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JABIR HUSSAIN
VS
SP INVESTIGATION ETC.
Case No. 9/6 || Dated: 24.05.2022

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT & SESSIONS JUDGE, ORAKZAI
AT BABER MELA

CASE NO. : 9/6 OF 2022
DATE OF INSTITUTION : 24.05.2022
DATE OF DECISION : 18.07.2022


JABIR HUSSAIN ADVOCATE
------(Petitioner)
VS

1. SP INVESTIGATION, ALI HASSAN
2. INVESTIGATING OFFICER MINHAAZ HUSSAIN OF POLICE STATION KALAYA
------(Respondents)

ORDER
18.07.2022

Petitioner Jabir Hussain Advocate present in person. Respondents not present.

- (2). The petitioner seeks **Ali Hassan Khan SP Investigation District Orakzai and Minhaz Ali Investigation Officer Police Station Kalaya** to be proceeded against for wilful breach and neglect of the provision of law u/s 118 of the Police Act, 2017 for vexatious arrest of Niqad Ali s/o Jang Ali, Aftab Ali s/o Muhammad Shah and Tajid Ali s/o Asad Ali in case FIR no. 36 dated 06.04.2022 u/s 302/34 PPC of Police Station Kalaya wherein as per contents of FIR, the local police on the basis of information regarding the occurrence, reached THQ hospital Kalaya where the complainant Tajid Ali made a report to the police to the fact that on the day of occurrence, in view of the death of her aunt, he


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telephonically contacted his brother Qasid Ali and told him to come to his house. On way to his house, the accused Waiz Ali and Tanwar Ali duly armed made firing at him, as a result of which he was hit and died on the spot. Motive was stated to be a previous blood-feud enmity between the parties.

On 11.05.2022, Mst. Ain Ullah Jaan, alleging herself as stepmother of deceased, recorded her statement u/s 164 CrPC and charged Niqad Ali and Aftab Ali for the murder of deceased, on the basis of which the Investigation Officer on 19.05.2022 arrested both Niqad Ali and Aftab Ali at District Headquarter Orakzai Baber Mela, Hangu.

The petitioner Jabir Hussain Advocate vide the instant application alleges that both the above-named persons (accused) have been arrested by the SP Investigation District Orakzai and IO of Police Station Kalaya malafidly from his seat while he was preparing Bail Before Arrest Application for both of the above-named persons (accused). He also alleges that the complainant of the instant case and both the above-named persons (accused) have been tortured by the above-named respondents/police officials.

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During pendency of the instant petition, Niqad Ali submitted application with the request that the instant petition may be converted into a petition u/s 22-A CrPC.

The comments of both the respondents were called wherein they negated the contention of the petitioner to the extent of arrest of Niqad Ali and Aftab Ali from seat of the petitioner; however, they contended that they were arrested on 19.05.2022 at 1630 hours in front of office of SP Investigation at District Headquarter Orakzai Baber Mela, Hangu. They further alleged that the petitioner has malafidly submitted the instant application against the respondents on the pretext of not providing police gunner to him which he had demanded on the basis of a false threat letter from local Taliban.

In view of comments of both the respondents, petitioner Jabir Hussain Advocate submitted another application to the fact that without an inquiry or investigation to the threat letter issued to him by the local Taliban, the District Police Officer has termed it a false letter which also amounts to neglect of duty by the DPO, Orakzai. In view of the application of petitioner Jabir Hussain Advocate, the comments of DPO, Orakzai were also called and placed on file.

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(3). I heard arguments and perused the record.

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- (4). As evident from the aforementioned facts of case, the complainant Tajid Ali has charged Waiz Ali and Tanwar Ali for the murder of his brother Qasid Ali. Mst. Ain Ullah Jaan, the alleged stepmother of the deceased, in her statement, by exonerating his nephews Waiz Ali and Tanwar Ali, has charged Aftab Ali and Niqad Ali (the complainant party) in the instant case and whereafter the SP Investigation District Orakzai and the IO (respondents) nominated and arrested both Aftab Ali and Niqad Ali in the instant case. The malafidi intention of the respondents in arresting the above-named persons (accused) can be gauged from the answers to the questions, that whether Mst. Ain Ullah Jaan while exonerating the accused charged in the FIR should have been examined as a witness of the defence instead of recording her statement as witness of the prosecution? and whether the SP Investigation and the IO (respondents) instead of nominating and arresting Niqad Ali and Aftab Ali should have sought the opinion of District Public Prosecutor? But discussing the answers to both the questions involve deep appreciation of the material available on file involving the merits of the case which is not the domain of this court while deciding Misc. Application u/s 22-A CrPC and which can only be answered and decided by the trial court.

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- (5). So far arrest of both the above-named persons from seat of the petitioner Jabir Hussain Advocate, is concerned, in this respect the respondents have negated the version of petitioner; however, they have admitted that they have been arrested in District Headquarter Orakzai Baber Mela, Hangu which falls within the criminal jurisdiction of District Hangu. In such circumstances, the local police of District Orakzai should have followed the execution of warrant as per procedure provided under section 83 read with sections 84 and 86 CrPC which amounts to neglect of law punishable under section 118 of the Police Act, 2017, if found wilfully made. The question that whether the respondents have wilfully neglected the provisions of law or otherwise needs an inquiry.

Similarly, it is also admitted on record that the petitioner Jabir Hussain Advocate had submitted an application to the DPO for providing him the security on the pretext of a threat letter allegedly issued by the local Taliban. The copy of application and threat letter are available on file. Notwithstanding the entitlement of the petitioner for provision of special security, a threat letter itself constitutes a cognisable offence but the District Police Officer, Orakzai has neither inquired the matter as to the genuineness of threat letter nor any action has been

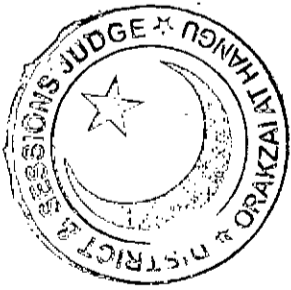
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taken against the petitioner, if as in the opinion of DPO
the letter was false.

(6). Hence, in view of what is discussed above, the
petition in hand is partially accepted to the extent that an
inquiry by the DIG concerned be made against **Ali
Hassan Khan, SP Investigation and Minhaz Ali,
Investigation Officer Police Station Kalaya** as to the
facts that whether they have wilfully neglected the
provisions of law as to arrest of Niqad Ali and Aftab Ali
in case FIR no. 36 dated 06.04.2022 u/s 302/34 PPC of
Police Station Kalaya, or otherwise?. An inquiry is also
be made to the fact that as to what action the DPO,
Orakzai has taken upon the threat letter issued to
petitioner Jabir Hussain Advocate?. In case the
respondents and the DPO, Orakzai were found wilfully
neglected the provisions of law, they be proceeded
against u/s 118 of the Police Act, 2017. File of this court
be consigned to record. Record be returned. Copy of this
order be sent to DIG concerned for necessary action in
accordance with law.



Pronounced:
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(SHAUKAT AHMAD KHAN)
District & Sessions Judge,
Orakzai, at Baber Mela