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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Petition No. 24/4 of 2024

“Ali Majan... Versus ... The State”

Order---04

Accused/petitioner on ad-interim pre-arrest bail present.

23.04.2024

Counsel for accused/petitioner is present.

DyPP for the State is attendance.

Accused/petitioner Ali Majan s/o Mir Jan seeks confirmation of his pre-arrest bail provisionally granted to him in cross version recorded vide daily diary no. 18 dated: 31.03.2024 registered under Section 506/427/34 PPC and 15AA of case FIR no. 13 dated 31.03.2024 of Mishti Mela Police Station, Orakzai.

Brief facts of the case as per daily diary no. 18 dated 31.03.2024 are that complainant alongwith his companions was busy in cutting trees in their mountain that in the meanwhile Ali Muhammad Jan, Ghafoor and Sultan Akbar along with other 15/16 persons came, spelt abuses, cause threats and claimed the mountain and trees to be their ownership; that complainant party left the spot due to fear and large number of accused party, who then hit their motorcar through sticks and stones; that in order to criminally intimidate them, the accused party opened aerial firing on them; that motive behind the offence is previous dispute over mountain, hence, the FIR.

Viewing the valuable arguments advanced by learned counsel for parties and record on file, this is concluded that there is no independent person, who has witnessed the occurrence. No incriminating material has been recovered from possession of the accused/petitioner. General role of criminally intimidation, commission of assault and mischief have been attributed to accused/petitioner. As per available record, the accused/petitioner is an old man of 77 years of age, therefore, the allegations of

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commission of the alleged offence by him appears to be nothing but to counterblast the main case registered against the complainant party, which does not rule of possibility of false implication with malafide intention. Moreover, sending the accused/petitioner behind the bars would amount to nothing but to bring humiliation to him because the offence does not attract the prohibitory clause of section 497 CrPC and two of the co-accused have already been released on bail by the learned trial court.

Importantly considerations for grant of pre-arrest bail are not at all different from the considerations for grant of post arrest bail, as far as merits of the case are concerned. The only difference is that there must be additional basis of humiliations, harassment, malafide, intention to disgrace and dishonor. If a person is otherwise entitled to bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him bail. Court has to keep a balance, therefore, if a fit case for grant of bail is made out, bail before arrest can be allowed in appropriate cases. (Reliance is placed on 2012 PCrLJ 430 [Sindh]). Similarly arrest for ulterior motives such as humiliation and unjustified harassment is a valid consideration for grant of pre-arrest bail. (Reliance is placed on 1993 PCrLJ 446. 2008 MLD 805 [Karachi]).

Resultantly, the application submitted by accused/petitioner for pre-arrest bail is hereby allowed and ad-interim bail already granted to him is confirmed on the existing bail bonds. Copy of this order be placed on judicial and police files for record.

Record be returned alongwith copy of this order and file of this Court consigned to the Record Room after its completion & compilation.

Announced
23.04.2024


(Abdul Basit)
Addl. Sessions Judge-II, Orakzai