

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

BBA No. 32 of 2021
Fazal Muhammad etc Vs State

ORDER
06.03.2021

Accused/petitioners on ad-interim pre-arrest bail along with their counsel present. Mr. Nisar Ahmad APP for the State present Mr. Aman Khan Bangash Advocate counsel for complainant party.

The accused/petitioners Fazal Muhammad s/o Sheikh Muhammad and Qasim Gul s/o Speen Gul R/o Tehsil Upper District Orakzai, are seeking the confirmation of their ad-interim pre-arrest bail in case FIR 06. Dated 31-01-2021 u/sec 302/324/436/353/427/148/149 PPC PS Upper Orakzai (Ghiljo) wherein three deceased persons were murdered and two other persons got injured during counter firing by tribes on dispute over the construction of two rooms in the disputed landed property *Mula Patay*, Ghiljo District Orakzai.

Arguments of the learned counsel for the accused/petitioners and learned APP for the state assisted by counsel for complainant heard and record perused.

Mala fide is sine qua non for the grant of pre arrest bail and the extra ordinary concession of pre arrest bail can only be extended to the accused/petitioners when they are able to surface on record mala fide on the part of complainant or prosecution for charging them. The record would show that the accused Qasim Gul and his tribesmen had constructed two rooms on the disputed property which resulted the occurrence. The accused/petitioners are charged for the murder of deceased persons and the eye witnesses also


SHAIKAT ALI
Addl. District & Sessions Judge-II,
Orakzai at Hangu

implicated them in the commission of offence which excludes mala fide on the part of complainant or prosecution and no mala fide was surfaced on record by the accused/petitioners. Furthermore, keeping in view the involvement of accused it is necessary to give them in the custody of police to surface on record the real facts of the case, hence the case of the accused/petitioners is not arguable for the confirmation of ad-interim pre arrest bail.

In view the above, the pre-arrest bail petition in hand is rejected and the ad-interim pre-arrest bail granted to the accused/petitioners vide order dated 23/02/2021 is hereby recalled.

File of this Court be consigned to record room after its necessary completion and compilation.

Announced
06.03.2021



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Babar Mela