Or.....23
28.10.2023

APP for the state present. Accused facing trial namely Haji Rehman present on bail along with counsel present. Complainant present.

Vide this order I intend to dispose of instant application filed u/s 249-A Cr.P.C.

Arguments heard and record perused.

Now on perusal of the available record and valuable assistance of the learned counsel for the accused petitioner and learned APP for the stated, this court is of the humble view that accused petitioner through instant application allege that a series of contradiction exist in the statements of PWs and furthermore, there are serious dents in the evidence so for recorded by the prosecution, which make the case of prosecution one of further inquiry. Hence there is no probability of conviction of accused at later stage after recording of entire evidence of prosecution. Contrary to this learned APP for the state vehemently opposed the instant application and had deposed that accused have been directly charged in the instant case. Furthermore, no delay in lodging of FIR has been proved on the part of complainant. He further argued that there exist no dent in the prosecution evidence and furthermore, the application in hand is pre-mature, hence the prosecution may kindly be allowed to produce their remaining evidence in order to bring home the charge against accused facing trial.

SYED ABAAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya

In given circumstances perusal of the record would reveal that as per contents of the FIR, the alleged occurrence previously took place on 29.05.2022 while the matter was reported to the police on 08.07.2022 i.e. after about one and half month of the alleged occurrence. It is also pertinent to mention here that no reason for such delay has been narrated by the complainant in the FIR and thus there exist an unexplained delay of about one and half months in lodging of FIR. Furthermore, the name of eye witness has been mentioned in the FIR. It is also worth mentioning here that prior to lodging of instant FIR# 15 dated: 15.07.2022 u/s 506/109/34PPC of PS Kuraiz Boya, the complainant had submitted an application to the DPO Orakzai on 05.07.2022. Perusal of said application would reveal that complainant had mentioned names of accused facing trial Zar khan and Naseeb khan as accused and had further alleged that they had made firing at him while subsequently in his FIR he had introduced two other accused namely Haji Rahman and Muhammad Ullah and further had attributed the role of firing to them while had attributed role of abetment to

accused Zar Khan. The contradictory stance of complainant in the FIR and the application submitted to the DPO Orakzai make the case of prosecution one of further inquiry. This fact has also been admitted by one Hashim Khan SI, IO, in his statement. Furthermore, no recovery has been effected from all the accused in the instant case and this fact has been admitted by the IO in his cross examination that he had not recovered anything from the spot or from the possession of accused. IO in the instant case has also stated that no corresponding marks of bullets were available on the spot or wall. Furthermore, IO also admitted in his cross examination that he had not recorded statement of any independent witness and thus he failed to comply with the mandatory provisions of section 103 Cr.P.C. The IO of the case has also deposed in his cross examination that he is not sure about the alleged occurrence. It is also pertinent to mention here that IO had deposed in his cross examination that accused Zar Khan was not present on the spot at the time of alleged occurrence while complainant in his examination in chief has deposed that accused Zar Khan was repeatedly giving directions to accused Haji Ullah and Muhammad Ullah. On the other hand the complainant in his FIR had also failed to mention the presence of accused Zar Khan on the spot.

Thus, in the light of aforesaid findings I am of the opinion that case of prosecution is full of dents and is one of further inquiry. Furthermore, there exist vast contradiction in the statements of PWs. Hence there is no probability of the conviction of accused facing trial namely Zar Khan at later stage after recording of entire prosecution evidence rather it would be a futile exercise and would be wastage of precious time of this court. Accordingly the application filed u/s 249-A Cr.P.C. is hereby allowed and accused facing trial namely **Haji Rehman S/O Naseeb Khan** is hereby acquitted U/S 249-A CrPC from the charges levelled against him. His bail bonds stand cancelled and sureties are discharged from the liability of bail bonds. Case property, if any, be kept intact till period of appeal.

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

Announced
28.10.2023

Syed Abbas Bukhari
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai