

Or 04
06-08-2019

Present:

Messrs. Muzahir Hussain and Abid Ali Advocates for accused/petitioner

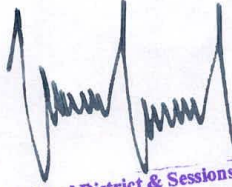
Haseeb Ullah Advocate for complainant, along with Muhabbat Ali, the father of deceased. (Wakalatnama submitted and placed on file)

APP Zohaib Ahmad Sher for the State

The accused/petitioner Shams Ur Rehman s/o Muhammad Ghulam; r/o Shawa Mela, Larki Tang, Koraiz, Lower Orakzai is seeking **post-arrest bail** in case **FIR No. 13** dated 15-06-2019, wherein he has been charged, along with another co-accused u/s **302/34 PPC** in PS Lower Orakzai (Kalaya).

The facts of the case, according to the FIR, are; that the local SHO, after receiving information arrived at emergency room of RHC Koraiz, where the first report of the instant case was made by the complainant, on 15-06-2019 at 15:30 hours. The dead body of the deceased Naimat Ali (aged about 40 years) was present in the emergency room. Complainant Noor Nabi, stated that on that day he along with one Taqweem Ali and deceased Naimat Ali were ploughing their field near GGMS with a tractor. That at 14:30 hours, Shams Ur Rehman (accused/petitioner) and his son Muharram Ali (co-accused) came there armed with Kalashnikovs. That the accused/petitioner Shams commanded his co-accused son Muharram to kill. That on this co-accused Muharram Ali, made firing at Naimat Ali who was hit and injured. That the accused ran away after firing. That Naimat Ali was being shifted to Kohat hospital but he succumbed on the way. The motive was stated as dispute over lands. The complainant charged both the accused for murder.


Arguments of the counsels for the parties and APP for State were heard; the available record has been perused. Tentative assessment of which, for the purpose of deciding instant petition, shows that:


Additional District & Sessions Judge-I
Orakzai

1. The accused/petitioner is charged directly by name with the commanding role of Lalkara, acting upon which his young co-accused son committed the murder. Tentative assessment suggest that accused/petitioner was not only sharing the common intention of committing murder, but also leading the intention of his co-accused son with a commanding Lalkara.
2. The matter was reported to the local police within an hour of occurrence, and this time is explained by the circumstances of the case.
3. During arguments, the counsel for accused/petitioner stressed on his stance of alibi, he produced a copy of outdoor patient ticket of DHQ/KDA hospital Kohat. The accused/petitioner claims that he was present in Kohat hospital on the day of occurrence. However, the same is not supported by the record of the case. No evidence in respect of the alibi has been produced by the accused/petitioner before the IO during investigation, even after getting interim post arrest bail.
4. The offence falls under the prohibitory clause of section 497 CrPC.
5. The stance of counsel for accused/petitioner that the tractor mentioned in FIR was not recovered or that the postmortem was conducted with delay in Kohat hospital, is immaterial at this stage. As only tentative assessment of substantive evidence can be made while deciding bail petition.
6. On the basis of available record, no ground for further inquiry into the guilt of accused/petitioner has been made out.

In these circumstances, instant petition is **dismissed**. Let a copy of this order be placed on record, which shall be returned to the quarter concerned. Let this file be consigned to the record room after necessary completion and compilation.

Announced
06-08-2019


JAMAL SHAH MAHSOOD
ASJ-I, Orakzai