

Or 03
15-07-2019

Present:

Bismillah Khan, father of accused/petitioner Naimat Ullah
Complainant Siyal Gul in person
DPP Umar Niaz for the State.
Record received.

Through the instant petition, the accused/petitioners **(1) Abid s/o Momen Khan (2) Niamat Ullah s/o Bismillah Khan (3) Muhammad Zubair** (in Challan Muhammad Sadique) s/o Saida Khan (4) **Ahmad Ullah** (in Challan Basharat) s/o Momen Khan (5) **Momen Khan** s/o Gul Nazar (6) **Ishrat Khan** (in Challan Basharat) s/o Gul Nazar; all residents of section Rabia Khel, Paio Khel, Samana Bazar Kalay, Ismailzai, District Orakzai, are seeking their **post-arrest bail** in case **FIR No. 06** dated **03-07-2019**, wherein they have been charged **u/ss 337-A(iii), 337-A(i), 337-L(2), 147,149 PPC**, of PS Upper Orakzai (Ghiljo).

The facts of the case, according to the FIR, are; that on 06-06-2019 at 10:35 hours, the complainant Siyal Gul reported, to an ASI of local police, that on that day, he (the complainant) was going toward his house when at about 10 o'clock accused/petitioners Abid, Naimat, Ahmad Ullah and Sadique stopped him; that accused/petitioners Abid and Naimat got hold of him while accused/petitioners Ahmad Ullah and Sadique started beating him with stones and sticks. That the complainant received injuries on his face, knee and back side of his body. That after the occurrence he saw the accused/petitioners Momen and Basharat witness the occurrence from a distance. The motive was stated as previous quarrel between the complainant and boys of the accused party. The complainant charged accused/petitioner Momen and Basharat for instigating the other accused/petitioners. The instant case was registered,

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after receipt of medical report etc. on 03-07-2019 (after about one month of occurrence).

The counsel for accused/petitioners has proceeded to KPJA for training, he has sent written arguments which are placed on file. The complainant stated that he does not want engaged counsel. Therefore, the written arguments on behalf of accused/petitioners are considered while the DPP for State was heard on behalf of prosecution. The tentative assessment of record, in light of arguments of the parties, show that:

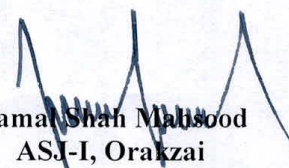
1. On 04-07-2019, a supplementary statement of complainant-injured Siyal Gul was recorded by the IO. In this supplementary statement the complainant stated that he had not mentioned the proper names and parentage of some of the accused in his first report. He stated that the actual name of the accused Sadique was Muhammad Zubair and that of Basharat was Ishrat. Hence, a doubt is cast on the names of accused as mentioned in FIR and the identity of the accused.
2. The occurrence allegedly took place on 06-06-2019 while the FIR was registered on 03-07-2019 (delay of about 27 days). This delay has not been plausibly explained on the record.
3. There is no report of radiologist in respect of fracture of bone. The MO has simply written the nature of injuries as grievous, without any supporting medico-legal evidence.
4. No recovery of any incrementing material has been made from any of the accused/petitioners.
5. No statement of any independent has been recorded in respect of the alleged occurrence and motive.
6. According to the card of arrest the four main accused/petitioners are juvenile. They are neither hardened or desperate criminals, nor is the offence charge against them heinous in nature.


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7. The allegation of instigation against the other two accused is not supported by any reasonable evidence.
8. The investigation of case is complete and the accused/ petitioners are no more required for further investigation.

In the light of the above discussion, the accused/ petitioners have made out a case of further inquiry into their guilt. Resultantly, the instant petition is allowed and the accused/ petitioners, Abid, Naimat Ullah, Muhammad Zubair, Ahamd Ullah, Momen Khan and Ishrat Khan, are directed to be released on bail, subject to furnishing bail bonds in the sum of Rs. 80,000 (eighty thousand) from two sureties, each in the like amount, to the satisfaction of this court. Record be returned to the quarter concerned with the copy of this order. The file of this court be consigned to Record Room after its necessary completion and compilation.

Announced
15-07-2019


Jama Shah Malik
ASI-I, Orakzai
(at Baber Mela, Hangu)