

**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. 06/2017

In

Cr. PLA No. 40/2016.

The State through ANF

Petitioner.

Versus

Ishaq Ahmed

Respondent.

PRESENT:-

1. Mr. Manzoor Hussain Special Prosecutor ANF alongwith Mr. Ali Nazar Khan Advocate-on-record for the petitioner.
2. Mr. Amjad Hussain Advocate on behalf of the respondent.

DATE OF HEARING: - 16.05.2017.

DATE OF DETAIL ORDER:- 24.08.2017.

ORDER.

Dr. Rana Muhammad Shamim, CJ..... This petition for cancellation of bail has arisen out of the impugned order dated 02.11.2016 passed in Criminal Misc. No. 117/2016 by the learned Chief Court whereby the said petition for grant of bail filed by the respondent/accused was allowed subject to furnishing bail bonds in the sum of Rs. 20,00,000/- (rupees twenty lac only). Consequently, the order dated 15.08.2016 passed by the Special Judge CNSA, Hunza-Nagar was set aside, hence, this petition for leave appeal. This court vide order dated 03.03.2017 issued notice to the respondent and the case was heard today.

2. Briefly, the facts of the case are that the petitioner was booked under Section 9(C) CNSA vide FIR No. 07/2016 dated

30.05.2016 lodged at Police Station ANF Gilgit. As per version of the FIR, the ANF authorities received spy information that one Muhammad Taqi son of Habibullah resident of Nagar and one Haji Abdul Rehman resident of Mardan, who are notorious international smugglers would try to transport heroin powder to China through Sost Border. Further that one of the agents of the above named smugglers will arrive from Morkhoon to Sost in order to handover the narcotics to any particular customer. The ANF officials constituted a raiding team and set out at about 1500 hours from Gilgit to Morkhoon. Consequently, the said team on reaching Morkhoon kept a vigilant eye at the suspected persons. At about 15:45 hours a person appeared at the scene of occurrence by holding a black bag in his hand. He was trapped and captured by the ANF team. The ANF officials took search of the said suspect resultantly five packet of heroin were recovered in presence of witnesses from him, each packet contains 2000 grams of heroin i.e. total weight 10,000/- grams (10 Kgs) heroin. Out of which ten (10) grams of heroin was separated from each packet as sample for chemical expert opinion. The recovered heroin powders alongwith samples were seized and sealed and were prepared which was duly signed by the recovery witnesses. The accused was arrested accordingly.

3. After completion of investigation, the challan of the case was submitted in the Court of Special Judge (CNSA) at Hunza-Nagar. The respondent applied for grant of bail in the learned Trial

Court which upon hearing was refused vide order dated 15.08.2016. The respondent being aggrieved, approached the learned Chief Court by filing Criminal Misc. No. 117/2016 which upon hearing was allowed vide impugned order dated 02.11.2016. The petitioner (State) being aggrieved called in question the said impugned order.

4. Mr. Manzoor Hussain learned Special Prosecutor ANF submits that 10 Kg of heroin was recovered from the possession of the respondent/accused in presence of the witnesses. The bail to the respondent was rightly refused by the learned Trial Court as there are sufficient materials and evidence on record which prima facie connects the respondent with the commission of offence. Per learned counsel the learned Chief Court relying upon the news clippings granted bail to the respondent without considering the gravity of offence as the punishment provided under Section 9(C) first proviso of CNSA 1997 is death while minimum sentence is life imprisonment. The alleged offence admittedly falls within the prohibition contained in Section 497 Cr. PC. The reasonable grounds exist to believe that the respondent has committed offence for which he is not entitled for the concession of bail. He submits that CNSA is a special statute & Section 25 of the said special law provides that the police officials are witnesses as good as private witnesses. The private witnesses is not a legal requirement for search and recovery in the case in question. He submits that the bail granted to the respondent by the learned Chief Court may

graciously be cancelled in circumstances. While saying so he relied upon the case law reported as 2006 SCMR 1256, 2010 SCMR 61 and 2008 SCMR 1254. Where the bail to the accused was refused in identical cases.

5. On the other hand, the learned counsel for the respondent supports the impugned order dated 02.11.2016 passed by the learned Chief Court. He contends that the case against the respondent is false & fabricated and the real culprits whose names have been mentioned in the FIR by the petitioner have not yet been implicated and arrested so far. He also contends the real facts of the case have been twisted and a tailored story has been put forth by the ANF authorities to save the real offenders. The case against his client is mere to fill in the blanks. He further contends that the heroin was recovered from the bags containing walnuts as evident from the documents placed on record by the respondent which were booked from Goods Forwarding Agency Haji Camp, Head office Peshawar by one Abdul Rehman to deliver it to one Muhammad Taqi resident of Nagar. The private witnesses of the locality clearly stated that the heroin was transported by packing the same in walnuts but their statements have not been considered. Per learned counsel his client was just a carrier and he is not a smuggler. He reiterates that the true story has been published as headline in all the local newspapers of Gilgit-Baltistan but surprisingly none of the main accused has been arrested. He adds that the record of the case is also silent regarding the transportation of the said heroin

from Peshawar to Gilgit and owned to Sost as well. He contends that in view of the above circumstances this case has become a case of further inquiry. He prays that the impugned order may pleased be maintained in the circumstances.

6. We have heard the learned counsels for the respective parties at length, perused the material on record of the case file and gone through the impugned order as well as bail order passed by the learned Trial Court. The tentative perusal of the material on record transpires that the respondent was apprehended red handed while carrying and transporting the 10 Kilo grams of heroin powders. The learned Chief Court had erred in entering into the facts of the case and making an incorrect observations that the respondent/accused was not found in the exclusive possession of the narcotics. The respondent, thus, was prima facie involved in an offence falling within the prohibition contained in Section 497 (1) Cr. PC who was not entitled for the concession of bail. The learned Chief Court have also failed to apply its judicial mind in holding that the news clippings in the newspaper regarding the false implication of the respondent has not been contradicted by the ANF authorities. The bail was granted to the respondent on the ground of further inquiry which had no legal force in the given circumstances of the case. The possibility of further inquiry did exist in every case but it was not possible to release the accused on bail notwithstanding his involvement in the heinous criminal case, particularly in which a considerable numbers of members of the

society including children, boys and girls, men and women fell prey of drug addiction & drug trafficking. We do agree with the learned counsel for the respondent that the provisions of Section 497 Cr.PC are not punitive in nature. The grant or refusal of bail to be determined judiciously having regard to the facts and circumstance of the case. Where the Prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime in category punishable with death sentence, life imprisonment or imprisonment for 14 years, must refuse bail, where, however, the accused, satisfies the court that there are not reasonable grounds to believe that he has no guilty of such offence then the he be released on bail. The court, arriving at any such conclusion is not to conduct a preliminary trial/inquiry but will only make a tentative assessment. Reasonable grounds means, the grounds which appeal to a reasonable and prudent man that the accused has committed an offence punishable with death or imprisonment for life or imprisonment for 10 years, the bail is not to be allowed. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. The Court will not minutely examine the merits of the case or plea of defence at bail stage. The court has to look at the material collected by the Police/force for and against the accused and prime facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt. The bail order must be carefully balanced at the scale of

justice and requirement of relevant law. The huge quantity of heroin was recovered from the possession of the respondent, he, thus, was prima facie involved in an offence punishable with death or minimum sentence as provided under Section 9 (C) of ANF Act is life imprisonment. There was nothing on record to show that the complainant party had any ill-will, grudge or hostility with the respondent to implicate him in this case by thrusting upon huge quantity of heroin powders and containment of narcotics. The respondent prima facie involved in the commission of offence under Section 9(C) of CNSA which falls within the prohibitory clause of Section 51(1) of CNSA, 1997 and 497(1) Cr. PC as it provides the capital punishment of death. Moreover, the courts can not relied upon the reports of the print media as the same are based on hearsay which has no evidential value in the eyes of law. The chemical expert report is also positive which corroborates the version of the petitioners. The reasonable grounds exist to believe that the respondent has committed a non-bailable offence which disentitles him for the concession of bail. In our considered view, the impugned order dated 02.11.2016 passed by the learned Chief Court is not well reasoned and not sustainable in law.

7. As a result of above discussions, and case laws relied upon by the learned Prosecutor ANF, this petition was converted into an appeal and the same was accepted. Consequently, the bail granted to the respondent, Ishaq Ahmed son of Khush Muhammad, resident of Morkhoon Tehsil Gulmit Gojal District Hunza was

cancelled vide our short order dated 16.05.2017. Consequent thereto, the impugned order dated 02.11.2016 passed in Criminal Misc. No. 117/2016 by the learned Chief Court was set aside and the bail order dated 15.08.2016 passed by the learned Trial Court is upheld. The learned Trial Court was directed to examine the materials prosecution witnesses within a period of 03 months in accordance with law. The case be conducted, heard and decided independently in its own merit without being influenced by any of the observation(s) earlier made by the learned Trial Court itself, the learned Chief Court or by this court. These were the reasons of our short order dated 16.05.2017. The copies of this order be sent to the learned Trial Court for compliance.

8. The appeal was accepted in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?