

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Criminal Appeal No. 07/2017

In

Cr. PLA No. 08/2017.

Isfandiar

Petitioner.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Johar Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. The Advocate General Gilgit-Baltistan on behalf of the respondent.

DATE OF HEARING: - 15.06.2017.

ORDER.

This Criminal petition has arisen out of the impugned order dated 22.12.2016 in Criminal Revision No. 13/2015 passed by the learned Chief Court whereby the said Criminal Revision was dismissed holding the same as baseless, groundless and malafidy on the part of the petitioner. The petitioner being aggrieved filed this petition for leave to appeal. This court vide order dated 10.05.2017 issued notice to the respondent and the case was heard today.

2. Briefly the facts of the case are that the petitioner was booked in case FIR No. 03/2015 under Sections 406, 409, 420 and 427 PPC. Consequently, investigation has been initiated by the State against the petitioner. The petitioner moved a bail before

arrest vide petition No. 10/2015 before the then learned Sessions Judge Gilgit. Upon hearing interim bail was allowed which was subsequently confirmed. The respondent being aggrieved filed Criminal Misc. No. 18/2015 before the learned Chief Court but later on the same was withdrawn by the respondent. Consequently, the same was disposed off vide order dated 21.05.2015 by the learned Chief Court. Meanwhile the challan of the case was submitted before the Committal Magistrate Chilas who forwarded the same to the then Sessions Judge District Diamer. Upon hearing the learned Sessions Judge issued non-bailable warrants of arrest for production of the petitioner by cancelling the pre-arrest bail facility so granted to the petitioner in circumstances. The petitioner being aggrieved by and dissatisfied with filed Criminal Revision No. 13/2015 before the learned Chief Court which upon hearing was dismissed vide impugned order dated 22.12.2016. Earlier the learned Chief Court vide order dated 05.11.2015 dismissed this petition for non-prosecution. Consequently, the Criminal Misc. No. 144/2015 was also filed by the petitioner for restoration of the same which was also dismissed vide order dated 16.11.2015. The petitioner also filed another Criminal Misc. 162/2015 which upon hearing was also dismissed vide order dated 14.03.2016. The petitioner being aggrieved assailed the said order of the learned Chief Court before this court by filing Cr. PLA No. 25/2016 which upon hearing was allowed vide order dated 24.08.2016 with the direction that the Revision Petition be considered as pending before

the learned Chief Court and the same be heard and decided expeditiously on its own merit. The learned Chief Court in pursuance of the order dated 24.08.2016 of this court heard and decided the Criminal Revision No. 13/2015 vide impugned order dated 22.12.2016 wherein the petition of the petitioner was dismissed.

3. The learned counsel for the petitioner submits that after granting bail by the learned Vacation Sessions Judge Gilgit vide order dated 13.02.2015, the same can not be cancelled unless the petitioner misused it. Per learned counsel on 07.09.2015 upon submission of challan of the said case, the learned Sessions Court District Diamer has wrongly observed that the bail to the petitioner was granted by the learned Judicial Magistrate Chilas which is without jurisdiction as Section 409 PPC is triable by the Court of Sessions Judge. He reiterates that the bail was granted by the learned Vacation Sessions Judge District Gilgit which holds field which was wrongly cancelled by the learned Sessions Judge Diamer, hence, the same was not tenable. Consequently, the petitioner filed Cr. Revision NO. 13/2015 which upon hearing was dismissed vide order dated 22.12.2016 declaring the same baseless, groundless and based on malafidies on the part of petitioner. Per learned counsel for the petitioner the impugned order dated 22.12.2016 is not sustainable being the result of misconception of law and misreading/non reading of the facts of the case whereas the order dated 13.02.2015 in B.A No. 10/2015 passed by the learned

vacations Sessions Gilgit is well reasoned and well founded. He prays that the impugned order dated 22.12.2016 may graciously be set aside and the order dated 13.02.2015 in B.A No. 10/2015 passed by the learned vacations Sessions Gilgit be maintained.

4. On the other hand, the learned Advocate General supports the impugned order dated 22.12.2016 passed by the learned Chief Court which according to him is well reasoned and well founded. He contends that the petitioner has willfully avoided to appear in the learned trial Court so he is not entitled for the concession of bail which has rightly been cancelled by the learned Sessions Court Diamer and the same was upheld by the learned Chief Court. He prays that the impugned order dated 22.12.2016 in Cr. Revision No. 13/2015 passed by the learned Chief Court may pleased be maintained.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned order dated 22.12.2016 passed by the learned Chief Court as well as the orders of the learned courts below. In our considered view the order dated 13.02.2015 in B.A No. 10/2015 passed by the learned vacations Sessions Gilgit is well reasoned and well founded.

6. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned order dated 22.12.2016 in Criminal Revision No.

13/2015 passed by the learned Chief Court and the order dated 07.09.2015 passed by the learned Sessions Judge Diamer in session case No. 114/2015 are set aside. The order dated 13.02.2015 in Petition No. 10/2015 passed by the learned Vacation Sessions Judge Gilgit is maintained. The bail concession extended to the petitioner shall remain intact as granted by the learned District Sessions Judge Gilgit.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.