

MOTASIM KHAN VS STATE

FIR no. 120, dated 22.12.2024, u/s 324 PPC, PS Kalaya

**IN THE COURT OF BAKHT ZADA ADDITIONAL SESSIONS JUDGE-
I, ORAKZAI AT BABER MELA**

Bail Before Arrest App: No: 32/4 of 2024
Date of Institution : 23.12.2024
Date of Decision : 07.01.2024

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ORDER

07.01.2025

Sr.PP, Abul Qasim for the State present.

Accused/petitioner, Motasim Khan s/o Naseem Khan
r/o Dara Adam Khel on ad-interim pre arrest bail along
Mr. Abid Ali Advocate present.

(2). Accused/petitioner, Motasim Khan s/o Naseem
Khan is seeking confirmation of his already granted
ad-interim pre-arrest bail in case FIR no. 120, dated
22.12.2024, u/s 324 PPC of police station Kalaya.

(3). Facts of the case are that complainant Jusrat Khan
s/o Mastan Ali Khan, aged about 34/35 years reported
the matter to the police vide naqal mad no. 11, dated
10.12.2024 that on 10.12.2024 at 1530 hours, he along
with Shams Ur Rehman were present at the place of
occurrence outside the house sitting chairs near the
gate, in the meanwhile, a dark green car came from
Feroz Khel Mela side driving by unknown driver,
which stopped nearby a person sitting on the rear seat
namely Motasim Khan s/o Naseem Khan r/o Dara
Adam Khel asked the complainant to come here, on
which the complainant replied "why". On this the said

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person started abusing him and fired at the complainant with intention to kill, but he luckily escapes unhurt and took refuge in the house of Shams Ur Rehman. The bullet marks are present on his wearing clothe and chairs. The occurrence is witness by one Shams Ur Rehman. Motive behind the occurrence is dispute over the mines.

(4). The report of the complainant was incorporated into naqal mad no. 11 and inquiry under section 157 (i) Cr. PC was initiated and on 12.12.2024 final report was submitted, accordingly to which the cognizable offence has been committed and consequently after 12 days of the final report on 22.12.2024 the instant FIR was lodged u/s 324 PPC.

(5). Arguments heard and available record perused, which shows that admittedly the accused/petitioner has got coal mine lease allotted in his favor from the Mines and Mineral Department and he is working on the development of the same for the last few years and now a dispute between the complainant of the instant case and accused/petitioner has arisen in respect of the lease granted by the Mines & Mineral Department in favor of the accused/petitioner. During the inquiry several FIRs have been annexed with the record wherein the present complainant and his eyewitness namely Shams Ur Rehman are nominated as accused and the same includes FIR No. 99, dated 22.10.2023, registered u/s

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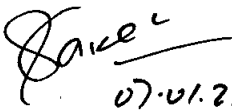
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324/109/148/149 PPC of police Station Kalaya, FIR No. 12, Dated 20.01.2022, registered u/s 506/148/149 PPC of police station Kalaya, FIR No. 37, dated 20.05.2022, registered u/s 506/148/149 PPC of police station Kalaya. All these FIRs have been registered against the present complainant and his witness Shams Ur Rehman and the place of occurrence in all the FIRs are mentioned as the same place which is coal mine of present accused/petitioner. There is civil litigation pending between the parties in respect of the coal mine in Peshawar High Court, Peshawar as stated by the complainant at the bar. According to the FIR, the occurrence has taken place on 22.10.2023 at 09:30 am in the broad daylight in front of the house of the complainant in the village, but except the said Shams Ur Rehman no one has been produced and mentioned in the report as eyewitness of the occurrence. At the belated stage during the course of inquiry statement of one Sheer Ayaz is shown at the roof top of his house near the place of occurrence at the relevant time, but as observed by the inquiry officer it is impossible for a person while standing on the roof top to recognize person present inside the car on the road. As mentioned above, the other witness namely Shams Ur Rehman is nominated accused in several FIRs lodged by the present accused party and thus no independent ocular account of the occurrence is available, furthermore,


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there is contradiction between the proceedings of inquiry report and final report. During the process of inquiry, the inquiry officer took into possession seven empty shells of 30 bore from the place of occurrence and one live round of 30 bore was recovered from under the chair on which the complainant and eyewitness were seated at the time of occurrence which is mentioned by the inquiry officer in his *Zimini* dated 22.12.2024, which makes the case of accused/petitioner one of further inquiry. It is also mentioned by the inquiry officer in his findings in the *Zimini* report part 2 dated 22.12.2024 that the occurrence seems to be concocted, but despite of these observations and doubtful recovery of live round of 30 bore from the place of presence of complainant and eyewitness the SHO in his final report has written that cognizable offence has been committed which is contradictory to the findings of the inquiry officer and shows malafide on the part of the police as well as on the part of the complainant, due to the reason that when the accused/petitioner has made the alleged firing from his vehicle, how the live round of 30 bore was recovered from under the chair on which the complainant and his eyewitness were allegedly present at the of occurrence. This recovery of live round from under the chair of the complainant and his eyewitness is leading this court to the inference that when the accused has made firing

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while sitting in the vehicle, then from where the live round came at the place of presence of complainant and his eyewitness. No injury has been sustained by the complainant or his eyewitness despite of alleged firing from such a short distance which also raise questions about the alleged intention of the accused/petitioner.

As reported in the judgment 2023 PCRLJ, 468 citations (d) if an accused has a good case for post arrest bail, then mere at the wish of complainant, he cannot be sent behind the bar for few days by dismissing his application for pre arrest bail.

(6). Therefore, in the light of above, the already granted ad-interim pre-arrest bail to the accused/petitioner Motasim Khan stands confirmed on the strength of existing bail bonds. The above findings being tentative in nature and would have no effect upon the trial of the accused/petitioner.

(7) Copy of this order be placed on police/judicial file while requisitioned record be sent back to the quarter concerned. Case file be consigned to record room after its completion and compilation.

Announced
07.01.2025



BAKHT ZADA
Additional Sessions Judge-I, Orakzai
at Baber Mela