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

Bail Application No. : 81/4 of 2022  
Date of Institution : 15.09.2022  
Date of Decision : 28.09.2022

MUHAMMAD ZUBAIR VS THE STATE

ORDER

DPP Umar Niaz for the State and Sana Ullah Khan Advocate for accused/petitioner present. Counsel for the accused/petitioner submitted that the parties have patched up the matter in connection of which the statements of all the legal heirs of deceased and elders have already been recorded before the court in BBA petition No. 82/4, except widow of deceased. He requested to requisition the record of aforementioned BBA; which was accordingly requisitioned and received.

Today, Tariq Mawia, Din Muhammad and Habib Nazar, the Jirga members, Mir Ahmad Khan, the father, Asmat Ullah, the son and Mst. Muzafar Khela, the widow of deceased present. As per list of the LRs of the deceased available on judicial file prepared by the IO, compromise proforma, statement of complainant, the joint statement of Mir Ahmad and Asmat Ullah, the father and son of deceased and the joint statement of Din Muhammad and Habib Nazar, the elders, the deceased has been survived by his father Mir Ahmad, his son Asmat Ullah and his widow Muzafar Khela. However, today when Mst. Muzafar

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Khela, the widow of deceased appeared before the court, she besides negating the factum of compromise, also revealed that besides aforementioned LRs, the deceased has left five daughters namely, Nishada (20 years old), Shawrana (15 years old), Muqadas (08 years old), Musarrat (03 years old) and Khadija (09 months). To that fact statement of Mst. Muzafar Khela, the widow of deceased duly identified by her father namely, Islam Khan recorded and placed on file.

On failure of the compromise, learned counsel for accused/petitioner and learned DPP for the State argued the application on merits.

2. The accused/petitioner, Muhammad Zubair s/o Ali Majan seeks his post arrest bail in case FIR no. 17, dated 29.04.2022, u/s 302 PPC of Police Station Mishti Mela, wherein as per contents of FIR, the complainant Saifoor Khan on 29.04.2022 at 1245 hours at DHQ Hospital Mishti Mela has made a report to police to the fact that on that day he was present at his house when he was informed by Muhammad Saeed s/o Islam Khan via cellphone regarding a quarrel between Pirbat Khan and Muhammad Zubair (the present accused/petitioner), and Pirbat Khan being stoned by accused/petitioner on his forehead causing death of Pirbat Khan on the spot. Accordingly, he reached the spot and found his nephew Pirbat Khan murdered. Hence, the present FIR.

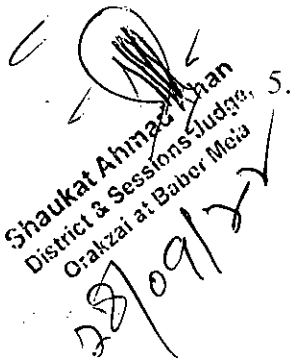
  
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3. It is evident from the record that the accused/petitioner is directly nominated in the FIR for the offence which falls within the prohibitory clause of 497 Cr.P.C. Moreover, statements of eyewitness Muhammad Saeed and other witnesses recorded u/s 161 CrPC prima facie support the version of complainant. Furthermore, the recoveries made from the spot and the medico legal report also support the version of complainant.

4. Hence, in view of what is discussed above, it is held that sufficient material is available on file which reasonably connect the accused/petitioner with the commission of offence; therefore, he is not entitled to the concession of bail at this stage. The instant post-arrest bail application is thus turned down.

5. Before parting with the order, it is pertinent to mention that the IO of the case has prepared a list of legal heirs wherein the daughters of the deceased including minor ones have not been shown. Similarly, the complainant, the father of the deceased, the son of the deceased and the Jirga members have also submitted affidavits Ex. PA, compromise proforma Ex. PB, the affidavit regarding list of legal heirs Ex. PC and the certificate submitted by jirga members in BBA petition No. 82/4 decided on 07.09.2022 have also not shown the daughters of the deceased as his legal heirs. Moreover, the statement of the complainant, the joint statement of the father and son of deceased and the

  
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joint statement of Din Muhammad and Habib Nazar have also been recorded on oath before the court wherein they have specifically stated that the deceased besides Mir Ahmad, father, Asmat Ullah, son and Mst. Muzafar Khela, widow, have no other legal heirs which besides depriving the widow and his daughters including minors of their share in the amount of *Diyat*, in case of compromise, also amount to, giving false evidence, fabricating false evidence, using evidence known to be false, issuing or signing a false certificate, false statement made in a declaration, using the same as true and giving false information to screen out the offender etc. Therefore, the copy of this order be sent to DPO, Orakzai for criminally proceeding all the above-named persons including the Jirga members for the offences attracted to the facts of the case.

6. Copy of this order be placed on judicial/police file. Requisitioned record be returned to record room.

Consign.

**Pronounced**  
28.09.2022

  
**SHAUKAT AHMAD KHAN**  
Sessions Judge, Orakzai  
at Baber Mela

