

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT**

BEFORE:-

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

**Crl. Appeal No. 06 of 2023 in
Crl.PLA No. 15/2023**

Ali Abbas etc

Petitioners

Versus

The State

(Respondent)

Present:-

Mr. Aurangzeb Khan, Advocate for petitioners.

Mr. Asadullah Khan, Senior Advocate for complainant.

Mr. Mir Muhammad Prosecutor-General for State alongwith Dr. Sammar Abbas and Dr. Zaheer Ahmad with record.

Date of hearing: **06.07.2023**

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:- After arguing the case at some length and foreseeing its out-come, learned counsel for the petitioners seeks to withdraw this petition to the extent of Ali Abbas (petitioner No.1) and Khalid Hussain (petitioner No.2). Instant petition to the extent of aforesaid petitioners stands dismissed as having been withdrawn.

2. Through instant criminal petition, the petitioners namely Mujahid Hussain, Zahid Hussain, Azhar Hussain and Shah Khan seek post arrest bail in a case registered against them vide FIR No.54 of 2022 dated 14.03.2022 offences under sections 302,337-A 324, 341, 109, 114, 34, 147 & 148, PPC at police station Jutial District Gilgit.

3. Brief facts of prosecution's case as narrated by the complainant in the FIR are that on 14.03.2022 at about 09:00 A.M, the complainant alongwith his son namely Adnan Hussain and his nephew namely Sarwar Hussain went towards stream (Nala) and in the meanwhile Imtiaz Hussain elder son of the complainant

informed them through telephone that accused persons namely Irshad Hussain, Azhar Hussain, Ahsan, Hidayat, Shah Khan, Khalid, Mujahid and Hamid Khan launched an attack at him (Imtiaz Hussain) and he sustained injuries on his person, whereupon the complainant alongwith his brothers Manzoor Hussain, Altaf Hussain and his son namely Imtiaz Ali reached at 'Chutial Nala' and took the injured P.W namely Imtiaz Hussain alongwith them in the vehicles for the purpose of his medical treatment. It has further been alleged in the FIR that when they reached near the under construction building of police Check Post Jutial, Gilgit, Zahid Hussain petitioner intercepted them on the way whereupon the complainant alongwith P.Ws came out from their vehicles, meanwhile, Ali Abbas made a fire shot at Manzoor Hussain whereas Khalid Hussain also made a fire shot at Imtiaz Hussain and thereafter Mujahid Hussain (petitioner) made a fire shot at Altaf Hussain P.W, whereby, all the aforesaid three persons sustained firearm injuries. It has further been alleged in the FIR that accused namely Shoukat Hussain, Azhar Hussain(petitioner), Shah Khan, Isa Khan and Kafiat while armed with their respective weapons were also present at the spot and accused namely Kafiat caused injury on the person of the complainant with 'DANDA' which landed on his head. In the meanwhile the police reached at the place of occurrence. Manzoor Hussain, Altaf Hussain and Imtiaz Hussain were shifted to hospital in an injured condition but Manzoor Hussain and Imtiaz Hussain succumbed to the injuries in the hospital. Hence instant FIR was registered.

4. Learned counsel for the petitioners contended that petitioners have falsely been implicated in the instant case on the basis of malafide; that there was general allegation against the petitioners namely Zahid Hussain, Azhar Hussain and Shah Khan that they alongwith other co-accused launched an attack at Imtiaz Hussain whereby he sustained injures; that no injury on the person of Imtiaz Hussain was observed by the doctor attributed to petitioners (Zahid Hussain, Azhar Hussain and Shah Khan); that there was no allegation against the petitioners namely Zahid Hussain, Azhar Hussain , Shah Khan and Mujahid Hussain that they caused any injury on the person of Manzoor Hussain deceased ; that during investigating nothing was recovered from the possession of the petitioners namely Zahid Hussain, Azhar Hussain and Shah Khan . It has further been contended by learned counsel for the petitioners that although there was an allegation against the petitioner namely Mujahid Hussain that he caused firearm injury on the person of

Altaf Hussain P.W yet during the same occurrence the petitioner namely Mujahid Hussain also sustained injuries on his person; that the prosecution did not explain the injuries sustained by Mujahid Hussain petitioner at the hands of the complainant party; that there was a dispute of land between the parties and infact the complainant party launched an attack at the accused party , therefore, the petitioner (Mujahid Hussain) acted in self defence, hence it was a case of two versions; that petitioners are behind the bars since their arrest and are no more required by the police for the purpose of further investigation. Thus, it is submitted that by accepting instant appeal, the petitioners may be admitted to post arrest bail.

5. Learned counsel for the complainant and learned Prosecutor-General have vehemently opposed the instant CrI. appeal on the grounds that petitioners were nominated in the FIR; that there was specific allegation against them that they alongwith co-accused caused injuries on the person of Imtiaz Hussain deceased. It has further been contended by them that there was specific allegation against the petitioner namely Mujahid Hussain that he caused firearm injury on the person of Altaf Hussain P.W which was declared grievous in nature by the doctor and during investigation pistol 30-bore was recovered from his possession ; that during the occurrence the complainant also received injuries at the hands of the accused persons; that during investigation the statements of injured P.Ws namely Altaf Hussain and complainant were recorded by the police under section 161 Cr.P,C wherein they fully implicated the petitioners in the commission of instant occurrence ; that in the instant occurrence two persons had lost their lives and petitioners are vicariously liable for the commission of murder of the deceased committed by their co-accused; that the offences alleged against the petitioners 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.

6. Arguments heard. Record perused.

7. It has been noticed that according to FIR, there was general allegation against the petitioners namely Azhar Hussain, Shah Khan and Mujahid Hussain that they alongwith other co-accused launched an attack at Imtiaz Hussain and injured him. This allegation against the aforesaid petitioners was levelled during the first phase of the occurrence when he(Imtiaz Hussain) himself telephonically informed the complainant that he received the injuries at the hands of the

petitioners (Azhar Hussain, Shah Khan and Mujahid Hussain) and other co-accused whereas Khalid Hussain co-accused allegedly committed the murder of Imtiaz Hussain with firearm weapon during the second phase of occurrence. This allegation against the aforesaid petitioners was also falsified by the postmortem examination report of Imtiaz Hussain deceased because the doctor did not observe any injury on his person except two firearm injuries which have specifically been attributed to Khalid Hussain co-accused and the said injuries were declared the cause of death of deceased Imtiaz Hussain. There was no allegation against the petitioners namely Azhar Hussain, Shah Khan, Mujahid Hussain and Zahid Hussain that they caused any injury on the person of Manzoor Hussain deceased. The only allegation against the petitioner (Zahid Hussain) in the FIR was that he intercepted the complainant and P.Ws when they were on the way. Although there was allegation against the petitioner (Mujahid Hussain) that he caused firearm injury on the person of Altaf Hussain injured P.W yet during this occurrence petitioners namely Mujahid Hussain, Azhar Hussain, Zahid Hussain and Shah Khan also sustained injuries on their persons at the hands of complainant party. The aforesaid petitioners were medically examined by the doctor who observed one injury each on the persons of Azhar Hussain, Zahid Hussain and Shah Khan petitioners which were declared simple in nature whereas the injury on the person of Mujahid Hussain petitioner was declared grievous in nature by the doctor. Although on the basis of application submitted by Shah Khan petitioner before SHO concerned, cross-version was initiated against the complainant and others but surprisingly the police cancelled the said cross-version case. The seat of injuries on the persons of the aforesaid petitioners is the best certificate to raise the plea of self defence by them (petitioners). Injuries on the persons of petitioners were suppressed by the prosecution in the FIR. In view of the matter, prima facie, it seems to be a case of two versions and in such situation every accused would be responsible for his own act, therefore, vicarious liability would not be attracted in this case. Although during investigation pistol 30-bore was recovered from the possession of petitioner Mujahid Hussain yet the FIR is silent that the petitioner Mujahid Hussain was armed with pistol 30-bore at the time of occurrence. It has further been noticed that although there was specific allegation against Mujahid Hussain petitioner that he caused firearm injury on the person of Altaf Hussain injured P.W yet he himself sustained grievous injury at the hands of the


complainant party, therefore, he is entitled to be released on bail giving him the benefit of said injury which was sustained by him. Nothing was recovered from the possession of petitioners namely Zahid Hussain, Azhar Hussain and Shah Khan. The petitioners are behind the bars since their arrest and are no more required by the police for the purpose of further investigation. No useful purpose would be served by keeping the petitioners in jail for an indefinite period.

8. For what has been discussed above, instant Criminal Appeal is accepted and petitioners are admitted to post arrest bail subject to their furnishing bail bonds in the sum of Rs. 2,00,000/- each with one surety each in the like to the satisfaction of the learned trial court. These are the reasons for my short order of the even date whereby the petitioners were admitted to bail and were ordered to be released from jail forthwith, if not required in any other case. It is, however, clarified that observations made in this judgment are tentative in nature and shall not prejudice the case of either party at trial stage.

9. During the course of arguments, it was noticed by me that the nature of injuries on the persons of the injured P.Ws as well as petitioners/accused were not declared by the doctors, whereupon the learned Prosecutor-General was directed to summon the concerned doctors who medically examined the aforesaid injured persons alongwith the record. In compliance with the order of the Court, Dr. Sammar Abbas and Dr. Zaheer Ahmed appeared before this Court on the same date of hearing (06.07.2023). When confronted that although they (doctors) have declared the injuries on the persons of Mujahid Hussain (petitioner) and Altaf Hussain (injured P.W) as grievous one yet they did not describe the nature of injuries as to whether it was Ghayr-Jaifah Mutalahimah (337-F(iii)), Ghayr-Jaifah Mudihah (337-F-iv) Ghayr-Jaifah Hashimah (337-F-V) & Ghayr-Jaifah Munaqqillah (337-F-vi) and that they also did not describe the nature of weapon used for causing the injuries. Both the doctors stated before the Court that although the medico-legal certificates of the injured P.Ws and the petitioners/accused were issued by them yet they did not declare the nature of the injures on account of lack of their knowledge in this regard. They further stated before the Court that there is no mechanism/practice in G.B Govt. Hospitals to declare the nature of the injuries after conducting the medical examination of the injured P.Ws and the accused and that they were not given the necessary

training by the Department in this regard. Its really strange state of affairs, therefore, in view of the matter, Secretary Health G.B is directed to appear in person before this Court on 05.09.2023 in order to explain the aforesaid situation. On the said date, he shall also apprise this court that how he shall manage the affairs in future to do the needful.

10. Relist on 05.09.2023. Office is directed to prepare a separate file in this regard.


Justice Sardar Muhammad Shamim Khan
Chief Judge