

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI AT BABER MELA


Bail Application No : 38/4 of 2023
Date of Institution : 03.05.2023
Date of Decision : 11.05.2023

MUHAMMAD SALAM VS THE STATE

ORDER

DPP, Umar Niaz for the State and Sana Ullah Khan Advocate for accused/petitioner present. Jehad Ullah and Imran Khan despite being served, not present. Attested copies of record received. Arguments heard and record gone through.

2. Accused/petitioner, **Muhammad Salam** s/o Abdul Khaliq, after being refused to be released on bail vide order dated 18.04.2023 of learned Judicial Magistrate-I, Tehsil Kalaya, District Orakzai, seeks his release on bail in case FIR No. 31, dated 04.04.2023, u/s 392 PPC/15AA & 5 Explosive Substances Act of Police Station Kalaya, wherein, as per contents of FIR, the local police acting on information regarding presence of some persons for the purpose of commission of offence on the spot, reached the place of occurrence, where at about 1300 hours three persons on seeing the police party abandoning 02 motorcycles tried to make their escape good from the spot, but they were overpowered. Out of the arrested persons, one disclosed his name as Muhammad Salam, the present accused/petitioner from whose possession a


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Kalashnikov along with a fix charger and 02 spare chargers, a knife and a hand grenade were recovered while the other two disclosed their names as Afsar Khan and Aman Ullah, the co-accused. Nothing incriminating was recovered from personal search of both the accused. Hence, the present FIR. During course of investigation, the accused disclosed that they have snatched the motorcycles from Jehad Ullah and Imran Khan. On 08.04.2023 the statements of the said Jehad Ullah and Imran Khan were recorded u/s 164 CrPC wherein they besides charging the aforementioned accused also charged 04 other accused for snatching two motorcycles, Rs. 360,000/- and two cellphones from them on 04.04.2023 at 1100 hours, where they were on their way to their house after collecting Rs. 360,000/- from one Ali Akbar at Zakha Khel village.

3. It is evident from the record that though the accused/petitioner is directly nominated in the FIR, he has been shown arrested on the spot, the offence for which the accused/petitioner is charged falls within the prohibitory clause of section 497 Cr.P.C and the accused/petitioner has also been shown armed with Kalashnikov; but no recovery of stolen/snatched property has been made from the accused/petitioner. So far, the statements of Jehad Ullah and Imran Khan are concerned, they have neither reported the matter to police nor later on they have approached the local

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police for recording their statements rather they have been called by the police after about 04 days of the occurrence, to the police station where they have allegedly charged the co-accused for the commission of offence. Moreover, the accused/petitioner has remained in police custody for 02 days but nothing incriminating has either been recovered from his possession or on his pointation. Furthermore, the co-accused Afsar Khan and Ambil Khan have already been released by this court vide orders dated 19.04.2023 and 27.04.2023; therefore, the present accused/petitioner is also entitled to the concession of bail on the basis of rule of consistency.

4. Hence, in view of what is discussed above, the accused/petitioner is admitted to the concession of bail provided he submits a bail bond in the sum of Rs. 100,000/- with two sureties, each in the like amount to the satisfaction of Judicial Magistrate concerned/MOD. Sureties must be local, reliable and men of means.

5. Copy of this order be placed on police/judicial file. Consign.

Pronounced:
11.05.2023



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