

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

Cr. Misc. No. 26/2009

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

Ashfaq S/o Ghulam Muhammad R/O Amphary Tehsil & District
Gilgit. Petitioner/Accused

Versus

The State

Respondent

OFFENCE UNDER SECTION 302/324/34 PPC AND 6/7 ATA
VIDE FIR NO. 303/2009 OF POLICE STATION CITY GILGIT
AND SECTION 13 A.O.VIDE FIR NO. 17/2009 POLICE
STATION CITY GILGIT.

CRIMINAL PETITION FOR GRANT OF LEAVE TO APPEAL
AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 14-
10-2009, PASSED BY THE DIVISION BENCH OF GILGIT-
BALTISTAN CHIEF COURT GILGIT, IN CRIMINAL MISC. NO
60/2009 WHEREBY THE LEARNED DIVISION BENCH
DISMISSED THE BAIL PETITION.

Present: Mr. Johar Ali, Advocate for petitioner.
Advocate General Gilgit-Baltistan for respondent.

Date of hearing: 22.04.2010.

ORDER

Syed Jaffar Shah, J..... This petition for leave to appeal is directed against order dated 14-10-2009, passed by Division Bench

of Chief Court Gilgit-Baltistan in Cr.Misc. No.60/2009, whereby rejecting the bail application of petitioner in a case registered under section 302/34 read with section 6/7 ATA vide FIR No. 303/2008.

2. The brief facts leading to the present petition are that one Ishtiaq son of Abdul Latif resident of village Naupora Gilgit lodged at complaint with police station City Gilgit alleging therein that on 26-12-2008, his uncle Abdul Wahid, real brother of Muhammad Tayyub, real uncle Abdul Manan one Fazal residents of Chilas, infant Fahad Ali son of Fazal, Mst. Yoon wife of Fazal were proceeding to Gilgit City from Noupura in Govt. Vehicle bearing No. X-68-1978 and they reached at Naikoi Village, accused Sher Ali Shah, Qaim Ali Shah, Sheikh Iqbal, Yaqoob, Dildar, Shafat, Akhtar Hussain etc attached the vehicle with fire arms resulting the death of inmates of vehicle namely Abdul Wahid Director Agriculture Muhammad Tayyub driver of the vehicle, Fazal an employee of Agriculture Department, Fahad Alam son of Fazal and Mst. Yoon Zahra wife of Gazal and Abdul Manan son of Abdul Hamid reportedly received bullet injuries. The complainant also disclosed in the complaint that the PW,s Naeemullah, Muhammad Yasir, Muhammad Rafiq, Muhammad Imran who were also traveling in another vehicle bearing GLT No. 8216 and had crossed the place of occurrence just few minutes prior to occurrence had also seen the above mentioned assailant at the spot.

3. That on receipt of the above information the in charge police station City Gilgit registered FIR bearing No. 303/2008, under

section 324/302/34 PPC read with section 6/7 ATA on the same day at about 10.30 A.M.

4. That during course of investigation the police arrested the petitioner and other accused named in the FIR and after completion of necessary investigation challand them under the above mentioned offences.

5. That the petitioner after his arrest applied for grant of bail before the learned Judge ATC No. 1 Gilgit who vide order dated 25-5-2009, dismissed the same, the petitioner having been dissatisfied with the order of learned Judge ATC filed bail application before Chief Court Gilgit-Baltistan which came to be heard by a Division Bench of learned Chief Court, which also met with the same fate.

6. We have heard the learned counsel for the petitioner and Advocate General for the state at length. The learned counsel for he petitioner contended that the petitioner is not nominated in the FIR, the accused directly charged in the FIR have already been released on bail as such the petitioner is also entitled for grant of bail as per rule of consistency, that the prosecution has not been able to establish a prima facie case against the petitioner and the case falls within the domain of further inquiry. He further added that the so-called recovery of weapon of offence has not been made from immediate possession of the petitioner rather the same has been foisted against him, the learned counsel also pointed out that there is material contradiction in statements of the witnesses recorded either Under 164 Cr.P.C. or 161 Cr.P.C.

7. on the other hand the learned Advocate General vehemently opposed the petition. He while controverting the above submission of the counsel for petitioner submitted that though the petitioner is not directly charged in the FIR yet sufficient material is available against him. He contended that beside recovery of weapon of offence sufficient ocular evidence is also available on record to connect the petitioner with the present crime. According to learned Advocate General witnesses namely Muhammad Naqeeb, Saifullah have directly charged the petitioners in their statements recorded Under Section 164 Cr.P.C. At the fag end of his arguments the learned Advocate General contended that the petitioner is otherwise not entitled for concession of bail having been involved in a heinous crime irrespective of weakness of prosecution case.

8. Having heard the learned counsel for the petitioner and Advocate General for the respondent/state and gone through the available record, we have come to the conclusion that the case of prosecution is of two versions. According to FIR seven person were shown to have attacked the vehicle carrying the deceased and injured to their destination. All these persons have admittedly been enlarged on bail by trial court vide order dated 08-04-2009. According to second version as per statements of DW Muhammad Naqeeb and Safullah recorded on 22/01/2009 under Section 164 Cr.P.C. Accused Iqbal, Yasoob, Dildar, Muhammad alam and present petitioner have been charged for commission of offence but out of them accused Dildar, Yaqoob and Shaikh Iqbal have been released on bail, from tentative assessment of material collected by

the prosecution the case of petitioner is not distinguishable from that of co-accused Dildar, Shakikh Iqbal and Yaqoob, the prosecution witnesses in their statement u/s164 had ascribed an identical role to all the accused but the trial court enlarged the others except present petitioner so far as contention of learned Advocate General regarding recovery of weapon of offence on the pointation of petitioner is concerned, recovery of weapon of offence was also made from the co-accused Shakikh Iqbal beside recovery, the said co-accused was also directly charged in the FIR.

9. The prosecution has also recorded the statement of injured Abdul Manan who is natural witness of the occurrence but the said witness dose not identifies any person while opening the fire. Moreover the said injured witness in his statements s/s 161 Cr. P.C claims that he is in a position to identify the assailants if they are produced before him but sadly the prosecution has not bothered to hold an identification parade to bring the real truth on record. From assessment of record we observe that the case in hand has not been conducted in fair, impartial and transparent manner.

10. So far as gravity of offence is concerned, a person who is otherwise entitled for grant of bail cannot be deprived of the same merely on the ground of offence being serous and heinous one.

In the light of above discussion the case against present petitioner calls for further inquiry as contemplated in section 497(2) Cr.P.C. We therefore, convert this petition into appeal and allow.

Our short order dated 22-04-2010, which is reproduced as under is treated as part of this order:-

“For the detail reasons to be recorded later, this petition is converted into an appeal and is accepted. The appellant is allowed bail subject to his furnishing bail bond in the sum of Rs. 2 lacs with two local sureties each in the like amount to the satisfaction of the trial court”.

However our above observation are tentative in nature and the trial court shall proceed with the case uninfluenced by the above observation.

Petition converted into appeal and allowed.

CHIEF JUDGE

JUDGE