

BA No. 34/BA and 35/BA of 2019

Or 03
21-12-2019

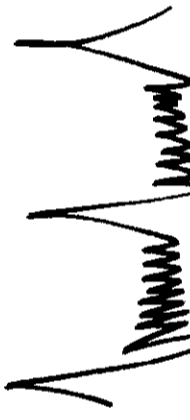
Present:

Hamid Sarfaraz Advocate for accused/petitioners
Complainant Muhammad Sadique, along with Akbar Yousaf
Khalil Advocate (Wakalatnamas submitted and placed on files)
DPP Umar Niaz for State

Through this single order the above mentioned two bail applications shall be disposed of, as both are outcome of the same FIR No. 44.

The accused/petitioners **Abdul Sharif** (BA No. 34/BA) and **Abdullah** (BA No. 35/BA) both sons of Sefat Gul; belonging to Ferozkhel caste and residents of Jeisalkhel, village Karital Orakzai, are seeking **post-arrest bail** in case **FIR No. 44** dated **07-12-2019**, wherein they have been charged **u/ss. 302/34 PPC** in PS Lower Orakzai.

The facts of the case, according to the FIR, are; that on receiving information about firing and a murder, an ASI reached the spot of occurrence where dead body of Misri Khan (deceased) was present in front of his house; that complainant Muhammad Sadique (a son of deceased) reported to the ASI that he along with one Raees Khan and his deceased father were present outside their house when, at about 10:50 hrs, a motor car bearing No. RIX7665 arrived there; that Abdullah (accused/petitioner in BA No. 35/BA) was driving the motor car while Abdul Sharif (accused/petitioner in BA No. 34/BA) was sitting in the rear seat; that both were armed and that Abdul Sharif immediately started firing from inside the motor car at his


JAMAL SHAH MAHSUD
District & Sessions Judge-I,
Orakzai at Hangu

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father; who was hit, and died on the spot; that the accused decamped in the same motor car after the occurrence. The motive was stated to be previous blood feuds. Hence the instant case was registered.

It is pertinent to mention is here that another FIR (FIR No. 45) was also registered by one Abdul Razaq, son of present accused/petitioner M. Sharif, wherein a different version of the occurrence was narrated. The bail application of an accused in FIR No. 45 was also pending before this court and arguments were heard in the bail petitions of both FIRs today.

Arguments of the learned counsels for the parties and DPP for state heard and record perused: the tentative assessment of which, for the purpose of deciding instant bail petition, shows that:

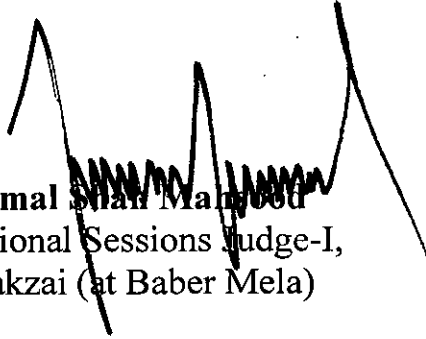
1. Accused/petitioner Abdul Sharif has been charged specifically for the main role of firing at deceased, while accused/petitioner Abdullah has been attributed the role of driving only. The sharing of common intention between both the accused-petitioners shall be determined during trial, after recording of evidence.
2. Although a second FIR, with a cross version of present occurrence, was registered by a son of one of the present accused/petitioner; however, keeping in view the delay in registering of second FIR and the tentative assessment of available record, mere registration of counter version would not make the case of accused/petitioners in the present case one of further inquiry.

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District & Sessions Judge
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3. The recoveries of empties from inside of the motor car, which was found present inside premises belonging to present accused/petitioners, corroborate the version of prosecution.
4. The alleged offence of murder falls under prohibitory clause of section 497 CrPC.

In the light of the above discussion, the accused/petitioner Abdullah has made out a case of further inquiry into his guilt, for the purpose of grant of bail; while accused/petitioner Abdul Sharif is prime facie found involved in the murder. Resultantly, the bail petition of accused/petitioner Abdullah (35/BA) is accepted while the bail petition of accused/petitioner Abdul Sharif (34/BA) is rejected. Accused/petitioner Abdullah may be released on bail, subject to furnishing bail bonds in the sum of Rs. 200,000 (two lacs) with 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. This file be consigned to Record Room after its necessary completion and compilation.

Announced
21-12-2019


Jamal Shah Mahmood
Additional Sessions Judge-I,
Orakzai (at Baber Mela)