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Arguments heard and record perused.

17.08.2024

Keeping in view the arguments advanced by learned counsel for parties and record available before the court, it is held that recovery of opium was not effected from the direct possession of the accused/petitioner rather from the place of occurrence. Likewise, no incriminating material or article has been recovered from possession of accused/petitioner during his body search. Though, there is no mandatory provision in the CNSA cases to associate private witnesses, however, their association is also not expressly barred in cases, where there is availability of the public on the spot. In the instant case, record shows that the police has recovered the opium from public place during time when the absence of public is not expected at the relevant time; therefore, local police was supposed to associate private witnesses but they did not. As per available record, accused/petitioner has not made confession nor there criminal history of his involvement in such like cases. This is yet to be seen that who was owner of the alleged recovered material/contraband. More so, this is astonishing to note that as to why the police did not arrest the accused/petitioner nor did nominate him an accused in the instant case at that time and thus makes this fact coupled with facts discussed above as case of further inquiry; therefore, keeping him behind the bar would serve no useful purpose. Importantly, co-accused with similar role has already been acquitted by the court of learned District & Sessions Judge, Orakzai vide order dated 08.05.2024 while the record provides that the prosecution has already opined for withdrawal of case under section 494 The Code of Criminal Procedure, 1898.

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Abdul Basit  
17/08/2024  
Jl. District & Sessions Judge-II  
Orakzai at Baber Mela,  
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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 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. Similarly arrest for ulterior motives such as humiliation and unjustified harassment is a valid consideration for grant of pre-arrest bail.

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. Copies of this order are placed on judicial and police files for record.

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

**Announced**  
17.08.2024

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