

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
Cr. Misc. No. 01/2010

Before: **Mr. Justice Syed Jaffar Shah,**
Mr. Justice Muhammad Yaqoob,

Hafiz-ur-Rahman S/O Ibadat Khan,
R/O Dashkim Tehsil & District,
Astore..... Petitioner/Accused

Versus

The State Respondent

**OFFENCE U/S 302/34, 109 PPC AND SECTION
13-A.O. FIR NO.09/2009 P.S. ASTORE.**

**PETITION FOR LEAVE TO APPEAL AGAINST THE ORDER/
JUDGMENT OF CHIEF COURT DATED 31-12-2009, WHEREBY
THE BAIL PETITION OF THE APPELLANT/PETITIONER HAS
BEEN DECLINED WITHOUT ANY COGENT REASON AND
AGAINST THE MANDATE OF LAW.**

**VERY GRACIOUSLY CONVERTING THIS PETITION INTO
APPEAL AND ALLOWING THE SAME TO MEET THE ENDS
OF JUSTICE.**

Present: Malik Haq Nawaz, Advocate for petitioner.
Advocate General Gilgit-Baltistan for the State.

Date of hearing: 22-3-2010.

ORDER.

Syed Jaffar ShahJ. This petition is directed against order dated 31-12-2009 passed by Single Judge of Chief Court Gilgit-Baltistan in Criminal Misc. NO. 151/2009, whereby rejecting the bail application of the petitioner in a case registered U/S 302/34/109 PPC with Police Station Astore vide FIR NO. 09/2009.

1. The brief facts leading to the present petitioners are that one Muhammed Zareel R/O District Astore lodged an FIR with police station Astore alleging therein that on receiving information about murder of his real uncle Muhammad Kabil, he rushed to place of occurrence where he found that some other people had also gathered thereon. On his inquiry he was informed that his uncle deceased Muhammad Kabil who was working as road cooli had proceeded to place of his duty along with Sohail Ahmed S/O Muhammad Ayoub, Sohail S/O Akbar Ali and Mir Ghazi R/O Mouza Dashkin Astore when the deceased and his companions reached the place of occurrence at about 8 A.M some unknown assailant/assailants hit the deceased at the back side of his head with fire Arms, resultantly he died at the spot. The motive alleged by compliant in the FIR is that about 8 months prior to the occurrence, sister of co-accused Zahid Hussain had eloped with one Tahir and later on entered into marriage the complainant suspected that the deceased had facilitated this elopement.

2. The police on receiving written complaint, registered a case on 24-03-2009 U/S 302/34 vide FIR No. 09/2009 and after conducting necessary investigation challaned the accused/petitioner along with other co-accused under section 302/34 PPC and on alleged recovery of weapon of offence another FIR under section 13-A.O was also registered.

3. The petitioner and co-accused moved their bail application before Additional District & Sessions Judge Astore, who vide order dated 16-12-2009 allowed bail petition of one of co-accused namely Umar Rahman and dismissed bail application qua present petitioner and Zahid Hussain. The petitioner and co-accused Zahid Hussain having been declined their bail application, filed application for bail before the learned Chief Court Gilgit Baltistan which came to be heard by Raja Jalal-ud-Din, Chief Judge Chief Court Gilgit Baltistan who vide impugned order rejected the same to the extent of present petitioner and granted bail infavour of co-accused namely Zahid Hussain.

4. The learned counsel for petitioner contended that the petitioner is innocent and case against petitioner is based absolutely on false and baseless allegations, that there is no tangible evidence against the petitioner and both the co-accused have been enlarged on bail as such the present petitioner is also entitled for grant of bail as per rule of consistency. He further submitted that the alleged recovery of weapon of offence is of no value as the same has been recovered on joint pointation of present petitioner and his co-accused who has already been enlarged on bail.

5. The learned Advocate General on the other hand while Strenuously opposing the petition stressed that the petitioner is

directly charged in the promptly lodged FIR, that the weapon of offence has been recovered on his pointation and the prosecution has successfully established a *prima facie* case against the petitioner as such he is not entitled for concession of bail.

6. We have carefully attended to the arguments of learned counsel for both sides at length and have perused the available material with due care and caution and have also gone through the impugned judgment, from perusal of the record it transpires that no doubt the offence has been committed in brought day light, name of the petitioner is also mentioned in the FIR lodged by Muhammad Zareel as a suspect, recovery of weapon of offence is also allegedly made on the pointation of petitioner but from tentative assessment of the material available on record there is no direct evidence to connect the petitioner with the present crime, three accused namely Zahid Hussain S/O Muhammad Zaman, Hafiz-ur-Rahman S/O Ibadat Khan, the present petitioner and Imranul Haque S/O Muhammad Ayoub have been nominated in the FIR as suspects and the star witness of the occurrence namely Sohail Ahmed S/O Muhammad Ayoub, the brother in law of deceased who was also mentioned as a witness of the occurrence by FIR lodger states in his statement Under Section 161 Cr.P.C. to have seen one Imranul Haque holding a Pistol in his hand, the said Umarul Haque has already been released on bail by learned additional Sessions Judge Astore, vide order dated 16-12-2009. The said witness was also produced as PW 2 before the trial court on

16-12-2009 where he categorically denied to have seen any person firing at the deceased.

7. It is the case of prosecution that when the PW Sohail soon after the firing at the deceased saw one Imran-ul-Haque S/O Muhammad Ayoub holding a pistol in his hand at the place of occurrence but the prosecution has neither recovered any pistol from him nor he has been figured in challan, rather the recovery of the pistol has been shown to have been effected on the pointation of petitioner and other co-accused Umarul Rehman S/O Amirullah. It is also stated that there is no fire arms export report with the prosecution to ascertain whether the fire has been made by the pistol recovered from petitioner or not.

8. Whatever discussed above the case against the petitioner calls for further inquiry into his 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 purely tentative in nature and the trial court shall proceed with the case un-influenced by this order.

Our shot order by virtue of which the petitioner was allowed bail reproduced herein under is treated as part of this order.

“For the reasons to be recorded separately, this petition is converted into appeal and allowed. The appellant is directed to be released on bail subject to furnishing of bail bonds in the sum of Rs. One Lac only (100,000) with two sureties each in the like amount to the satisfaction of trial court”.

Petition converted into appeal and allowed.

JUDGE

JUDGE