

IN THE SUPREME APPELLATE COURT NOTHERN AREAS

GILGIT

Cr. Mise. No. 19/2009

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

Ghulam Nabi s/o Shakoor,
Muhammad Raza s/o Hajat Ali,
Javaid Hussain s/o Qamber, residents of village Yulbuo
Tehsil Roundu at present District Jail,
Skardu, ----- Petitioner

Versus

The State

Respondent

**OFFENCE U/S 395, 341,506 (II). 395, 324, 397,
402, P.P.C. R/W SECTION 20 OFFENCE
AGAINST ORDINANCE VIDE FIR NO. 4/2009
DATED 24-06-2009 P.S. ISTAK SKARDU.**

**CRIMINAL PETITION FOR EAVE TO APPEAL
AGAINST THE ORDER DATED 13-08-2009
PASSED BY THE LEARNED N.A. CHIEF COURT
IN CR. MISC. NO. 02/2009**

Present: Mr. Munir Ahmed, Advocate for the petitioners
Advocate General for the State.

Date of hearing: 15.09.2009

JUDGMENT:

Syed Jaffar Shah Judge,..... This Criminal
petition for leave to appeal is directed against order dated
13/8/2009 passed by Single Bench of Chief Court in Cr. Misc.

No. 2/2009, whereby application for grant of post arrest bail was rejected.

1. The brief facts leading to the present petition are that the petitioners and their co-accused Shamshad Ali and Shahadat Ali, were arrested by police in a case registered under Section 395/34/506, PPC, R/W Sec. 20 of Hudood Ordinance 1979, vide FIR No. 4/2009 lodged in the police station Astuk Skardu on the complaint of one Syed Muhammad Ali Shah, alleging that on 23/6/2009 at about 11 P.M. he was on his way to Juglote from Skardu as driver of a truck and when he reached near a place known as Malupa Pari some muffled persons blocked the road and robbed Rs. 25,000/- (Rupees Twenty five thousand and Six Mobiles) lying in the truck. The FIR was registered on the following day police arrested the petitioners and their co-accused as suspects and during investigation, it is alleged that the police recovered the robbed money and Mobile phones from their possession.

2. We have heard the learned counsel for the petitioners and Advocate General for the state. The learned counsel appearing on behalf of the petitioners in support of his petition contended that the petitioners are not directly charged in the FIR. That no person identified the petitioners as culprits, nor any identification parade was conducted, that co-accused namely Shamshad and Shahadat have been released by learned Chief Court as such the petitioners are also entitled for grant of bail

as per rule of consistency as a matter of right, that alleged recovery is fabricated and foisted against the petitioners.

On the other hand the learned Advocate General controverted the above contention and vehemently opposed the petition. He contended that petitioners are not entitled for concession of bail as they are involved in a serious and heinous offence. That the looted Property has been recovered from their possession and the prosecution has successfully established a prima facie case against them.

3. Having heard the arguments of learned counsel for parties and gone through the available record and judgment impugned, we find that except alleged recovery of looted amount there is no direct evidence against the petitioners to connect them with the present crime. Admittedly at the time of occurrence the petitioners as well as their other accomplices were muffled and no body could identify them as such question of identification parade does not arise, the FIR was lodged after 23 hours of occurrence, through the distance from the place of occurrence to police station Astuk is stated to be 16 K.M. only. Although the delay in lodging of FIR is not material in the case in hand as no one is nominated, yet it makes the case of prosecution doubtful regarding commission of offence. The prosecution claims to have recovered the looted amount which according to I.O. was distributed among the accused persons in equal shares, this recovery was effected on 4/7/2009 i.e. after two weeks of the occurrence, all the recovery Mashirs are police personnel and no independent witness has been

associated by the prosecution. It is unbelievable as to how the accused involved in a case of dacoity, kept the looted amount in fact for fifteen days, this recovery can hardly be attributed to petitioners especially when the currency notes are not tainted ones. So far as alleged recovery of Mobiles sets ins concerned no description was given in the FIR as such it is difficult to presume that these are the same mobile which were extorted from complainant. Under these circumstances we have come to conclusion that the alleged recovery is not free from doubt. So for as the ground of seriousness or anti social nature of offence is concerned, concession of bail cannot be withheld merely on the plea of seriousness of the offence or its being an Anti Social when an accused is otherwise entitled for grant of bail. The belated and un-credible recovery of looted amount in a non transparent manner, non association of independent witness at the time of recovery, non identification of accused by the complainant has made the case one of further inquiry within the meaning of Section 497 (2) Cr.P.C.

In view of forgoing reasons we have come to the conclusion that it is a fit case for grant of bail. This petition is therefore, accepted. The short order by virtue of which the petitioners were allowed bail reproduced herein under is treated as part of this order.

“For the reasons to be recorded later on this petition is converted into an appeal and allowed. The petitioners are allowed bail subject to their

furnishing bail bounds in the sum of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of trial court”.

Petition converted in to appeal and allowed.

Chief Judge

Judge

Judge