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

Petition No. 59/4 of 2024

“Israfeel... Versus ... The State etc.”

Order---03

Accused/petitioner through counsel is present.

13.06.2024

Complainant despite service is absent.

Dy.PP for the State is present.

Accused/petitioner Israfeel son of Hussain Khan seeks his post arrest bail in case FIR No. 06 dated: 01.05.2024 under section 379/411/34 PPC of Daboori Police Station, Orakzai.

Fazal Habeeb, complainant, reported that on 01.05.2024 at morning time, he had tied two cows of black color and one cow of multicolor (*braga*) in field outside his house which have been stolen by some unknown persons; that on getting information, he has come to know that Israfeel son of Hussain Khan along with two unknown persons has committed the theft of his cows; therefore, he has charged them for the commission of offence, hence, the report.

Arguments heard and record perused.

Learned counsel for accused/petitioner argued that initially the complainant has charged unknown persons for the commission of offence, however, later on charged the accused/petitioner for the commission of offence without disclosing his source of satisfaction. He added the time of occurrence is unknown, whereas, the offence does not fall within prohibitory clause of section 497 CrPC; therefore, prayed for release of the accused/petitioner on post arrest bail.

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On contrary, learned prosecution refuted the arguments advanced by learned counsel for accused/petitioner and argued that recovery of a cow has been effected from direct possession of the accused; he argued that in theft cases, the time of the occurrence is mostly unknown; therefore, prayed for dismissal of application.

This is tentative assessment of record available on file as deep appreciation of evidence is neither required nor warranted. According to the record, a black color cow has been recovered from the direct possession of the accused/petitioner. Although, the offence does not fall within restrictive clause of section 497 CrPC, however, recovery of a cow from direct possession of accused/petitioner shows his involvement in the commission of offence. Record suggests that accused/petitioner belongs to the district Khyber; therefore, there is no plausible justification on record to show his presence at district Orakzai at the time of recovery of cow from his possession.

For what has been discussed above, the court concludes that accused/petitioner has failed to make out a case for grant of bail; hence, his application is dismissed. Copies of this order be placed on police and judicial files for record.

File of this Court be consigned to District Record Room after its necessary completion and compilation within the span allowed for; whereas, record be returned.

Announced
13.06.2024


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