

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

Cr. Misc. No. 20/2009

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

Shab Rung Petitioner

Versus
The State Respondent

**CHARGES UNDER SECTION 457 PPC AND 9/14
HUDOO'D ORDINANCE VIDE FIR. NO. 46/09
POLICE STATION CHILAS.**

**PETITION FOR GRANT OF LEAVE TO APPEAL
AGAINST THE JUDGMENT/ORDER OF THE
LEARNED CHIEF COURT NORTHERN AREAS
DATED 06-08-2009.**

Present: Mr. Sharif Ahmad, Advocate for the petitioner.
Advocate General Gilgit-Baltistan for the state.

Date of hearing: 06.10.2009.

ORDER

SYED JAFFAR SHAH, JUDGE..... Petitioner Shab Rung after his arrest in a case registered under section 457 PPC read with section 9/14 of Hudood Ordinance 1979, vide FIR. No. 46/09 dated 15-05-2009 at Police Station Chilas District Diamer having failed to get bail from Chief Court Gilgit-Baltistan has sought leave to appeal against order dated 06-08-2009 passed

by the single Judge of Chief Court Gilgit-Baltistan in Criminal Misc. No. 81/2009 and consequently has prayed for grant of Bail.

The Learned Counsel Mr. Sharif Ahmad, appearing on behalf of petitioner mainly contended that nothing has been recovered from the possession of the petitioner, that co-accused has already been granted bail by Chief Court as such the petitioner is also entitled for grant of bail as per rule of consistency as matter of right. He further went on to argue in support of petition that prosecution has failed to bring out a *prima facie* case against the petitioner and the case also falls within domain of further inquiry.

On the other hand Learned Advocate General appearing on behalf of the State contented that since the petitioner is involved in a heinous offence and has caused a heavy loss to the national exchequer as such he is not entitled for concession of bail. He further contented that the prosecution has been able to bring sufficient material against the petitioner to connect him with the crime.

Having heard the Learned Counsel for the parties and gone through available record and the judgment impugned with care and caution, we find that admittedly the petitioner along with his co-accused was nominated in FIR as suspect. The FIR lodger and other employees deputed at the godown

were stated to have guarded the godown apprehending the commission of offence but it is strange that inspite of their presence at the spot they neither caught the petitioner and other accused red handed nor they did any effort to inform the police especially when it took a considerable time to open the door of godown, pull and load the wheat bags in the vehicle. This makes the case of prosecution doubtful rather shows their indulgence in the crime or at least abetment in the commission of offence. Secondly nothing incriminating is stated to be recovered from the petitioner. Whatever the recovery is shown, it has not been made from the possession of petitioner and other co-accused. The prosecution has also not recovered the original key of the godown, even they failed to produce the same on the direction of this Court.

The Investigation Officer has failed to conduct a fair and transparent investigation rather the investigation has been conducted in a capricious and irregular manner. The Superintendent of Police present on Court notice is directed to take appropriate action against Investigation Officer as per police rules.

The upshot of the above discussion is that petition is converted into appeal and allowed. Our short order reproduced here in under may be read as part of this order,

"for the reasons to be recorded separately, this petition is converted into appeal and allowed. Appellant may be released on bail subject to his furnishing surety in the sum of Rs. 100,000/- (one lac rupees) with tow sureties each in the like amount to the satisfaction of Trial Court".

Petition is converted into appeal.

Judge

Judge