

COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

Case Title: State VS Najeeb Ur Rehman

s Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order No. 12	30.05.2024	<p>DPP for the state present. Accused Shakeel on bail along with counsel present. Rest of the accused are exempted today at the application of the counsel for the accused. Today the case is fixed for arguments on the application u/s 249-A Cr.P.C.</p> <p>Accused/petitioners namely Najeeb Ur Rehman s/o Gul Muhammad Khan, Muhammad Tahir s/o Muhammad Akbar, Siraj Ahmad s/o Naqib Ahmad, Shakeel Muhammad s/o Muhammad Akbar, Zaliman Shah s/o Gulman Shah are facing trial in case FIR No. 23, dated: 08.11.2023, u/s 341/120-B/291/148/149 PPC of PS Ghiljo.</p> <p>Brief facts of the case as per report of the complainant are that complainant Muhammad Ibrahim Khan SHO has reproduced letter No. 1810 of the Deputy Commissioner Orakzai in the FIR, the contents of which are that the DC Orakzai wrote a letter to DPO Orakzai with the subject of "unlawful protest". It is further mentioned that enclosed please find herewith report No. 1358/AC/Upper dated 07.11.2023 by Assistant Commissioner Upper Orakzai along with its annexures. As per the report, the following 04 individuals organized an unlawful protest on 06.11.2023, blocking the main Ghiljo Dabori &amp; Ghiljo Mamuzai road and causing public nuisance, in open</p>

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<p>Order No. 12 continued</p>	<p>30.05.2024</p>	<p>violation of notified SOPs of Home &amp; TA's Department No. SO (Security-II)/HD/2022 dated 30.07.2023, despite prior service of notices upon them (copy attached):-</p> <ol style="list-style-type: none"><li>1. Mufti Muhammad Tahir, (Tehsil Chairman Upper), Tribe Ali Khel</li><li>2. Malik Haji Shakeel Muhammad, Tribe Malla Khel</li><li>3. Najeeb ur Rehman, (ORM), Tribe Ali Khel</li><li>4. Malik Zaliman Shah, Tribe Rabia Khel.</li></ol> <p>As reported by the AC, because no prior intimation was given/approval sought by the organizers for the protest from the District Administration or Police as required under the Home Department's SOPs, no security arrangements could be made. Thus, the above mentioned 04 individuals also endangered the lives of citizens.</p> <p>The AC has recommended that FIR may be registered under the relevant sections of law against the above-mentioned individuals. The recommendation of the AC is strongly endorsed by this office and hereby referred to you for immediate legal action. It is emphasized that if timely legal action is not taken, it will encourage all political parties to hold such unlawful protests and gatherings in view of the upcoming elections, which in the current volatile security situation will provide an opportunity to the terrorists, resulting God forbid in huge loss of lives.</p>
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Order No. 12 continued	30.05.2024	<p>On the above letter of the DC Orakzai, Muhammad Ibrahim Khan SHO being complainant registered the above-mentioned FIR against the accused facing trial and absconding accused.</p> <p>After completion of investigation, the case was put in court for trial. Accused were summoned on 01.02.2024. Accused facing trial Najeeb Ur Rehman, Muhammad Tahir, Siraj Ahmad, Shakeel Muhammad and Zaliman Shah being on bail attended the court while statement of SW was recorded in respect of the absconding accused namely Muhammad Shakir, Muhammad Nazir, Muhammad Umar, Muhammad Raziq, Muhammad Karim, Muhammad Nadeem, Muhammad Alam, Muhammad Sajid and Mirza Khan.</p> <p>Formality u/s 241-A Cr.P.C was complied with on 04.03.2024 while charge against the accused was framed on 08.03.2024 to which they pleaded not guilty and claimed trial, whereafter the prosecution witnesses were summoned.</p> <p>During the course of prosecution evidence, the statements of as many as 02 PWs were recorded while statements of 03 PWs were abandoned by the learned Sr.PP for the State.</p> <p>PW-01 is the statement of complainant Muhammad Ibrahim who exhibited the FIR as Ex.PA, letter of DC Orakzai in shape of Murasila is Ex.PB. After completion of</p>
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investigation, he submitted interim challan which is Ex.PW-1/1. Later on, he submitted complete challan which is Ex.PW-1/2.

During cross-examination, he admitted that he was present at the time of the alleged protest by the accused facing trial and absconding accused, but he has not registered the FIR rather the same has been registered after receiving the letter of DC Orakzai. He was thoroughly cross-examined by the counsel for the accused facing trial.

PW-02 is the statement of Aman Ullah, SI of PS Ghiljo. He stated that he was present on duty with SHO on 06.11.2023 and the accused facing trial along with the absconding accused blocked the main road Ghiljo for traffic. He was cross-examined by the counsel for the accused.

Counsel for the accused submitted an application u/s 249-A Cr.P.C, notice of which is given to the prosecution. Arguments heard and available record perused.

The perusal of record shows that SHO Muhammad Ibrahim Khan has cited himself as complainant in the instant case but astonishingly he has not uttered a single word regarding the occurrence from his own rather he has mentioned the letter of DC Orakzai word by word in the FIR and still he has not made the DC Orakzai as complainant in the instant case. During his statement as

  
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<p>Order No. 12 continued</p>	<p>30.05.2024</p>	<p>PW-01, he admitted that neither anyone has appeared before him for registration of FIR nor he has recorded statement of anyone regarding the occurrence. He admitted that whatever he written in the FIR is not his statement. He has not mentioned the time of occurrence in the FIR despite of fact that he during his cross-examination tried to establish his presence at the place of occurrence. He also admitted that he was in the knowledge that the accused facing trial have organized an unlawful protest on 06.11.2023 and that despite of knowledge, he has not registered the FIR against the accused facing trial. It is also strange to notice that the names of only 04 accused are mentioned in the letter of DC Orakzai and in the FIR as well, but 14 persons have been made accused in the challan Ex.PW-1/2. He admitted that nowhere in the FIR, the word "illegal conspiracy" is mentioned. It is also creating sufficient doubt in the case of prosecution that despite of the fact that complainant has not wrote a single word from his own in the FIR still he has made pointation to the IO regarding the place of occurrence and points where the accused facing trial were allegedly present. The cross-examination on the statement of SHO, Complainant clearly shows that he was present at the time of occurrence and nothing illegal has happened during the alleged protest on 06.11.2023, but later on, after receiving the letter of DC</p>
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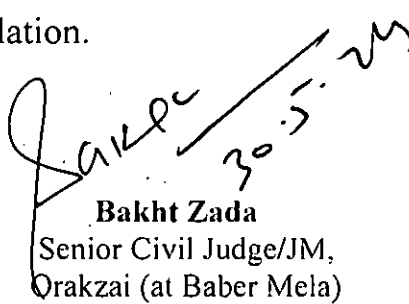
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<p>Order No. 12 continued</p>	<p>30.05.2024</p>	<p>Orakzai on 08.11.2023, he has registered the instant FIR at the order of DC Orakzai.</p> <p>All these facts and circumstances clearly shows that either the SHO was not present at the time of occurrence or he has registered the FIR at the order of high-ups with malafide intention and despite allegedly showing his presence during the alleged protest on 06.11.2023 at the place of occurrence, he has not registered the FIR due to the reason that nothing illegal had happened during the protest. All these makes the case of prosecution one full of doubts and in such like situation, it is impossible for the prosecution to bring home charges against the accused facing trial even if statement of all the PWs are recorded. I therefore accept the instant application u/s 249-A Cr.P.C and acquit all the accused facing trial from the charges levelled against them. They are on bail. Their sureties are discharged from the liabilities of their bail bonds. Case property if any be kept intact till the decision of appeal/revision etc if any.</p> <p>Case file be consigned to the record room after its necessary completion and compilation.</p> <p style="text-align: center;"><b><u>Announced</u></b> 30.05.2024</p> <p style="text-align: right;"> <b>Bakht Zada</b> Senior Civil Judge/JM, Orakzai (at Baber Mela)</p>
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