

Present:

Accused/petitioners on interim bail, along with Farid Ullah Shah Advocate
Complainant Said Hakeem, along with Muhammad Farooq Khattak Advocate
Sr. PP Javed Iqbal for State

This order shall dispose of **pre-arrest bail** application of the accused/petitioners **(1) Nazir Rehman** s/o Shams-ur-Rehman (mentioned in record as Nazeerak s/o Shamak), **(2) Waseel Khan** s/o Noormat Khan (mentioned in record as Asal Khan s/o Noor Muhammad Khan and **(3) Aseel Gul** (mentioned in record as Aseel Khan) s/o Arbab Khan; all belonging to caste Ali Khel and residents of Ghutak, Upper Orakzai; who are charged **FIR No. 51**, dated 16-10-2020, u/ss. **342/506/447/427/148/149 PPC** of **PS Upper Orakzai**.

The allegation against accused/petitioners is that they, along with 23 other co-accused – all armed, criminally trespassed into the property (Crush Machine Plant) of complainant, Said Hakeem; that they wrongfully confined and beat two nephews of complainant; caused damaged to the crush machine plant; and that they criminally intimidated the complainant party. It was alleged that a civil dispute between the parties was already pending before civil court. The FIR was registered under the directions of Ex-Officio of Justice of Peace, passed in an application under 22-A CrPC. The present accused/petitioners allege malafide on part of complainant and local police. Hence the instant petition.

Arguments of counsels for the parties and Sr. PP for State heard; the available record perused. Tentative assessment of which, for the purpose of deciding instant petition, shows that:

1. A total of 26 persons were charged by the complainant. The name of accused/petitioner Nazir Rehman was revealed by the complainant in a supplementary statement recorded about 80 days after the occurrence. No description of un-known persons was given in the

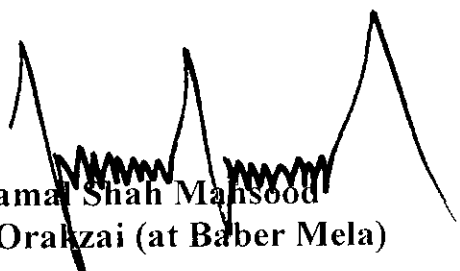
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FIR, neither the complainant has mentioned as to how he became satisfied about the identity of accused/petitioner Nazir Rehman as one of the culprits. Moreover, no specific role has been given to the other accused/petitioner in the FIR.

2. The complainant had alleged injuries and damage to property; however, neither any medical report is available on record nor any evidence in respect of destruction of property has been produced before the IO.
3. All the offences, except offence u/s 506 PPC, are bailable.
4. Civil dispute between the parties is admitted by the prosecution; hence, chances of malafide for false implication, in order to settle civil dispute, cannot be ruled out.
5. The offences alleged do not fall under prohibitory clause of section 497 CrPC, and the allegations call for further inquiry into the guilt of accused.
6. The accused/petitioners joined investigation since grant of interim BBA on 03-12-2020, but so far, no material evidence has been brought on record against them.
7. All other co-accused of the case have already been released on regular bail. No useful purpose could be served by sending the accused to jail, only to be released on regular bail.

In these circumstances, malafide on part of complainant and local police cannot be ruled out. Resultantly, the instant pre-arrest bail petition of accused/petitioners **Nazir Rehman, Waseel Khan and Aseel Gul**, is **accepted** and the ad-interim pre-arrest bail already granted to them 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
10-12-2020


Jamal Shah Mansood
ASJ-I, Orakzai (at Baber Mela)