

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

BEFORE:-

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

Cr. Appeal No. 13/2018

In

Cr. PLA No. 49/2017

Safdar Ali son of Meharban r/o Nagral, District Gilgit

Petitioner.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Ehsan Ali Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General for respondent.

DATE OF HEARING: - 19.07.2018.

ORDER.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has arisen out of the impugned order dated 27.11.2017 in Criminal Misc. No. 154/2017 passed by the learned Chief Court whereby the said Criminal Miscellaneous filed by the petitioner was dismissed, hence, this petition for leave to appeal. This court vide order dated 27.01.2018 issued notice to the respondent and the case is heard today.

2. Briefly, the facts of the case are that the Petitioner was apprehended under Sections 120-B, 123-A, 124-A, 153-B PPC, 11-EE (IV), 6/7, 11-N, 7(G) 7(ii), 6/7 Anti-Terrorism Act, 1997 vide FIR

No. 40/2016 dated 02.10.2016 at Police Station City Gahkuch, District Ghizer. The petitioner was under surveillance, when found and detected in organizing Balawaristan National Front (BNF) which is a ban organization headed by one Abdul Hameed who is involved in anti-State activities and is in self exile. The petitioner involved to transport anti-state literature to Gilgit-Baltistan and to distribute the said literature among the members of BNF and other like-minded people with intent to destabilize the country. The petitioner being aggrieved filed Criminal Misc. Application No. 67/2017 for grant of post arrest bail under Section 497 Cr. PC read with Section 21-D of the Anti-Terrorism Act, 1997 in the learned Trial Court. Upon hearing, the learned Trial Court dismissed the said application vide order dated 31.07.2017 which was upheld by the learned Chief Court vide impugned order dated 27.11.2017, hence, this petition for leave to appeal.

3. The learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the case. He also submits that the allegations against the petitioner are general, vague and ill-found. He also submits that there are no reasonable grounds to believe that the petitioner has committed a non-bailable offence as alleged. Per learned counsel the FIR against the petitioner was lodged without resorting to the provisions of Section 196 Cr. P.C, hence, the subsequent proceedings are illegal and without lawful authority. The registration of a criminal case by an ordinary Police official involving the petitioner under Sections

120-B, 123-A, 124-A, 153-B PPC is without jurisdiction except upon a complaint made by the Central Government or the Provincial Government concerned, therefore, the FIR itself is liable to be quashed. He further submits that the punishment provided under the Anti-Terrorism Act is for three years which does not fall in the prohibitory clause of Section 497 Cr. PC. He submits that both the learned Courts below fell in error while refusing bail to the petitioners. He placed on record the bail granted to main accused namely Mehboob Ali in same FIR No. 29/2016 by the learned Chief Court and the petitioner is entitled for the same concession on the principle of consistency. He also submits that the petitioner is in prison for the last two and half years without trial.

4. On the other hand, the learned Advocate General appearing on behalf of the State opposed for the grant of bail to the petitioner as there are sufficient grounds to believe that he has committed the alleged offence. He supports the impugned order passed by the learned Chief Court as well as order passed by the learned Trial Court. He contends that the petitioner is an active member of Balawaristan National Front (BNF) which is headed by one Abdul Hameed who is involved in anti-State activities and is in self exile. The petitioner being activist of BNF visited India to meet the Chairman of BNF namely Abdul Hameed as evident from his passport recovered from him by the police during search. The offence is not bailable. He also contends that sufficient material available on record against the petitioner which connect him with

the commission of the offence. Per learned Advocate General, the learned Chief Court and the learned Trial Court have rightly refused the concession of bail to the petitioner. The impugned order passed by the learned Chief Court as well order passed by the learned Trial Court may pleased be maintained.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order dated 27.11.2017 in Criminal Misc. No. 154/2017 passed by the learned Chief Court as well order passed in Cr. Misc. No. 67/2017 by the learned Trial Court. We have also perused the bail granting order dated 25.05.2018 to the main accused Mehboob Ali passed by the learned Chief Court.

6. In view of the above discussions, we convert this petition into an appeal and the same is allowed by granting bail to the petitioner namely Safdar Ali son of Meharban r/o Nagral, District Gilgit on the of Principle of Consistency subject to furnishing two solvent sureties in the sum of Rs. Rs. 5,00,000/- alongwith two reliable bail bonds in the like amount to be furnished by the respectable/notables of the area to the satisfaction of the learned Trial Court. The petitioner, if placed under Schedule-IV shall also furnish fresh surety bonds under Schedule-IV of Police Rules to the concerned police authorities. In case, the petitioner, after releasing on bail, violates the police rules or involved in anti-State activities, he will be taken into custody forthwith in accordance with law.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.