

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Cr. Appeal No. 23/2016
In
Cr. PLA No. 26/2016.**

1. National Accountability Bureau through its Chairman Atta Turk Avenue Sector G-5/2, Islamabad. **Petitioner.**

Versus

1. Muhammad Nasir son of Bobulo r/o Jamat Khana Bazar Mohallah Rahim Colony Gilgit. **Respondent.**

PRESENT:-

1. The Additional Prosecution General NAB Islamabad for the petitioner.
2. Mr. Asadullah Khan Advocate on behalf of the respondent.

DATE OF HEARING: - 08.11.2016.

Date of detail judgment:- 06.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition for cancellation of post arrest bail has been directed against the impugned judgment dated 28.06.2016 in Writ Petition No. 34/2016 passed by the learned Gilgit-Baltistan Chief Court whereby the learned Chief Court accepted the Writ Petition filed by the respondent by granting him post arrest bail against the surety of Rs. 20,00,000/- only with two sureties to the satisfaction of the learned Accountability Court Gilgit. The petitioner being aggrieved by and dissatisfied with filed this petition for leave to appeal. This court vide order dated 24.06.2016 issued notices to the respondents and the case was heard on 08.11.2016 wherein the

petition was converted into an appeal and the same was allowed vide our short order dated 08.11.2016. Consequently, the bail granted to the respondent was cancelled.

2. Briefly facts of the case annexed with the warrant of arrest are that initially it was reported by the print media of Gilgit-Baltistan that in 2011-2012 the officers of Education Department Gilgit-Baltistan were taking Rupees 3/4 lac from the candidates for their appointments without conducting test/interview. Whereas short listed candidates who could not pay the bribe, have been dropped by the authorities of Education Department on the pretext of non-availability of posts. At that time the respondent was performing duties as Director in Education Department. The record reveals that the respondent has appointed 296 persons as staff in excess to the sanctioned posts. The respondent also appointed 411 persons, illegally without test /interview including appointments against the abolished posts, upgraded, under age, over age and also un-qualified ineligible individuals and by such illegal appointments the respondent accumulated 26.5 millions and a sum of 17.596 millions was deposited in the Bank through cash. The respondent also purchased properties in the name of different people as benamadars.

3. The National Accountability Bureau at Rawalpindi initiated inquiry against the respondent on 07.11.2012. later on the said inquiry was converted into an investigation on 09.01.2014. It revealed that the accused persons in connivance with each others,

by misusing of their official authorities received bribe, illegal gratification and extended undue favour to others by committing following gross irregularities and illegalities in the appointments which are as under:-

- (i) Appointed of over aged/under aged and unqualified people.
- (ii) Made appointments without advertisement of posts, test/interview and DRC/DPC.
- (iii) Appointed and accommodated about 1214 plus individuals in excess of sanctioned posts.
- (iv) The post of MT (BPS-09) was abolished for new appointments with effect from 01.07.2011, even then illegally new appointments on the said posts were made.
- (v) The post of OT, PET and DM (BPS-14) was abolished for new appointments with effect from 01.07.2011 even than illegally new appointments on the said posts were made.
- (vi) There was ban on all new recruitments by the Federal Government during the financial year 2011-2012 and 2013-2014, even than large number of employees were appointed in the subject department.
- (vii) Appointed employees above the power of their competencies.
- (viii) Low scale employees, without due procedure adjusted and appointed at higher scales.
- (ix) In violation of recruitment policy, appointed female candidates against the male posts and male candidates appointed/adjusted in Girls Schools against female posts.
- (x) Most of the illegal persons have been appointed on the pretext of their contingent/contract services, whereas there is no rule or policy to appoint someone on the basis of his/her contract/contingent services.

4. The learned Prosecutor General appearing on behalf of the petitioner submits that the respondent accumulated huge

amount through illegal means while caused huge loss to the Government exchequer. He also submits that the respondent in connivance with other accuse persons willfully, knowingly and with criminal intent by misusing his authority extended undue and illegal favours/benefit to himself and the appointees in the shape of illegal appointments and failed to exercise his authority to prevent the loss caused to national exchequer. The respondent in connivance with the other accused, misusing his authority has admittedly appointed 440 employees illegally i.e. without test & interview and, without approval appointed at higher posts in excess of sanctioned strength, against upgraded/abolished post, under aged/over aged and un-qualified individuals without his competency. He also appointed candidates on the pretext of their contingent/contract services in violation of recruitment policy. He appointed female candidate against male post and male candidate appointed/adjusted on female post and low scale employees without following due procedure adjusted and appointed on higher scale. The respondent in connivance with other accused, illegally used to collect bribe amount of Rs. 3/4 Lacs per post against the appointment, which is also evident from the perusal of his personal bank account record. Record shows that an amount of Rs. 17.596 Million was deposited in his personal bank account. He also accumulated/acquired properties amounting to Rs. 26.5 Million. The respondent in order to conceal his illegal assets intentionally did not purchase these properties in his personal name rather he

purchased in the name of different Benamidars. He also submits that his bank accounts itself speak about his involvement in the crime and the said amount was deposited during his tenure as Director, Education Department, Gilgit-Baltistan. He further submits that there are sufficient materials on record which connect the respondent with the commission of offence. He submits that the learned Gilgit-Baltistan Chief Court fell in error while granting post arrest bail to the respondent vide impugned judgment dated 28.06.2016, inspite of the fact that sufficient material was available on record against him and the interim reference was already filed against him & other 27.05.2016 in the competent court of law.

5. On the other hand, the learned counsel for the respondent contends that the alleged allegations against the respondent are false and result of malafides. He also contends that the National Accountability Bureau authorities have failed to bring on record. No statement of any effectee out of the hundreds of the alleged illegal appointees has been recorded to connect the respondent with the commission of the alleged offence. He further contends that the National Accountability Bureau authorities have also failed to arrest the actual culprits and the respondent has been made a escape goat. He maintains that all the records are in the possession of the petitioner and there is no apprehension that the respondent can temper with the prosecution evidence in any manner. He argues that the respondent was compulsory retired from the Government Service under the Disciplinary Rules 2011 on

account of the above narrated charges. Against which the respondent has filed Service appeal before the learned Service Tribunal Gilgit-Baltistan which is subjudice before the Gilgit-Baltistan Service Tribunal. He contends that it is a settled principle of law that one cannot be vexed twice and this golden principle of law has been violated by the petitioner. He contends that the respondent was arrested on 04.02.2016 who has been kept in custody for 42 days by the petitioner with the purpose of the investigation and now the said investigation has been completed and further detention of the respondent was not justifiable. He contends that the respondent has to prepare his defence against the said charges leveled by the petitioner, hence, the post arrest bail granted to the respondent by the learned Gilgit-Baltistan Chief Court is sustainable which may graciously be maintained.

6. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned Judgment dated 28.06.2016 passed by the learned Gilgit-Baltistan Chief Court.

7. It is not disputed that the High Court or Chief Court in exercise of its jurisdiction under article 199 of The Constitution of Islamic Republic of Pakistan, 1973 or under the provisions of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 empowered to grant a bail to a person under The National Accountability Bureau Ordinance, 1999 as all the grounds which are relevant for grant of bail under the ordinary law can generally

be considered in constitutional jurisdiction. The provision of section 497 Cr.P.C. are not punitive in nature as there is no concept of punishment before judgment. The question of grant/refusal of bail is to be determined judiciously leaving regard to the facts and circumstances of each case. Where the prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime falling in prohibitory clause of section 497 Cr.P.C. the Court must refuse bail. On the other hand where the accused satisfies the Court that there are no reasonable grounds to believe that he is guilty of such offence, then the Court must release him on bail. For arriving at the conclusion as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, the Court will not conduct a preliminary trial/inquiry but will only make a tentative assessment, i.e., will look at the material collected by the police for and against the accused and prima facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So, the Court will not minutely examine the merits of the case or plea of defence at bail stage.

8. We are in agreement with the learned counsel for the petitioner that prima facie, the National Accountability Bureau authorities have made out a case of corruption and corrupt

practices against the respondents which has to be decided by the learned Competent Court of jurisdiction in its own merits as per law and at this stage, the grant of post arrest bail to the respondents is not tenable.

9. In view of the above discussions, we converted this petition into an appeal and the same was allowed by our short order dated 08.11.2016 consequent thereto the impugned judgment dated 28.06.2016 in Writ Petition No. 34/2016 passed by the learned Gilgit-Baltistan Chief Court was set aside. The bail granted to the respondent namely Muhammad Nasir son of Bobulo Ex. Director Education Department Gilgit-Baltistan was cancelled. These were the reasons for the said short order.

10. The learned National Accountability Bureau Court Gilgit is also directed to hear and conclude the case on its own merits expeditiously within a period of six (06) months without influencing by any of observation(s) either made by this court or by the learned Chief Court.

11. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?