

4

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

**Petition No. 61/4 of 2024**

*“Kashmeer Khan... Versus ... The State etc.”*

**Order---04**

03.07.2024

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

Accused/petitioner Kashmeer Khan s/o Gulbaz Khan seek confirmation of his pre-arrest bail provisionally granted to him by this court in case FIR no. 22 dated: 09.05.2024 under Section 506/504/447/147/149 PPC of Mishti Mela Police Station, Orakzai.

Arguments heard and record perused.

Brief facts of the case as per report are that on 17.03.2024 at about 1700 hours, the complainant was ploughing his fields through a tractor when accused/petitioner along with co-accused named in the report came and forcibly removed the tractor from the fields, used abusive language and criminally intimidated him, hence, FIR.

Keeping in view the arguments advanced by learned counsel for parties and record available before the court, it is held that the occurrence has not been witnessed by an independent person. More so, the perusal of record reveals that accused/petitioner has neither been arrested on the spot nor anything incriminating has been recovered from his possession or on his pointation. Record also provides that no weapon or firearm has been used in the commission of offence. There are plethora of case laws on point that while granting pre-arrest bail even the merits of the case be touched upon provided the court reaches to a conclusion that in case of dismissal of pre-arrest bail, the accused would become entitled for his release on post-arrest bail because in that situation, this would be a futile exercise to send him to prison, the wisdom is drawn from 2023 PCrLJ 517 [Lahore (Rawalpindi Bench)]. All the sections of law are bailable in nature except section 506 PPC but contents of report suggests that complainant has allegedly charged the accused/petitioner for issuance of oral threats etc. and no threat as such of causing death/serious hurt

*ayy*  
*WU*  
*03/07/2024*

**Abdul Basit**  
Addl. District & Sessions Judge-II  
Orakzai at Baber Mela,  
Hangu

5

Contd. 04  
03.07.2024

was issued, which apparently attracts the clause (1) of section 506 PPC and makes it a case of further inquiry. The offence does not attract prohibitory clause of section 497 CrPC. At present, there is not sufficient incriminating material available on file to connect the accused/petitioner with the commission of offence. Accused/petitioner is an old man of about 71 years of age, who is otherwise entitled to extra ordinary concession of bail. Besides, the accused/petitioner has already joined the investigation and recalling his bail just for the purpose of sending him behind the bars at the wish of complainant would serve no purpose except to bring humiliation to the accused/ petitioner. Likewise, there are judgments on point that when accused/petitioner has a good case for post-arrest bail, then, mere at the wish of complainant, he cannot be sent behind the bars for few days by dismissing his application for pre-arrest bail, as a ready reference the case law reported in 2023 PCrLJ 468 [Lahore] is referred here. Similarly, there are many judgments of apex courts on point that "a mistaken relief of bail may be repaired by committing the accused after trial, if proven guilty, but no proper compensation can be offered to the accused/ petitioner for his unjustified incarceration *albeit* if he is acquitted after trial.

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 along with copy of this order and file of this Court consigned to the Record Room after its completion and compilation.



Announced  
03.07.2024

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