

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Bail Petition10/4 of 2023.

Date of institution.....21.02.2023.

Date of decision.....24.02.2023.

Sanaullah Khan Advocate for accused/petitioners
Complainant Mohsin Ali

Order.No.02
24.02.2023

Counsel for accused/petitioners present. Attested wakalatnama is placed on file. Complainant present. Record received. Arguments heard and record gone through.


Complainant stated at the bar that he has affected compromise with accused/petitioners outside the court and he has got no objection if accused/petitioners are released on bail or subsequently acquitted. To this effect statement of complainant recorded wherein he stated that he has got no objection on release of accused/petitioners on bail or subsequent acquittal. Statement is duly thumb impressed by complainant. Photocopy of his CNIC is Ex-PA.

Accused/petitioners namely 1. Aswat Ali S/O Anwar Ali, 2.

Irfan Ali S/O Aswat Ali and 3. Said Muhammad S/O Qasim Jan are


seeking their post arrest bail in case FIR No.07, Dated:19.02.2023 U/S

379/34 PPC, PS Kurez Boya, Orakzai.


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Civil Judge/JM
Kalaya Orakzai

Although offence under Section 379 is not compoundable, however, in plethora of judgments of the superior courts, it is held that the factum of compromise could be considered as a ground for grant of bail in the interest of justice and equity. When complainant is not willing to prosecute the accused any further, the court would not compel the parties to do so as "you can take the horse till the water but you cannot make him drink". On merits, offence Under Section 379 PPC does not fall within the ambit of prohibitory clause of Section 497 Cr.PC. In such like cases grant of bail is a rule and refusal is an exception. Per record the alleged occurrence took place on 07.02.2023 at unknown time and it was reported on 19.02.2023. Nothing incriminating has been recovered from the accused/petitioners or on their pointation. There is no criminal history of accused/petitioners as per available record. More so, there is unexplained delay in lodging of F.I.R. Accused/petitioners have not confessed their guilt before the court. Investigation has already been completed and accused/petitioners are no more required to the local police for investigation and no useful purpose would be served by keeping the accused/petitioners behind the bar.

Resultantly, application in hand is allowed. Petitioners be released on bail subject to furnishing bail bonds in the sum of Rs. 50,000/- with two reliable sureties each in the like amount to the satisfaction of this court. Copy of this order be placed on police as well as judicial record. Record be sent back to the quarter concerned


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forthwith, while file of this court be consigned to record room after necessary completion and compilation.

ANNOUNCED:
24.02.2023



Zahir Khan
JMIC, Tehsil Kalaya,
Orakzai