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BA No. 19/4 of 2024
FAZAL MALIK VS THE STATE
FIR No. 20, Dated 31.03.2024, u/s 9 (d) CNSA, PS Kalaya
IN THE COURT OF SYED OBAIDULLAH SHAH
SESSIONS JUDGE/JUDGE SPECIAL COURT,
ORAKZAI AT BABER MELA

Bail Application No. : 19/4 of 2024
Date of Institution : 04.04.2024
Date of Decision : 05.04.2024

FAZAL MALIK VS THE STATE

ORDER

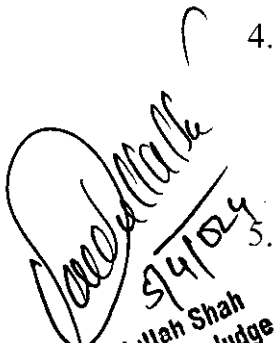
DPP, Umar Niaz for State and Abid Ali Advocate for accused/petitioner present. Record received. Arguments heard and record gone through.

2. Accused/petitioner, **Fazal Malik** s/o Rijat Khan seeks his post-arrest bail in case FIR No. 20, dated 31.03.2024, u/s 9 (d) CNSA of Police Station Kalaya, wherein as per contents of FIR, the complainant along with other police during routine patrolling were present on the spot where at about 1200 hours a motorcycle riding by two persons; on seeing the police party tried to turn their motorcycle but were overpowered. The pillion passenger – who later on disclosed his name as Sama Khel, the co-accused – was having a red colour bag in his lap which led the complainant to the recovery of 05 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 5000 grams. The driver of the motorcycle disclosed his name as Fazal Malik, the present accused/petitioner. Hence, the present FIR.

3. Learned counsel for defense argued that the accused/petitioner has falsely been implicated in the instant case to scot-free the actual culprit, that the FSL report is not available on file, that there is no previous history of the accused/petitioner in such like cases.

4. Learned DPP for the state put forward his arguments that the accused/petitioner was arrested on the spot and more than 01 kilogram of chars has been recovered from his possession.

In the light of arguments advanced by the learned DPP and counsel for the accused/petitioner, record gone through which shows that though the accused/petitioner is directly nominated in the FIR


5/4/24
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

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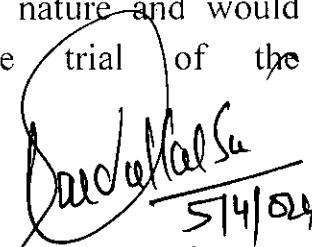
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and the offence for which the accused/petitioner is charged, attracts the prohibitory clause of section 497 CrPC; however, the recovery has not been effected from personal possession of the accused/petitioner. Moreover, the FSL report is yet awaited to show that whether the recovered substance was actually chars or otherwise. Accused/petitioner, after his arrest, has gone through the process of investigation but he has neither confessed nor admitted his guilt. As far as the connection of the accused/petitioner with the alleged contraband is concerned, it is yet to be determined during trial that whether the same belongs to the accused/petitioner or otherwise.

6. Hence, in view of what is discussed above, bail petition in hand stands accepted and the accused/petitioner is admitted to the concession of bail provided he submits a bail bond in the sum of Rs. 100,000/- with two sureties each in the like amount to the satisfaction of Judicial Magistrate/MOD. The sureties must be local, reliable and men of means.
 7. Order announced. File of this court be consigned to record room after its necessary completion and compilation.
 8. This order is tentative in nature and would have no effect upon the trial of the accused/petitioner.
- Dated: 05.04.2024




(SYED OBAIDULLAH SHAH)
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela