

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

Cr. Misc. No. 03/2011

Present:- Mr. Justice Syed Jaffar Shah. J
Mr. Justice Muhammad Yaqoob, J
Nabiullah **Petitioner**

Versus

Samair Kahan **Respondent**

CHARGE U/S 302/34, PPC VIDE FIR NO. 40/2010 POLICE STATION CHILAS DISTRICT DIAMER.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 63 OF GILGIT-BALTISTAN EMPOWERMENT AGAINST THE IMPUGNED ORDER DATED 04-02-2011 OF LEARNED CHIEF COURT, WHEREBY THE LEARNED JUDGE CHIEF COURT RELEASED THE RESPONDENT ON BAIL WITHOUT ANY COGENT REASONS.

Haji Jmal Khan, for the petitioner

Date of hearing : 11.04.2011.

ORDER

Syed Jaffar Shah,... J. Through this petition the petitioner has sought leave to appeal from this court against the order dated 04-02-2011, passed by Single Bench of Chief Court Gilgit-Baltistan in Criminal Misc. No.05/2011, whereby the learned judge of Chief Court has granted bail to the present respondent in a case registered with Police Station Chilas District Diamer Under section 302/34 PPC vide FIR No. 40/2010.

2. The fact summarized by the learned counsel for the petitioner as well as narrated in the FIR are that on the fateful day of occurrence i.e.09-06-2010 at about 12:30 P.M. Samir Khan, Iqbal, and Khan Muhammad committed the murder of Shakoor Khan by opening fire with fire arms. The complainant in the FIR has alleged that the indiscriminate firing was made by Iqbal and Khan Muhammad resulting in the murder of said Shakoor Khan, while no

role of firing is attributed to the present respondent in the FIR. The FIR lodger has also involved three other accused namely Ghulam Muhammad, Umer Yar and Abdul Rouf for instigation/abetment in the commission on crime.

3. Upon registration of the FIR the local police arrested six accused nominated in FIR, out of whom Umer Yar and Abdul Rauf were let out U/S 169 Cr.P.C. by police. The present accused and other co-accused applied for bail before the court of District and Session Judge Diامر, Chilas who vide order dated 28-10-2010 allowed bail to one of the co-accused namely Ghulam Muhammad who had been assigned a role of abetment in the FIR.

4. Having been unsuccessful in their attempt in securing their bail from the court of District and Sessions Judge Chilas, the respondent and his co-accused applied for bail before the Hon'ble Chief Court Gilgit-Baltistan. The matter came to be heard by Mr. Justice Sahib Khan, learned Judge of Chief Court. During the course of arguments in the Chief Court it is stated that application to the extent of two accused namely Iqbal and Khan Muhammad, was not pressed by the learned counsel for reasons best known to him and pressed the same to the extent of present petitioner (Samir Khan).

5. The learned Chief Court vide order dated 04-02-2011 allowed bail to the present respondent. Having been aggrieved and dissatisfied with the order Learned Chief Court the petitioner who is also complainant in the case filed the present petition before this court for cancellation of bail.

6. We have heard the learned counsel for the petitioner/complainant who mainly contended that the respondent having been nominated in the FIR was not entitled for grant of bail, that the accused/respondent was involved in a case punishable with death or at least transportation for life falling as such his case would fall within prohibitory clause of section 497 (2) Cr.P.C. as such the learned Judge Chief Court ought to have refused grant of

bail to respondent but he, in utter disregard of principles/law governing for grant and refusal of bail has released the respondent on bail.

7. Having heard the learned counsel for the petitioner and perused the record with his assistance we have not been able to find any infirmity in the findings of Learned Single Judge of Chief Court. The respondent has not been assigned any overt and specific role leading to the murder of deceased. In FIR No. allegation of causing any injury to the deceased or even making any aerial or ineffective firing is specifically attributed to the respondent, more so no allegation of abetment has been leveled. The accused/respondent has been charged by two witnesses at a later stage in their statement Under Section 161 Cr. P.C. for making a lalkara from the last corner of a street. We have noticed that role attributed to co-accused namely Ghulam Muhammad was more specific in nature than that of present respondent but he has already been granted bail. There is no evidence against respondent regarding abetment or conspiracy and mere mentioning name of respondent in the FIR does not disentitled him for grant of bail whose case otherwise in one of further inquiry within mischief of Section 497 (2) Cr.P.C. The learned Judge Chief Court has rightly and logically granted bail to the respondent.

8. It has been settled law that once a bail is granted to an accused by court of competent Jurisdiction then very strong and exceptional ground would require to snatch the liberty of person who is already granted bail but and it is to be seen whether the bail granting order was capricious, patently illegal, factually incorrect and whether the accused has misused his concession of bail by tempering evidence etc.

9. Record reveals that there is no allegation of misuse of bail concession, tampering with the evidence, and repetition of crime which are essential grounds for cancellation of bail.

The upshot the above discussion is that we do not find any force in the arguments if learned counsel for petitioner the present petition being meritless is hereby dismissed.

Leave to appeal refused.

Judge

Judge