

3

IN THE COURT OF ADDITIONAL SESSIONS JUDGE ORAKZAI, AT BABAR MELA

BA No. 49/4 of 2023
Mehmood Khan etc. Vs State

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	22/06/2023	<p>Mr. Khursheed Alam Advocate for accused/petitioners; complainant in person and Mr. Nisar Ahmed APP for State are in attendance.</p> <p>2. Arguments heard; whereas, this is the disposal of petition for grant of bail, submitted by accused Ghafoor Khan and Mehmood Khan both sons of Olan Khan, residents of Qaum Utman Khel Tappa Fateh Khan Khel, Tehsil Lower, District Orakzai, being charged in Case FIR No. 61 dated 12-06-2023, registered under Section 302-202/34/15AA/182 in Police Station Kalaya, Orakzai.</p> <p>3. Naqal mad No.9 dated 03-05-2023 was entered by the Police reflecting the story narrated by Ghafoor Khan son of Olan Khan as complainant being the paternal uncle of the deceased child namely Hamza son of Saleem Khan who has reportedly committed suicide. The Medical Officer on examination of the dead body opined that it is asphyxia (suffocation) followed by fire arm injury. The Police has diverted the line of investigation. Another paternal uncle of the deceased namely Iftekhar Ahmed son of Olan Khan on 12th of June, 2023 had this time recorded his statement under Section 164 of the Code of Criminal Procedure, 1898 narrated different story from the complainant by stating that Mehmood Khan son of Olan Khan and Mst Bibi Saeeda wife of Saleem Khan were in illicit relationship. They have been observed by the deceased kid who was caught on the spot and suffocated till death. To save their skin, they have dramatize the incident by opening the fire over the dead body of the kid to name it suicide. The Original complainant has been booked for using as true such initial statement of occurrence knowing it to be false as well as for furnishing false information to Police and</p>


SAYED FAZAL WADOOD
Addl District & Sessions Judge
Orakzai at Hangu

(4)

Order
continue...

Mehmood Khan and Mst Bibi Saeeda have been implicated as accused for commission of offence for murdering the child. On recovery of weapon, Section 15 of the KP Arms Act 2013 was added in the FIR later on. Meanwhile, one of the accused was arrested and thus petition for grant of bail was presented which is under consideration.

4. - - Complainant in the statement recorded under Section 164 of the Code of Criminal Procedure, 1898 namely Iftekhar Ahmed as well the father of deceased Hamza namely Saleem Khan appeared in person and stated that they have got no objection on release of accused on bail.

5. This is tentative assessment of record having no nexus with final determination of guilt or innocence of accused for being stage of bail. The incident has punctually been reported which is a daylight occurrence and Naqalmad No.09 dated 13-05-2023 has promptly been entered. Though delay has been occurred in registration of the case; yet, the diversion in investigation, that too, in line with and in consonance of the medico legal report, is apparently justifying such delay or at least devalues its importance. The weapon of offence, used bullet and other incriminating materials recovered from the spot. The medico legal report speaks about the death of kid as unnatural with the cause of suffocation followed by fire arm injury. The place of occurrence is also the dwelling house of the deceased, complainant and accused residing therein as joint family. All these facts connects the accused with the commission of offence on its face and the principal accused charged for commission of brutal murder of child of six years age through asphyxia (suffocation) followed by fire arm injury dramatizing it as suicide, is therefore, not considered for concession of bail.

6. As far as compromise is concerned, permission of the Court for compounding an offence is mandatory and no offence mentioned in subsection-2 of section 345 Code of Criminal Procedure, 1898 shall be compoundable without


SAYED FAZAL WADOOD
Addl: District & Sessions Judge
Orakzai at Hangul

B

Order
Continue...

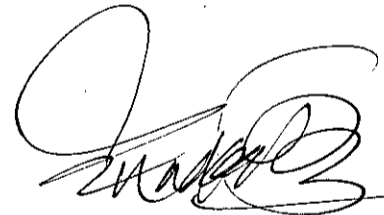
such permission. The object requiring leave from the Court is a purposeful activity and not as that of silent spectator affixing Judicial Stamp upon compromise. The murder was of 06 years child which was obviously brutal and cruel caused terror and sensation in the society; therefore, the compromise is not being endorsed by this Court.

7. The second petitioner Ghafoor Khan is the original complainant of the case and is charged for mere furnishing false information to whom no recovery or role in murder has been attributed. The offence with which he is charged is not falling within the prohibitory clause; wherein, grant of bail is matter of routine. He be released on bail furnishing bail bonds of Rupees one lac (Rs. 100,000); with two local sureties; each in the like amount; to the satisfaction of this Court.

8. For what has been discussed under paragraph No. 5 and 6 above, petition for grant of bail to the extent of principal accused namely Mehmood Khan stands dismissed.

9. File of this Court be consigned to District Record Room after its necessary completion and compilation within the span allowed for. Record be returned back with the cop of this order.

10. Announced in open Court.



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela