

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

Before:-

- 1. Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.**
- 2. Mr. Justice Javed Iqbal, Judge.**
- 3. Mr. Justice Shahbaz Khan, Judge.**

Cr. Appeal No. 09/2016

In

Cr. PLA. No. 19/2016.

1. The State

Petitioner.

Versus

1. Niamat Wali son of Bachat r/o Gopis District Ghizer, currently Residing at Jutial Gilgit.

Respondent.

CHARGED UNDER SECTIONS 365-B/ 34, 494, 420, 493-A, 471 AND 468 PPC VIDE FIR NO. 103/2015 POLICE STATION JUTIAL DISTRICT GILGIT.

PRESENT:-

1. Mr. Asadullah Khan Advocate for the complainant called absent.
2. The Advocate General Gilgit-Baltistan for the State.
3. Mr. Mir Ikhlaq Hussain Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record on behalf of respondent.

DATE OF HEARING: - 01.09.2016.

ORDER.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has been directed against the impugned order dated 19.05.2016 passed by the learned Chief Court Gilgit-Baltistan in Cr. Misc. No. 78/2016, whereby the bail was granted to the respondent who allegedly committed offence under Sections 365-B/ 34, 494, 420, 493-A, 471 and 468 PPC. The petitioner feeling aggrieved by and dissatisfied with the said impugned order filed this petition for leave to appeal.

2. Briefly the facts of the prosecution case are that an FIR No. 103/2015 was registered on the complaint of one Naveed Ahmed son of Ahmed Wali Shah R/o Yasin Colony Jutial on 07.11.2015 in Police Station Jutial Gilgit under Section 365-B/34

and Section 109 PPC against Niamat Wali son Bachat r/o Gopis currently residing Jutial Gilgit. It was reported by the complainant that his sister-in-law namely Aneeta wife of Pervaiz has been abducted by some unknown persons and her Ex. Fiancé is under suspicious. On the basis of information provided by the complainant party, the Police after hectic efforts recovered the abductee and the respondent was arrested and booked under Section 494, 420, 471, 493-A, subsequently 468 of PPC were added to the FIR. The respondent admitted their relationship by producing false affidavits of abductee stating therein that she has been divorced by Pervaiz Ahmed Shah. The police started investigation under Section 157 Cr. PC and during investigation one Ahmed Ali Shah, father-in-Law of the lady handed over a piece of small paper, which was containing a Mobile No. 03125416203 found in the personal belonging of Aneeta Nawaz. The said cell number during inquiry/investigation of the local police, was found registered in the name of respondent, which provided a clue to the police to proceed ahead. On 04.12.2015 on spy information, when police conducted a raid in a house at Konodas and arrested both the accused red handed from a room of the house.

3. The respondent accused filed application under Section 497 Cr. PC in the learned Trial Court for grant of bail which upon hearing was dismissed vide order dated 30.05.2016 on the basis of materials on record, prima facie, the respondent/accused is involved in the commission of the alleged offence. Furthermore, the

punishment provided in the offence is life imprisonment and the case of the respondent/accused falls within the prohibitory clause of Section 497 (1) Cr. PC. The respondent/ accused being aggrieved by filed Criminal Misc Application No. 28/2016 in the learned Gilgit-Baltistan Chief Court which upon hearing was allowed vide impugned order dated 19.05.2016. The petitioner/State feeling aggrieved by and dissatisfied with the said order filed this petition for leave to appeal. This court vide order dated 16.06.2016 granted leave to appeal and notice was issued to the respondent accordingly. The case was finally heard today.

4. The learned Advocate General submits that the impugned order dated 19.05.2016 passed by the learned Chief Court is not sustainable. As per materials available on record the respondent/accused was caught red handed from a house alongwith the lady co-accused Mst. Aneeta Nawaz. The respondent/accused in defence produced Nikah Nama before the police to prove his innocence. He further submits that on the contrary the Prosecution Witnesses (PWs) in their statements stated that the previous marriage of the abductee Mst. Aneeta Nawaz is intact. He also submits that the Prosecution has collected tangible evidences to connect the respondent/accused with the commission of the crime. He submits that as regard the offences punishable for death sentence or imprisonment for life or imprisonment for ten (10) years, the question of grant or refusal of bail is to be determined judiciously having regard to the facts and circumstances of each

case. He also submits that the prosecution has satisfied the learned Trial Court that there are reasonable grounds to believe that the respondent/accused has committed an offence falling in the category of Prohibitory Clauses and the bail was accordingly refused by the learned Trial Court. He, however, submits that learned Gilgit-Baltistan Chief Court while deciding the bail application went into deeper appreciation of evidence and the circumstances as spelled out in the case was neither desirable nor permissible at bail stage. He further submits that the learned Gilgit-Baltistan Chief Court was under legal obligation to consider all the attending facts and circumstances before releasing the accused on bail. He also submits that in such cases even the offence does not fall within the Prohibitory Clause of Section 497 Cr.PC, the bail was not allowed. He also submits that even where the name of the accused is not mentioned in the FIR and subsequently categorical belated statements of Prosecution Witnesses (PWs) directly implicating the accused for the commission of offence, the bail was refused in circumstances. He further submits that keeping in view of all the attending circumstances, even fact of delay in recording the statements of Prosecution Witnesses (PWs) cannot be determined at bail stage and tentative assessment of the material on record is to be considered. He reiterated that the bail in such cases even offence does not fall under Prohibitory Clause was refused. He also submits that there are sufficient material available on record that the lady co-accused Aneeta Nawaz was in the wedlock of her husband

namely Pervaiz Ahmed as no proof of divorce has been submitted by the respondent and the lady co-accused. While saying so he relied upon the case laws reported Muhammad Afzal & others versus the State, 1997 SCMR, 278, Lal Muhammad versus the State, 1990 SCMR, 315, Abdul Aziz versus Saleem Muhammad & another, SCMR 1990, 346 and Imtiaz Ahmed & others versus the State PLD 1997, 545.

5. On the other hand, the learned counsel for the respondent supports the impugned order dated 19.05.2016 passed by the learned Chief Court being well reasoned and well founded. He contends that the grounds taken in the petition by the petitioner for cancellation of bail itself are sufficient to dismiss the same. He also contends that the lady Aneeta Nawaz after taking divorce from her previous husband contracted marriage with the respondent/accused. The respondent/accused was living with the co-accused as husband and wife as such the respondent has not committed any offence. He further contends that since the documents produced by the respondent/accused before the investigating agency and the authenticity of these documents can be considered after recording of the evidence which makes the case as one of further inquiry and the learned Gilgit-Baltistan Chief Court has rightly granted him the concession of bail.

6. 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 19.05.2016 in Cr. Misc. No.

78/2016 passed by the learned Chief Court as well as the order dated 30.05.2016 passed by the learned Trial Court Gilgit. We are fortified by the judgments cited by the learned Advocate General in case titled Muhammad Afzal & others versus the State (supra), wherein it is held that the courts are under an obligation to consider all the attending facts and circumstances before deciding to release such accused persons on bail, in case titled Lal Muhammad versus the State (supra), it is held that prima facie the case is made out against the petitioner which disentitles him from the grant of the bail after having gone through the record of the case and the investigation papers available on record, the refusing of bail to the accused by the learned Trial Court or by the learned High Court have not violated any legal provisions or principle of law, in case titled Imtiaz Ahmed & others versus the State (supra), it is held that the approach of the court in view of the scenario prevailing in the country has to be reformation-oriented with the desire to suppress the mischieves. To achieve the said objective the courts have to apply strictly the laws which are designed and intended to eradicate the national evils. The statements of the Prosecution Witnesses (PWs) by comparing with the statement of accused cannot be determined at bail stage, in case titled Abdul Aziz versus Saleem Muhammad & another (supra), it is held that when there is categoric statements of the Prosecution Witnesses (PWs) directly implicating the accused with the commission of offence, the effect of delay in recording statements of Prosecution

Witnesses (PWs) could not be determined at bail stage and the bail granted by the High Court was cancelled. Similarly, evaluation of the statement of the accused by comparing with the statements of other witnesses is not justifies at this juncture and the petitioner's request for bail was refused.

7. In view of the above discussions, in presence of the sufficient materials on record and laws laid down by the Hon'ble Apex Court of Pakistan and in our considered view the respondent was not entitled for concession of bail at this stage. The appeal is allowed and the bail granted to the respondent is hereby cancelled. Consequent thereto the impugned order dated 19.05.2016 passed by the learned Gilgit-Baltistan Chief Court is set aside whereas the order dated 03.05.2016 in Bail Application No. 36/2016 passed by the learned Sessions Judge Gilgit is maintained. The respondent/accused, however, would be at liberty to repeat the bail application in the learned Trial Court after examining of the materials witnesses if so advised.

8. The appeal is allowed and the bail is cancelled in above terms.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?