

IN THE SUPREME APPELLATE COURT NOTHERN AREAS
GILGIT

Cr. Mise. No. 03/2009

Before: Mr. Justice Muhammad Nawaz Abbsi (Chief Judge)
Mr. Justice Syed Jaffar Shah (Judge)
Mr. Justice Muhammad Yaqoob (Judge)

1. Malook Khan s/o Hazir Khan
2. Shah Raees Khan s/o Azur Khan Residents of Dodishal at present
Jucicial Lock up, Chilas.

Petitioner

Versus

The State

Respondent

OFFENCE UNER SECTION 302/34 PPC VIDE FIR
NO. 52/2007 AND 13.A.O VIDE FIR NO.
15/2008 AND 16/2008

PETITION FOR LEAVE TO APPEAL AGAINST
THE OREER DATED. 03.04.2009.

Present: Malik Haq Nawaz Advocate for the petitioners
Advocate General for the State.

Date of hearing: 09.06.2009

ORDER

This petition has been directed against the order dated 03.04.2009 passed by Chief Court, Northern areas whereby the petitioners nominated accused in the cases FIR No. 15/2008 and 16/2008 and 52/2007 registered U/S 302/34 P.P.C read-with 13.A.O 1965 at Police Station, Darel were refused bail.

The brief facts as contained in the FIRs are that at about 1:30 p.m on 01.10.2007, the petitioner and their five nominated co-accused in the FIRs in furtherance of their common object opened attack by firing at Muhabat Khan and Saeed Alam who having sustained injuries lost their breath at the spot. The motive as stated in the FIR was dispute with respect to the performing of Nikah by Muhabat Khan a woman.

The local police during the course of investigation declared five accused innocent and got them discharged from the case under section 169 Cr.P.C. The present petitioner having been found involved in the case were challenged to face the trial. The postmortem of the deceased wan not conducted and weapon of offence recovered from the possession of petitioners were also not sent to the ballistic expert for opinion. The bail was declined to the petitioners by the learned

Additional Distract sessions Judge mainly for the reason of their ascension with their co-accused after the occurrence, and Chief Court while taking into consideration the alleged recovery of weapon of offence form them as an additional reason refused bail to them.

The learned counsel for the petitioners has contended that in the FIRs and in the statement of eye witness recorded by police U/S 161 Cr.P.C. the petitioners and their co-accused have been assigned the collective role of firing at the deceased without any specific attribution to distinguish the case of the petitioners form their co accused. In brief the contention of the learned counsel for the petitioners is that it being a case of collective firing, the petitioners would stand at par to their co-accused and by virtue of sub section (2) of Section 497 Cr.P.C. would as of right be entitled to the concession of bail.

The learned Advocate General has opposed this petition mainly on the ground that in addition to the evidence of absconsion weapon of offence allegedly used by the petitioners in the occurrence were also recovered at their instance which would be considered sufficient evidence to connect them with commission of offence.

We have heard the learned counsel for the petitioners and learned advocate general at length and with their assistance also perused the record. The consideration for grant of bail in cases not falling within the prohibitory clause of section 497 Cr.P.C. are different to that of the cases falling under said clause and bail in cases involving punishment of death or imprisonment for life or for a term of ten 10 years, is not ordinarily granted unless the court on the basis of tentative assessment of the evidence in the hand of prosecution forms on opinion that the guilt of the accused would require further inquiry in terms of sub (2) of section 497 Cr.P.C. which provides as under:-

“if it appears to such office or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bail able offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided”

There is no general rule for grant of bail in the ground of further inquiry rather the scope of further inquiry in each case depends upon the facts and circumstances of that case. The provision of sub section (2) of section 497 Cr.PC. may attract in the cases of no evidence or the evidence direct or

circumstantial is not confidence inspiring or the evidence is not of the standard to sustain conviction or there is not possibility of ultimate conviction on the basis of evidence brought on police file or the case is of doubtful nature and such other ground which may be considered sufficient for further inquiry into the guilt of an accused.

In the present case apart from direct evidence of eye witnesses the abscondence of the petitioner and recovery of fire arm allegedly used by them in the occurrence have been brought on record. The medical evidence is not available to ascertain the cause of death and similarly the fire arm expert opinion regarding the recovered weapon is not part of record whereas the eye witnesses have assigned to all the accused the same role of collective firing at the deceased. The tentative assessment of evidence in hand of prosecution would show that the case against the petitioners is not distinguishable to their co-accused who have since been discharged and consequently their case would squarely fall within the ambit of section 497 (2) Cr.P.C. for the purpose of further inquiry.

The perusal of record would suggest that the investigation in the present case was not conducted in fair manner and the element of dishonesty is apparent on the face of record as the co-accused of the petitioners on the basis of same set of evidence were declared innocent whereas the petitioners were challaned to face the trial. The District Attorney also did not care to take notice of defect in the case at the time of forwarding the challan to the court. We are therefore, persuaded to direct IGP and Secretary Law Northern areas, to hold independent inquiries into the conduct of concerned police official and the District Attorney who forwarded the challan to the Court. The report of the inquiries will be sent to the Registrar of this Court within a month.

In the light of foregoing reasons, this petition is converted into an appeal and is disposed of in terms short order passed on 9-6-2009 which is treated as part of this order and is read as under:

For the reasons to be recorded later this petition is converted into appeal and appellants are allowed bail subject to their furnishing bail bonds in the sum of Rs. two lac 200000/- each with two local sureties each in the like amount to the satisfaction of trial court. Appeal is disposed of accordingly.

Chef Judge

Judge

Judge

