

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

Cr. Mise. No. 23/2009

Before: Mr. Justice Muhammad Nawaz Abbsi (Chief Judge)

Mr. Justice Syed Jaffar Shah (Judge)

Mr. Justice Muhammad Yaqoob (Judge)

1. Arshad wali s/o Mir zaman.

2. Mansoor s/o Faradoon r/o Kashrote Tehsil & District Gilgit.
Petitioner

Versus

The State

Respondent

**CHARGES UNDER SECTION
302/324/34/118/212/216 PPC AND 6/7, 21-1
OF THE ATA 1997 AND 4/5 EXPLOSIVE ACT
VIDE FIR NO. 120/2009 POLICE STATION CITY
GILGIT**

**PETITION FOR LEAVE TO APPEAL AGAINST
THE ORDER/JUDGMENT OF CHIEF COURT
DATED 15-09-2009**

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

Date of hearing: 21.10.2009.

ORDER

SYED Jaffar Shah, J.....

The petitioners have sought leave to appeal against orders 15-09-09 passed by single bench of Chief

Court Gilgit-Baltistan in Cr. Misc. No. 105/09, whereby declining the concession of bail to the present petitioner in a case registered with police station Gilgit City u/s 302/324/341/118/212/216 PPC r/w Sec. 6/7, 21-1 of ATC and Sec. 4/5 of Explosive Act vide FIR No 120/2009.

2. The brief facts leading to the present petition are that on 20/04/09 at about 21:30 PM some unknown assailants attacked the vehicle of the than Deputy Speaker of Northern areas legislative Assenby Syed Asad Zaidi with sophisticated weapons resultantly one Shahid Hussain sitting in the vehicle died at the spot while Mr. Zaidi and his driver received injuries and later on succumbed to the said injuries. On receiving the information the local Police registered the case against unknown culprits and the investigation of the case was conducted by a joint investigation team headed by DIG Crime Branch in terms of Sec. 19, ATA, the investigation team arrested the present petitioners alongwith three other co-accused namely Mir Baz Khan s/o Mirza Khan, Amjad s/o Faridoon, and Shakeel s/o abdul Hameed while some others are stated to be absconded and after necessary investigation challaned them u/s 302/34, 118, 212, 216 PPC r/w Sec. 6/7, 214, 213 ATA.

3. After their arrest the petitioners and other accused applied for grant of bail before the Judge Anti Terrorist Court No.2 Gilgit, who vide order 10-08-09 granted bail to one co-accused namely Amjad and refused to grant bail to the extent of rest of the accused including the present petitioner. They and other two accused unsuccessfully approached the Chief Court Gilgit-Baltistan but the

single Judge of Chief Court declined grant of bail infavour of petitioners.

4. We have heard the learned counsel for petitioners and Advocate General for the State. The learned counsel for the petitioners submitted that except a statement recorded u/s 21-H ATA purported to be a confessional statement and recovery of weapon of offence there is no material on the record to connect the petitioners with the present petitioners are not directly involved in the commission of the crime and they have been made scape goats by the prosecution are innocent and no active role has been attributed to them in the commission of offence.

5. The learned Advocate General on the other hand vehemently opposed the petition and controverted the above submission. He contended that the petitioners are involved in a heinous crime, and sufficient material is available against them on the record beside their confessional statement and recovery of crime weapons.

6. Having heard the learned counsel for the parties at length and gone through the available record. We have come to the conclusion that the occurrence had taken place in dark night and no witness was shown by the prosecution to have seen the occurrence. No doubt the investigation team has recovered one 22 bore rifle and a 7.62 rifle on the pointation of petitioner Arshad Wali but from tentative assessments of the available record the in no way is sufficient to connect the petitioner with the crime especially when it is made after a considerable delay. It is also not the case of prosecution that the petitioner has used the recovered weapons in

commission of the offence. Allegation against the petitioner is that they have handled the weapon of offence used in the commission of offence.

7. So far as confessional statement of the petitioner is concerned it is not understandable as to why the investigation team has not adopted a recognized and normal course of producing the petitioner before a Judicial Magistrate for recording their confessional statements and what were the reasons to record statement u/s 21-1 of ATA by Superintendent of Police who can never be thought to be an independent and impartial person. Be that as it may, this confessional statement if believed to be true and correctly recorded even then cannot be made basis for conviction of the petitioner without further corroboration from perusal of available material it transpires that there is no direct to connect the petitioner with the commission of offence.

8. As regards the ground of seriousness and heinousness of the offence is concerned, concession of bail cannot be withheld merely on the plea of heinousness of the offence when an accused person is otherwise entitled for grant of bail. We observe that the investigation team consisting of senior official has failed to conduct a fair, transparent and untainted investigation. In such cases the investigation team/officer should very vigilantly conduct the investigation in a transparent and fair manner in accordance with law and avoid to adopt traditional methods of investigation.

9. For what has been discussed above the case against the petitioners calls for further inquiry into their guilt within the

purview of Sec. 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 uninfluenced by this order

Our short order by virtue of which the petitioners were allowed bail reproduced hereunder is treated as part of this order.

“For the reasons to be recorded later on, this Criminal Petition is converted into an appeal and bail is allowed to the appellants in the sum of Rs. Two Lac (200,000/-) each with two sureties in the like amount to the satisfaction of the trial court”.

Petition converted in to appeal and allowed.

Announced

21-10-2009

Chief Judge

Judge

Judge