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

Petition No. 29/4 of 2024

“Raheel Badshah ... Versus ... The State”

Order---04

08.05.2024

Accused/petitioner on ad-interim pre-arrest bail along with counsel is present. DyPP for the State is in attendance.

Accused/petitioner Raheel Badshah s/o Sakhi Badshah seeks confirmation of his pre-arrest bail provisionally granted to him in case FIR no. 18 dated 04.06.2023 u/s 324, 341, 225, 186, 189, 427, 504, 147, 149 PPC of Mishti Mela Police Station, Orakzai.

Concise facts of the case as per report are that complainant along with other police personnel while on patrolling of the area visited the site, where free distribution of flour was being managed under the Government Scheme in the needy and poor people; that police officials were busy in maintaining discipline at distribution point; that huge gathering of the public was resulted into chaos and the mob has pelted stone and attacked the police station; that one of them namely Hazratullah s/o Badshah Hussain has opened fire with his pistol; that luckily no one got harmed and the mob evaded their arrest; that they have also succeeded releasing the arrested person from their custody; that the extra police personnel were called upon and after their return to the police station, the people of the locality approached the police station in the form of procession and blocked the road for all types of traffic etc.; that the procession was led by accused/petitioner and others named in report; that the procession has also pelted stones at police station and damaged the sign boards, crime board, side cameras, stoppers, chairs, table, doors, windows and parts of the building of the police station coupled with case properties of different cases, details given in the report; that

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the incident was reported vide daily diary no. 13 dated 27.03.2023, which was later on converted into FIR above, hence, the case.

Viewing the arguments advanced by learned counsel for parties and record on file, this is held that although the presence of large number of persons has been shown on the spot, however, not a single independent person has been cited as marginal witness to the occurrence. Neither, the script of alleged speech or photography and videography of the procession has been collected nor recovery of any incriminating material brought on record. No weapon of offence or crime empty has been recovered so far, which does not rule out the possibility of false implication of the accused/petitioner in the commission of offence. There is nothing on record to show that as to how the local police has identified the accused//petitioner in such large number of scattered mob because not a single accused was arrested on the spot. Moreover, Muhammad Younas SHO of Police Station Central Mishti Mela being complainant of the case appeared and stated at the bar that he is under instruction to have no objection over acceptance of pending bail application as the matter has already been compromised. He referred the copy of compromise (Ex.PA); thus, he was examined on oath which confirms the fact of compromise genuinely effected between the parties. Police being law enforcement agency and the accused being general public had patched up the matter through intervention of the elders of locality and other stakeholders of the District Administration that is why same is accepted in the best interest of justice, the district being part of erstwhile FATA. In similar manner, bail before arrest of the co-accused with similar role has already been confirmed by my learned predecessor in office and accused/ petitioner is also found entitled to the same concession on principle of rule of consistency.

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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 & 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 valid consideration for grant of pre-arrest bail. (Wisdom is drawn from 1993 PCrLJ 446 and 2008 MLD 805 [Karachi])

Resultantly, 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 and compilation.

Announced
08.05.2024


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