

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II ORAKZAI, AT
BABAR MELA**

BA No... 7 of 2020

Hasham Khan etc..... Vs..... State

ORDER
10.04.2020

Mr. Sanna Ullah Khan advocate, Learned counsel for the accused/petitioners present. Syed Amir Shah APP for the State present. Complainant Zain Akbar in person present.

Accused/petitioners Hasham Khan s/o Stori Gul, Syed Umar s/o Wali-u-Din and Abdul Khanan s/o Sial Khan r/o Lower Orakzai District Orakzai are seeking their release on bail in case bearing Information Report No. 812 APA/L dated 08/04/2016 u/s 302/34-PPC of PS Lower Orakzai(Kalaya).

Brief facts of the case are that the accused/petitioners along with deceased Khalid s/o Khyal Man Shah Mishti r/o Khwa Darah were on their way from Mishti Mela to Anjari on Kacha road with Chars when reached to Bezot area at about 03:00 AM, some unknown persons opened fire as a result of which Khalid got hit and died. The accused/petitioners were charged for the murder of Khalid vide information report ibid. During the proceedings of the case before the then Political Administration the accused/petitioners were arrested and then released time to time and the case was then transferred to this court after the merger of FATA into the province of Khyber Pakhtunkhwa. When the case was entrusted to this court for trial, accused were summoned however the accused/petitioners remained absent and were avoiding their arrest. NBWA was issued against the accused and the accused/petitioners were arrested in execution of warrant (NBWA) issued by this court and were sent to Judicial Lock-up. There was no previous bail

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order on record nor the accused could be considered to be on bail under the legal provisions of law. The accused/petitioners presented the instant bail application for their release on bail.

Arguments of the learned counsel for the accused/petitioners and learned APP for the state heard and record perused.

The tentative assessment of record would transpire that accused/petitioners are charged vide Information Report bearing No. 812-APA/L dated 08/04/2016 after receiving report by the then Assistant Political Agent Lower Orakzai addressed to the Political Agent Orakzai Agency wherein neither the name of the complainant and eye witnesses are mentioned nor the name of the person who reported the occurrence. In the Information Report the firing which resulted the death of deceased has been attributed to some unknown persons and the accused/petitioners are not charged for firing. The occurrence is reported to be a night occurrence and neither any site plan is prepared nor any recovery has been affected from the place of occurrence. No inquest report or PM report of the deceased is available on file to ascertain the nature of injury, the cause of death and the time of death. The complainant has charged the accused/petitioners after of delay of about twenty days by submitting application to the then APA wherein no source of his satisfaction for charging the accused has been mentioned nor any eye witness has been cited by the complainant. The circumstantial evidence is also lacking in the case to connect the accused with the commission of offence. The aforementioned facts make the case accused/petitioners one of further inquiry. The accused remained in the custody of police however they neither confessed their guilt nor pointed out the place of occurrence nor any recovery has been affected for their possession. The trial in the case

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against the accused is in progress, therefore keeping in view the circumstance of the case the accused/petitioners are entitled to be released on bail.

In view of the above discussion the bail petition in hand is accepted and the accused/petitioners are ordered to be released on bail subject to furnishing surety bond in the sum of Rs. 200, 000/- with two sureties each in the like amount to the satisfaction of this court or MOD. The sureties must be local and men of means.

File of this Court be consigned to record room after its necessary completion and compilation.

Announced
10.04.2020



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Babar Mela