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BBA No. 68/BBA/2020

Or 03
03-07-2020

Present:

Accused/petitioners on interim bail, along with Adnan Javid Advocate APP Syed Amir Shah for State

This order shall dispose of **pre-arrest bail** application of the accused/petitioners **(1) Kabal Khan** s/o Qeemat Shah **(2) Paida Khan** s/o Paio Khel r/o Bezot Lower Orakzai; who are charged in case **FIR No. 35**, dated 03-05-2020, u/ss. **342/506/427/148/149 PPC** of **PS Lower Orakzai**.

The instant case was registered by the SHO of local police station, who made an entry in daily diary of PS (madd no. 13) on 29-04-2020 to the effect that he was on routine patrol of the area when he received information that there was a dispute of land between the tribes of Aka Khel of district Khyber and Bezot, in which both the parties were firing at each other; that some persons belonging to Bezot tribe had wrongfully confined persons belonging to Aka Khel tribe, and locked them in a room; that a vehicle belonging to people of Aka Khel was also damaged in the accident; that the SHO, along with the SDPO, reached the spot but found that the persons wrongfully confined had been released before arrival of police; that no one came forward to make report to the police; that, however, if persons of Aka Khel tribe came forward to report then proper proceedings would be conducted.

On 29-04-2020 the instant FIR was registered, wherein it is mentioned that during inquiry the names of accused were ascertained and that legal opinion was obtained, upon which the FIR was registered. The present accused/petitioners are 02 of the 14 nominated accused. Hence the instant petition.

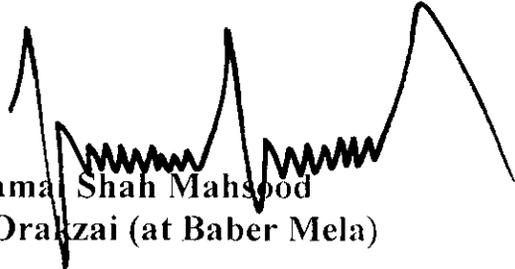
Arguments of counsel for accused/petitioners and APP for State heard, and available record perused; the tentative assessment of which, for the purpose of deciding instant petition, shows that:

JAMAL SHAH WAHSUD
Add: District & Sessions Judge-I,
Orakzai at Hangu

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1. The time of occurrence is mentioned as unknown and there is a delay of 04 days in registration of FIR. This delay has not been plausibly explained.
 2. There is no statement of any eye witness of the occurrence and it is not clear as to how the IO/SHO came to know about the names of the accused persons.
 3. The accused/petitioners joined investigation since grant of interim BBA on 25-06-2020, but so far, no material has been brought on record against them.
 4. Other co-accused, who were arrested, have already released on bail.
 5. In absence of statement of any victim or eye witness and the suspicious inquiry and proceedings conducted by SHO/IO, the possibility of malafide on part of local police cannot be ruled out.
 6. The allegations against the accused/petitioners call for further inquiry into their guilt. No useful purpose could be served by sending the accused/petitioners behind bars only to be released on regular bail.

Resultantly, the instant pre-arrest bail petition of accused Kabal Khan and Paida Khan, is **accepted** and the ad-interim pre-arrest bail already granted to him is confirmed on the existing bail bonds. Copy of this order be placed on record. Record be returned while this file be consigned to record room after necessary completion and compilation.

Announced
03-07-020


Jamaal Shah Mahsood
ASJ-I, Orakzai (at Baber Mela)