

IN THE SUPREME APPELLATE COURT NORTHERN AREAS

GILGIT

Cr. Misc. No. 18/2008

**Before: Mr. Justice Muhammad Nawaz Abbasi (Chief Judge)
Mr. Justice Syed Jaffar Shah (Judge)**

Imam Malik s/o Mir Wali Khan r/o Thore, tehsil Chilas District
Diamer at present Judicial lockup in district Jail, Chilas.

Accused/Petitioner

Versus

The State

Respondent

**CHARGES U/S 324/114/109/34 PPC,
FIR.NO.27/2007, POLICE STATION THORE
DISTRICT DIAMER.**

**PETITION FOR LEAVE TO APPEAL AGAINST
THE JUDGMENT/ORDER DATED 15-08-2008,
WHEREBY BAIL TO THE PETITIONER HAS BEEN
DECLINE BY THE CHIEF COURT NORTHERN
AREAS GILGIT.**

**FOR CONVERTING THE SAME INTO APPEAL
VERY GRACIOUSLY AND FOR RELEASE OF
PETITIONER/ACCUSED ON BAIL TO MEET THE
ENDS OF JUSTICE.**

**Present: - Javed Iqbal, Advocate for the petitioner.
Advocate General for the State, Assisted by Muhammad
Issa, Advocate.**

Date of hearing: 18.05.2009

ORDER

MR. JUSTICE SYED JAFFAR SHAH, J..... Having been aggrieved and dissatisfied with the order dated 15-08-2008 passed by the Single Bench of Northern Areas Chief Court in Criminal Misc. No. 52/2008, whereby declining the bail to the petitioner, the petitioner has assailed the impugned order through this petition and has prayed for grant of bail.

Vide short order dated 18-06-2009, the petitioner was granted bail by this court.

The brief facts leading to the present petition are that the petitioner Abdul Malik along with his father Mir Wali Khan was directly charged in FIR No. 27/2007 registered with police station Thore District Diamer u/s 324/34 for causing fire arm injuries to one Muhammad Ghani, the real brother of complainant/accused FIR lodger Abdul Ghafoor.

The police on receipt of information registered FIR No. 05/2007 and later on arrested both the accused, however the co-accused Mir Wali stated to be released.

The Learned Counsel appearing for the petitioner contended that the petitioner is entitled for concession of bail as per Rule of Consistency as according to him the co-accused namely Mir Wali with similar role has been let off. He further contended that it is yet to be determined as to out of two assailants who's fire hit the body of the injured. He emphasized that the case in hand falls with in the domain of further inquiry.

On the other hand the Advocate General assisted by the complainants counsel vehemently opposed the petition and contended that some witnesses of occurrence have attributed the role of firing only to the present petitioner as such his role can not be equated with that of other accused.

They further argued that since the weapon of offence has been recovered on the pagination of petitioner as such his case is also distinguishable from that of co-accused.

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We have heard the arguments of learned counsel for parties and Advocate General on behalf of the State and have gone through the available record with care and caution.

From perusal of the record it transpires that the petitioner and co-accused Mir Wali were attributed identical role of firing at the injured but the record is silent to the extent of locale and the nature of injuries as well as description of fire arm. It is true that the witnesses namely Rehmat Wail, Haq Nawaz, Ayub Ullah and Abdullah in their statements record u/s 161 Cr. PC at a belated stage i.e. more than one month of the occurrence have charged only Imam Malik, the present petitioner for causing fire arm injuries to the injured Muhammad Ghani but on the other hand the FIR lodger, the injured himself, PW's cited in the FIR namely Muhammad basher and Ahsan Ullah in their statement recorded soon after the occurrence charged both the petitioner and co-accused Mir Wali with similar role.

It is also strange that the police has allegedly recovered a rifle of 7.62 bore on the pointation of petitioner from the house of one Jahangir after a period of more than one month of occurrence but above witnesses namely Ahsan Ullah and Muhammad basher categorically say in their statement that present petitioner fired with a Kalashnikove as such how a five short rifle is recovered on his pointation is yet to be ascertained.

From perusal of the record it appears that except the recovery of crime weapon which is also not free from doubt, not specific act is appearing against the petitioner nor record discloses as to out of two persons who is the main culprit who caused the injuries

to the injured, nor any medical report has been provided by prosecution to show the number, locale and the nature of the injuries caused to the injured.

The statements of prosecution witnesses are contradictory to each other. The investigation of the case has been conducted in a capricious rather in a partial manner by the investigation officer. The irregular way of investigation makes case of prosecution highly doubtful, the benefit of doubt which goes to the accused even at bail stage.

In view of forgoing reasons we have come to the conclusion that it is a fit case of further inquiry. This petition is therefore accepted holding that the petitioner is entitled for grant of bail. The short order of even date by virtue of which bail has been granted to the petitioner reproduced hereunder is treated as part of this order.

“For the reasons to be recorded later on, this petition is converted into an appeal and appellant is allowed bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (one lac) with two sureties each in the like amount to the satisfaction of trial court.”

It has been noticed that in spite of submitting challan in court the trial court has not started the trial of the case for the considerable time as such we deem it fit to direct the trial court to expedite the trial of the case and conclude the same with in shortest possible time.

Chief Judge

Judge