

**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. 08/2017

In

Cr. PLA No. 31/2015.

The State

Petitioner.

Versus

Aziz-ur-Rehman

Respondent.

PRESENT:-

1. The Advocate General Gilgit-Baltistan for the petitioner.
2. Mr. Manzoor Ahmed Advocate alongwith Mr. Rehmat Ali Advocate-on-Record on behalf of the respondent.

DATE OF HEARING: - 29.06.2017.

ORDER.

This Criminal Petition for cancellation of pre-arrest bail has been directed against the impugned order dated 20.11.2015 in Criminal Misc. No. 16/2015 passed by the learned Chief Court whereby the petition for cancellation of bail of the respondent, filed by the petitioner was dismissed having no merits. The petitioners were directed to proceed against all the offenders involved in the alleged crime. The petitioners feeling aggrieved filed this petition for leave to appeal. This court vide order dated 14.01.2016 granted leave to appeal. Consequently, notice was issued to the respondent and the case was finally heard today.

2. Briefly the facts of the case are that an FIR No. 01/2015 under Section 406, 409, 420 and 427 PPC was registered at Police

Station "Thor" District Diamer against the respondent on the application of the Executive Engineer B&R Division Diamer. In his report, the complainant alleged that the respondent was awarded a contract for Metalling of a 15 kilometer road from KKH to Sari Dass vide agreement dated 21.04.2006. The period for completion of the said road was one (01) year as per the said agreement but the respondent could not complete the road in question within the stipulated period. The police charged the respondent for commission of offences under the above Sections of PPC. The respondent/accused being aggrieved by and dissatisfied with the said impugned order filed BA. No. 11/2015 in the court of Vacation Sessions Judge District Gilgit for his pre-arrest bail which upon hearing was allowed subject to execution of a deed for completion of the work of the project within 02 months vide order dated 07.02.2015. The petitioner being aggrieved filed Criminal Misc. No. 16/2015 in the learned Chief Court which upon hearing was dismissed vide impugned order dated 20.11.2015, hence, this petition for leave to appeal.

3. The learned Advocate General submits that the pre-arrest bail concession granted to the respondent by the learned Vacation Sessions Judge, Gilgit and by the learned Chief Court, Gilgit-Baltistan are against the provisions of Section 498 Cr. PC. He also submits that main conditions governing in exercise of jurisdiction in pre-arrest bail are as under:-

(a). There should be a genuine proved apprehension of imminent arrest with the effect of virtual restraint on the applicant.

(b). That on account of ulterior motives, particularly on the part of motivated police, there should be apprehension of harassment and undue irreparable humiliation by means of unjustified arrest.

(c). It should, otherwise, be a fit case on merit for exercise of discretion in favour of the applicant.

4. He further submits that the offence committed by the respondent falls within the prohibitory clause of Section 497 Cr. PC. Per learned Advocate General mere on the basis of his undertaking that he will complete the remaining work of project within two/three months does not entitle the respondent for the grant of bail when he has admitted his guilt. He submits that the investigation agency has been deprived to investigate the case and the respondent inspite of his undertaking in the court has not completed the remaining work. Consequently, he has misused the concessions of bail as he caused huge loss to the Government exchequer. He adds that since no ground for pre-arrest bail was available, therefore, the bail granted to the respondent may graciously be cancelled and the orders passed by both the Courts below may pleased be set aside.

5. On the other hand, the learned counsel for the respondent supports the impugned order dated 20.11.2015 in Criminal Misc. No. 16/2015 passed by the learned Chief Court. He

contends that no criminal case can be registered against the respondent as the matter/dispute if any is of a civil nature. The respondent, however, is ready to honor his contractual commitments for Metalling of road, in case the road clearance be given by Government of Gilgit-Baltistan. He also contends that as per agreement dated 07.11.2016 between the parties the contractor has undertaken to complete the said road before 17th June, 2017, the progress of the work is satisfactory and will shortly be completed. He prays that the bail granted to the respondent vide impugned order dated 20.11.2015 in Criminal Misc. No. 16/2015 passed by the learned Chief Court was never misused and it may graciously be continued. Per learned counsel for the respondent, the impugned order is well reasoned and no interference is warranted into it.

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 20.11.2015 in Criminal Misc. No. 16/2015 passed by the learned Chief Court as well as the order of the learned court below. Admittedly, the dispute between the Gilgit-Baltistan Government and the respondent is of civil nature and orders passed by the both the Courts below are well reasoned. The learned Advocate General also could not point out any illegality and infirmity in the impugned order passed by the learned Chief Court.

7. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequently, impugned order dated 20.11.2015 in Criminal Misc. No. 16/2015 passed by the learned Chief Court is maintained.

8. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?