

IN THE SUPREME APPELLATE COURT NORTHERN AREAS

GILGIT

Cr. Misc. No. 09/2009

**Before: Mr. Justice Muhammad Nawaz Abbasi, (Chief Judge)
Mr. Justice Syed Jaffar Shah, (Judge)
Mr. Justice Muhammad Yaqoob Khan (Judge)**

1. Badar Munir s/o Nawab Khan.
2. Muhammad Alam s/o badar Jamil r/o dodishal Darel Distract Dimer at present confined in District Jail Chilas.

Petitioner

Versus

The State

Respondent

OFFENCES UNDER SECTION 324/34 PPC VIDE FIR NO. 83/08 & 85/08 AGAINST THE PETITIONERS AND CROSS FIR NO. 86/08 AGAINST COMPLAINANT SIRAJ ALAM AT POLICE STATION CHALIAS.

CRIMINAL PETITION FOR LEAVE TO APPEAL AGAINST ORDER DATED 15-05-2009 PASSED BY THE LEARNED NORTHERN AREAS CHIEF COURT.

**Present: -Muhammad Issa, Advocate present for the petitioners.
Advocate General for the State.**

Date of hearing: 26.08.2009

ORDER

Syed Jaffar Shah Judge..... The present petition for grant of leave has been directed by the petitioners namely Babar Munir and Muhammad Alam residents of Dodishal Darel District Diamer against or dated 15-05-2009 passed by Single Bench of Chief Court Northern Areas in Cr. Misc. No. 47/09, whereby declining concession of bail to petitioners in a case registered under section 324/34 PPC read with section 13 A.O vide FIR No. 38, 84, 85/08.

(1) Precisely the facts narrated in the FIR lodged by one Fazal Rahman, a police constable are that on the day of occurrence the petitioners opened fire with 30 bore pistols upon siraj Alam and Shabbir Hussain in the vicinity of Session Court of Chilas, while they were coming out of Session Court after attending a case. It is also the case of prosecution that in retaliation the other party namely Siraj Alam and Shabbir Hussain also opened fired upon the present petitioners, but non out of both the parties sustained any fire arm injury.

(2) That the police arrested both the parties at the spot but latter on the other party namely Siraj Alam and Shabbir Hussain were let out by the police under section 169 Cr. PC.

(3) The petitioners after their arrest moved bail application before the Additional & Sessions Judge Chilas, which was turned down vide order dated 25-11-2009, the petitioners again moved application for grant of bail before Chief Court Northern Areas, which came to be heard by the Learned Chief Judge Northern Areas Chief Court, who vide impugned order rejected the same.

(4) The learned Counsel for the petitioners at the very out set prayed for condonation of delay of 29 days in filing of present petition, since the petitioners in jail more over petition for condonation has been made on the ground of illness and points raised by the Learned Counsel are convincing as such we condone the delay of 29 days in filing of the petition.

(5) We have heard the Learned Counsel for the parties at length the Counsel appearing for the petitioners contended that this is a case of aerial firing which basically does not constitute an offence under section 324 PPC, he further contended that although the recovery of pistols from the petitioners are allegedly made but the same recovery is immaterial as no crime empty has been record from the spot. He further contended that it is a case of further inquiry as both the parties have admittedly fired each other as such it is yet to be determined as to who was the aggressor party. He also added that in spite of laps of considerable time the trial has not been started as yet and the petitioners are languishing in jail, suffering from hardships and there are no chances of disposal of the case in near further.

(6) The petition is opposed by Learned Advocate General appearing on behalf of the state on the ground that the petitioners were apprehended on the spot and weapons of offence have been recovered from their possessions.

(7) So far as contention of Learned Counsel for petitioner regarding delay in trial is concerned we do not find any force in this contention as the Learned Counsel has failed to point out any noticeable delay in Trial. The report furnished by the Trial Court on

the direction of this Court also reveals that considerable delay is attributed to prosecute and the Trial of the case is in progress.

(8) Having heard the arguments of learned counsel for the parties and from perusal of the record we have come to the conclusion that four accused namely Badar Munir, Muhammad Alam) present petitioners) Siraj Alam and Shabbir Hussain were charged in the FIR for opening fire to each other but the police has released two accused namely Siraj Alam and Shabbir Hussain under section 169 Cr.PC the role of firing attributed to all the accused were identical in nature, recovery of weapons were also made from them at the spot but the prosecution has challanded only the present petitioners under section 324/34 PPC and 13 A.O thus they have been treated differently. It is also admitted fact that although recovery of fire arm i.e. 30 Bore Pistol has allegedly been made from the present petitioner but no crime empty is stated to have been recovered from the spot. The above factors bring the case of petitioners with the domain of further inquiry with the meaning of Section 497 (2) Cr.PC.

Considering the present case as one of further inquiry, this Court by converting the petition into appeal had ordered release of petitioners vide shot order, the same is reproduced as under:-

“For the detail reasons to be recorded late on, this petition is converted into an appeal and bail is allowed to the petitioners subject to their furnishing bail bonds in the sum of Rs. 100,000/- (one lac) each with two sureties, each in the like amount to the satisfaction of trial Court.”

For what has been discussed above the petition is converted into appeal and the same is allowed.

Chief Judge

Judge

Judge