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BA No. 11/BA of 2019

O 06
08-05-2019

Present:

Abid Ali Advocate for accused/petitioner
Sanaullah Khan Advocate, alongwith complainant Shamim Ali
APP Zohaib Ahmed Sher for State

The accused/petitioner **Mohammad Shafiq** son of Phool Mehdi; resident Bar Mohammadkhel, Tappa Khuidadkdel, Lower Orakzai (presently confined in sub-jail Orakzai HQ) is seeking **post-arrest bail** in **case no. 92/APA/L** dated **13-01-2018**, registered with the then Assistant Political Agent Lower Orakzai, wherein he was charged for murder and causing hurt (sections **302/324 of PPC**).

The facts of the case, according to information report (No. 92/APA/L), are; that on 13-01-2018 at about 10:00 am, Nasir Ali died and his daughter-in-law (wife of Shamim Ali) sustained bullet injuries as a result of firing made by accused/petitioner in village Charbagh, Bar Mohammadkhel area. According to this report the accused was arrested and put behind bars. The motive was stated as domestic skirmishes between the parties.

It is pertinent to mention here that the above mentioned incident and proceedings took place when the special law, Frontier Crimes Regulation, 1901, was in force in Orakzai. The accused/petitioner has filed the instant bail petition after the extension of normal laws of land to the erstwhile FATA region.

Arguments of the counsel for the accused/petitioner, counsel for complainant and APP for the State heard; the available

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record has also been perused. The tentative assessment of which, for the purpose of deciding instant petition, shows that:

1. On 14-01-2018, i.e. the next day of occurrence, a statement of accused/petitioner M. Shafiq was recorded by Political Tehsildar of Lower Orakzai. Wherein the accused/petitioner, while admitting domestic disputes, alleged that the deceased, alongwith his sons Naseem Ali and Shabnam Ali (complainant party), had come to his house armed with weapons, who were also accompanied by womenfolk; That a son of deceased was present on roof top, who stated firing despite pleadings of the womenfolk. That then the complainant party tried to trespass into his house and he also started firing. That later he came to know that his maternal uncle (deceased Nisar Ali) and the wife of his cousin Shamim Ali were hit with bullets in the incident. Thus, prima facie, the case is one of cross versions. The accused/petitioner has taken a plea of self defence - after the complainant party started firing and tried to enter his house. In these circumstances, it would only be determined after recording of evidence as to which party was the real aggressor and which party acted in self defence.
2. No statement of any eyewitness from the complainant party has been recorded so far. It is also doubtful as to firing of which of the parties hit the deceased and the injured.
3. On 01-03-2018 (some 50 days after the occurrence), a written statement of Shamim Ali (present complainant) was submitted to the APA. Wherein he stated that he was not present on spot at the time of incident. The complainant introduced a new allegation of use of hand grenade and involvement of other persons in the occurrence as well. Thus, casting further doubts on the version of complainant party.

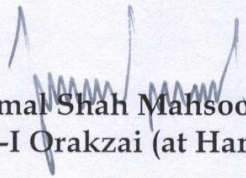
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4. The proceedings in the case were initiated 13-01-2018, on which date the first order sheet was written by APA (or by his clerk). No further proceedings were carried out by the APA/AC or by the Council of Elders, despite the fact that questions of reference were drafted for Council - on an undated document, and the case remained pending for more than a year.
5. No name or statement of any eye-witness is available against the accused/petitioner.

In view of the above circumstance, the accused/petitioner has made out a case of further inquiry into his guilt for the purpose of grant of bail. He is entitled to benefit of doubts present in prosecution case. Resultantly, the instant petition is **accepted** and it is directed that the accused/petitioner, **Mohammad Shafiq**, be released on bail in the instant case, subject to furnishing bail bonds, in the sum of **Rs. 200,000** (two lac), from two sureties, each in the like amount, to the satisfaction of this court.

Let a copy of this order be placed on record, while this file be consigned to Record Room after its necessary completion and compilation.

Announced
08-05-2019


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