

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)**

Gul Sfaid s/o Maser Khan, r/o Darel at present in Judicial lockup
in District Jaail Diamer Chilas.

Petitioner

Versus

The State

Respondent

CHARGE UNDER SECTION 302/34PPCAND 13 A.O

**PETITION FOR LEAVE TO APPEAL AGAINST
THE ORDER/JUDGMENT DATED 08-05-2009
PASSED BY CHIEF COURT NORTHERN AREAS
GILGIT**

Present: - Advocate General for the state.
Malik Haq Nawaz, Advocate for the petitioner.

Date of hearing: 25.08.2009

ORDER

The petitioner facing charge of murder under section 302/34 PPC in case registered against hi vide FIR No. 54/2007 dated 14.10.2007 at Police Station Daril has filed this petition for grant of bail on the refusal of the same by Chief Court, vide order dated 08.05.2009.

The petitioner along with his companion allegedly armed with lethal weapon opened firing at shah room deceased as a result of which he having sustained injuries died at the spot. The occurrence was seen by Azmatullah, Dadu and Shah Jehan, and their statements were accordingly recorded by Police under section 161 however, during the course of investigation, co-accused of the petitioner namely Haji Hakim was discharged under section 169 C.rpc and Challan against the petitioner was submitted on 29.05.2008, whereas, charge against him was framed on 11.10.2008. the report called from the trial Court reveals that despite repeated notice and issue ofailable and nonailable warrant, the witnesses did not appear before the Court and on the dates on which witnesses were available, the district Attorney was not present and for the above reason there was no progress in the trial.

The careful examination of the record with assistance of learned counsel for the petitioner and learned Advocate General, and tentative assessment of the evidence in the hand of prosecution would show that petitioner was assigned the general role of firing in company of his co-accused and it is not ascertainable for the statements of eye witnesses under section 161 Cr.PC that who out of two assailants was exclusively responsible for causing death and there is also nothing on record that for what reason the co-accused of the petitioner was discharged from the case.

The learned counsel for the petitioner has contended that no doubt petitioner is a nominated accused but there is no incriminatory evidence on the record to prove the charge against him and in view of the facts that the petitioner and his co-accused were assigned the general role of firing, the benefit of doubt arising out of the situation after the guilt of petitioner would go to him even at bail stage. Learned Counsel added that except the ocular account yet to be produced no other evidence including the medical and recovery is available on record to connect the petitioner with the crime. He submitted that the Postmortem of the deceased was not conducted, to ascertain the cause of death and similarly the weapon of offence allegedly recovered from the petitioner was not sent to the ballistic expert for opinion. Therefore, the sole evidence of eye witness without test of cross examination and security of its evidentiary value no inference regarding guilt of petitioner cannot be drawn at this stage to withheld. Learned Counsel that in these circumstances, the case against petitioner would squarely fall within the ambit of Section 497 (2) Cr.PC, for the purpose of further inquiry and grant of concession of bail. The learned Advocate general has not been able to controvert the contention of learned counsel for want of police record, which has not been made available to him by the concerned Police.

Be that as it may, in view the facts and circumstances of the case and the quality of prosecution evidence, the detention of the petitioner without trial is not fair. The report submitted by trial Court would show that despite issue ofailable and nonailable warrants of witnesses, prosecution has not bothered to make any effort to produce the evidence and consequently the early conclusion of trial is not in sight.

We, therefore, convert this petition into and appeal, and grant bail to the appellant, subject to his furnishing bail bonds in the sum of Rs. 200000/- two lac, with two sureties each in the amount to the satisfaction of trial Court.

Chief Judge

Judge