime house, by accused Ahmed Askar, who is resident of Orakzai Agency, and co.

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Examined and Certified to be true Copy

Signature of the examining officer

Examined Branch Judge Special Court

villager of accused Sahid Ali as well as co-villager of the recorded tenant Razia Ali, and the availability of accused Ahmed Askar in the crime house at the time of the occurrence, whereas his car was admittedly parked in the hotel at that time, also corroborates the fact that the house was, in fact hired by both the accused and a 'Benami' rent deed was executed in the name of Razia Ali nephew of accused Sahid Ali. Moreover the hiring of house just 09 days before the occurrence speaks volume of the fact that the house was rented for this crime only and for no other purpose.

15. Both the accused have denied their direct connection with the crime house and have adopted the line of cross examination to the affect that they do not own the crime house nor have they obtained the same on rent. It is observed here that perpetrators / mafia of drug crimes are always shrewd to such an extent that a man of common prudence can never even conceive of it. It cannot be expected from drug mafia that they will hire / purchase house in their own name and would commit crime in the same. They always embark upon "Benami Transactions" to save their skins, to throw dust in the eyes of people and dodge and mislead the law enforcing agencies as well as the courts of law and in this manner they get leverage of their misdeeds. So it is established that the accused had occupied the crime house for the commission of offence and they have been caught red handed with huge quantity of contraband from the said house.

16. On the point of alleged violation of provisions of S.103 Cr. PC, and non-association of private witnesses to the recovery/raid proceedings, and the recovery witnesses being ANF officials, it is highlighted here that the PWs including IO of the case have categorically stated that private persons were not available at the given time and even otherwise private people are always reluctant even to disclose their identity and none is ever ready to stand witness to the matter, therefore no private person could be cited as witness. It is however added that the ANF officers/officials were present on the spot and are reliable witnesses as any other witness can be. The prosecution witnesses were members of the checking/raiding party, thus their presence on the spot was natural. These officials were competent witnesses like any other independent witness and evidence of the prosecution witnesses could not be discarded merely to the reason that

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[Signature]
 10/7-09

Examined and found correct
 District Judge, Saharanpur

they are ANF officials. Even otherwise the question of violation of provisions enumerated in section 103 Cr.PC seems to be devoid of merits when taken into consideration with the provisions of section 25 of Act, which section by itself has excluded section 103 Cr.P.C and otherwise too, as by now it has been judicially recognized that no private witness would ever come forward as Mashir/Witness on recovery memo in such like cases in view of the prevalent worse situation of law & order in the country, and in the wake of the expected criminal reaction against such Mashir by the powerful criminal gangs of drugs Mafia. Such being the position the statement of an official witness is sufficient to be relied upon, as no legal bar or restriction (whatsoever) on the testimony of an official witness has so far been imposed in this regard and the police / official witnesses are competent witnesses.

17. On the point of complainant of the case being also investigating officer of the case, it is pointed out here that there is no express bar or any restriction imposed by any law that the complainant of a case cannot be the investigation officer of the same case. It has been held by the Hon'ble Higher courts of this country in number of judgments that no legal impediment existed in the way of police officer, who was a complainant of the case and also acted as an investigating officer. Reliance can be placed on "2017 PCr.LJ Page. 32, 2017 PCr.LJ Page. 1399 & 2002 YLR Page. 3800".

18. On the question of burden of proof in such like cases, law and plethora of precedent judgments, are clear which expressly lay down that though the prosecution is bound to prove its case, but at the same time the accused is also obliged to substantiate his plea of defense, if taken. Even under the sustentative law on the subject, statutory burden in this regard under section 29 of the CNSA is on accused, who has to explain his position & to discharge his burden through cogent evidence in order to prove his innocence.

19. The accused in their statements u/s 342 Cr.PC, have given no valid explanation as to why they have been involved in the case, or why the case has been plotted against them. Accused Sahid Ali has alleged that he was attending to the call of nature at road side in Korat and was arrested by the ANF and involved in the instant case. The accused Sahid Ali has also...

Examiner
 Judge Special Court

neither deposed on oath nor produced any evidence in support of his allegation. In the statement of accused, specific question was put to him that Mst Riaz Begum is his sister and she had through her son hired the crime house on rent. The accused did not clearly and expressly deny the fact of his relationship with Mst Riaz Begum. He in a very ambiguous and evasive manner responded that "I have no link with Mst Riaz Begum", however, did not say that Mst Riaz Begum is not his sister.

20. Accused Ahmed Askar in his statement of accused as well as statement under oath stated that he is a contractor by profession and had come to Hangu for clearance of his bills from C & W but as there is no hotel in Hangu, therefore he stayed in Kohat. In support of this stance the accused produced and placed on record certain documents as Ex.D-1 and Ex.D-2. The documents on bare perusal reveal that the same pertains to the year 2013-14, whereas one Muhammad Ghulam is recorded as contractor and accused has accepted that these documents are not in his name. The accused has cleverly tried to obtain benefit from the photocopies of the bills allegedly issued in favor of some Muhammad Ghulam somewhere in 2013-14 much earlier than the date of occurrence. It is absolutely false and untrue that there is no hotel in Hangu and that the accused had come to Kohat for clearance of bills. From this fabricated stance of the accused, one fact is clearly admitted that accused Ahmed Askar was staying in hotel in Kohat and was arrested from the crime house at the relevant time and at the cost of repetition it is highlighted here that the accused belong to the same village and the crime house was rented by sister's son of accused Sahid Ali.

21. Accused Ahmed Askar also examined 02 DWs who deposed regarding the fact that they were also staying in the hotel and had seen the ANF officials catching hold of the accused Ahmed Askar. Regarding the statements of DWs, it is to be noted that in his statement of accused Ahmed Askar did not utter even a single word to the effect that some people from his locality were staying in the hotel or that they had seen him in the custody of ANF. Even he did not opt for producing any defence evidence, while recording his statement on 24.04.2019. It was on 13.05.2019 when he submitted an application for permission to produce DWs and it was only then that DWs were maneuvered, introduced / produced and an attempt

Continued on the next page

JUDGE
 District Court

neither deposed on oath nor produced any evidence in support of his allegation. In the statement of accused, specific question was put to him that Mst Riaz Begum is his sister and she had through her son hired the crime house on rent. The accused did not clearly and expressly deny the fact of his relationship with Mst Riaz Begum. He in a very ambiguous and evasive manner responded that "I have no link with Mst Riaz Begum", however, did not say that Mst Riaz Begum is not his sister.

20. Accused Ahmed Askar in his statement of accused as well as statement under oath stated that he is a contractor by profession and had come to Hangu for clearance of his bills from C & W but as there is no hotel in Hangu, therefore he stayed in Kohat. In support of this stance the accused produced and placed on record certain documents as Ex.D-1 and Ex.D-2. The documents on bare perusal reveal that the same pertains to the year 2013-14, whereas one Muhammad Ghulam is recorded as contractor and accused has accepted that these documents are not in his name. The accused has cleverly tried to obtain benefit from the photocopies of the bills allegedly issued in favor of some Muhammad Ghulam somewhere in 2013-14 much earlier than the date of occurrence. It is absolutely false and untrue that there is no hotel in Hangu and that the accused had come to Kohat for clearance of bills. From this fabricated stance of the accused, one fact is clearly admitted that accused Ahmed Askar was staying in hotel in Kohat and was arrested from the crime house at the relevant time and at the cost of repetition it is highlighted here that the accused belong to the same village and the crime house was rented by sister's son of accused Sahid Ali.

21. Accused Ahmed Askar also examined 02 DWs who deposed regarding the fact that they were also staying in the hotel and had seen the ANF officials catching hold of the accused Ahmed Askar. Regarding the statements of DWs, it is to be noted that in his statement of accused Ahmed Askar did not utter even a single word to the effect that some people from his locality were staying in the hotel or that they had seen him in the custody of ANF. Even he did not opt for producing any defence evidence, while recording his statement on 24.04.2019. It was on 13.05.2019 when he submitted an application for permission to produce DWs and it was only then that DWs were maneuvered, introduced / produced and an attempt

Defendant in the Trial Court

2019-09
Special Court

(Signature)

was made to create a story that accused was arrested from the hotel. It is to be kept in mind that as per prosecution evidence accused Ahmed Askar was arrested from the crime house and thereafter was taken to hotel wherefrom his vehicle as well as the hotel record was taken into custody. Since the accused was conscious that he is unable to rebut this prosecution evidence, he cleverly devised the introduction of DWs by tempting them to depose in his favor; however, they also could not shatter the prosecution evidence to the effect that accused was arrested from the crime house, taken to hotel by the ANF and therefrom his vehicle as well as hotel record was taken into custody. Even if the statements of the DWs is accepted, it can be legitimately concluded that they had seen the accused at the time when he was taken by the ANF to the hotel for the recovery of his vehicle and hotel record and thus confirmed the prosecution case.

22. Thus the defence taken by both the accused is absolutely unbelievable besides being not legally proved. As stated earlier, that the recovered substance (charas) is of such a big magnitude/volume that a prudent mind cannot believe that it could have been falsely planted against the accused. When the recovery is seen in juxta-position with the story narrated by the accused, it sounds nothing more than a "cock & bull story" rather seems to be a very "funny fairytale". As such the defense version is declared to be false and fabricated one merits no reliance.

23. The prosecution has proved its case against both the accused. The accused were found in possession of the house and extremely huge quantity of charas weighing 36 kg has been recovered from the house, which the accused had willfully stored/deposited in the house for supply across the country to destroy the nation's young generation.

24. As a sequel to what has been observed, this Court finds guilty accused Ahmed Askar and Sahid Ali u/s 9C CNSA for being in possession of charas weighing 36 Kg; as such the accused facing trial namely Ahmed Askar and Sahid Ali are convicted and sentenced to Rigorous imprisonment for life and they are also burdened with a fine of Rs.10,00,000/- (One Million) each. In default of payment of fine, defaulter accused shall suffer further S.I for One Year (01 Year). Accused Ahmed Askar is already in custody while accused Sahid Ali is on bail who is also taken into custody.

Continued to Page 22 Copy
 Branch Judge, Special Court

and are remanded to jail along with conviction warrants. Benefit of section 382-D Cr.P.C. is also given to the accused.

25. Case property i.e. "charas", shall be destroyed, but after the expiry of period fixed for revision / appeal, while the personal non-incriminating articles recovered from accused stand returned to them. As far as the vehicle taken into custody is concerned, the same was returned to Ahmed Askar on superdari. Sureties of the vehicle are absolved from their liabilities under the bonds.

26. The convict / accused Sahid Ali was on bail on medical grounds as he is suffering from kidney disease and is undergoing dialysis regularly in LRH Peshawar. Since he is convicted and sent to Central prison Peshawar, therefore, the Supdt Jail is directed to forthwith hospitalize the convict in jail hospital and to provide him with best health facilities there including regular dialysis in LRH Peshawar as per the schedule provided to the convict by the said hospital.

27. Copy of this judgment has been delivered to the accused free of cost.

28. File shall be consigned to the record room after necessary completion & compilation.

Announced
10.07.2019

(Mrs. NUSRAT YASMEEN INTEKHAB)
Judge Special Court, CNS, Peshawar

10-07-2019

CERTIFICATE

Certified that this judgment consists of ten (10) pages, each page, has been read, corrected, wherever it was necessary and signed by me.

(Mrs. NUSRAT YASMEEN INTEKHAB)
Judge Special Court, CNS, Peshawar

10-07-2019

Certified to be True Copy

(Signature)
Judge Special Court
Peshawar

23

Ord. 74

10/07/2019

Learned SP for the state present, accused Ahmed Askar produced in custody while accused Sahid Ah on bail present.

Vide my detail judgment of today, this Court finds guilty accused Ahmed Askar and Sahid Ali u/s 9C CNSA for being in possession of charas, weighing 36 Kg; as such the accused facing trial, namely Ahmed Askar and Sahid Ali are convicted and sentenced to Rigorous Imprisonment for life and they are also burdened with a fine of Rs.10,00,000/- (One Million) each. In default of payment of fine, defaulter accused shall suffer further S.I for One Year (01 Year). Accused Ahmed Askar is already in custody while accused Sahid Ali is on bail who is also taken into custody and are remanded to jail along with conviction warrants. Benefit of section 382-B Cr.PC is also given to the accused.

Case property i.e. "charas", shall be destroyed, but after the expiry of period fixed for revision / appeal, while the personal non-incriminating articles recovered from accused stand returned to them. As far as the vehicle taken into custody is concerned, the same was returned to Ahmed Askar on superdara. Sureties of the vehicle are absolved from their liabilities under the bonds.

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Copy of this judgment has been delivered to the accused free of cost.

File shall be consigned to the record room after necessary completion & compilation.

Announced
10/07/2019

(Mrs. NUSRAT YAGMINEH INTEKHAB)
Judge Special Court, CNS, Peshawar

Handwritten notes on the left margin:
G.P.S. (2) (1) / 10/07/2019 / N.P.P.

Certified to be True Copy

Ex. No. 9
Branch Judge Special Court
District Peshawar

672-07-219

Amman (B) 24



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Cr.A No:- 919P /2019

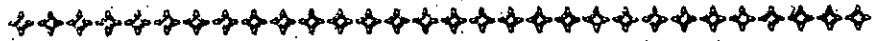
Ahmad Asker S/o Ghulam Asker R/o Dary Satar
Kaly, P/o Kalapa Tehsil Lower District Orakzai,
Now Confined at Central Jail, Peshawar.

..... Accused/Appellant

Versus

The State

..... Respondent



APPEAL U/S 48 OF C.N.S.A, 1997 AGAINST THE
ORDER/JUDGMENT DATED 10/07/2019 PASSED BY
JUDGE SPECIAL COURT (CNS), PESHAWAR WHEREBY
THE APPELLANT WAS SENTENCED TO LIFE
IMPRISONMENT WITH FINE OF RS. 10,00,000/- OR IN
DEFAULT OF PAYMENT OF FINE HE SHALL SUFFER
FURTHER UNDERGO ONE YEAR SI, BENEFIT OF SECTION
382-B CR.P.C IS EXTENDED.

Prayer:-

On acceptance of this appeal, the impugned
order/judgment dated 10/07/2019 may kindly be set-
aside and the appellant may kindly be acquitted.

Respectfully Sheweth:-

1. That the local police have arrested the appellant in the
above noted case.
2. That the prosecution has submitted the Challan before the
court and recorded the statements of Pws.

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Peshawar High Court

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT**



J U D G M E N T

Cr.Appeal No. 919-P/2019

Date of hearing: 16.09.2021
Appellant: (Ahmad Askar) By Mr. Asfandyar Khan, Advocate.
Respondent: (State) By Mr. Waqas Khan Chamkani, Special Prosecutor, ANF.

S M ATTIQUE SHAH, J.- This single judgment

shall dispose of the present Criminal Appeal No. 919-P/2019 filed by appellant namely Ahmad Asker son of Ghulam Asker and; Criminal Appeal No. 1030-P/2019 filed by appellant Sahid Ali son of Muhammad Nabi against their conviction and sentences awarded to them, as both the appeals are the offshoots of one and the same impugned judgment dated 10.07.2019 rendered by the learned Judge Special Court (CNS) Peshawar, in case FIR No.46 dated 10.11.2015 under section-9 (c) of Control of Narcotic Substances, Act, 1997, registered at Police Station Anti Narcotic Force, Kohat, whereby the appellants were convicted and sentenced as follows;

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- i. Under Section-9 (c) of CNSA to suffer rigorous imprisonment for life and also to pay fine of Rs.10,00,000/- (one million) each or in default of payment of fine, defaulter accused shall suffer further S.I for one year.
- ii. Benefit of section-382-B Cr.PC was extended to the appellants.

2. The brief and essential facts of the prosecution case are that on 10.11.2015 Incharge of the Police Station received spy information to the effect that Ahmad Askar and Sahid Ali are involved in the business of narcotics and; having huge quantity of narcotic are present in house No.51 Sector C-1, KDA, Kohat; that on receiving such information complainant Mahmood-ul-Hassan Inspector/SHO alongwith Subedar Liaqat Ali, Hawaldar Murad Ali, constables Ibn-e-Amin, Rizwan, Abid Hussain, Zawar Hussain, Noshad Ahmad, Ikhtiar Hussain, lady constables Haseena, driver Zia-ur-Rehman, Riaz Khan and the informer came to the said house in official vehicles, skillfully opened the door of the house, wherein two persons were found present, who were apprehended; that on query they disclosed their names as Ahmad Askar son of Ghulam Askar and; Sahid Ali son of Muhammad Nabi;

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that they accepted presence of narcotic in the house and; led the raiding party to the Baitak of the house and; at their pointation 30 packets charas contained in plastic sacks lying underneath the bed were recovered; that on weighment each packet of charas came 1200 grams; that sample of ten grams from each packet of charas was separated for chemical analysis, sealed into parcels No.1 to 30 while the remaining quantity of charas were sealed into parcels No.31 & 32; that the complainant arrested the accused, took into possession the recovered charas through recovery memo EX PW 1/1, prepared the site plan EX PW 1/3, drafted murasila EX PW 1/2 and sent the same through constable Naushad Khan to police station for registration of case FIR against the accused.

3. On completion of investigation, challan was put in Court against the appellants. Formal charge was framed against them, to which they did not plead guilty and claimed trial.

4. In order to bring home charge against the appellants, the prosecution produced as many as four PWs.

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5. On closure of prosecution evidence, statements of accused under Section 342 Cr.P.C were recorded wherein they denied the allegations leveled against them. Appellant Ahmad Askar opted to record his statement on oath within the meaning of section-340(2) Cr.PC and also to produce defence evidence; while appellant Sahid Ali waived his right of adducing evidence in his defence as well as recording his statement on Oath.

6. On conclusion of trial, after hearing the learned counsel for the parties and appraising evidence on the file, the learned trial Court through the impugned judgment dated 10.07.2019, convicted and sentenced the appellants, as mentioned in the opening paragraph of the judgment. Feeling aggrieved from their conviction and sentences, the appellants have filed their respective criminal appeal before this Court.

7. We have heard arguments of the learned counsel for the parties and perused the record with their valuable assistance.

8. The complainant/seizing officer (PW-1) in the murasila has not mentioned that on the pointation of

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accused-appellant Ahmad Askar he raided the hotel of Seth Saifullah Khan Bangash; however, in the recovery memo EX PW 1/4, it is mentioned that accused-appellant Ahmad Askar is residing in Seth Saifullah Khan Bangash Hotel, Kohat, since 07.11.2015 and his car bearing registration No.RIV-1214 has been parked in the parking of the said Hotel and; accordingly, the accused led the police party to Room No.12 of the said Hotel, wherefrom the Ignition Key of the car was taken and thereafter the car was taken into possession. PW-1 also recorded statement of Syed Nadir Shah, Hotel Manager, who also provided photocopies of register consisting of 09 pages (EX PW 1/7) to the I.O and; at page No.8 the time of check-in of accused Ahmad Askar on 09.11.2015 is 06.30. This witness further stated that the Hotel Manager handed him over the hotel record on 10.11.2015 in the hotel in the presence of Nowshad, Ikhtiyar Hussain and other member of the party. Nowshad PW-2 in cross examination also stated that; *"It is correct that the I.O had recorded the statement of hotel manager in my presence."* The seizing officer in cross examination for accused Ahmad Askar, admitted it correct that as per

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the judicial record the accused Ahmad Askar was staying in room No.12 of the said Hotel. PW-1 in his cross examination stated that there were apprehension of narcotic being removed and escaping of accused; but, despite taking quick action, he stated that he consumed round about one hour after receiving information in the P.S and; that they directly proceeded to the spot from the P.S, the distance between P.S and spot might be 8 to 10 kms and; consumed half an hour in reaching to the spot. In cross examination, he further stated that; *"I did not associate any private person in the raid except the informer. The place of occurrence was not previously known to me. I cannot give the number of houses present in KDA colony. I prepared the site plan myself. I did not mention in site plan that what was situated at the west of spot of occurrence..... It is correct that house in question consist of two gates and I entered from the gate near point (c) in the site plan. There are four rooms in the lower portion of the house in question including betak..... I did not mention specifically and individually the points of PWs in the site plan..... I did not record statement of any*

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private person with regard to ownership as well as occupation of house in question. Volunteered that no one private person was available there." Noushad PW-2, the marginal witness to the recovery memos as well as member of the raiding party, in cross examination stated that; "the house in question was vacant one..... I know about only one door of the house in question from where we entered it, however, I do not remember of any other door. I do not remember that how much rooms were there in the house in question..... As no one was present in the street that is why no statement of any private person was recorded by the I.O. The site plan was prepared in my presence. I do not remember that who told the I.O about the surrounding houses owners name as mentioned in the site plan." However, the I.O in the site plan EX PW 1/3 has shown two houses except the house in question and the names of its owners have been mentioned therein specifically and; besides the above, no specific point of the raiding party has been mentioned in the site plan. The I.O further admitted it correct that accused Ahmad Asker is neither owner nor tenants of the house in question and that

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the house in question is not owned by any relatives of the accused Ahmad Askar and; that no relative of the accused Ahmad Askar is the tenant in the house in question. Regarding information received by the A.D Excise, the Seizing Officer PW-1 in cross examination stated that; *"I got information in the PS from AD/Incharge Ghulam Muhammad. It is correct that I was not informed directly by the informer and I was informed by AD, however, the informer was present in the PS who accompanied us to the spot. AD did not visit with us on the spot. I was informed at about 08.00 am. I did not make entry in D.D when I received information, however, I made my departure regarding the information in the D.D. The extract of D.D is not available on file."* PW-2 in his cross examination stated that the raiding party was consist of 12 personnel except the informer; but, it is strange to note that only the names of six prosecution witnesses have been cited in the calendar of witnesses.

9. Shakeel Khan HC (PW-4) deposed that on receipt of murasila, he incorporated its contents into FIR EX PW 4/1; that after arrival of the I.O he handed him over the sealed

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parcels of samples, sealed remaining case property, personal search of the accused as per recovery memo, case vehicle alongwith key, application to the FSL, he deposited the case property etc in the Malkhana of the PS and parked the case vehicle in the premises of the PS, made entry in register No.19; that on 11.11.2015 he handed over 30 sealed parcels of charas, each ten grams, alongwith application of the I.O, copy of FIR, recovery memo, raseed-e-rahdari to constable Ibadullah for taking the same to the FSL, who after depositing the samples in the FSL, handed over him acknowledge receipt; but, the photocopy of register No.19 and that of receipt are not available on judicial file. Besides, the above FC Ibadullah, who took samples to the FSL, is dead; therefore, the authenticity of FSL could not be established by the prosecution.

10. The prosecution produced Inayat Ali son of Sardar Khan, Hussain Ali son of Qambar Ali and; Hakim Ali son of Ashiq Ali before the Court of Judicial Magistrate-I, Kohat for recording their statements u/s-164 Cr. PC and; accordingly their statements were recorded. Inayat Ali in his statement stated that he is attorney of Zafar Mehmood

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son of Ikhtiar Shah, who is owner of House No.51 Phase-II, C-I KDA, Kohat, and rented out the said house @ Rs.8000/- per month on 15.10.2015 to one Hakim Ali son of Ashiq Ali through Hussain Ali; while Hussain Ali supported the version of Inayat Ali. Transfer deed EX PW 3/1 reveals that Mst. Bibi Zahida Khaton w/o Syed Muhammad Arifeen was the original owner of the said plot and; the same was transferred to Zafar Mehmood. It is worth to mention here that none from the above cited witnesses has been produced before the trial Court to prove that the accused-appellants were residing in the said house during the days of occurrence and specifically at the time of their arrest from the said house.

11. Convict-appellant Ahmad Askar recorded his statement on Oath within the meaning of section-340(2) Cr.PC, and; deposed that;

"I am innocent, the allegations against me are totally false and fabricated. I was not arrested from the house mentioned above nor anything was recovered from me. I do not know co-accused Sahid Ali. I am contractor by profession and was having government contract of construction of hospital at Baramzai Orakzai Agency. I came to Kohat for clearance of my bills pertaining to construction of

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hospital from C&W Hangu, as there is no hotel in Hangu, therefore, on 07.11.2015 I have booked room in the Haji Seth Saifullah Khan Bangash Hotel and Restaurant in Kohat. Clearance of government bills is hectic/huge task so I remained in the hotel for few days. On 10.11.2015 at 0800 am I was in my room when ANF officials came there and took me in their illegal custody from a hotel room alongwith my car No.RIV-1214 which was parked in the hotel parking and brought me alongwith my car to police station. Hotel record already exhibited in the evidence shown my arrest from the said hotel on 10.11.2015 which is sufficient evidence about my innocence. The certificate regarding my contract about construction of hospital is exhibited D-1 and D-2. Similarly the bills regarding contract are exhibit DX consisting of ten sheets."

Convict-appellant Ahmad Askar also produced defence witnesses namely Naib Ali as (DW-1) and; Tasawer Khan as (DW-2). DW-1 deposed that;

"I have a general store at my village Beramzai. I came to Kohat for purchasing various commodities for my store. I came to Kohat on 09.11.2015 and booked room No.07 at Haji Seth Saifullah Bangash hotel and restaurant. Hotel record already exhibited reveals the same. On 10.11.2015 at about 0800 am I came out of my room after hearing voices from outside, I saw that ANF officials four in uniform whereas three officials were in plain clothes caught hold my co-villager Ahmad Askar (accused) and took him alongwith his motorcar No.RIV-1214

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already parked in the hotel parking with them. I know accused Ahmad Askar very well, he is my co-villager. I know him from very close he is a government contractor and he is having a very good reputation he was arrested from the room of the hotel in my presence I even ready to depose on Holy Quran regarding arrest of the accused Ahmad Askar from the hotel room."

Likewise, Naib Ali (DW-2) deposed as under;

"I came to Kohat on 07.11.2015 for some of my personal work and booked room No.4 in the Haji Seth Saifullah Bangash Hotel and Restaurant. Hotel record already exhibited reveals the same. On 10.11.2015 at about 0800 am I came out of my room after hearing voices from outside I saw that ANF officials four in uniform whereas three officials were in plain clothes caught hold my co-villager Ahmad Askar (accused) and took him alongwith his motorcar No.RIV-1214 already parked in the hotel parking with them. I know accused Ahmad Askar very well he is my co-villager. I know him from very close he is a government contractor and he is having a very good reputation he was arrested from the room of the hotel in my presence. I even ready to depose on Holy Quran regarding arrest of the accused Ahmad Askar from the hotel room."

12. Convict-appellant Ahmad Askar produced certificates EX D-1 & EX D-2 issued by Sub-Divisional Officer, C&W FATA Division, South Kalaya, qua

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construction of 03-Nos Functional veterinary Dispensaries in Orakzai Agency and; its completion by Ahmad Askar son of Ghulam Askar on behalf of the original contractor M/S Muhammad Ghulam Govt: Contractor and; also produced the bills for payment for the works carried out on such construction. Appellant Ahmad Askar in his statement recorded on Oath has specifically stated that for clearance of the bills, he came to Kohat on 07.11.2015 and; booked room in Seth Saifullah Khan Bangash Hotel; that on 10.11.2015 at 0800 am he was in his room when ANF officials came there and took him in their illegal custody from the hotel room alongwith his car No.RIV-1214, which was parked in the parking of the said hotel. His stance qua stay in the said hotel and his arrest from the said hotel was also supported by DW-1 & DW-1 in their respective statement. They were lengthy cross examined by the prosecution; but, their statements could not be shattered. However, statements of the defence witnesses remained intact qua the arrest of appellant Ahmad Askar from the said Hotel on 10.11.2015 by the ANF officials. Besides the above, the Investigating Officer placed on file

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the photocopies of register qua stay of the persons in Haji Seth Saifullah Khan Bangash Hotel, Kohat, EX PW 1/7 (consist of nine pages) which also supports the stance of appellant Ahmad Askar qua his stay in the said Hotel from 07.11.2015 till 10.11.2015. The defence of convict-appellant Ahmad Askar also got support from the statement of PW-1, the seizing officer, who categorically admitted that he procured the photocopies of register of Seth Saifullah Khan Bangash, Hotel, Kohat, and; that his vehicle was also recovered from the parking of the said Hotel.

13. Now coming to the report of FSL (Ex-PZ) that; whether the same fulfills the requirement of Rule-6 of the (Government Analysts) Rules, 2001 or otherwise. The ibid report upon its perusal does not signify the test protocols that were applied to carry out the test; therefore, the mandatory requirement of law provided by Rule 6 has not been complied with in its letter and spirit; the noncompliance of the ibid Rule would render the said report inconclusive, suspicious and untrustworthy and; the same could not be relied upon qua maintaining the

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conviction and sentence of the accused/appellants in the circumstances, as it lacks evidentiary value. **2019 SCMR 930 Khair-Ul-Bashar V. The State** and **2020 SCMR 196 Muhammad Boota v. The State and another**. The ibid proposition was again reaffirmed by the august Apex Court in **Qaiser Javed Khan's** case reported in **PLD 2020 Supreme Court 57**. The relevant portion is reproduced below for ready reference;

"Now coming to the report of FSL (EX-PZ) that; whether the same fulfills the requirement of Rule 6 of the (Government Analysts) Rules, 2001 or otherwise. The ibid report upon its perusal does not signify the test protocols that were applied to carry out the test; therefore, the mandatory requirement of law provided by Rule 6 has not been complied with in its letter and spirit and; the noncompliance of the ibid Rule would render the said report inconclusive, suspicious and untrustworthy; which lacks the evidentiary value and the same could not be relied upon qua maintaining the conviction and sentence of the accused/appellant. 2019 SCMR 930 Khair-Ul-Bashar v. The State and 2020 SCMR 196 Muhammad Boota V. The State and another. PLD 2020 Supreme Court 57 Qaiser Javed Khan V. The State through Prosecutor General Punjab, Lahore and another. The relevant portion is reproduced below for ready reference;-

6. *The Report of the Government Analyst in this case specifies only the tests applied and not the protocols thereof. The term "protocol" has not been defined in the Rules. Its dictionary*

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meaning is: "A plan of scientific experiment or other procedure." It is also referred to as "the precise method for carrying out or reproducing a given experiment." These definitions are in line with the elaboration of the term "protocol" given in Imam Bakhsh wherein the Court stated the expression "protocol" to mean an explicit plan of an experiment, procedure or test. It is clarified that "protocol" is, therefore, a recognized standard method or plan for carrying out the test applied to ascertain the nature of the substance under examination. No test can take place without a protocol. The Report of the Government Analyst must show that the test applied was in accordance with a recognized standard protocol. Any test conducted without a protocol loses its reliability and evidentiary value. Therefore, to serve the purposes of the Act and the Rules, the Report of the Government Analyst must contain (i) the tests applied (ii) the protocols applied to carry out these tests (iii) the result of the test(s). This sequence, for clarity and better understanding can be envisaged as follows:

Test Applied	Protocols (applied to carry out the tests)	Results of the test(s)

7. Once the above three requirements under Rule 6 are contained in the Report of the Government Analyst, any ambiguity therein may be resolved by the Trial Court by exercising its power under Proviso to section 510, Cr.P.C. The said provision states that the Court may, if it considers necessary in the interest of justice, summon and examine the

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person by whom such report has been made. Therefore, the Trial Court while examining the said Report has the power to summon the Government Analyst in case there is any ambiguity in the said Report and seek clarification thereof. This clarification can only be based on the existing record of the Government Analyst and does not mean to allow the Government Analyst to conduct a fresh test or prepare another Report, for that would amount to giving the prosecution a chance of filling the gaps and lacunas in the Report. The Trial Court must also be mindful of the legal position that the per se admissibility of the Report i.e. without examining the Analyst (expert) does not vouch for its evidentiary value, as observed in Khair-ul-Bashar. The Courts are free to examine the contents of the Report and to assess its evidentiary value (weight), a matter distinct from its admissibility.

8. The Report of the Government Analyst in the instant case does not specify the protocols of the tests applied and thus does not meet the requirements of the law as interpreted by this Court in the cases of Imam Bakhsh and Khair-ul-Bashar (supra). The said Report cannot be relied upon for the conviction of the petitioner. Therefore, the petition is converted into an appeal and allowed. The conviction and sentence of the petitioner are set aside. He shall be released forthwith if not required to be detained in any other case."

14. For safe administration of criminal justice the Court is to appraise the evidence brought on record minutely, and if a single doubt arises there from, the benefit of which

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must be extended to the accused. It seems that the trial Court was influenced by the huge quantity involved in the case and extended every possible benefit to the prosecution, in contrast to the true import of Section 29 of CNSA. In such like cases, for the safe administration of criminal justice, law mandates that Courts are to be conscious of not the quantity of contraband; but, the quality of evidence produced in the Court for reaching a correct conclusion and just decision of the case. In this respect we are also fortified by the judgment of Hon'ble Supreme Court rendered in Shahzada's case (2010 SCMR 841), wherein it was held that;

"We have heard the learned counsel for the parties and have perused the record of this case very carefully. As regards the appellants, who were simply sitting in the car, their case is distinguishable from the case of the Driver and for involvement of such persons the prosecution is required to lead some evidence to show that they had knowledge of the property lying in the car or they had abetted or conspired with the Driver in the commission of the crime. No such evidence has been led by the prosecution to prove the above aspects of the case so as to make the appellants responsible for the commission of the crime along with the Driver. If the property would have been lying open within the view of the appellants or they knew the placement of the property then the situation would have been different. In such a situation, the appellants were required to explain their position, as required under Article 122 of Qanun-e-Shahadat Order, 1984 and without such explanation their involvement in the case would have been proved. As the property was not within their view and they had no knowledge of the placement of the property, therefore, they cannot be held responsible and in joint possession of the property with the Driver. As such the case of the

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prosecution against the appellants is highly doubtful".

15. The crux of the above discussion is that the prosecution case is full of contradictions, doubts and dents. It is of now settled principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and; not of grace. Guidance is sought from the judgment of the Apex Court rendered in Tariq Pervez's case (1995 SCMR 1345), wherein it was held that;

"If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

16. Keeping in view the above discussion, we accept both the appeals, set aside the impugned judgment dated 10.07.2019 and acquit the appellants from the charge under Section-9 (c) CNSA, 1997 levelled against them. They shall be released forthwith, if not wanted in any other case.

Above are the detailed reasons of our short order of even date.

Announced:
16.09.2021.

[Signature]
SENIOR PUISNE JUDGE

[Signature]
JUDGE

(D.B. of)
Hon'ble Mr. Justice Rook-ul-Amin Khan,
Hon'ble Mr. Justice S M Attique Shah.
(Kausar Ali, PS)

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Peshawar High Court Peshawar
Authorized Under Article 17 of
The Oath-taking Order 1989
24 MAR 2023
[Signature]

(C) 44

OFFICE ORDER NO. 34 DATED PESHAWAR THE 08 / 12 / 2021 ISSUED BY MR. FARHATULLAH KHAN CONSERVATOR OF FORESTS MERGED AREAS PESHAWAR.

Mr. Sahid Ali Ex-Forest Guard was dismissed from service vide DFO Orakzai Office Order No. 08 dated 03-09-2019 being booked in FIR No. 46 dated 10-11-2015 under Section 09 (C) CNSA Police Station ANF Kohat , meanwhile he preferred an appeal No. 1030-P of 2019 in Peshawar High Court which accepted and he was acquitted, being Civil Servant an Enquiry was conducted vide office order No. 27 dated 27-10-2021.

1. Where as Mr. Sahid Ali Ex-Forest Guard of Orakzai Forest Division filed an appeal regarding re-instatement in to Govt. service in light of Court decision.
2. whereas the undersigned nominated DFO Kurram as Enquiry Officer vide office order No.27 dated 27.10.2021.
3. Whereas, the Enquiry Officer submitted his inquiry report vide letter No.999/B&A dated 15.11.2021.
4. Whereas, the undersigned called the appellant for personal hearing on 03-12-2021
5. Whereas, the personal hearing/cross examination of the appellant was conducted on 07-12-2021
6. Whereas, the undersigned deeply thrashed out, critically analyzed, compared and contrasted the dismissal order, appeal of the appellant, report of the Enquiry Officer, Court decision and cross examination/ personal hearing of the appellant in consonance with available record, Facts on ground.
7. Whereas, concluding above, exposition, the undersigned agreed with the Enquiry Officer and in the capacity of "Appellate Authority" and power conferred vide Ruls-17 (2) (C) of the (E&D) Rules-2011 hereby accept the appeal of appellant and decided the case as under.
 - i. DFO Orakzai office order No.08 dated 03.09.2019 is hereby set aside.
 - ii. The Forest Guard is hereby re-instated in to Govt: service with immediate effect.
 - iii. The intervening period from 3.9.2019 to 16.9.2021 (743 days) between dismissal from service & re-instatement is hereby treated as (Leave without pay).

(Farhat Ullah Khan)
Conservator of Forests
Merged Areas
Peshawar

No. 1669-71 /E

Copy for information and necessary action forwarded to the:-

1. DFO Kurram Forest Division Parachinar (Inquiry Officer).
2. DFO Orakzai Forest Division Hangu.
3. Mr. Sahid Ali Forest Guard C/O DFO Orakzai.

Conservator of Forests
Merged Areas
Peshawar

محضور جناب چیف کنزرویٹر آف فارسٹس جنوبی ریجن صوبہ خیبر پختونخواہ پشاور

بوساطت: جناب ڈویژنل فارسٹ آفیسر اور کزنٹی فارسٹ ڈویژن ہنگو۔

مضمون: اپیل برخلاف کنزرویٹر آف فارسٹس مرچنڈ ایریاز پشاور آفس آرڈر نمبر 34 مورخہ 08/12/2021۔

گزارش کی جاتی ہے۔ کہ سائل کو ناجائز منشیات کے کیس میں 10/11/2015 کو گرفتار کیا جس میں سہ ماہہ نصرت یاسین انتخاب جج پشیل کورٹ پشاور نے اپنے فیصلے مورخہ 10/7/2019 کو عمر قید اور دس لاکھ -/1000000 روپے جرمانے کی سزا سنائی تھی (کاپی لف ہذا ہے)۔ جس کے برخلاف سائل نے پشاور ہائی کورٹ میں اس فیصلے کے خلاف اپیل دائر کی جسکو معزز عدالت نے منظور کرتے ہوئے 16/9/2021 کو سائل کو بے گناہ قرار دیکر بری کر دیا (کاپی لف ہذا ہے)۔ اور بندہ 17/9/2021 کو حاضری رپورٹ بمعہ عدالتی فیصلہ کی کاپی اپنے متعلقہ ڈی۔ ایف۔ او کے دفتر میں پیش کیا لیکن ڈی۔ ایف۔ او صاحب نے میرا کیس کنزرویٹر آف فارسٹس مرچنڈ ایریاز پشاور کو لینڈ نمبر 378/E مورخہ 21/10/2021 رائے لینے کیلئے بھیجا۔ جس پر کنزرویٹر آف فارسٹس مرچنڈ ایریاز پشاور نے مندرجہ بالا آفس آرڈر کے مطابق (کاپی لف ہذا ہے) سائل کو روز کو نظر انداز کر کے مزید درج ذیل سزائیں دیں جو کہ سراسر ناجائز اور زیادتی ہے۔ کیونکہ ایک تو بندہ نے بے گناہ ایک لمبا عرصہ جیل میں گزارا اور دوسری کنزرویٹر آف فارسٹس مرچنڈ ایریاز پشاور نے دوبارہ سزا دی۔

(1) بندہ 8/12/2021 کو with immediate effect بحال کیا جو کہ چاہیے تھا کہ کم از کم عدالت کے فیصلے کی تاریخ سے بحال کرتا۔

(2) بندہ کو مزید 743 دن چھٹی بغیر تنخواہ کی منظور کی۔

جناب والا CSR-52-55 صاف لکھا ہے کہ جو سرکاری ملازم اس قسم کے جرم میں گرفتار ہے (کاپی لف ہذا ہے) اور عدالت اسے باعزت طور پر بری کر دے تو اسے تمام مراعات دیئے جائینگے۔ جبکہ کنزرویٹر آف فارسٹس مرچنڈ ایریاز پشاور نے انکے برخلاف کیا۔ اور مزید یہ کہ بندہ اپنی مرضی سے ڈیوٹی سے غیر حاضر نہیں ہوا اور نہ ہی کبھی کوتاہی کی ہے۔ اپنی پچھلی ڈیوٹی بڑی جان پشانی سے کی ہے اور کبھی اپنے سینئر زکو شکایت کا موقع نہیں دیا ہے۔

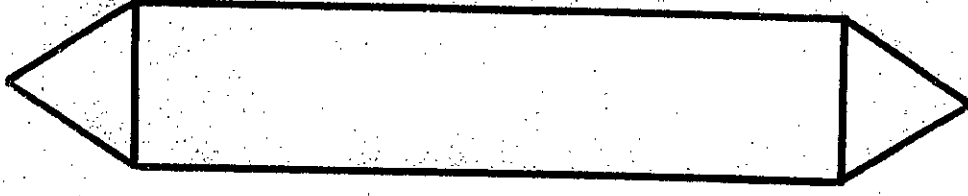
لہذا جناب سے گزارش ہے۔ کہ ایک تو بندہ نے بے گناہ لمبا عرصہ جیل میں گزارا اور دوسری طرف بندہ کا ایک گروہ نہیں اور دوسرا ناکارہ ہو چکا ہے۔ جس کا باقاعدہ طور پر ڈائیلیسز کر رہا ہے۔

لہذا بندہ کے مندرجہ بالا تکلیفات اور بیماری کو مد نظر رکھتے ہوئے کنزرویٹر آف فارسٹس مرچنڈ ایریاز پشاور کے آفس آرڈر نمبر 34 مورخہ 08/12/2021 پر نظر ثانی کر کے بندہ کو مذید جسمانی، ذہنی اور مالی مشکلات سے روز کے مطابق بچایا جائے۔ صاحب کی بڑی عنایت اور مہربانی ہوگی۔

آپ کا تابعدار ساجد علی فارسی گارڈ
اور کزنٹی فارسٹ ریجن
اور کزنٹی فارسٹ ڈویژن ہنگو۔

EC
DFO
23/12/2021

بعدالت سد سے طاسیوے کاد



23 نومبر 2023ء

مورخہ

سید علی

مقدمہ

دعویٰ

جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

کیلئے لیدر اللہ خٹک

کاد

آن مقام

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز ایڈووکیٹ وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

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المرقوم

العبد و العبد

Accepted By Pleader
Kabir Ullah Khattak
ADVOCATE HIGH COURT PESHAWAR
EX-ADDITIONAL ADVOCATE GENERAL
SERVICE TRIBUNAL K.P.A.