

BA No. 13/BA of 2019

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24-04-2019

3

Present:

Sanaullah Khan Advocate for accused/petitioners
APP Zohaib Sher for State
Complainant Koko Rehman in person

The accused/petitioners (1) **Mukamil and (2) Latif**, both sons of Mir Said; residents of Sheikhan Umerzai, Masud Pakha, Orakzai are seeking **post-arrest bail** in **case no. 1702/AC/L** dated **05-08-2018**, registered with Assistant Commissioner Lower Orakzai, wherein they were charged for murder and causing hurt (sections **302/324 of PPC**).

The facts of the instant case, according to record, are; that on 05-08-2018 it was reported to the Assistant Commissioner (AC) of Lower Orakzai that at about 08:00 pm an incident of sudden firing took place between Mukamil Shah (accused petitioner no.1) and Shahzada (deceased) in Masud Pakha, Sheikhan area. That the said incident resulted in deaths of 04 persons, namely Shahzada, Javid, Ashrat and Fazal Rahim; while 03 others (Shah Nawaz, Latif and Mukamil – the later two accused/petitioners) received bullet injuries. The motive behind the occurrence was stated to be dispute over a piece of land. Levy and Orakzai Scouts personnel were sent to the spot to evacuate the injured and affect cease fire. According to letter no. 1706/AC/L dated 06-08-2018 the accused petitioners were arrested by the local authorities.

It is pertinent to mention here that the above mentioned incident and proceedings took place when the special law, FATA Interim Governance Regulation, 2018, was in force in Orakzai. The accused/petitioners have filed the instant bail

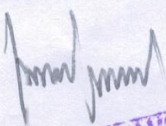
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Addl: District & Sessions Judge-I
Orakzai of Wazirabad

4

petition after the annulment of the said Regulation and extension of normal laws of land to the erstwhile FATA region.

Arguments of learned counsel for the accused/petitioner and APP for the State heard; and available record perused. The tentative assessment of which, for the purpose of deciding instant petition, shows that:

1. The accused/petitioner Mukamil is charged by name in first report of the incident made to the AC. The said accused also received injuries in the incident; where as accused/petitioner Latif was also arrested on the next day in injured condition. Thus the presence of both the accused/petitioner on the spot and their involvement in the occurrence is prima facie established.
2. The case was reported to have taken place on the spur of moment and seems to be one of cross versions. However, 04 murders were allegedly committed by the accused party; whereas, the accused/petitioners received comparatively minor injuries in the occurrence (a single fire arm injury on left thigh of accused/petitioner Mukamil can only be affirmed from record). Thus it is prima facie established that the accused/petitioner exceeded their right of private defence, if any. The provisions of section 100 PPC are therefore not attracted to the case. Even otherwise, not every case of cross-version/self defence would mean that bail can be claimed as of right. Moreover, the accused/petitioners did not register any report against the opposite party, which indicates that they were the real aggressors.
3. Delay in lodging of report can be condoned in the present case as the same was registered when the criminal law of State was not in field in the erstwhile FATA region, and no proper


JAMAL SHAH MAHSUD
Addl. District & Sessions Judge
Orakzai at Hangu

5

Contd.O-5
24-04-2019

mechanism for registration of criminal cases and collection of evidence was put in place by the then political administration.

4. Other immaterial discrepancies in the case can also be ignored at this stage for the same reason, when a substantive piece of evidence, in the shape of injured eyewitness (Shah Nawaz), is available against the accused/petitioners.
5. The offence falls under the prohibitory clause of section 497 Cr.P.C and is heinous in nature.

In these circumstances, instant petition is **dismissed**. Let a copy of this order be placed on record; while this file be consigned to the record room of District Courts Hangu, after necessary completion and compilation.

Announced
24-04-2019

Jamal Shah Mahsood
ASJ-I, Orakzai (at Hangu)

JAMAL SHAH MAHSOOD
Addl. District & Sessions Judge,
Orakzai at Hangu