

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI AT BABER MELA


Bail Application No : 150/4 of 2021
Date of Institution : 17.08.2021
Date of Decision : 23.08.2021

ISWAN ALI VS THE STATE

ORDER

DPP, Umar Niaz for the State and Wahid Miraj Advocate for accused/petitioner present. Complainant alongwith his counsel Mr. Jabir Hussain Advocate present. Record received. Arguments heard and record gone through.

- (2). The accused/petitioner, after being refused to be released on bail vide order dated 16.08.2021 of learned Judicial Magistrate, Orakzai, seeks his post arrest in case FIR no. 8, dated 30.06.2021, u/s 337-A(i)/337-A(v) PPC of PS Kalaya Lower Orakzai wherein, as per contents of FIR, complainant Niqab Ali on 17.06.2021 made a report to the police to the effect that on that date his brother was on his way to his fields when at about 08:30 am, accused/petitioner Iswan Ali came on the spot, exchanged harsh words with his brother and stoned him on his skull causing injuries to him.


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(3). Arguments heard and record perused.


Perusal of the record shows that though the accused/petitioner is directly nominated in the FIR and the offences for which the accused/petitioner is charged, fall within the restrictive clause of section 497 Cr.P.C; however, it is evident from the record that the report has been made to the police by the complainant Niqab Ali who is not eyewitness of the occurrence. Moreover, the occurrence has allegedly taken place on 17.06.2021 but the statement of the alleged eyewitness has been recorded on 30.06.2021, after about 14 days of the occurrence and that too does not support the version of the complainant to the extent of time of occurrence. Furthermore, nothing incriminating has either been recovered from the spot or from possession of the accused/petitioner. Above all, the primary punishment for the injury of the kind of "Shajja" is Daman, Arsh or Diyat and the punishment of "Tazir" can only be awarded in exceptional circumstances where the accused is a previous convict, habitual or hardened, desperate or dangerous criminal. But in the instant case no such exceptional circumstances are alleged.

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(4). Hence, in view of what is discussed above, the accused/petitioner is admitted to the concession of bail provided he submits a bail bond in the sum of Rs. 100,000/- with two sureties, each in the like amount to the satisfaction of this court. Consign.

Announced
23.08.2021


SHAUKAT AHMAD KHAN
Sessions Judge, Orakzai
at Baber Mela