

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
Cr. Misc. No. 21/2009**

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

State Petitioner

Versus

Shah Hussain s/o Shah Muhammad
r/o Barkulti Yasin District Ghizer..... Accused/Respondent

**PETITION FOR LEAVE TO APPEAL FROM
THE ORDER DATED 17-08-2009 PASSED BY
THE N.A CHIEF COURT IN CRIMINAL MISC.
NO. 78/09.**

**CHARGE UNDER SECTION 447,148, 427,354,336,
AND 337-A,PPC VIDE FIR NO. 09/2009 POLICE
STATION YASIN.**

Present:- Advocate General for the state.
Malik Shafqat Wali, Senior Advocate,
Assisted by Haji Jamal Khan, advocate
for respondent.

Date of hearing 06-04-2010.

O R D E R.

Mr. Justice Syed Jaffar Shah,.....J. This
petition for leave to appeal is directed against the order dated 17-
08-2009 passed by the Single Bench of Chief Court Gilgit-Baltistan in
Criminal Misc. No. 78/2009, whereby granting bail

infavour of respondent in a case registered Under Section 447,147, 427,354,336, 337-A PPC, with Police Station Yasin vide FIR bearing No. 9/2009 dated 8/5/2009.

2. The brief facts leading to the present petition are that the respondent and his other co-accused allegedly attacked one Gullo his daughter Mst. Naseema and some others with stones etc. It is also narrated in the FIR that the respondent and his party also filed a similar application in the same police station for making an attack on them by the present complainant party. The police after holding an inquiry Under Section 156 Cr.P.C. registered the above FIR against the respondent and others.

3. The police after registration of the case prepared the challan against present respondent, co-accused Muhammad Jan, Sanaullah, Abdul Murad and Hamzah Khan, for the above mentioned offences, while one accused namely Akbar Hussain was stated to be released under section 169 CR.P.C.

4. The respondent and other co-accused filed their bail application before the Additional Sessions Judge Ghizer who refused bail to the respondent while granted bail to rest of the accused vide order dated 28-05-2009. The present respondent having been aggrieved with the order passed by Additional Sessions Judge Ghizer, filed bail

application in the Chief Court Gilgit-Baltistan which came to be heard by Mr. Sahib Khan, the learned Judge Chief Court Gilgit-Baltistan who, vide impugned order granted bail to the respondent holding that the case being one of further inquiry within the meaning of 497 (2) Cr.P.C, the respondent is entitled for grant of bail.

5. The above order has been challenged by the state through learned Advocate General with prayer for re-calling /cancellation of bail granted to the present respondent.

6. We have heard the learned counsel for the parties, the learned Advocate General seeks cancellation of bail on the ground that a prima facie case existed against the respondent, he was specifically named in the FIR with a specific motive for causing injuries to Mst. Naseema and gullo but the learned Chief Court in disregard of principles for grant and refusal of the bail has enlarged the respondent on bail. He contended that the act of the respondent was brutal in nature, he even did not spare a teenage girl who had come to rescue her father, sustained severe head injuries, remained in hospital for a period of six months and lost her senses and jumped into the river. He said the other victim of the occurrence “gullo” had also received grievous injurious as per Medical report. The learned Advocate General lastly contended that a specific and overt act had been attributed to the respondent in the statements recorded Under Section

161Cr.P.C. beside recovery of crime article on his pointation.

7. on the other hand the learned counsel for the respondent while vehemently supporting the impugned order went on saying that the case against the respondent was one of further inquiry within the meaning of 497 (2) Cr.P.C. The offence did not fall within the prohibitory clause of Section 497 Cr.P.C. the parties had filed cross complaints against each other and it was yet to be determined as to who was aggressor, other co-accused had either been let off Under Section 169 Cr.P.C. or released on bail as such cancellation of bail at this stage would be violative of law. At the end of the arguments the learned counsel for respondent submitted that the prosecution has failed to submit challan of the case as provided Under Section 173 Cr.P.C as such the respondent otherwise was entitled for grant of bail and the learned Chief Court has rightly granted bail to the respondents.

8. Having heard the learned counsel for the parties and gone through available record and impugned order, we have come to the conclusion that four witnesses namely Shah Khan, Zohra, Zahid Gull and Abdul Khan, beside two injured persons categorically charge the respondent for causing injuries to Gullo and Mst. Naseema, their statements are supported by Medical evidence and recovery of crime articles on the pointation of the respondent. Moreover the respondent

has acted in a brutal and ruthless manner, one of the victim namely

Mst. Naseema a teenage girl who was shifted to PIMS Islamabad in a critical condition, she remained hospitalized for period of six months and underwent series of operations even than could not be recovered, resultantly she lost her sense and jumped into river. According to Medical report her skull was fractured due to severe head injury. The offence committed by the respondent prima facie fall within the mischief of Section 336 and 337 (v) which provide maximum sentence of 10 and 14 years R.I. respectively which fall within the prohibitory clause of Section 497 Cr.P.C. The learned Judge Chief Court has wrongly held that the respondent was entitled for grant of bail on the ground of further inquiry as under the circumstance, the case of respondent was not a case of further inquiry as contemplated Under Section 497(2) Cr.P.C. and as discussed above.

9. So far as non submission of challan is concerned the learned Advocate General submitted that due to non availability of Medical report the challan could not be submitted in the Trial Court. We have found that the copy of challan is placed in the file, however we direct the I.O. of the case to submit the same within seven (7) days of this order if not submitted earlier.

For what has been discussed above, this petition is converted into appeal and allowed, the impugned order is set aside and concession of bail granted to the respondent by Chief Court vide order

dated 17-08-2009 is re-called. However our above observations are

tentative in nature and the Trial Court shall proceed with the case uninfluenced by this order and shall dispose off the same within six months. The respondent will be at liberty to move fresh bail application in case the trial is not completed within the above period.

JUDGE

JUDGE