

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

Before:-

- 1. Mr. Justice Dr. Rana Muhammad Shamim, Chief Judg.**
- 2. Mr. Justice Muzaffar Ali, Judge.**

Cr.PLA No. 13/2015.

The Stat

Petitioner.

Versus

Muhammad Afzal

Respondent.

**CHARGES UNDER SECTION 302/34 PPC VIDE FIR
86/2014 POLICE STATION CHILAS.**

**CRIMINAL PETITION FOR LEAVE TO APPEAL
UNDER ARTICLE 60 OF GILGIT-BALTISTAN
(EMPOWERMENT SELF GOVERNANCE) ORDER 2009
ETC.**

Present:-

The Advocate General Gilgit- Baltistan, Gilgit.

DATE OF HEARING:-16-09-2015.

Dr. Rana Muhammad Shamim,CJ--- The learned Advocate General Gilgit-Baltistan contends that the FIR No. 89/2014 was registered under Section 302, PPC on the complaint of Sher zaman real brother of deceased Rash khan, who became injured with the firing of the unknown persons at the spot near Civil Depot Airport Chillas. Subsequently, during investigation respondent No1 alongwith other accused namely Saif-u-Rehman, Safeyan and Alam zaib were implicated as an accused persons. He further submits that PW-05 Muhammad Mubashir as stated in his statement under section 161 Cr. Pc that on the day of the fateful incident, he alongwith one Razi ullah was present at the khinar Area at Chillas, at

about,1300 hours accusd Saif-u-Rehman, Safeyan and Muhammad Afzal Petitioner and Alam zaib while sitting in the footpath were talking on another and after some time co accused Saif- Ur-Rehman and Alam Zaib went thereto. About 15-20 minutes after their leaving, accused Muhammad Afzal and Safeyan also left the place in a taxi bearing No. **NCP DMR** 12 alongwith deceased Rash khan towards **KKH**. The Taxi was driven by the petitioner Muhammad Afzal and at about 1400 hours it was informed that Rash Khan was murdered near timber Depot corroborated by the **PW** Razi Ullah whereas, Pw Mir Jahan has stated in his statement under Section 161 Cr. PC that on the date of the fateful incident he and **PW** Rauf was present at Chillas and all of a sudden about 14:30 he was told that Rash khan/ deceased has been murdered near timber Depot. They rushed towards the site of occurrence, when they reached at the place of occurrence they saw acccused Safeyan and the petition/ Muhammad Afzal were coming to Chillas Bazaar from KKH site in a car driven by the present petitioner. They Proceeded ahead and when they reached near graveyards they saw the other co-accused coming towards Chillas bazaar from KKH. The same version was also been corroborated by Pw Rauf as well.

The learned Advocate General further contends that the FIR was lodged within 40 minutes of the incident. He further contended that crime arm i.e. 30 bore pistol was also recovered on the pointation of accused Alam zaib from his

house concealing in an almara. He admitted that he alongwith the co-accused opened fire with his 30 bore Pistol No. 636 upon the deceased Rash Khan. He also contended that crime empties and pistol has recovered from them and the said found matching with the pistol as per report of ballistic expert. He further submits that the learned trial Court has rightly refused bail to the petitioner as the evidence collected by the police during investigation connected the petitioner with the crime. The Challan of the said case has already been submitted before the Trial Court and progress is being made for framing of charge and recording of the evidence is also in progress. He also contended that the learned Chief Court, Gilgit-Baltistan in Cr. Misc. No.51/2015 vide order dated 29.05.2015 has granted bail to the respondent NO.1 against the facts law and material available on the record of this case. The learned Chief Court, Gilgit- Baltistan has not applied its judicial mind to the facts i.e. recovery of crime weapon, which was effected on the pontation of the petitioner, as the same is admissible under Order 38 of Qanoon-e-Shahadat. He further submits that the report of the ballistic expert further supports the prosecution case as the Crime empties recovered and it found matching fired with the recoverd pistol. He further submits that the deceased Rash khan was lastly seen with petitioner etc before his murder. There are sufficient materials available to believe that the respondent No. I and co-accused committed the murder of Rash Khan. Therefore, the bail

granted by the learned Chief Court was required to be cancelled as provided under Section 5 of Section 497 Cr. PC.

We heard the learned Advocate General Gilgit-Baltistan, perused the case file and the material available on the record. It is admitted position that petitioner and other co-accused were not nominated in the FIR and admittedly the statements of the PWs were also recorded after and unexplained delay of 05 days. There is no eye witness of this brutal murder as well except lastly seen deceased Rash Khan with petitioner and co-accused. The recovery of the alleged crime weapon although effected on the pointation of the co-accused Alam Zaib but after unexplained delay of 11 days. Admittedly no independent person of the locality was associated to witness the search, no explanation for not associating the witness of locality for search of the house of co-accused Alam Zaib on his pointation, though the same were available.

No infirmity and illegality has been pointed out by the learned Advocate General Gilgit- Baltistan in the impugned order dated 19.06.2015 in Cr. Misc . No. 51/2015, passed by the learned Chief Court, Gilgit- Baltistan. The learned Chief Court, Gilgit-Baltistan rightly held that in view of the above, the case of the petitioner has become a case of further inquiry, subsequently, he was granted bail.

In our considered opinion no interference is waranted in the impugned order dated 19.06.2015, passed by

the learned Chief Court, Gilgit- Baltistan. The leave to appeal is accordingly refused.

Leave refused.

Chief Judge

Judge

Whether the case is fit to be reported or not?