

**IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI**

Case No .....38/2 of 2023.

Date of institution.....13.06.2023.

Date of decision.....12.12.2023.

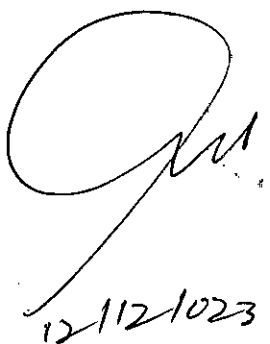
Case FIR No. 35 Dated: 09.04.2023 U/S 506/148/149 PPC, PS Kalaya

**Order. No. 17**

12.12.2023

APP for the state present. Accused Tanab Ali, Nadeem Ali and Waseem Ali on bail present. Accused Ghadeer Ali is exempted. Accused Safeer Ali, Mudabir Ali and Junaid Ali are absconding. Further arguments on application u/s 249-A Cr.PC heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 09.04.2023, complainant/SI Aftab Hassan, PS Kalaya received information regarding firing at Zaridar, Orakzai and he rushed to the spot where on inquiry, he came to know that party No. 1, Safeer Ali, Ghadeer Ali, Waseem Ali and party No. 2, Tanab Ali, Junaid Ali, Mudabir Ali and Nadeem Ali have made firing at each other for criminal intimidation. The motive behind the occurrence is previous altercation and quarrel between the parties. Murasila was drafted at the spot. On the strength of murasila, the instant case was registered against the accused facing trial.



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Civil Judge JM  
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After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty

and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 03 PWs have been examined.

Complainant/Sub-Inspector Aftab Hassan, deposed as PW-01. He stated that during the days of occurrence, he was posted as ASHO, PS Kalaya. On the day of occurrence, he along with constables Gul Shid Ali No. 1528, Taj Gul HC No. 310, Rafi Ullah No. 321 were on area patrol at the vicinity in the official vehicle. In the meanwhile, he heard sound of fire-shots and rushed to the village Zaridar where on inquiry, he came to know that the party No. 1, accused Safeer Ali, Ghadeer Ali, Waseem Ali and party No. 2, Tanab Ali, Junaid Ali, Mudabir Ali and Nadeem Ali have made firing at each other for criminal intimidation. The motive behind the occurrence is previous altercation and quarrel between the parties. He drafted murasila Ex.PW-1/1 at the spot and sent the same to PS through constable Gul Shid Ali No. 1528 for registration of the case. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation.

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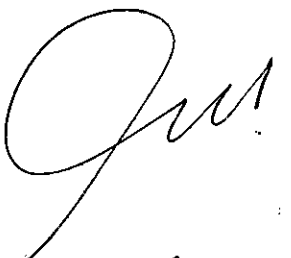
Sub-Inspector, SI Murtaza was examined as PW-02. He is IO of the case. He prepared site plan Ex.PB on the pointation of complainant. Accused Waseem Ali and Ghadeer Ali were arrested by SHO Aftab Ahmad and were handed over to him for interrogation. He produced the accused before the court for obtaining their physical custody vide his applications Ex.PW-2/1 and Ex.PW-2/4. On 10.07.2023, accused Tanab and Nadeem were arrested vide card of arrest Ex.PW-2/5. He produced the accused before the court for

obtaining his physical custody vide application Ex.PW-2/6. He recorded statements of PWs, accused and search witness u/s 161 Cr.PC. As rest of the accused were avoiding their lawful arrest therefore, he vide applications Ex.PW-2/2 and Ex.PW-2/3 applied for warrant u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC. After completion of investigation, case file was handed over to SHO for submission of supplementary challan against the accused.

PW-03, is the statement of SI Aftab Ahmad. He Stated that during the days of occurrence, he was posted as SHO, PS Kalaya. On 09.04.2023, he arrested accused Waseem Ali and issued his card of arrest Ex.PW-3/1. Accused was handed over to IO. On 18.06.2023, accused Ghadeer Ali was arrested vide card of arrest Ex.PW-3/2. Accused was handed over to IO. After completion of investigation, he submitted complete as well as supplementary challan against the accused facing trial.

Perusal of record transpires that the alleged occurrence took place on **09.04.2023** at **11:00 am** in the houses of accused facing trial situated at Zaridar, Orakzai and it was reported on **09.04.2023** at **11:50 am** and FIR was registered on **09.04.2023** at **12:30** hours.

As per available record, there is no eye witness to the occurrence. Complainant, SI Aftab Hassan, who deposed as PW-01, is also not an eye witness to the occurrence. It is an unseen occurrence. No incriminating article has been recovered from the possession of the accused or on their pointation. No empty has been recovered from the spot. Source of information regarding involvement of accused in

  
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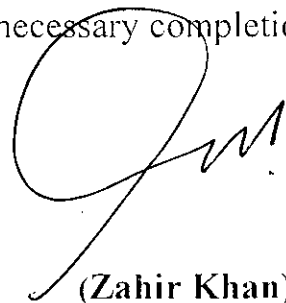
commission of the offence has not been disclosed. Accused have not confessed their guilt before the court. Accused were not arrested at the spot. Accused parties have not charged each other for the commission of the alleged offence. There is no documentary proof regarding the motive. The site plan Ex.PB does not support the case of prosecution.

Case of prosecution is full of dents and doubts benefit of which goes to the accused as of right. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial are acquitted from the charges leveled against them. Accused Tanab Ali, Nadeem Ali, Waseem Ali and Ghadeer Ali on bail. Their sureties stand discharged from their liability.

Accused Safeer Ali, Mudabir Ali and Junaid Ali are absconding. Keeping in view the available record and statements of PWs, this court is satisfied that a prima facie case exists against the absconding accused named above who are intentionally avoiding their lawful arrest, hence, they are hereby declared as proclaimed offenders. Their names be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against them.

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

**Announced.**  
12.12.2023



(Zahir Khan)  
Judicial Magistrate-I,  
Tehsil Kalaya, Orakzai