

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Cr. PLA No. 02/2015.

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Muzaffar Ali, Judge.**

1. Ashrat 2. Amin Shah Sons of late Pir Wali Shah residents of
Noh Tehsil yaseen District Ghizer.

Petitioners.

Versus

The State

Respondent.

**OFFENCES UNDER SECTIONS 324, 336, 337-A(III)/34 PPC
VIDE FIR NO. 29/2014 POLICE STATION YASEEN GHIZER
DATED 23.08.2014.**

**PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF
GILGIT-BALTISTAN GOVERNANCE & EMPOWERMENT
ORDER 2009 READ WITH SECTION 497 CR.PC AGAINST
THE IMPUGNED JUDGEMENT DATED 20.11.2014 PASSED
BY THE SINGLE JUDGE OF GB CHIEF COURT .**

Present:-

1. Mr. Amjad Hussain Advocate for the petitioners not present his associate is present who is not advocate of this Court cannot proceed.
2. Mr. Sher Madad, Advocate General Gilgit-Baltistan for the State.

Date of Hearing: - 02-09-2015.

ORDER

Dr. Rana Muhammad Shamim.....CJ. From the perusal of the prosecution record and the case file it reveals that the occurrence took place on 22.08.2014 and the FIR was lodged on the very next day i.e. 23.08.2014. The recovery of Kulhadee, Belcha and danda etc were affected after 24 days of the occurrence and no private persons were associated to witness the search. The statements of Prosecution Witnesses (PWs) were also recorded after the delay of 24 days without expressing any reason for such delay. The civil suits are

pending before the learned civil Court between the parties of this case.

The learned Advocate General Gilgit-Baltistan opposes the grant of bail to the petitioners on the basis of concurrent findings of the three courts below who declined to grant bail to the petitioners. He further states that proceedings of the case is in progress before the learned Trial Court and statements of three PWS have already been recorded.

We have heard the learned Advocate General Gilgit-Baltistan and the record of the case have also been perused. We observed that the delay regarding the recovery of the articles has not been explained and no reason for not associating any independent private witness was given in the case in hand. It has also been observed that civil disputes between the parties are also pending before the civil Court. The statements of the PWs were also recorded after unexplained delay of 24 days of the occurrence, which creates serious doubts in prosecution case and the benefit of such doubt can also be given to the petitioners even at the bail stage as held in case of Tariq Bashir versus the State, reported as PLD 1995 SC 34.

The learned apex Court of Pakistan also observed that as regards offences, punishable with death, or imprisonment for life or imprisonment for ten years the provisions of Section 497 are not punitive in nature. There is no concept of punishment before judgment in the criminal law

of the land. The question of grant /refusal of bail is to be determined judiciously having regard to the facts and circumstances of each case. Where the prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime falling in the category of offences punishable with death, or imprisonment for life or imprisonment for ten years, the Court must refuse bail. On the other hand where the accused satisfies the Court that there are not reasonable grounds to believe that he is guilty of such offence, then the Court must release him on bail. For arriving at the conclusion as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, the Court will not conduct a preliminary trial/inquiry but will only make tentative assessment, i.e. will look at the material collected by the police for and against the accused and be prima facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So, the Court will not minutely examine the merits of the case or pleas of defense at that stage. The bail order must be carefully balanced and weighed in scale of justice and requirement of relevant law.

The question of benefit of reasonable doubt is necessary to be determined not only while deciding the question of guilt of an accused but also while considering the question of bail because there is a wide difference between the jail life and free life.

The learned Advocate General could not satisfy the Court for causing such delay of 24 days in recovery of crime articles, belated recording of statements under Section 161 Cr.PC of the PWS. He has also not refuted the pending civil litigations between the parties in the learned Civil Court.

In view of the above discussion this petition for leave to appeal is converted into an appeal and the petitioners/appellants are granted bail subject to submission of bail bounds of Rs.2,00,000/ (Rupees two lac only) to the satisfaction of the learned Trial court. The petitioners may be released on bail if not required in any other case.

The above observations are tentative in nature and the learned Trial Court should not influence with the above observations of this Court and decide the case in accordance with law.

Chief Judge.

Judge.

Whether the case is fit to be reported or not.