

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

Cr. Misc. No. 16/2010

Present:- Mr. Justice Syed Jaffar Shah. J
Mr. Justice Muhammad Yaqoob, J

Zarmast Khan s/o Jehangir R/O Chamugarah, Tehsil & District
Gilgit. Petitioner

Versus

Samair Kahan

Respondent

CHARGE UNDER SECTION 302/34/147/148/33-A PPC AND
13 A.O.

PETITION FOR LEAVE TO APPEAL AGAINST THE
ORDER/JUDGMENT DATED 10-11-2010, WHEREBY BAIL
PETITION OF THE PETITIONER HAS BEEN DECLINED
WITHOUT ANY COGENT REASONS AND LEGAL
JUSTIFICATION.

Malik Haq Nawz advocate or petitioner
Haji Jamal Khan Advocate on record
Advocate General Gilgit-Baltistan.

Date of hearing : 09.12.2010.

ORDER

Syed Jaffar Shah:.....J. This petition for leave to appeal is directed against the order dated 10-11-2010 passed by Single Bench of Chief Court Gilgit-Baltistan in Criminal Miscellaneous No. 75/2010, whereby the bail application of the petitioner was dismissed.

2. The brief facts leading to the present petition is that one Jhangir Khan son of Abdullah lodged a complaint with Police Station Air Port Gilgit alleging therein that on the fateful day of occurrence i.e. 02-08-2010 he was on his duty on transformer

installed near graveyard of village Chamoghard Gilgit, in the mean time the present petitioner and his other companion namely Rais Khan, Jhangir Khan, Marajuddin, Sajjad and Abdul waheed attacked one Abdul Khaliq/SO Habibullah with stones, resultantly he received injuries on his body however due to intervention of a number of villagers they left the scene of occurrence leaving the victim in an injured condition and went towards their houses and after a while they again appeared along-with fire arms. It is alleged in the FIR that the father of petitioner namely Jahngir Khan made a lalkara to kill the injured Abdul Khalique whereupon, the petitioner opened fire which hit the real son of complainant namely Nazarul Haq S/O Hole Khan who died at the spot. According to FIR lodger the occurrence was seen by some independent witnesses namely Sher Muhammad, Yousuf, Jhangir and others.

3. After receiving the complaint the Local Police registered FIR bearing No. 75/2010, Under Section 302/34,337-A,147,148 PPC and arrested the present petitioner and other co-accused.

4. That the petitioner and other co-accused applied for their bail in the court of Additional Sessions Judge Gilgit, the learned Additional Sessions Judge granted bail to other accused but dismissed the bail application to the extent of petitioner. The petitioner again filed an application for bail in the Chief Court Gilgit-Baltistan which also met with the same fate.

5. We have heard the learned counsel for petitioner as well as the Advocate General for state. The learned counsel for petitioner

assisted by Haji Jamal, advocate on record mainly contended that since other accused with similar have been released on bail by Trial Court, the petitioner is also entitled for grant of bail as per rule of consistency. He also argued that the case is of further inquiry and falls within mischief of Section 497 (2) Cr. P.C.

6. On the other hand the learned Advocate General while opposing the above submission of learned counsel for petitioner contended that the role attributed to the present petitioner is distinguishable from that of other accused, beside recovery of offence from his possession. He further added that according to statement of impartial witnesses recorded Under Section 161 Cr.P.C. a prima facie case is made out against the petitioner.

7. Having heard the learned counsel for the parties and perused the available record including the order of Chief Court we have come to the conclusion that the arguments of the learned counsel for petitioner have no force. The role attributed to the present petitioner is distinguishable from that of other accused. To establish the rule of consistency it is necessary that role of all the accused roped in a criminal case is same, identical and not distinguishable from each other and bail cannot be granted as a matter of course in a simple sentence that rule of consistency is applicable and this rule cannot be applied in each and every case. From tentative assessment of available record it transpires that the fatal fire shot has been attributed to the present petitioner, the recovery of weapon of offence has been secured from his possession

and he is directly charged in the FIR as well as in statements recorded U/S 161 Cr.P.C.

In view of what has been discussed above we do not find any merit in this petition which is dismissed and leave refused. Petition dismissed.

JUDGE

JUDGE