

Court of Additional Sessions Judge, Orakzai at Baber MelaCase Title: State vs Said Amin etc. BBA. 73/4 of 2021

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	07.07.2021	<p>Hassan Khan Advocate Is Representing Accused/Petitioners; Sajid Ur Rehman Khatak Advocate For Complainant And Amir Shah APP For The State Are In Attendance.</p> <p>2. This Is The Disposal Of Petition For Pre-Arrest Bail Presented Through Counsel On Behalf Of Accused Said Amin, Badshah Khan And Younis Khan, Charged In FIR Bearing No.11 Dated 25-05-2021, Registered Under Section 506,504,447,147,149 Of The Pakistan Penal Code 1860, In Police Station Mishti Mela, Orakzai.</p> <p>3. Allegations are that accused along with co-accused assembled at the spot and restricted the worker of complainant from cultivation of the agricultural property owned and possessed by the complainant. They have extended threats of dire consequences and criminally intimidated the workers. The matter was reported to Police and resultantly criminal law was brought into motion by registration of case articulated above. One of the accused on arrest was remanded to Judicial Lockup who was later on released on post arrest bail by learned Judicial Magistrate Orakzai. Rest of the accused are petitioners in petition for pre arrest bail, which is under consideration.</p> <p>4. All of the accused have directly been charged in the contents of FIR but no specific role has been attributed to anyone of them. Complainant has approached the local Police with considerable delay that has not been explained which is always fatal in legal proceedings. The pendency of criminal and civil litigation between the parties raised questions over the authenticity of the contents. Similarly, the complainant has nominated sixteen accused in his report that seems throwing wide net for implicating the accused along with all near and dears while lodging FIR. All these facts raised serious questions over the intention of the complainant; whereas, the existence of mala fide is one</p>


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

of the prime gadgets for deciding application for pre arrest bail.


5. Humiliation and unjustified harassment is another scale besides the mala fide of the complainant or Police. Where arrest of the accused was not necessary requirement of investigation agency sending accused behind the bar only for the reason that he could be released on bail after his arrest is obviously unjustified. Moreover, neither incriminating material has been recovered nor independent ocular evidence has been collected by the investigation officer. Prohibition postulated in Section 497 of the Code of Criminal Procedure is not attracted as well. One of the accused has been extended concession of bail by learned Judicial Magistrate, Orakzai speaks about routing to Rule of Consistency. In case titled "Muhammad Shafiq Khan vs Inamullah" reported as 2015 P Cr LJ 1469, Hon'ble the Peshawar High Court Peshawar has ordained in following terms:

...S. 498--- Pre-arrest bail --- Object--- Mala fide on part of complainant/prosecution --- Principles --- Concession of pre-arrest bail is always extended in cases of mala fide and ulterior motive on part of complainant/prosecution to save innocent people from their unjustified arrest and humiliation at hands of police.

6. For what has been discussed above, instant pre-arrest bail petition is accepted and the ad-interim pre-arrest bail already granted to the accused/petitioners is confirmed on existing bail bonds.

7. File be consigned after completion and compilation to District Record Room Orakzai, within span allowed for.

8. Announced in open Court.


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