

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

BEFORE:-

*Mr. Justice Sardar Muhammad Shamim Khan, Chief Judge.
(In Chamber)*

**Crl. Appeal No. 09 of 2023 in
Crl.PLA No. 24/2023**

Abdul Nasir

Petitioner

Versus

The State

(Respondent)

Present:-

Mr. Burhan Wali, Advocate for petitioner.

Mr. Manzoor Hussain, Advocate for complainant.

Mr. Mir Muhammad Prosecutor-General for State.

Date of hearing: **31.08.2023**

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:- Through instant criminal petition, the petitioner namely Abdul Nasir seeks post arrest bail in a case registered against him vide FIR No.82 of 2012 dated 23.12.2012 offences under sections 302& 34, PPC read with sections 6/7 of ATA, 1997 at police station Basin District Gilgit.

2. Brief facts of prosecution's case as narrated by the complainant in the FIR are that on 23.12.2012 some unknown culprits committed the murder of Naiber Hussain by causing firearm injuries on his person. In the opinion of the complainant the instant occurrence took place due to sectarian violence. Hence instant FIR was registered.

3. Learned counsel for the petitioner contended that petitioner has falsely been implicated in the instant case on the basis of malafides; that it was an unseen occurrence and petitioner was not nominated in the FIR; that petitioner was implicated in the instant case on the basis of statement of Faizan P.W recorded by the police on 19.02.2023, 10-years after the occurrence, therefore, veracity of such statement shall be adjudged by the learned trial court after recording his evidence ; that extra judicial confession allegedly made by the petitioner before the police is inadmissible in evidence; that during investigation nothing was recovered from the possession of the petitioner; that petitioner is behind the bars since his arrest and is no more required by the police for the purpose of further investigation. Thus, it is submitted that by accepting instant appeal, the petitioner may be admitted to post arrest bail.

4. Learned counsel for the complainant and learned Prosecutor-General have vehemently opposed the instant appeal on the grounds that petitioner was implicated in the instant case on the basis of statement of Faizan P.W recorded under section 161 Cr.P.C by the police on 19.02.2023; that in the said statement, the aforesaid P.W has levelled specific allegation against the petitioner that he was armed with pistol and he committed the murder of Naiber Hussain; that during investigation the petitioner confessed his guilt in his confessional statement got recorded by him under section 21-H of ATA, 1997; that the offences alleged against the petitioner come within the ambit of prohibitory clause of section 497 Cr.P.C. Thus, it is submitted that instant CrI. Appeal is liable to be dismissed.

5. Arguments heard. Record perused.

6. It has been noticed that it was an unseen occurrence and petitioner was not nominated in the FIR. On 23.05.2013, one Iftikhar Hussain S/O Quwat Khan was arrested in this case by the police as suspect and police got his physical remand and thereafter the police also arrested Iftikhar Ahmed son of Ibrahim as suspect in the instant case but during investigation both the aforesaid accused persons were discharged by the police from the instant case under section 169 Cr.P.C. On 01.01.2023 on the basis of information provided to the police by a secret informer Abdul Nasir (petitioner) was arrested in this case as accused. The said secret informer also informed the police that Faizan son of Mansoor Khan was also

involved in the commission of instant occurrence. It is shrouded in mystery that how the secret informer came to know regarding the involvement of the petitioner in the commission of instant occurrence. During investigation the petitioner got his confessional statement recorded under section 21-H of ATA,1997 wherein he confessed that he had committed the murder of Naiber Hussain by causing firearm injuries on his person in presence of Faizan P.W. In his said statement he also confessed that he committed this occurrence on account of a quarrel that took place between him and deceased prior to the instant occurrence. On 19.02.2023 the police recorded the statement of Faizan P.W under section 161 Cr.P.C wherein he involved the petitioner in the commission of instant occurrence. It has further been noticed that the statement of alleged eye witness (Faizan) was recorded by the police after about ten years of the occurrence. The alleged witness namely Faizan did not explain in his said statement that why he kept mum for a period of about 10 years and did not disclose this fact either to police or the complainant immediately. Although the said P.W in his aforesaid statement took the stance that on account of his tender age he ran way towards his house due to fear but during investigation the police did not thrash out the factum of age of the said P.W namely Faizan at the time of occurrence. Perusal of order dated 14.06.2023 passed by learned Chief Court, whereby the post arrest bail of the petitioner was dismissed, reveals that the P.W namely Faizan sworn an affidavit on 07.05.2023 wherein he resiled from his previous statement recorded under section 161 Cr.P.C by the police as an eye-witness. Keeping in view the facts and circumstances of the case, the evidentiary value of the statement of P.W Faizan would be adjudged by the learned trial court after recording his evidence.

7. Although in the FIR as per opinion of the complainant, instant occurrence took place on account sectarian violence but prima facie no evidence is available on record in this regard, therefore, whether the police was competent to record the confessional statement of the petitioner under section 21-H of ATA, 1997 or not is a matter which requires further inquiry. The petitioner was arrested in this case on 01.01.2023 and he is behind the bars for a period of about eight months and is no more required by the police for the purpose of further investigation. No useful purpose would be served by keeping the petitioner in jail for an indefinite period.

8. For what has been discussed above, instant Criminal Appeal is accepted and petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (two lacs) with one surety in the like to the satisfaction of the learned trial court. However, it is clarified that observations made in this order are tentative in nature and shall not prejudice the case of either party at the time of trial.

09. Disposed of.

10. During the course of arguments and after perusal of record, it was noticed that the trial of instant case is being conducted by learned ATA, Court . Whether instant occurrence took place on account of sectarian violence or otherwise is a matter which needs consideration, therefore, the office is directed to issue notices to learned counsel for the petitioner, learned counsel for complainant as well as learned Prosecutor-General for the next date of hearing in order to explain that whether the trial of instant case before learned ATA Court is in accordance with law or otherwise. Office is directed to prepare separate file in this regard.

11. Relist on 02.10.2023.



Justice Sardar Muhammad Shamim Khan
Chief Judge