

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

Cr. Mise. No. 18/2010

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

Quaid-e-Azam & Others

Petitioner

Versus

The State

Respondent

PETITION FOR LEAVE TO APPEAL AGAINST THE
ORDER/JUDGMENT DATED 04-11-2010 OF
LEARNED CHIEF COURT GILGIT-BALTISTAN
WHEREBY THE LEARNED CHIEF COURT HAS
DISMISSED THE BAIL PETITION OF THE
PETITIONER/APPELLANTS:

Present: Mr. Amjad Hussain, Advocate for the petitioners
Haji Jamal Khan, A.O.R.

Date of hearing: 28.03.2011.

ORDER

SYED Jaffar Shah, -----J. This petition for leave to appeal is directed against the order dated 04-11-2010 passed by learned Chief Judge Chief Court Gilgit-Baltistan in Criminal Misc. No. 61/2010 whereby the learned Chief Judge has dismissed the application of the petitioners for grant of bail in a case registered Under Section 302,324,161/34 PPC read with section 13 Arms Ordinance vide FIR No. 32/2009 and 33/2009 registered with Police Station Thore District Dimer.

2. The petition in hand was initially filed by six petitioners namely 1. Qaid-e-Azam, 2. Azam, 3. Mustaqem

S/O Shahli Zar, 4. Hadis, 5. Abdul Mutalib S/O Ali Zar, 6. Idress S/O Hamis, on 06-12-2010 the petition to the extent of petitioner's No. to 6 namely Hadis, Abdul Mutlib, and Idress was dismissed by this court having not pressed by learned counsel for petitioners as such by this order we would dispose of the petition to the extent of remaining three petitioners namely Qaid-e-Azam, Azam and Mustaqeem.

3. The brief facts leading to the present petition are that on 17-12-2009 one Dilbar Khan the complainant, lodged a complaint with police station Thore, District Dimar alleging therein that on the fateful day of occurrence i.e. 17-12-2009, the dead body of one Sadder S/O Shah Mir who was died due to road accident in Rawalpindi was brought from Rawalpindi to his native village for burial purpose. It is alleged in the FIR that the said the said deceased Sadder had remained absconder for a long time after committing the murder of one of relatives of petitioners namely Doshan S/O Ali Zad and according to the custom of the area the dead body of said sadder was taken to the house of Doshan for forgiveness but on lalkara of the petitioners their other companions instead of granting forgiveness to the complainant party resorted indiscriminate firing upon the gathering, resultantly one Muhammad Ashraf received bullet injuries and died.

4. That the police on receipt of information registered a case Under Section 302/324/34 read with section 114 PPC against the petitioners and other co-accused and arrested them. The weapons on offence from co-accused were also stated to have been recovered for which separate FIR under relevant provisions of Arms Ordinance has been registered.

5. That the petitioners filed bail application before the court of District and Sessions Judge Diamer which was dismissed vide order dated 12-06-2010 and after having been unsuccessful in their attempt to secure bail from the court of Sessions Judge, moved bail application before Chief Court Gilgit-Baltistan which met the same fate.

6. We have heard the learned counsel for the petitioners and Advocate General, Gilgit-Baltistan for the state, the learned counsel for the petitioners submitted that there is no direct allegation against the petitioners for commission of offence, that the petitioners have been roped in the crime due to malafide intention and enmity with the complainant party, that no specific role has been attributed to them except role of lalkara as such they are entitled for grant of bail. On the other hand the learned Advocate General while opposing the above submissions of learned counsel for the petitioners contended that the present petitioners have been nominated in the promptly lodge FIR and there is sufficient material available against them to connect with the present crime. Moreover their case falls within the prohibitory clause of Section 497(2) Cr.P.C.

7. Having heard the learned counsel for the parties, gone through the available record with their able assistance, we have come to the conclusion that though the names of present petitioners are figured in the FIR but no pivotal role except the role of lalkara has been assigned to them, the presence of the petitioners has been show at the place of occurrence but there is no allegation of petitioners being armed

at the of occurrence as such question of recovery or non recovery of fir arm from their possession is immaterial. So far as mentioning of their names in the FIR with a role of lalkara is concerned it may be a reason to engage maximum number of persons from opposite party in the litigation as long standing enmity between the parties is admitted.

Be that as it may, for what has what has been discussed above the case against the petitioners calls for further inquiry into their guilt within the purview of Section 497 (2) Cr. P.C. this petition is therefore converted into appeal and allowed, however our above observations are tentative in nature and the trial court shall proceed with the case without being influenced by this order. Our short order dated 28-03-2011 by virtue of which the appellants were allowed bail is reproduced herein under is treated as part of this order.

“For the reasons to be recorded separately this Petition is converted in to appeal and allowed. The appellants shall be released on bail subject to their furnishing bail bonds in the sum of Rs. Two lacs with one surety each in the like amount to the satisfaction of trial court”.

Petition converted into appeal and allowed.

Chief Judge

Judge

Judge