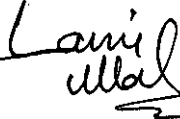


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File be put up for remaining arguments on an application U/S 249-A Cr. PC and prosecution's evidence on the date already fixed.


Sami Ullah
Judicial Magistrate-I,
Orakzai (at Baber Mela)

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Present:

DyPP for the state.

Accused namely Naib Hassan, Shakir Khan, Asif Khan, Muhammad Shareef, Mutahir Ali and Hikmat Ali on bail in person alongwith counsel.

Liaquat Ali, Naseem Ali, Shahid Ali and Atif Ali are absconders.

PW namely Muhammad Younas SHO in person.

Statement of PW namely Muhammad Younas SHO recorded as PW-01 which is placed on file.

Remaining arguments on an application u/s 249-A are heard by Learned DyPP and Counsel for the accused.

1. Accused namely Naib Hassan, Shakir Khan, Asif Khan, Muhammad Shareef, Mutahir Ali and Hikmat Ali and absconding accused namely Liaquat Ali, Naseem Ali, Shahid Ali and Atif Ali are charged in case FIR No. 29, dated 05.08.2023, U/S 188-PPC of PS Kuriz Boya, District Orakzai.
2. Brief facts of the case are that on 05.08.2023, Muhammad Younas SHO/complainant alongwith other police nafri were on routine patrol and when they reached to the spot of occurrence they found that crowd was gathered for purpose of protest in wake of arrest of the chairman PTI and were delivering hate speech and instigating people to cause damage to the public property. The mob was led by Naib Hassan, Shakir Khan, Asif Khan, Muhammad Shareef, Mutahir Ali,

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Civil Judge/JM-I
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Hikmat Ali, Asim Raza, Liaqat Ali, Naseem Ali, Shahid Ali and Atif Ali. While there were ban on the processions and gathering by order of the competent authority U/S 144 Cr.P.C vide letter No.1242/C/DC-ORK. The Complainant drafted Murasila and handed over to Constable Syed Abbas Ali Shah and on the strength of Murasila, FIR was registered against the accused.

3. After completion of investigation, challan was put in court against the accused and the accused were summoned. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed U/S 188-PPC, to which the accused did not plead their guilt and claimed trial, therefore, the prosecution was called to produce evidence in support of their case.
4. The prosecution has produced one witness and his statement was recorded. Furthermore, counsel for accused already filed application U/S 249-A Cr. PC for acquittal of the accused.
5. Counsel for the accused pressed an application u/s 249-A Cr.P.C and completed his remaining arguments. DyPP also argued the aforementioned application.
6. Perusal of case file reveals that Source of information regarding involvement of accused in commission of the offence has not been disclosed. There is no independent eye witness to the occurrence. There is no script/detail of the alleged hate speech committed by the accused. Moreover, no audio or video recording of the alleged hate speech has been associated in the investigation of the instant case. And most importantly as per section of Law levelled against them the accused, there is no order of competent authority on case file which has been allegedly violated by the accused. Furthermore, accused have not confessed their guilt before the court.
7. Perusal of the evidence recorded in the instant case also transpires material discrepancies in the statement of prosecution witness i.e.

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Lanif
Ullah
Sami
Civil Judge/JM-I
Orakzai at (Babar Mela)

State Vs Naib Hassan and others

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complainant himself. PW-01 recorded in his cross examination that no disinterested private witness was associated and his statement was recorded in the investigation. He also admitted that the letter of competent authority u/s 144 Cr.P.C is not available on file, violation of which is committed by the accused. He also recorded that apart from this report no evidence against the accused came forward in investigation.

8. Thus, keeping in view, the above discussion, there is no probability of conviction of the accused in the instant case as there are so many dents and doubts in the prosecution case.
9. The trial court can acquit accused U/S 249-A Cr. PC at any stage of the proceedings. Keeping in view the available record, if it is held that there is no probability of conviction of accused. Recording of full prosecution evidence would be a futile exercise and wastage of precious time of the court.
10. Resultantly, application is **Allowed**. Accused facing trial namely Naib Hassan, Shakir Khan, Asif Khan, Muhammad Shareef, Mutahir Ali and Hikmat Ali are acquitted in terms of Section 249-A Cr. PC from the charges leveled against them in case FIR No. 29 Dated: 05.08.2023 U/S 188-PPC registered at PS Kuriz Boya, District Orakzai. Accused are on bail. Bail bonds stands cancelled and sureties are discharged from their liability.
11. Moreover, as per as proceedings Under Section 512 Cr.P.C is the instant case is concerned, statement of complainant/SHO recorded as PW-01 which is placed on file. Perusal of record transpires that the accused namely Liaqat Ali, Naseem Ali, Shahid Ali and Atif Ali are avoiding their lawful arrest and to this effect statement of Sirab Ali, DFC has already been recorded and in the light of his statement, there is no prospect of the arrest of the accused in the near future, hence proceedings U/S 512 Cr.P.C were initiated against the accused

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Liaqat Ali
Sana Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

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namely Liaqat Ali, Naseem Ali, Shahid Ali and Atif Ali, all residents of Qoam Bar Muhammad Khel, Tehsil Lower District Orakzai.

As per record, the above name accused is involved in case FIR No.29 Dated 05.08.2023 U/S 188 PPC registered at PS Kuriz Boya, District Orakzai.

Keeping in view the available record and statement of PW, this court is satisfied that absconding accused named above who are intentionally avoiding their lawful arrest, hence, accused are hereby declared as proclaimed offender. Their name be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against them. Case property (if any) be kept intact till arrest and trial of the accused.

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

Announced:
09.03.2024


Sami Ullah
Judicial Megistrate-1,
Orakzai at Baber Mela.