

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
Cr. Misc. No. 02/2010**

**BEFORE: SYED JAFFAR SHAH, &
MUHAMMAD YAQOOB, JJ.**

1. Muhammad Rawan S/O Faqir,
2. Fazal Khan S/O Gulsher R/O Khanbery,
Tehsil Darel District Diamer at present District
Jail Diamer Chilas.....Accused/Petitioners

Versus

The State through Police Station Khanbery Respondent

**PETITION FOR LEAVE TO APPEAL AGAINST THE
JUDGMENT/ORDER DATED 17-12-2009 PASSED BY
THE CHIEF COURT WHEREBY THE BAIL
APPLICATION VIDE NO. CR. MISC 127/2009 OF THE
PETITIONERS HAS BEEN DISMISSED.**

PRESENT:-

**Mr. Ehsan Ali, Advocate assisted by
Mr. Rehmat Ali, Advocate for the petitioners
Advocate General Gilgit-Baltistan for the State
Malik Haq Nawaz, Advocate for complainant**

Date of hearing 20-05-2010.

O R D E R.

Syed Jaffar Shah,J. The petitioners through this
petition seek leave to appeal against the order dated 17-12-2009

Passed by Single Bench of Chief Court Gilgit-Baltistan in Criminal Misc. No. 127/2009, whereby declining bail to the petitioner in a case registered Under Section 302,324,427,431,353/34 PPC read with Section 13-A.O vide FIR No 2/2008 and 4/2008 with Police Station Khanbery District Diamer.

2. The brief facts narrated in the FIR No.02/2008 of Police Station Khanbery are that one Mubarak Shah son of Alam Khan, Resident of Khanbery made a complaint to SHO Police Station Khanbery alleging therein that he is an employee in the Fisheries Department Government of Gilgit-Baltistan. On 5-6-2008 at about 6.30 A.M. he and his uncle Muhammad Nousharwan and employee of Fisheries Department, Hazarat Wali, and Nadir Khan were proceeding from Khanbery to Gilgit in connection with official matters in a vehicle being driven by one Raqibullah, when they reached near a place known as Sigali Dome he found the road was blocked, and in the meantime accused Muhammad Rawan, Waheed and Fazal opened fire upon Muhammad Nousharwan who died at the spot while two inmates of the vehicle namely Nadir Khan and driver of vehicle Raqibullah sustained bullet injuries on their bodies and after commission of the crime the accused fled away from the scene of occurance.

3. On receiving information, the Police registered FIR No. 2/2008 Under Section 302,324,427,431,353/34 PPC and started investigation of the case the local police arrested the accused persons on the same day.

4. After their arrest, the petitioners and co-accused moved application for grant of bail in the court of Judicial Magistrate Chilas who granted bail to co-accused namely Waheed, while application to the extent of present petitioners was dismissed. The application made before the Sessions Judge as well as Chief Court met with the same fate.

5. We have heard the learned counsel for the petitioners and Advocate General for the state at length. The learned counsel for petitioners mainly contended that petitioners are entitled for grant of bail as per rule of consistency, delay in conclusion of trial and on the ground of further inquiry, according to learned counsel for petitioners, co-accused namely Waheed with similar role has been released on bail by Judicial Magistrate. They further contended that no specific role has been attributed to the present petitioners and it is yet to be determined as to out of three assailants whose fire shot hit the deceased and injured two persons as such the case falls within the mischief of Section 497 (2) Cr.P.C.

6. On the other hand the learned Advocate General while controverting the above submissions contended that the occurrence is a brought day light occurrence, the petitioners have been directly charged in the FIR, that the recovery of weapon of offence has been made on their pointation of petitioners soon after the occurrence, that

the occurrence is seen by the natural eye witness including two injured witnesses. He submitted that though the co-accused namely Waheed was granted bail by the Judicial Magistrate, the same order has been challenged and the application for cancellation of his bail is pending subjudice before Sessions Judge Chilas.

7. Having heard the learned counsel for the parties and gone through the available record, we have come to the conclusion that the petitioners are directly charged in a promptly lodged FIR, the occurrence had taken place in a brought day light, recovery of weapon of offence has been made soon after the occurrence, motive of commission of offence has also been established, the occurrence is seen by three witnesses including two injured persons whose statements have been recorded without any inordinate delay.

8. So far as delay in conclusion of the trial is concerned, the trial court on the direction of this court has furnished comments, from perusal of comments and order sheets placed on record it reveals that the challan of the case was submitted on 24-09-2008 and thereafter the case could not be proceeded with either due to non-availability of defence counsel, District Attorney or in absence of Presiding officer, as such the delay cannot be attributed to prosecution solely. Any how this delay in conclusion of cannot be a good ground for grant of bail in absence of any specific provision. So far as rule of consistency is

concerned, the order of Judicial Magistrate, granting bail to co-accused is admittedly challenged before Trial Court and pending subjudice.

For what has been discussed above, we find no substance on the grounds agitated by the learned counsel for petitioners, as from tentative assessment of the available materials a *prima facie* case is made out against the petitioners. So we dismiss the petition, however we direct the trial court to conclude the trial of the case within 120 days of this order without being influenced by our above observations which are tentative in nature.

Our short order by virtue of which the leave was refused is treated as part of this order.

Leave refused and petition dismissed.

Judge

Judge