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

Petition No. 96/4 of 2024

"Qalat Khan... Versus ... The State"

Order---03
25.09.2024

Accused/petitioner on ad-interim pre-arrest bail along with counsel and DyPP for the State are in attendance. Record received.

Accused/petitioner Qalat Khan s/o Malak Khan Maqbali Shah seeks confirmation of his pre-arrest bail provisionally granted to him by this court in case FIR no. 96 dated: 16.09.2024 under Section 188 PPC of Kalaya Police Station, Orakzai.

Brief facts of the case as per report are that complainant during patrolling in the area received information that Manzoor Pishteen, leader of PTM was visiting Feroz Khel Mela Orakzai, where, a large number of people were assembled to attend the procession; that complainant proceeded to the spot, where about 170/180 persons were assembled, whereas, accused/petitioner along with 13 other accused were leading the procession; that vide letter no. 1572/C/DC/ORK of DC Orakzai, there was a ban on assembly/procession; that accused/petitioner along with other accused have violated the orders of DC Orakzai, hence, FIR.

Arguments of learned counsel for accused/petitioner, learned DyPP for the State heard and record perused.

Perusal of the record reveals that though accused/petitioner has been charged for the commission of offence but there is no independent eyewitness to the occurrence. There is no direct or indirect evidence or sufficient incriminating material available on file against accused/petitioner to connect him with commission of offence at this stage. Neither accused/petitioner is arrested on the spot nor any incriminating article recovered from possession of accused/petitioner disclosing his involvement in commission of offence, which does not rule out the probability of malafide/ulterior motive on the part of prosecution and also apprehends false implication of the accused/petitioner in the instant case. It is strange enough that in presence of such a huge crowd, how the identity of the

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District & Sessions Judge-II
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accused/petitioner was made out and as to why he was not on the spot. All the facts mentioned above makes the case of accused/petitioner one of further inquiry and refusal of bail would serve no useful purpose except to bring humiliation to him.

Importantly consideration for grant of pre-arrest bail are not at all are 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. (Reliance is placed on 2012 PCrLJ 430 [Sindh]). Similarly arrest for ulterior motives such as humiliation and unjustified harassment is a valid consideration for grant of pre-arrest bail. (Reliance is placed on 1993 PCrLJ 446. 2008 MLD 805 [Karachi]).

Besides, accused/petitioner has joined the investigation and he is no more required for further investigation, whereas, proper procedure has not been adopted as per law, which shows false implication of accused/petitioner in the instant case with malafide intention, therefore, on the acceptance of application in hands, bail before arrest of the accused/petitioner is confirmed on the existing bonds. Copy of this order be placed on police and judicial files for record.

Record be returned to the quarter concerned and file of this court consigned to record room after necessary completion and compilation.



Announced
25.09.2024

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