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

BA No. 92/4 of 2021
Muhammad Ayaz 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	19/07/2021	<p>Mr. Mehmood ul Islam Advocate for accused/petitioner; Mr. Amir Shah APP for State; complainant Muhammad Akhlaq in person, are in attendance.</p> <p>2. This is the disposal of Post arrest bail application presented by accused/petitioner Muhammad Ayaz s/o Laj Bar Khan r/o Haider Khel District Orakzai.</p> <p>3. SHO of Police Station Lower Kalaya, Orakzai has got information that the dwelling house of Muhammad Ikhlaq s/o yar Badshah (Complainant) was set on fire. He rushed to the spot and drafted Murasila in the name of Muharrir of Police Station. As much as 18 persons including present petitioner have nominated for criminal house trespass, mischief to property and mischief by fire for commission of offence in Murasila. Resultantly, FIR bearing No. 27 dated 10-04-2020 was registered in the Police Station Lower Kalay by attracting sections-436-427-452-148-149.</p> <p>4. All the nominated accused have been remanded to Judicial Lockup and thereafter released on bail. Complete challan was put in Court. Copies have been provided and charge has been framed accordingly. Prosecution has led evidence and on conclusion of trial, the counsel representing accused, complainant and APP for state have been heard in final arguments. The case was fixed for announcement of Judgement. The present petitioner remained absent on the day of judgement; whereas rest of the accused have been convicted and sentenced by learned Trial Judge. Consequently, warrant of arrest was issued against present petitioner which returned unserved with report of the SHO that accused is avoiding his lawful arrest. Accordingly, the petitioner was declared as proclaimed offender and perpetual warrant of arrest was issued.</p>


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5. In execution of perpetual warrant, the petitioner was arrested and remanded to Judicial Lockup. Petition for grant of bail was present before the learned Trial Judge which was turned down on the score of being non compoundable; hence, instant petition for bail is present which is under consideration.

6. Learned counsel for accused/petitioner and learned Assistant Public Prosecutor for state were heard at length and file gone through.

7. This is tentative assessment of record available on file and deep appreciation of evidence is neither necessary nor warranted at this stage. The trial of the case has already been completed; wherein, the accused/petitioner participated till the announcement of Judgement. Disappearance at the date of announcement of Judgement was apparently designed with mala fide to avoid probable conviction and he succeeded in his plan as rest of the accused have been convicted by Trial Court. This act alone is sufficient to smell about the ulterior motive of the petitioner. Coming to the Court with clean hand is the primary ingredient for exercising discretion in someone favor as mala fide is fatal per se while dealing with such discretionary matters.

8. Accused/petitioner was earlier extended concession of bail which was misused by him and culminated into proclamation of offender. There is equal chance of misusing the concession of bail again by accused and thus lead the Court to withholding of the concession of bail.

9. Complainant appeared before the Court and recorded his statement that he has got no objection if the bail is granted to the accused. This statement is ignorable on the score that the offence with which the accused has been charged is non compoundable. Legislature has laid down in Section 345 of the Code of Criminal Procedure 1898, a test for determining the classes of offences which concern individuals only as distinguish from those which has reference to the interest of the state. Tabulation of offences

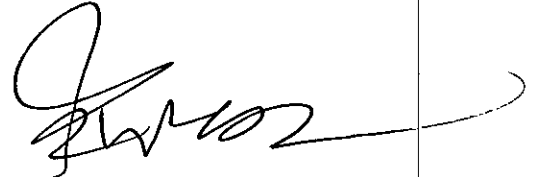

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is made under Section 345 Cr.PC, being unambiguous removes all doubts, uncertainty and must be taken as complete and comprehensive guide for compounding offences (PLJ 2005 Supreme Court 303).

10. For what has been discussed above, instant bail petition stands dismissed. File of this Court be consigned to District Record Room after its necessary completion and compilation within the span allowed for; whereas, copy of this Order be placed on record of Police to be returned accordingly.

11. Announced in open Court.



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