

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN  
GILGIT

**BEFORE:-**

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

**Crl. Appeal No. 11 of 2023 in  
Crl.PLA No. 32/2023**

Asim Ali

Petitioner

Versus

The State

(Respondent)

**Present:-**

Mr. Samee Ahmed, Advocate for petitioner.

Mr. Mir Muhammad Prosecutor-General for State.

**Date of hearing:**            **02.10.2023**

**JUDGMENT**

**Sardar Muhammad Shamim Khan, Chief Judge:-** Through instant criminal petition, the petitioner namely Asim Ali seeks post arrest bail in a case registered against him vide FIR No.67 of 2022 dated 30.07.2022 offences under sections 147, 148, 324, 34, 337-D, PPC read with sections 21-L & 6/7 of ATA, 1997 at police station Airport District Gilgit

2. Brief facts of prosecution's case as narrated by the complainant in the FIR are that on 30.07.2022 at about 05:30 P.M, the complainant Usma came at "Yadghar Chwok Baikery" to buy some drinks. In the meanwhile a procession reached there and the police officials were also present alongwith the said mob/procession. A Motor-cyclist from the procession quarreled with the driver of "Chingchi Rickshaw" and thereafter some other motor-cyclists from the procession also maltreated the driver of said Chingchi Rickshaw. In the meanwhile some armed persons from the procession/mob and some police officials made firing at

Siddiqia Mosque from Yadgar Chowk. It was further alleged in the FIR that the complainant had no knowledge about the said armed persons however, one of the police officials belonged to Qazalbash Mohallah whereas the second police official belonged to Burmas area. The police officials alongwith other armed persons raised religious slogans and created fear and terror in the locality and thereafter they made firing from Yadgar Chowk towards Siddiqia Mosque whereby the complainant sustained firearm injury on his chest and he fell down on the earth whereas one Ali Qaiser Iqbal also received firearm injury near Siddiqia Mosque. The people of the locality/Mohallah immediately shifted the complainant and said Ali Qaiser Iqbal to hospital for medical treatment. 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 petitioner was not nominated in the FIR and he was not identified by any of the P.W at the spot; that although the petitioner was implicated in the instant case on the basis of CCTV footage but statement of any P.W is not available on record in order to establish that the petitioner was identified through CCTV Camara; that extra judicial confession allegedly made by the petitioner before the police is inadmissible in evidence; that in the FIR the complainant implicated two police officials who allegedly made firing on the peaceful passersby and Namzies/worshippers near the Siddiqia Mosque and during investigation they were arrested and identified as Mubashir Abbas and Hussain Allam Constables but they were discharged by the police from the instant case under section 169 Cr.P.C; that during investigation nothing was recovered from the possession of the petitioner; that Aitizaz Hussain co-accused who allegedly made ariel firing at the time of occurrence and was identified through CCTV Footage preferred his post arrest bail through Criminal Misc. No.289/2022 and he was admitted to post arrest bail by learned Chief court vide order dated 03.02.2023; that the case of the petitioner is on better footing than the case of aforesaid co-accused, therefore, the petitioner is also entitled for concession of bail keeping in view the rule of consistency; 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 Prosecutor-General has vehemently opposed the instant appeal on the grounds that although the petitioner was not nominated in the FIR yet he was identified through CCTV Footage wherein it was established that petitioner threw a stone on the procession/mob which created fear and terror in the procession and that due to alleged act of the petitioner the peaceful atmosphere of the area was disturbed; 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 Crl. Appeal is liable to be dismissed.

5. Arguments heard. Record perused.

6. It has been noticed that petitioner was not nominated in the FIR. According to version of prosecution, the petitioner was identified through CCTV Footage wherein it was shown that petitioner threw a stone on the procession/mob which gathered near Yadgar Chowk and thereafter petitioner was arrested in this case on 06.09.2022. No statement of any P.W was recorded by the police in order to establish that the petitioner was identified through CCTV Footage. The police did not mention the place where the CCTV Camera was installed through which the petitioner was identified. During the course of arguments, learned Prosecution-General frankly conceded that although the petitioner threw stone at the procession yet no person sustained injury by such act of the petitioner. Perusal of record reveals that 16-suspects including the petitioner were identified through CCTV Footage and they were arrested by the police but during investigation 7-suspects were discharged by the police from the instant case under section 169 Cr.P.C. It has further been noticed that in the FIR the complainant implicated two police officials who allegedly made firing on the peaceful passers-by and Namzies/worshipers near the Siddiqia Mosque and during investigation they were arrested and identified as Mubashir Abbas and Hussain Allam Constables but they were discharged by the police from the instant case under section 169 Cr.P.C. It is evident from the record that although the petitioner made allegedly extra-judicial confession before the police while in police custody yet his statement was not got recorded by learned Magistrate under section 164 Cr.P.C despite the fact that police kept on producing the petitioner for getting his physical remand before

the learned Magistrate. Veracity and admissibility of such evidence against the petitioner would be adjudged by the learned trial court after recording the prosecution's evidence. During investigation nothing was recovered from the possession of the petitioner. Keeping in view the facts and circumstances of the case the case of the petitioner comes within the ambit of further inquiry.

7. It has further been noticed that Aitizaz Hussain co-accused against whom there was allegation that he made ariel firing at the time of occurrence and he was identified through CCTV Footage and that recovery of pistol 30-bore was also effected from his possession, preferred his post arrest bail through Criminal Misc. No.289/2022 and he was admitted to post arrest bail by learned Chief court vide order dated 03.02.2023. The case of the petitioner is on better footing than the case of aforesaid co-accused who was admitted to post arrest bail by learned Chief Court, therefore, the petitioner is also entitled for concession of bail keeping in view the rule of consistency. The petitioner was arrested in this case on 06.09.2022 and he is behind the bars for a period of more than one year and is no more required by the police for the purpose of further investigation. Learned counsel for the petitioner states at bar that trial of the case has not commenced till yet. No useful purpose would be served by keeping the petitioner in jail for an indefinite period because it was not known as to how much time would be consumed by the prosecution in completion of the trial.

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. These are the reasons for my short order of the even date whereby the petitioner was admitted to bail and was ordered to be released from jail forthwith, if not required in any other case. It is however, 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.

- sd -  
Justice Sardar Muhammad Shamim Khan  
Chief Judge

Whether fit for reporting (Yes / Not)