

Or 06
01-06-2020

Present:

Accused/petitioner on interim bail, along with Abid Ali Advocate
Muhammad Anjam Khan Advocate for Complainant (wakalatnama
submitted and placed on file)
DPP Umar Niaz for State

This order shall dispose of **pre-arrest bail** application of the
accused/petitioner **Muhammad Ameen** s/o Sanjab Khan r/o Shikhan
Tapa Sammozai, village Kanganai Orakzai; who is charged in case
FIR No. 38, dated 09-05-2020, u/s **324/34 PPC** (later section 427 PPC
also added) of **PS Lower Orakzai**.

The facts of the case, according to record, are; that an ASI of local
police was on routine patrol of the area when he came across Fazal
Akbar (complainant) in Mishti Bazar in the morning of 09-05-2020;
the complainant reported to the ASI that on 07-05-2020 he was present
in his house when he received information that his nephew Nimat
Ullah, who was working in his fields on tractor, has been injured by
someone; that he immediately went to the spot and was told that
Muhammad Ameen (present accused/petitioner) and Muhammad
Yahya (co-accused) had ordered Rahim Ullah (Co-accused) to fire
upon Nimat Ullah, with intention to commit *qatl-e-amd*; that Rahim
Ullah fired upon Nimat Ullah with a pistol and caused injuries to him;
that the injured was taken by the complaint and villagers to the DHQ
hospital Mishit Mela, from where he was referred to KDA hospital
Kohat and then further to LRH Peshawar. The complainant charged
the 03 persons as accused. No motive was revealed by the complainant
and the reason for delay in registration of case was mentioned as
ignorance of law.

The present accused/petitioner had filed an application before
DPO, Orakzai for inquiry into the false allegation made against him;
the inquiry report was also requisitioned along with record.

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

1. There is a delay of 02 days in reporting the occurrence to the local
police. The FIR was registered on hearsay statement of complainant,
who is admittedly not an eyewitness of the occurrence. The statement

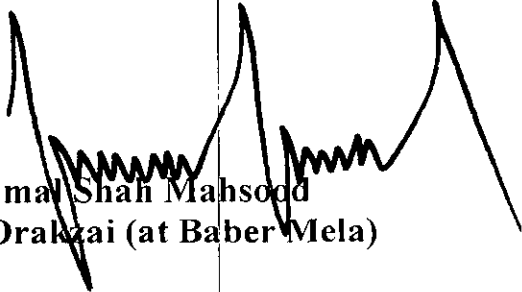
JAMAL SHAH MAHSUD
District & Sessions Judge-I,
Orakzai

of injured was recorded with further delay of 02 days. The ignorance of law is not plausible explanation for delay. Moreover, the delay reflects deliberation and consultation before reporting the matter to the police.

2. The inquiry report shows that the accused/petitioner has produced witnesses before the Inquiry Officer (SDPO lower Orakzai), in respect of the alibi he claims. The inquiry report also show that complainant had a dispute with present accused/petitioner in respect of waterpipe. Thus, chances of false implication with ulterior motive, on part of the complainant, cannot be ruled out.
3. The accused/petitioner has been given the role of joint lalkara, along with another co-accused. No overt/active role has been assigned to him for firing at the injured. The impact of alleged lalkara attributed to accused/petitioner shall be determined at trial after recording of evidence.
4. The accused/petitioner joined investigation since grant of interim BBA on 13-05-2020, but so far, no material has been brought on record against him. No recovery is required to be made from the present accused/petitioner.
5. The allegations against the accused/petitioner call for further inquiry into his guilt. No useful purpose could be served by sending the accused/petitioner behind bars only to be released on regular bail.

Resultantly, the instant pre-arrest bail petition of accused Muhammad Ameen, is **accepted** and the ad-interim pre-arrest bail already granted to him is confirmed on the existing bail bonds. Copy of this order be placed on record. Record be returned while this file be consigned to record room after necessary completion and compilation.

Announced
01-06-2020


Jama Shah Mahsod
ASJ-I, Orakzai (at Baber Mela)