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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Case No. 01/10 Cr.R of 2023

Date of institution: 15.11.2023

Date of decision: 13.12.2023

Date of consignment:

The State (petitioner)

Versus

Muhammad Taif alias Taib son of Abdul Baqi resident of Tribe Sturi
Khel Angari, District Orakzai (respondent)

REVISION PETITION U/S 439 (A) Cr.PC

Judgment

1. Through this judgment I shall decide criminal revision petition filed by petitioner against respondent whereby he has impugned the judgment and order dated: 13.11.2023 of the Court of learned Judicial Magistrate-I, Kalaya, Orakzai.
2. Concise facts giving rise to instant criminal revision petition are that Taj Wali, complainant of FIR No. 104 dated 30.10.2023 u/s 384 r/w 120-B of Kalaya Police Station, Orakzai, lodged report against Muhammad Taib and others stating that he along with Haji Zubair, Shah Wali and Haji Javed Gul had conducted jirga amongst Muhammad Taib and Ehsanullah in 2013, where it was decided that from then onward they would resolve all their matters being their elders; that they had many dispute of landed properties having worth in millions between them from 2013 to till date, however, Muhammad Taib had refused to pay due Shari share of Ehsanullah, whereat, jirga members made many attempts to resolve the issue but Muhammad Taib being

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an oppressive person did not agree and started animosity with them; that in months of July and August 2023 at different timings, Muhammad Taib, Abidullah and an unknown person contacted with each other, hatched a conspiracy to abduct the elders and told to unknown person to demand ransom amount of rupees 180 million from elders else to kill them, hence, the report was made and case was registered.

3. The respondent/accused Muhammad Taib was arrested. On 12.11.2023, investigation officer produced him before the court of learned Judicial Magistrate/MOD, Kalaya, with request of three days physical remand of accused. The learned Judicial Magistrate/MOD granted only one day physical custody of the accused. On next day, the accused was again produced before the court of Area Judicial Magistrate-I, Kalaya with further request of two days physical remand of the accused, however, the learned Judicial Magistrate instead of granting the physical remand of accused hold that since the main offence with which the accused/respondent was charged with was bailable; thus, passed an order for the release of accused/respondent on bail subject of his furnishing bail bonds to the sum of Rs. 80,000/- with two sureties each in the like amount to his satisfaction.

4. Feeling aggrieved from the order, petitioner impugned herein order of learned Judicial Magistrate-I, Kalaya, Orakzai dated 13.11.2023 through this criminal revision by alleging it to be wrong on ground that the learned Judicial Magistrate-I, Kalaya Orakzai has exercised the powers not vested with it.

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5. Arguments heard and record perused.
6. Learned counsel for petitioner reiterated the facts of petition in his arguments and prayed that on acceptance of the instant revision petition, impugned judgment and order of the learned Judicial Magistrate-I, Kalaya, Orakzai may be set aside being in sheer violation of law and either the physical custody of the accused/respondent may be granted or he may be sent to judicial lock-up.
7. Learned counsel for respondent has refuted the arguments of learned counsel for petitioner with assertion that since the main offence was bailable; therefore, section 120-B PPC is also to be treated bailable and the criminal revision petition having no merits may be dismissed.
8. The main grievance of the petitioner is that earlier the learned Judicial Magistrate/MOD, Kalaya granted the physical remand of accused/respondent, however, when on next day, accused was produced before the court of learned Judicial Magistrate-I, Kalaya, he not only refused the physical remand of accused but instead of sending him to judicial lock-up, released him on bail while treating the offence to be bailable. There is no second opinion that offences in Pakistan Penal Code are either bailable or non-bailable. In bailable offences, when accused is produced before the court, accused is released on bail as a matter of right and the court is bound to pass a bailable order irrespective of the heinousness of the offence within the meaning of section 496 PPC. In non-bailable offences, grant of bail is discretion of

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the court, which the court exercises in befitted cases judicially within the meaning of section 497 CrPC. In the non-bailable offences, however, when accused is produced before the court, the court directs the accused to be sent to judicial lock-up as per routine, wherefrom, the accused applies for the post arrest bail and the court keeping in mind facts and merits of the case, decide the petition accordingly. In the instant case, accused/respondent is charged with two offences; first section 120-B PPC and second section 384 PPC. Section 120-B PPC relates to the criminal conspiracy, which may be pertaining to an offence punishable with death or rigorous imprisonment for a term of two years or upwards; second it may relate to any other criminal conspiracy pertaining to an offence other than mentioned in first category. When, criminal conspiracy relates to an offences punishable with death or rigorous imprisonment for a term of two years or upwards, then, as per column no. 5 of the second schedule of The Criminal Procedure Code, 1898 (**the Code**), section 120-B PPC is to be treated according to the offence which is the object of conspiracy is bailable or not. If, however, it relates to any other criminal conspiracy, then, section 120-B PPC is to be treated as bailable. Likewise, section 384 PPC speaks about extortion, which as per column no. 5 of second schedule of the Code is bailable in nature. Since, section 120-B PPC speaks about the criminal conspiracy, and the main object of the conspiracy was extortion i.e. section 384 PPC, which is bailable; therefore, section 120-B PPC is also to be treated as

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bailable as per the explanation given in column no. 5 of the second schedule of the Code.

- 9. In view of above facts and figures, it is held that the learned Judicial Magistrate-I, Kalaya Orakzai has passed the impugned as per powers vested in it and did not commit any illegality wanting the interference of this court, hence, the impugned judgment and order dated: 13.11.2023 of the learned Judicial Magistrate-I, Kalaya Orakzai is upheld and criminal revision petition in hands being bereft of merits is dismissed.
- 10. Requisitioned record along with copy of this order be returned to quarter concerned and file of this court consigned to record room after necessary completion and compilation.



Announced
13.12.2023

(Abdul Basit)
Additional Session Judge-II,
Orakzai

CERTIFICATE

Certified that my judgment consist of five (05) pages. Each page is signed by me after necessary corrections, where needed.



Announced
13.12.2023

(Abdul Basit)
Additional Session Judge-II,
Orakzai