

IN THE SUPREME APPELLATE COURT NORTHERN AREAS
GILGIT

Cr. Misc. No. 13/2009

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

1. Gulzar Hussain s/o Tahir Hussain 2. Adnan Ali s/o Ahmed 3. Muhammad Afzal s/o Abdur Rehman r/o Krasmathing Olding Skardu.

Petitioner

Versus

The State

Respondent

**OCCENCE UNDER SECTION 377/34 PPC VIDE FIR
NO. 01/2009 DATED 15.03.2009 POLICE STATION
SHIGAR**

**PETITION FOR LEAVE TO APPEAL AGAINST
THE ORDER/JUDGMENT DATED 25-06-2009 OF
LEARNED CHIEF COURT NORTHERN AREAS
GILGIT**

Present: - Haji Jamal Khan advocate for the Petitioner
Advocate General for the petitioner.

Date of hearing: 31.08.2009

ORDER

Mr. Justice Muhammad Nawz Abbasi, C.J: Learned counsel for the petitioners at the very outset submitted that the case of Adnan Petitioner is distinguishable to that of two other petitioners namely Gulzar Hussain and Muhammad Afzal, therefore, he would not press this petition for the time being to his extent. This petition to the extent of Adnan is dismissed, as not pressed.

The learned counsel for Gulzar Hussain and Muhammad Afzal petitioner submitted that there is no evidence on record to connect the petitioners with crime. The medical examination report of victim is negative and neither the statement of the victim under section 161 has been recorded nor identification of the petitioners who were stranger to him was held. The learned counsel submitted that first informer was not an eye witness, therefore his evidence being hearsay would be of no consequence.

The learned Advocate General has not been able to contradict the above assertion of the learned for the petitioners on record.

The perusal of record would show that the version of FIR to the extend of petitioners is not as such supported by any evidence on record and consequently the case against them would squarely fall within the ambit of section 497 (2) C.rpc for the purpose of bail. This petition is therefore converted into an appeal and bail is allowed to them, subject to their furnishing bail bonds in the sum of Rs. One lac (1,00,000) each the two sureties each in the like amount to the satisfaction of trial Court.

The investigation in this case was badly conducted. The sub inspector who investigated the case without collecting the medical report from the concerned doctor and recording the statement of victim and also without identification parade of petitioner who were stranger to the victim before the occurrence submitted the challan. This was gross negligence and inefficiency of I.O which would amount to destroy the evidence and may have direct effect on prosecution case. The medical officer who initially examined the victim and prepared preliminary medical report did not prepare final report, before 29.08.2009 when he was called to appear before this Court case, who is under suspension and DSP is holding the inquiry. The SSP Skardu will submit the final result of inquiry to the Registrar of this Court. The SSP present in Court states that a supplementary Challan containing the statement of victim under section 161 Cr.P.C will be shortly filed before the trial Court.

The medical officer either lack of experience or due to negligence did not bother to prepare the medical report. He should be careful in future.

Chief Judge

Judge

Judge