

04

BBA No. 88/BBA of 2020

Or 03
07-10-2020

Present:

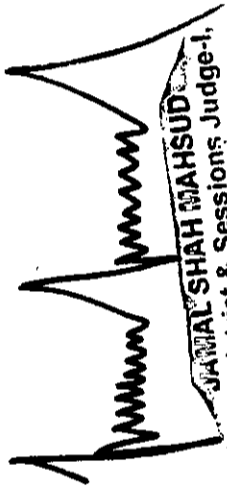
All 06 accused/petitioners on interim bail, along with Sana Ullah Khan, Advocate
APP Nisar Khan for State
Record received

This order shall dispose of **pre-arrest bail** application of the accused/petitioners **(1) Asad Ullah** (Asad Khan) s/o Bait Ullah Khan, **(2) Faheem Khan** (Payomin Khan) s/o Khaista Meen, **(3) Shaukat Khan** s/o Walayat Khan, **(4) Muhib Ullah** s/o Nawab Khan, **(5) Alamzeb Khan** s/o Saeed Ullah and **(6) Saeed Ullah** s/o Abdul Malik; all belonging to caste Mishti, tapa Mamizai; r/o village Kandanay, Orakzai; who are charged in case **FIR No. 102**, dated 24-09-2020, u/s. **188 PPC of PS Lower Orakzai.**

The facts of the case, according to FIR, are; that the ASHO of Lower Orakzai, went to village Kandanai for implementing the order, dated 16-09-2020, of JM-I, Orakzai, for removing obstruction from road/passageway and for intimating the respondents (accused/petitioner Saeed Ullah etc.) that action will be taken against them u/s 188 PPC in case of resistance/disobedience. That when the ASHO, along with a police party, went to the spot for implementation of this order and for removing of obstruction, with the help of Rafi Ullah (complainant in proceedings before the JM-I) and others, the present accused/petitioners started resistance; that they stated before ASHO that they had spent a lot of money on the road/passageway and that they will not let the police party to open the road. The ASHO after being confronted with this situation, drafted a murasila and sent it to PS for registration of FIR u/s 188 PPC. Hence the instant petition.

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

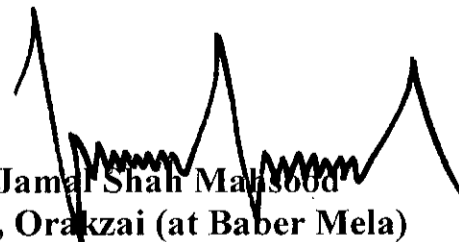
1. The offence with which the accused/petitioners are charged is punishable with imprisonment of up to 01 month, or fine or both. The


JAMAL SHAH MAHSUD
Addl: District & Sessions Judge-I,
Orakzai at Hangju

- punishment of imprisonment may only be awarded in exceptional circumstances.
2. None of the accused was arrested on the spot, despite presence of a police party. Even there is no site-plan of the spot of occurrence available on record.
 3. 02 accused/petitioners, namely Alamzeb (15 years) and Muhibullah (13 years) are juveniles.
 4. One of the accused, Shaukatullah, who is a student at Peshawar; raised the plea of alibi. The IO had obtained the record of CCTV footage and statement of in-charge of hostel in this respect, revealing that the said accused/petitioner he was present in Peshawar during the day of occurrence.
 5. No statement of any independent witness is available on record and the name of accused/petitioners were probably revealed to the ASHO by the complainant Rafiullah, who had dispute over the road/passageway with the present accused/petitioners. Malafide on part of Rafiullah, in falsely nominating the accused/petitioners cannot be ruled out.
 6. The case of accused falls under the ambit of further inquiry for the purpose of grant of bail; no useful purpose would be served by sending the accused to jail, only to be released on post arrest bail.

Resultantly, the instant pre-arrest bail petition of accused/petitioners **Asad Ullah** (Asad Khan), **Faheem Khan** (Payomin Khan), **Shoukat Khan**, **Muhib Ullah**, **Alamzeb Khan** and **Saeed Ullah** is **accepted** and the ad-interim pre-arrest bail already granted to the accused/petitioners 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
07-10-2020


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