

**IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI**

Case No .....35/2 of 2022.

Date of institution.....02.07.2022.

Date of decision.....26.06.2023.

Case FIR No. 28 Dated: 27.03.2022 U/S 504,506,341,148,149 PPC, PS Kalaya

**Order. No. 21**

26.06.2023

Dy.PP for the state present. Accused Jasrat on bail along with counsel present. Rest of the accused are exempted from appearance. Complainant Mutasim Khan and PW Liaqat Ali along with counsel present. Statements of complainant and PW Liaqat Ali recorded as PW-01 and PW-02. Counsel for accused facing trial submitted application u/s 249-A Cr.PC. Arguments on application heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that report of the complainant Mutasim Khan was recorded vide mad No. 7 dated 23.03.2022 wherein, it is alleged that complainant is a lease holder of coal mine situated at Tangi Dana Khwala, Lower Orakzai and on the day of occurrence, accused facing trial came to the spot and unlawfully blocked the coal mining passage. They criminally intimidated him and coal mine labor. Accused facing trial advanced threats of dire consequences. The motive behind the occurrence is dispute over coal mine. PW Liaqat Ali thumb impressed the report as

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Kalaya Orakzai

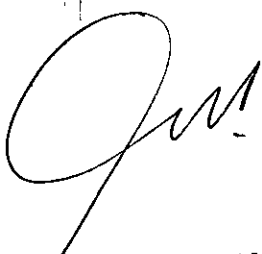
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verifier. On the strength of report, the instant case was registered against the accused facing trial.

After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.

Mutasim Khan was examined as PW-01. He stated that he is lease holder of coal mine situated at Tangi Dana Khwala. On the day of occurrence, he along with Liaqat Ali, Ijaz, the watchman were present in the coal mine when accused facing trial came to the spot and unlawfully blocked coal mine passage. Accused facing trial made aerial firing in order to criminally intimidate them. Thereafter, they went to the house of one Meen Ajab. He reported the occurrence to the local police. His report was reduced into writing and he thumb impressed the report as token of its correctness. PW Liaqat Ali thumb impressed the report as verifier. After registration of the FIR, he pointed out the spot to the IO who prepared site plan on his pointation. He charged the accused facing trial for the commission of the offence.

Liaqat Ali was examined as PW-02. He stated that complainant Mutasim Khan is his lease partner. Accused Jasrat had advanced threats of dire consequences to manager of coal mine. When his partner/complainant was proceeding to coal mine situated at Tangi Dana Khwala, accused Hikmat unlawfully blocked the passage to mining area. All the accused facing trial used abusive language and

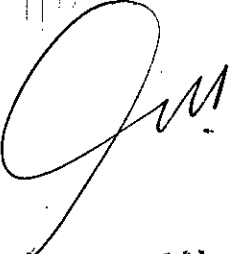
  
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they were asked to return from the coal mine. They had taken survey officials along with local police to the spot when accused facing trial came there. On the following day, accused facing trial made aerial firing to intimidate them. They took the police to the spot and accused Jasrat was arrested there. He charged the accused for the commission of the offence.

Perusal of record transpires that the alleged occurrence took place on **23.03.2022** at **10:00** hours at Tangi Dana Khwala and it was reported at 13:00 hours and FIR was registered on **27.03.2022** at 10:00 hours.

PW-01, who is complainant of the case, stated in his cross examination that he does not belong to district Orakzai. He hails from Dara Adam Khel, Kohat. Lease was granted to him of the coal mine in the year 2018. It is correct that he has not provided any lease agreement in his favour to the local police. The lease area is the joint undivided ownership of Qaum Bezot. They reached the spot at about **5:40 pm**. Beside, verifier, eye witness, the watchman was present at the spot. Watchman was already present at the spot while he and PW Liaqat Ali reached to the spot at about 05:40 pm. He has charged 13 persons in the FIR. Their names are Jahagrez, Jasrat, Hikmat, Imtiaz, Itbar Gul. Rest of the accused were not known to him by name rather they were recognized and identified by PW Liaqat Ali. The accused were at a distance of 10 paces from them. He was not called by the IO to the spot. Site plan was not prepared in his presence.


  
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Similarly, PW-02 stated in his cross examination that he has correctly stated in his statement recorded as PW-02, that accused asked them on gun point to return and they returned accordingly. On the day of occurrence, no firing was made. On the day of occurrence, survey and police officials were not present with them. He did not remember the date and time of occurrence. The occurrence took place at deegar vela/evening time. They lodged report on the following day of the occurrence. Accused facing trial are members of his Qaum "Bezot". Site plan was prepared by SI Shal Muhammad. Police officials along with SHO were present at the spot. Accused Hukam and Jasrat were arrested by the police at the spot.

Per contents of FIR, accused facing trial used abusive language and advanced threats of dire consequences but when complainant Mutasim Khan and PW Liaqat Ali deposed as PW-01 and PW-02, they stated that aerial firing was also made by accused facing trial. Allegations of aerial firing are not leveled in the FIR. Even if aerial firing was made, no empty has been recovered from the spot. Per statements of PWs, survey and police officials were present at the spot at the time of occurrence and accused Jasrat and Hukam were arrested at the spot which contradicts the record. Complainant hails from Dara Adam Khel and he was not able to name all the accused nominated in the FIR in his statement. Per record, the occurrence took place at 10:00 am however, PW-01, stated in his cross examination that the occurrence took place at 5:40 pm. Similarly, the occurrence was

  
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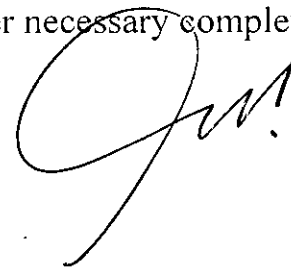
reported on 23.03.2022, however, PW-02 stated that it was reported on the next day of the occurrence which further contradicts the record.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Nothing incriminating has been recovered from possession of accused or on their pointation. Accused have not confessed their guilt before the court. There is no documentary proof of the motive. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

**Announced.**  
26.06.2023



**(Zahir Khan)**  
Judicial Magistrate-I,  
Tehsil Kalaya, Orakzai