

Present:

Sajid Rehman Khattak Advocate for accused/petitioner
Complainant, Awal Meen Shah, along with Sana Ullah Khan
Advocate
APP Syed Amir Shah for the State

Through the instant bail petition accused/petitioner **Najam ud Din** s/o Anar Badshah; r/o Utman Khel caste, tapa Bazran Khel, Feroz Khel, Meloser, Lower Orakzai; who is charged in case **FIR No. 103**, dated 24-09-2020, registered in PS Lower Orakzai - u/ss. **302/34 PPC** is seeking **post arrest bail**.

Facts of the case, according to FIR, are; that an SI found the dead bodies of Minat Shah (aged 48) and Muhammad Anas (aged 32) in the Emergency Room where complainant Awal Meen Shah (brother of deceased Minat Shah and Uncle of deceased Muhammad Anas) reported to the SI that the two deceased had come to his house in the morning for *bemar-pursi* and were present in hujra; that in the meanwhile Najam ud Din (accused/petitioner), Rizwan and Khameen (all three brothers) also arrived in the hujra for *bemar-pursi*; that these 03 left the hujra after sometime, while Minat Shah and Muhammad Anas (both deceased) left after having meal; that a little while later he (complainant) heard the sound of firing and immediately came out of his house and saw Najam ud Din, Rizwan and Khameen running away armed with weapons; that the complainant immediately went to the spot and found his brother Minat Shah and nephew Muhammad Anas murdered on the spot. He charged the 03 persons as accused and the motive was stated as previous enmity. A murasila was prepared by IO in respect of this report and sent to the PS. The dead bodies were referred for Post-mortem. Accused/petitioner was arrested on the next day of occurrence; hence the instant petition.

Arguments of counsels for the parties and APP for State heard, and available record perused; the tentative assessment of which, for the purpose of deciding instant petition, shows that:

JAMAL SHAH MAHSUD
Assistant Judge-I
Orakzai at Hangu

1. Admittedly, there is a cross version of the instant case, in respect of which FIR no. 104 was registered u/s 302/34 PPC in the same PS. The time and place of occurrence of the both the FIRs is the same. The instant case (FIR no. 103) was recorded prior in time, however, the present complainant completely concealed the facts about the murder and attempted murder of FIR no. 104 in his report. In such circumstances, question as to which party was aggressor, and which was aggressed upon, shall be decided by trial court after evaluation of evidence.
2. The matter of the present case was reported to the police after a delay of 05 hours.
3. The complainant, according to FIR, had only seen the 03 accused running from the spot - armed with weapons; no specific role of firing at the deceased has been attributed to the accused/petitioner.
4. The hujra and house of complainant are not shown in the site-plan; neither presence of complainant is shown therein.
5. Admittedly, there was a previous enmity between the parties; three brothers have been charged without specific roles or the kind of weapons allegedly used by them. False implication, in such circumstances, cannot be ruled out.
6. No recovery has been made from accused/petitioner, neither any other independent and reliable piece of evidence brought on record against him during investigation.

In view of the above circumstance, the accused/ petitioner has made out a case of further inquiry into his guilt. Resultantly, the instant petition is **accepted** and it is directed that the accused/petitioner, **Najam ud Din**, may be released on bail in the instant case, subject to furnishing bail bonds in the sum of **Rs 100,000 (one lac)**, with two sureties - each in the like amount to the satisfaction of this court. Record of the police be sent back along with a copy of this order. Let this file be consigned to Record Room after its necessary completion and compilation.

Announced
18-11-2020


Jama Shah Mansood
ASJ-I Orakzai