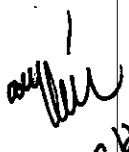


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Court of Additional Sessions Judge, Orakzai at Baber Mela

BCA. 95/4 of 2023  
Taj Wali vs Muhammad Taib

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 05	13.12.2023	<ol style="list-style-type: none"><li>1. Petitioner/complainant with counsel is present.</li><li>2. Accused/respondent with counsel is present &amp; submitted wakalatnama.</li><li>3. DyPP, for the State is present.</li><li>4. Taj Wali, Petitioner/complainant, seeks cancellation of bail order dated: 13.11.2023 granted to accused/respondent Muhammad Taib alias Taif s/o Abdul Baqi by learned Judicial Magistrate-I, Tehsil Kalaya, Orakzai in case FIR No. 104 dated: 08.11.2023 u/s 384/120-B PPC Kalaya Police Station, Orakzai.</li><li>5. 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 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.</li><li>6. On 12.11.2023, the investigation officer produced the accused before the court of learned Judicial Magistrate/MOD,</li></ol>

  
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Order contd.

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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 surety bonds to the sum of Rs. 80,000/- with two sureties each in the like amount to his satisfaction.

7. Feeling aggrieved from the order, petitioner impugned herein order of learned Judicial Magistrate-I, Kalaya, Orakzai dated 13.11.2023 through the instant petition with request to cancel bail granting order.

8. Arguments heard and record perused.

9. Perusal of the record reveals that bail petition of accused/respondent has been allowed by learned Judicial Magistrate-I, Orakzai vide order dated 13.11.2023. The contention of learned counsel for petitioner is that the learned Judicial Magistrate-I, Kalaya Orakzai has wrongly released the accused/respondent on bail while treating the non-bailable offence to be a bailable offence. In this respect, it is held 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 the court, which the court exercises in befitting 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,

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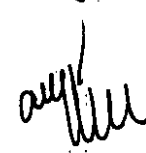
Order contd.

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

10. Besides, grounds for disposal of bail cancellation application are very limited and court has to look into only those grounds without going into the deep merits of the case unless the order is patently perverse or illegal. As per available record, there is nothing on record that the accused/respondent has ever misused the concession of bail or has attempted to tamper with the prosecution evidence. There is also nothing on record that accused/respondent is creating hurdles in investigation process or harassed the witnesses or repeat the commission of offence.

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<p>Order contd.</p>	<p>13.12.2023</p>	<p>11. As per settled law once the bail is granted it cannot be recalled except when there exists strong and exceptional circumstance. Moreover, no plausible ground has been shown for bail cancellation by petitioner; hence, the instant bail cancellation application being devoid of merits is <b>dismissed</b>.</p> <p>12. Copy of this order placed on police and judicial files for record. Requisitioned record returned to the quarter concerned and file of this court consigned to record room after completion and compilation.</p> <p><b><u>Announced</u></b> 13.12.2023</p> <p> <b>Abdul Basit</b> Addl. Sessions Judge-II, Orakzai</p>
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