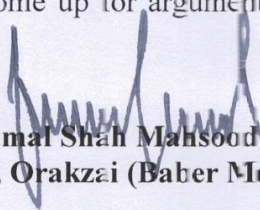


Or 04
09-07-2019

Present:

Accused/petitioners on interim bail, along with counsel
Complainant Taj Muhammad, along with Abid Ali Advocate
DPP Umar Niaz for State

The complainant submitted Wakalatnama, which is placed on file. The counsel for complainant requested adjournment to prepare arguments. To come up for arguments on 13-07-2019


Jamal Shah Mansood
ASJ-I, Orakzai (Baber Mela)

BBA No. 19/2019

Or 05
13-07-2019

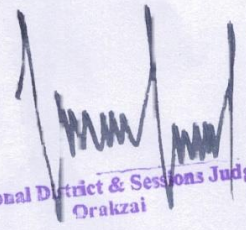
Present:

Both the accused/petitioners on interim bail, along with Sana Ullah Khan Advocate
Complainant, along with Abid Ali Advocate
DPP Umar Niaz for State

This order shall dispose of **pre-arrest bail** application of the 02 accused/petitioners namely (1) **Muhammad Riaz** and (2) **Muhammad Nawaz**, both sons of Niaz Khan; residents of Mishti Mela, Tapa Darwi Khel, Central Orakzai; who are charged in case **FIR No. 17**, dated **24-06-2019**, u/s **379/427 PPC** of **PS Lower Orakzai (Kalaya)**.

The instant case was registered on directions of ex-officio Justice of Peace, u/s 22-A CrPC. Facts of the case, according to the available record are; that, on 29-04-2019 the complainant Taj Muhammad filed an application before DPO Orakzai, wherein he alleged that, on 18-04-2019, the accused/petitioners and the other co-accused cut down and committed theft of 27 trees from his land situated in Mishti. Initially the police did not accept the version of complainant and refused to register FIR; however, after directions of Justice of Peace, the FIR was registered. Hence the instant petition.

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

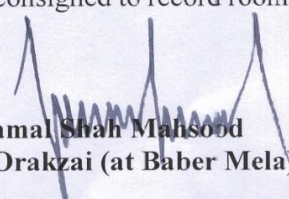

Additional District & Sessions Judge
Orakzai

2

1. The matter was reported to the police after delay of 10 days of alleged theft, no plausible explanation has been given for this delay.
2. The investigating officer has placed on record a spurious picture of logs of trees, which were allegedly recovered from Sangra Bazar; however, it is not clear that from whose possession the same were recovered. It is also suspicious whether the same are the logs of *Chir* trees, allegedly belonging to complainant.
3. According to statement of Akhtar Munir SI, dated 17-06-2019, which is available on file - only 10 trees were cut from a jungle which was joint ownership of complainant and others, including Noorab Khan. Accused/petitioner Muhammad Nawaz has also admitted that he cut down and took 10 trees; but that he was allowed to take those trees by co-owner Noorab Khan. Hence, the dispute seems to be one of civil nature, which the complainant has tried to convert into criminal proceedings with malafide intention.
4. The IO has not recorded the statement of any independent witness, despite the fact that the names of other alleged co-owners of jungle were available on record. Hence, malafide on part of IO is also evident.
5. The accused/petitioners joined investigation since grant of interim BBA on 28-06-2019, but so far, no progress has been made in investigation against them.
6. No further recovery is required to be made from accused/petitioners. No useful purpose could be served by sending the accused/petitioners behind bars only to be released on regular bail.

In light of the above points involved, I am of the opinion that malafide on part of complainant cannot be ruled out; the case of accused/petitioners also calls for further inquiry into their guilt. Resultantly, the instant pre-arrest bail petition is **accepted** and the ad-interim pre-arrest bail already granted to the accused/petitioner 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
13-07-2019


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