

JUDGMENT SHEET**IN THE SUPREME APPELLATE COURT GILGIT BALTISTAN.****Before:**

1. Mr. Justice Syed Arshad Hussain Shah CJ
2. Mr. Justice Wazir Shakeel Ahmed, Judge

Cr. PLA No: -03/2020,04/2020

Faizan Rehmat son of Kamran Mughal, resident of abbotabad, Tehsil & District Abbotabad, presently in judicial Lock- up District Jail Chillas, District Diamer.

Petitioner/ Accused**VERSUS****The State****Respondent**

CRIMINAL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 75 OF THE GOVERNMENT OF GILGIT-BALTISTAN ORDER 2018, AGAINST THE IMPUGNED JUDGEMENT/ORDER DATED 13.04.2020 PASSED BY CHIEF COURT GILGIT BALTISTAN, GILGIT, IN CRIMINAL MISC NO 49/2020, WHEREBY THE HON'BLE CHIEF COURT GILGIT BALTISTAN GILGIT DISMISSED THE CRIMINAL MISC PETITION DISCUSSED ABOVE WITHOUT ANY COGENT REASONS.

FOR SETTING ASIDE THE IMPUGNED JUDGMENT/ORDER DATED 13.04.2020 AND FOR THE PETITIONER/ACCUSED MAY GRACIOUSLY BE ALLOWED TO FURNISH LOCAL SURETIES/PERSONAL BONDS INSTEAD OF BANK GUARANTEE TO MEET THE ENDS OF JUSTICE LAW AND EQUITY.

Present: - Mr. Muzafar-u-din Advocate for the petitioner/Accused.

Deputy Prosecutor General for respondent/State.

ORDER

Wazir Shakeel Ahmed, J----- Through this single judgment, we intend to dispose of the above titled Cr. PLA No 03/2020 along with connected Cr. PLA No. 04/2020, as both the cases pertains to transaction of commodities i.e pine nut (Chalghoza) between the parties inter-se.

2. Brief facts of the matter in hand are summarized as under:

One Muhammad Qasim S/o Jamshed Khan filed an application under section 22-A Cr.PC before the court of District and Sessions Judge at Chillas for lodging an FIR against some persons along with the present petitioner in connection with issuance of some cheques which were bounced back due to insufficient balance on the account of business transaction of the above said commodity. The District and Sessions Judge, while disposing the petition directed to lodge FIR against the persons nominated in the fake application under section 489-F, 420 and 34 PPC, against the present petitioner and others which culminated into lodging of FIR No. 91/2018 dated 24.09.2018.

3. Later on, one Imam Hadi submitted an application at PS city Chillas for lodging of an FIR against the petitioner named above for issuance of a cheque amounting to Rs. 1,00,00000 (one crore), and the case was got registered under FIR No. 11/2019, against the present petitioner under section 489-F, 420 and 506 PPC and the Petitioner was arrested on 19.03.2019.

4. On 08.04.2019, the petitioners got filed two bail petitions bearing No. 61/2019 and 62/2019, before the court of learned Judicial Magistrate Chillas. After hearing the parties the learned Judicial Magistrate allowed the bail petitions subject to furnishing of a Bank guarantee by the petitioner to the tune of Rs.10,00,00000/- (Ten Crore) and Rs. 1,00,00000/- (One Crore) in cases 91/2018 and 11/2019 respectively.

5. Being aggrieved and dissatisfied with the order of learned Judicial Magistrate, the petitioner filed miscellaneous petitions before the learned Addl. District and Sessions Judge, Chillas, who vide order dated 03.09.2019, dismissed both the petitions bearing No. 01/2019, by maintaining order of the Judicial

Magistrate. The above order of the Addl. District and Sessions Judge, Chillas, were challenged before the learned Chief Court, Gilgit-Baltistan at Gilgit , through Criminal Miscellaneous petition No. 47/2020 and 48/2020, filed under section 561 Cr.PC to the utmost dissatisfaction of the petitioner. Learned Chief Court also dismissed the two petitions through a single order dated 13.04.2020. Hence the present Cr.PLAs.

6. We have heard learned counsel for the petitioner as well as learned Deputy Prosecutor General, at length and also gone through the record of the case with their able assistance and while doing so, we have painfully observed that while passing the bail order the learned trial court miserably failed to apply its judicious mind to the facts and the law involved in the case and wrongly, rather illegally disposed of the bail petitions on the ground of consensus of the parties qua the petitioner and the complainant/respondents, who have shown to have willfully arrived in consensus that the trial court may dispose of the bail petition as the complainant has shown his consent that he has no objection in passing of the bail order, provided that, the petitioner furnishes Bank guarantee of Rs.10,00,00000/- (Ten Crore) and Rs. 1,00,00000/- (One Crore) in cases 91/2018 and 11/2019 respectively.

7. The record of the case transpires that the trial court has allowed the bail petition on the basis of whims of the complainant and have allegedly shown their non-objection if the bail petition is allowed subject to above laid down condition.

8. The record of the case is altogether silent regarding willingness of the petitioner to furnish bank guarantee as mentioned above and how on earth a party can undertake to furnish a bank guarantee to Rs. 10,0000000/- (Ten Crore), in a

case wherein, there is no single iota of any occasion of issuance of any cheque by the petitioner in that case i.e FIR No. 91/2018. It is further regrettably found that both the learned District Court as well as Chief Court misconceived the facts of the case by wrongly ascertaining that the bail petitions were allegedly disposed of on the basis of consent of parties.

9. Both the courts below should have at least gone through the facts entailing initiation of the case under FIR No. 91/2018 against the petitioner which has shown to be registered by the order of the learned Sessions Judge, Diamer, by one Qasim S/o Jamshed Khan, wherein the said Muhammad Qasim complainant had alleged business transactions of the complainant party that Waqas Ali, Salman Butt, Muhammad Bilal and the present petitioner Faizan Rehmat pertaining to business of *Chalghoza*.

10. In the said application under section 22-A Cr.PC, there is an allegation of issuance of series of cheques issued by one Waqas Ali in favor of AlamIqbal, Niaz Muhammad, Muhammad Qasim and Haq Nawaz amounting to Rs. 4,50,00000/- (Four Crore Fifty Lacs), Rs. 3,13,00,000/- (Three Crore and Thirteen Lacs), Rs. 96,00000/- (Ninety six thousand) and Rs. 40,00000/- (Forty Lacs), which nearly goes up to Rs. 10,0000000/- (Ten Crores). Nowhere in the said application, there is any mention of the present petitioner showing to have issued any single cheque to any person regarding the said transaction. So, in this way the petitioner was illegally robbed in the case under FIR bearing No. 91/2018, and he was wrongly rather illegally directed to furnish bank guarantee of Rs. 10,0000000/- (Ten Crores)

11. We in the light of the contents of the present petition, filed under section 561-A Cr.PC, and also on the basis of the

submissions of the learned counsel for the petitioner confined ourselves in allowing the relief sought in the said two petitions in hand i.e 03/2020 and 04/2020. Further, the petitioner is at liberty to seek redressal from the court of competent jurisdiction in light of facts of the case, as observed above.

12. Before parting with this judgment, we intend to discuss the relevant section 499 Cr.PC, which is reproduced herein under for ready reference.

499 (1). Bond of accused and sureties:

Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2). *If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.*

13. It is well settled principle of law that an accused person is said to be admitted to bail when he is released from the custody of Police/Court and is entrusted to the custody of persons known as his sureties, who are bound to produce him to answer, at a specified time and place, to face charge and in case of default of doing so are liable to forfeiture of such a sum as is specified when the bail is granted. Likewise, Section 500 Cr.PC enacts that:

"As soon as the bond has been executed, the person for whose appearance it has been executed, shall be released".

14. The question of furnishing of a bank guarantee can only arise in a situation when the accused person is unable to furnish two (2) solvent local sureties to the satisfaction of the court and his willing to furnish bank guarantee, as has seems to be done in the present case but with the slight difference that the trial Court miserably failed to get an undertaking in written in the case in hand by the present petitioner, regarding his willingness to furnish bank guarantees in case of allowing of bail petition to the satisfaction of the trial Court.

15. Above are the detailed reasons of our short order dated 07.05.2020, passed in Cr. PLA No. 03/2020 and 04/2020, respectively. File.

Announced:

07.05.2020

CHIEF JUDGE

JUDGE

Whether the case is Fit to be reported or Not?