

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

BBA No. 90/4 of 2023

Muhammad Tahir 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 No.4	06.12.2023	<p>Accused/petitioners on ad-interim pre-arrest bail along with counsel and Dy.PP for State are in attendance.</p> <p>2. Accused/petitioner Muhammad Tahir s/o Muhammad Akbar, Najeeb ur Rehman son of Gul Muhammad Khan and Shakeel Muhammad son of Ashghar Muhammad are seeking confirmation of their bail before arrest provisionally granted in case FIR no. 23 dated: 08.11.2023 under sections 341/120-B/291/148/149 of Ghiljo Police Station, Orakzai.</p> <p>3. Brief facts of the case as per report are that four persons namely Muhammad Tahir, Malik Haji Shakeel, Najeeb-ur-Rehman and Malik Zaliman Shah had organized an unlawful protest on 06.11.2023, blocked the main Ghiljo, Dabori and Mamozai roads, which not only caused public nuisance as well as violated the directives of Home & Tribal Department; that the said protest was arranged without intimation and prior approval from the concerned administrations, which act of the said persons endangered the lives of citizens, hence, FIR.</p> <p>4. Arguments heard and record perused.</p> <p>5. On tentative assessment of record, it reveals that the incident has not been witnessed by any independent witness. Neither script of the alleged speech nor the photography and videography of the procession have been collected. There is no evidence except the mere allegation which is not sufficient for basing judicial determination. Moreso, perusal of record reveals that accused/petitioners have been charged for the commission of offence but neither the accused/petitioners were arrested on the spot nor anything incriminating has been recovered from their direct possession.</p> <p>6. During arguments, learned counsel for accused/petitioners submitted copy of judgement and order dated 11.08.2023 of the court of august Peshawar High Court, Peshawar passed in CM no.1590-P of 2023 ancillary to WP-2836-P/2023, which reflects that one of the accused namely Shakeel Muhammad was allowed bail, with direction to submission of surety bonds to the satisfaction of Deputy</p>

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 Addl. District & Sessions Judge
 Orakzai at Babar Mela

Commissioner concerned, however, the later did not attest the bail bonds, whereat, the said accused filed above referred miscellaneous petition before august Peshawar High Court, Peshawar which was allowed and bail bonds of the said accused were directed to be produced before the learned District & Sessions Judge/Additional District & Sessions Judge of Judicial Magistrate on duty for attestation after his due satisfaction, which shows malafide on the part of prosecution as well as false implication of accused/petitioners in the instant case with ulterior motive.

7. Importantly considerations for grant of pre-arrest bail are not at all different from the considerations for grant of post arrest bail, as far as merits of the case are concerned. The only difference is that there must be additional basis of humiliations, harassment, malafide, intention to disgrace and dishonor. If a person is otherwise entitled to bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him bail. Court has to keep a balance, therefore, if a fit case for grant of bail is made out, bail before arrest can be allowed in appropriate cases. (Reliance is placed on 2012 PCrLJ 430 [Sindh]). Similarly arrest for ulterior motives such as humiliation and unjustified harassment is a valid consideration for grant of pre-arrest bail. (Reliance is placed on 1993 PCrLJ 446. 2008 MLD 805 [Karachi]).

8. Resultantly, the application submitted by accused/petitioners for pre-arrest bail is hereby allowed and ad-interim bail already granted to them is confirmed on the existing bail bonds. Copy of this order be placed on judicial and police files for record.

9. Record be returned and file of this court consigned to the record room after its completion and compilation.

Announced
06.12.2023


Abdul Basit
Addl. Sessions Judge,
Orakzai