

BA No. 52/BA of 2020

Or 03
27-04-2020

Present:

Abid Ali Advocate for accused/petitioners
Complaint along with Haseeb Ullah Khan Advocate
DPP Umer Niaz Khan for State

The accused/petitioners **Shams Ur Rehman** s/o Muhammad Kareem; belonging to Mishti, Darwe Khil caste; resident of Chappar Mishti, Marghio Chena, Lower Orakzai is seeking **post-arrest bail in case FIR no. 25** dated **10-04-2020**, u/ss **437/427/452/148/149 PPC**, registered in PS Lower Orakzai.

Facts of the case, according to the FIR, are; that the SHO was on patrol of the area when he received information that some people have burnt down the house of complaint, Muhammad Ikhlq, in village Narai Kanda, Mishti Mela; that the SHO reached the spot with a police party and saw the house on fire; that the complaint met the SHO on spot and reported that he was present in the said house with his family members, when 19 persons (including accused/petitioner Shams Ur Rehman) entered into his house bearing arms and forcefully evicted the inmates and then set the house on fire; that the complaint party could not do anything due to fear. The motive was stated to be that one Faiz Ur Rehman, of the same village, was murdered and accusation was cast on Ishaq, a nephew of complaint; the complaint stated the accused party set his house on fire being angry due to murder of said Faiz Ur Rehman. The SHO sent report to the PS, where the instant case was registered.

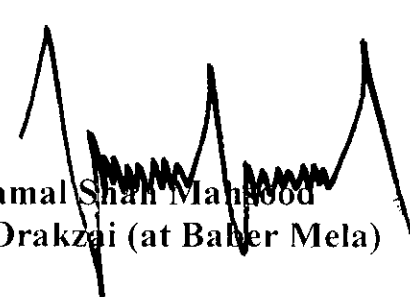
JAMAL SHAH MAHSUD
Addl: District & Sessions Judge-I
Orakzai

Arguments of learned counsels for the parties and DPP for the State heard; the record perused. Tentative assessment of which, for the purpose of deciding instant petition, shows that:

1. The accused-petitioner is directly charged in FIR, by name, for a heinous offence which falls under the prohibitory clause of section 497 CrPC.
2. The FIR was promptly lodged and the ashes were recovered from the spot; the pictures of damaged house and chattels are also available on record.
3. The counsel for accused/petitioner stressed that the statements of eyewitnesses named in FIR were recorded with delay; however, this fact has been explained on the ground that the complaint party was forced to leave the area after occurrence and had moved to Kohat in fear.
4. The complaint party has also produced video recording of the occurrence to the IO.
5. The accused/petitioner claims to be juvenile; however, under section 6 (4) of JJSA, 2018, a juvenile above 16 years of age involved in commission of a heinous offence cannot claim bail as of right.

In these circumstances, the accused/petitioner is prima facie found connected with the commission of heinous offence. Resultantly, the instant petition is **dismissed**. Let a copy of this order be placed on record; while this file be consigned to the Record Room after necessary completion and compilation.

Announced
27-04-2020


Jamal Shah Mansoor
ASJ-I, Orakzai (at Baber Mela)