

BA File No. 38 /BA of 2019

Or 02  
23-12-2019

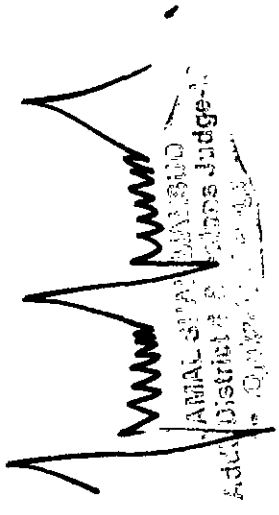
Case file of Bail Application, along with record, received from the Court of worthy D&SJ for disposal. Let it be registered.

Present:

Zahoor Ur Rehman Advocate for accused/ petitioner  
Complainant Habib Nawaz, along with Syed Anwar Sadaat  
Advocate  
DPP Umar Niaz for the State

Through the instant post-arrest bail petition accused/petitioner **Hashmat Ullah** s/o Ali Majaan; r/o Mishti Anjghalay, Central Orakzai, is seeking his release on bail in case FIR No. 47 Dated 11-12-2019, registered u/s 387/365/511/148/149 PPC in PS Lower Orakzai.

Facts of the case, according to the available record, are; that, on 08-12-2019, the SHO forwarded a written application to the Muharrir of PS, with directions to enter the contents of the said application in the daily dairy and send a copy to the DPP for legal opinion. According to daily dairy No. 8 of 08-12-2019, the allegations made in the said application by complainant (Habib Nawaz) are; that the complainant is government contractor, working on Anjanri Road; that on 07-12-2019, his laborers were working on the road in his presence; that in the meanwhile, accused Hashmat Khan (present accused/petitioner) along with co-accused Daood Khan, Salam, Sultan Akbar, Irfan, Kallat Khan and Jalal came there armed with Kalashnikovs; that they tried to kidnaped the complainant, who ran away to the house of one Khanadan and took shelter there; that the accused followed him into the house of Khanadan and beat him with violence, however, the

  
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attempted kidnapping failed due to intervention of family of Khanadan; that the accused party then took away with them a pickup vehicle, 02 tractors and 01 tar-coal plant from the spot and made the laborers run away, thus stopping the work on road. After getting opinion of DPP, the instant was registered on 11-12-2019.

Arguments of the learned counsels for the parties and DPP for State heard. After the perusal of record, the tentative assessment for the purpose of deciding instant bail petition is as follows:

1. The offence allegedly occurred on 07-11-2019 in the morning, but the report was made to police on 08-12-2019. This delay of 24 hrs. has nowhere been explained, thus casting doubt on prosecution case.
2. One tractor and tar-coal mixture were allegedly recovered outside the house of accused/petitioner on his pointing; however, neither any independent witness of locality was associated with these recovery proceedings nor was the place of recovery in exclusive control of the present accused/petitioner.
3. Admittedly, the parties are co-contractors of the road and there seems to be dispute in respect of payment between them (Copies of agreement and record of payments etc. produced by counsel for accused/petitioner, are placed on file). Thus, chances of false implication, for settling civil dispute through criminal process, on part of complainant cannot be excluded.

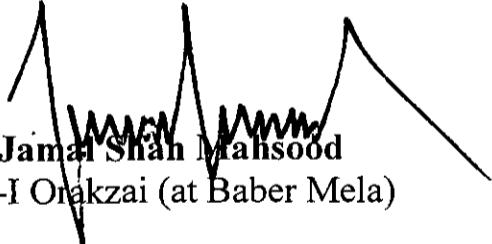
AMAL SHAH MAHSUD  
Addl. District & Sessions Judge-I,  
Orakzai at Hangu

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4. The statements of alleged eyewitnesses were recorded by the IO with delay on 15-12-2019, thus, casting doubts on the same.
5. The accused/petitioner has remained in police custody and the investigation against him is complete. No further incriminating material has been found against the accused/petitioner.

In view of the above circumstance, the accused/petitioner has made out a case of further inquiry into his guilt. Resultantly, the instant petition is **accepted** and it is directed that the accused/petitioner **Hashmat Ullah** may be released on bail in the instant case, subject to furnishing bail bonds in the sum of **Rs 100,000 (one lac)**, with two sureties each in the like amount to the satisfaction of this court. Record of the police be sent back along with a copy of this order, while this file be consigned to Record Room after its necessary completion and compilation.

**Announced**  
**23-12-2019**

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