

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

BEFORE:-

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

**Crl. Appeal No. 03 of 2024 in
Crl.PLA No.01 of 2024**

Umer Farooq

Petitioner

Versus

The State

(Respondent)

Present:-

Mr. Burhan Wali, Advocate for petitioner.

Mr. Mir Muhammad Prosecutor-General for State.

Mr. Aurangzeb Khan, Advocate for the complainant.

Date of hearing: 27.03.2024

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:- Through instant Criminal appeal the petitioner namely Umer Farooq seeks post arrest bail in a case registered against him vide FIR No.115 of 2020 dated 26.08.2020 offences under sections 302, 397 & 34, PPC read with section 13 Arms Ordinance at police station City District Gilgit.

2. According to FIR on 25.08.2020 at about 10:00 P.M, Altaf Hussain brother of the complainant alongwith his paternal cousin namely Siraj Khan was proceeding towards their house from the main bazaar. When they reached near Sub-Station Gilgit, in the meanwhile one un-known person with muffled face came over there and pointed pistol at Altaf Khan and Siraj Khan and demanded to hand over the mobile phones whereupon said Altaf Khan and Siraj Khan started running away and the said unknown culprit made firing at Altaf Khan and committed his murder. Hence instant FIR was registered.

3. Learned counsel for the petitioner contended that petitioner is not nominated in the FIR and he has falsely been implicated in the instant case on the basis of malafides; that the petitioner was not identified at the spot rather the culprits had muffled their faces; that on 30.08.2020, five days after the occurrence, the police recorded the statement of an eye-witness namely Siraj Khan wherein he only raised suspicion against the petitioner by contending that from the features and physical appearance, the unknown culprit with muffled face was looking like a neighbor; that alleged recovery of pistol from the possession of the petitioner was planted against the petitioner in collusion with police; that the petitioner is a juvenile offender and his trial is being conducted by Juvenile Court; that this Court vide order dated 05.04.2022 while deciding the bail petition of co-accused namely Abdul Mannam, directed the learned trial court to conclude the trial of instant case within the period of two months but despite lapse of period of about two years, trial of instant case has not been concluded by learned trial court; that petitioner was arrested in this case on 31.08.2020 and he 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 although the petitioner is not nominated in the FIR yet he was implicated in the instant on the basis of statement of P.W Siraj Khan recorded by the police on 30.08.2020; that the aforesaid P.W in his said statement levelled specific allegation against the petitioner that he made firing at Altaf Khan and committed his murder; that during investigation pistol was recovered from the possession of the petitioner which is sufficient incriminating evidence connecting the petitioner with the commission of this offence; that petitioner is habitual offender and is involved in three other criminal cases registered against him at different police stations; that the offences alleged against the petitioners are heinous in nature and come within the purview 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 petitioner is not nominated in the FIR. Although the petitioner was implicated in the instant case on the basis of statement of P.W namely Siraj Khan recorded by the police on 30.08.2020 with the delay of five days yet the aforesaid P.W in his said statement only raised suspicion against the petitioner by contending that from the features and physical appearance, the unknown culprit with muffled face was looking like a neighbor. Admittedly the occurrence took place at night time and unknown culprit had muffled his face, therefore, he was not identified at the spot. Prima facie, from the statement of aforesaid P.W serious question of identification of the petitioner is involved in this case. Perusal of record further reveals that except the deposition of aforesaid P.W, no other incriminating evidence is available on record connecting the petitioner with the commission of instant occurrence. Veracity and admissibility of such evidence qua the involvement of the petitioner would be adjudged by the learned trial court after recording the prosecution's evidence. Although, during investigation, pistol was allegedly recovered from the possession of the petitioner and report of Forensic Science Laboratory is positive in this regard yet perusal of said report reveals that empties as well as pistol recovered from the possession of the petitioner were simultaneously received in the said office on 13.01.2021, therefore, positive report of Forensic Science Laboratory is inconsequential. Keeping in view the facts and circumstances of the case, the case of the petitioner comes within the ambit of further inquiry. Admittedly the petitioner is juvenile offender and his trial is being conducted by Juvenile Court. It has further been noticed that this Court vide order dated 05.04.2022 while dealing with the bail petition of co-accused namely Abdul Mannam issued direction to learned trial court to conclude the trial of instant case within the period of two months but despite lapse of considerable period, trial of instant case has not been concluded by learned trial court. The petitioner is behind the bars since his arrest 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.

7. 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. 5,00,000/- 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.

8. As the instant case pertains to year 2020 and direction for early conclusion of trial was issued by this Court vide order dated 05.04.2022 but surprisingly the learned trial did not honour the said direction despite lapse of a considerable period. In view of the matter, learned trial court is directed to conclude the trial of instant case strictly on merits within the period of two months positively after receipt of this order. In order to conclude the trial of instant case, within stipulated period, learned trial court would be at liberty to adopt all coercive measures for summoning of remaining prosecution witnesses, if necessary. In case of non-conclusion of trial within the stipulated period, the learned trial court shall submit report through Deputy Registrar (Judicial) of this Court. In the said report learned trial court shall specifically give the reason that why the trial of instant case has not been concluded by him till yet.

- Sd -

Justice Sardar Muhammad Shamim Khan
Chief Judge