

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

BBA No. 4/4 of 2022  
Muhammad Sohail etc Vs State

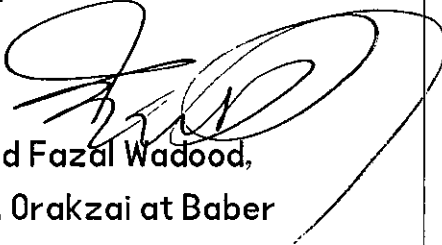
Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order.	29/01/2022	<p>Syed Hamza Gillani Advocate for accused/petitioners and Mr. Amir Shah DyPP for State are in attendance.</p> <p>2. Arguments have already been heard; whereas, this is the disposal of pre arrest bail application presented by accused/petitioners Muhammad Sohail s/o Kasteer Khan r/o Ashiq Colony District Kohat and Almas Khan son of Mukarab khan r/o Tazi Khel, District Orakzai.</p> <p>3. Mining Guard working in the Office of Assistant Director Mineral Orakzai forwarded Murasila regarding illegal mining and transportation against accused to SHO of Police Station Kalaya, Orakzai. It is contended therein that Mr. Gulam Habib Mining Guard being busy in the official business has noticed the accused in transportation of illegal mining that was reported on printed form of Murasila signed by the complainant along with another Mining Guard namely Abdul Qadoos. Resultantly, FIR bearing No. 149 dated 24-12-2021 was registered in the Police Station Kalaya by attracting sections-42-56 of the Khyber Pukhtoon Khwa Mines and Minerals Act 2017. Accused had moved the Court with application for pre-arrest that is under consideration.</p> <p>4. Learned counsel for accused/petitioners and learned Deputy Public Prosecutor for State were heard at length and file gone through.</p> <p>5. Grant of pre-arrest bail no doubt, is an extra ordinary relief and in ordinary circumstance, could not be granted in routine; but, for sending a person behind the bars, there must be some legal and tangible evidence with prosecution to establish at least a prima facie case against him. In the absence of any such evidence, sending accused behind the bars is altogether unjustified. In this legal background,</p>

  
**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

when the case file is consulted, the very initiation of the case is defective. Section-86 of the KP Mines and Minerals Act, 2017 prescribes that Licensing Authority or officer authorize by it in this behalf shall report the scheduled mining offenses to local police but in violation of the law, a Mineral Guard has forwarded Murasila; that too, on printed form of Kohat Mining Office, which speaks high volume of casual approach in sensitive matters involving public money. Similarly, type of Mineral and mode of transportation have not been mentioned in the Murasila as well as in contents of FIR. What to speak of no recovery when the make and number of vehicle used in such alleged transportation has not been mentioned. These facts and circumstances are sufficient to be inferred for the element of malifide on part of the complainant. More so, the offence with which accused have been charged is not falling with in the prohibitory part of Section of 497 of the Code of Criminal Procedure, 1898. In the case of Khalil Ahmed Soomro vs State reported as PLD 2017 Supreme Court 730, it has been ordained that when the accused person was entitled to the post-arrest bail, his prayer for pre-arrest bail, if declined, would be a matter of technicality alone.

6. For what has been discussed above, instant bail petition stands allowed. The ad-interim pre-arrest bail granted to the accused/petitioners vide Order dated 03/01/2022 is hereby confirmed on the strength of existing bail bonds. 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.

7. Announced in open Court.

  
Sayed Fazal Wadood,  
AD&SJ, Orakzai at Baber