


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

BA No. 21/4 of 2022
 Rizwan Ullah 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 - 8	09/11/2022	<p>Mr. Asad Khan Muhammad Zai Advocate for accused/petitioner; Muhammad Zubair APP for State are in attendance.</p> <p>2. This is the disposal of Post arrest bail application presented by accused/petitioner Rizwan Ullah son of Quwat Shah resident of Qaum Bar Khel Tappa Sheikmal Khel Sam Baba Tajori Bara, District Khyber.</p> <p>3. Mr. Aftab Ahmad ASHO along with other police officials of Police Station Kalaya, Orakzai were present on the spot during barricade while a Motor Car bearing registration No. v-7915-sindh white color came from Feroz Khel side and stopped for the purpose of checking. On personal search of accused, nothing recovered by the police while on search of said Motorcar, the complainant recovered 24 packets of chars measuring each packet 1200/1200 grams total 28,800 grams which were wrapped in yellow scotch tape from the secret cavity made beneath the rear seat of the said vehicle. Criminal Law was brought into motion against the accused and resultantly, FIR bearing No. 57 dated: 02/05/2021 was registered against the accused by attracting Section 9-D of the KP Control of Narcotics Substances Act, 2019, in Police Station Kalaya of District Orakzai. The accused being arrested on spot was later on remanded to Judicial Lockup. Consequently, application for release of accused named above on bail is presented which is under consideration.</p> <p>4. Learned counsel for accused/petitioner and learned Assistant Public Prosecutor for state were heard at length and file gone through.</p> <p>5. This is tentative assessment of record available on file as deep appreciation of case file is neither required nor</p>



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warranted at this stage. Accused has presented instant application for grant of post arrest bail on the sole ground of ailment. The documents pertaining to illness of the accused as well as the petitioner have been referred to Medical Board particularly constituted for examination of such accused. The 04 members Medical Board consisting upon Orthopedic Surgeon, General Surgeon, Medical Specialist and Deputy Medical Superintendent has opined in a report dated: 21-03-2022 in following terms;

“ Rizwan Ullah s/o Qouwat Shah giving history of lower backache since 2006 that is getting worse with time. Today he was presented in front of medical board DHQ hospital Mishti Mela where he was assessed clinically and his previous medical record of investigation s was scrutinized.

So medical board decided to send MRI Spine films (2 in numbers) for a fresh report from a tertiary care hospital(KTH, LRH, HMC) Peshawar and if possible a neurological/ Neurosurgical opinion should be sought.

On the basis of above reports and conclusions, answers to pointed questions can be provided then to the honorable court.”

6. Correct criteria for grant of bail to an accused in non-bailable case on medical ground is that the sickness or ailment which the accused is suffering is such that it cannot be properly treated within the Jail premises and that some specialized treatment is needed and his continued detention in Jail is likely to effect the capacity or is hazardous to his life (2000 SCMR-107). In instant case, the opinion of medical board constituted for the purpose of examining the accused and his medical documents reflects that it is lower backache linked with patient for more than a decade, not an emergency and if the accused develop further symptoms, he may be treated at DHQ hospital or neurosurgeon can easily be approached for consultation. As the matter is not falling under category of emergency and treatment thereof, if needed, can be provided in DHQ hospital; therefore sole


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ground of medical for grant of bail is not considerable.

7. 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.

8. Announced in open Court.



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