

**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. 24/2016
In
Cr. PLA No. 27/2016.**

1. National Accountability Bureau through its Chairman Atta
Turk Avenue Sector G-5/2, Islamabad **Petitioner.**

Versus

1. Basharat Hussain son of Shah Fareen R/o Thole, District
Nagar.

2. Fida Hussain son of Muhammad Shafi, R/o Sikandarabad,
District Nagar **Respondents.**

PRESENT:-

1. The Additional Prosecution General NAB Islamabad for
the petitioner.
2. Mr. Amjad Hussain Advocate on behalf of the
respondents.

DATE OF HEARING: - 08.11.2016.

DATE OF DETAIL JUDGMENT:- 06.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal
Petition for cancellation of post arrest bail has been directed against
the impugned judgment dated 28.06.2016 in Writ Petition No.
55/2016 passed by the learned Gilgit-Baltistan Chief Court
whereby the learned Chief Court accepted the Writ Petition filed by
the respondents by granting them post arrest bail against the
surety of Rs. 20,00,000/- only each with two sureties to the

satisfaction of the learned Accountability Court Gilgit, hence, this petition for leave to appeal. This court vide order dated 24.06.2016 issued notices to the respondents and the case was heard on 08.11.2016 wherein the petition was converted into an appeal and the same was allowed vide our short order dated 08.11.2016. Consequently, the bail granted to the respondents was cancelled.

2. Briefly facts of the case annexed with the warrant of arrest are that it was reported by the daily "Dunya News" dated 14.10.2013 that the officers of the Customs Gilgit-Baltistan at Sost Border have collected a sum of Rs. 300 million as custom duty, sales tax and income tax which was not deposited into Government account. On 24.01.2014 the National Accountability Bureau, Head Quarter referred the case to the Collector Model Customs Collectorate (MCC) Gilgit-Baltistan for submission of detail report of the offence. The Collector Model Customs Collectorate (MCC) Gilgit-Baltistan through the Secretary, Customs Budget sent a reference to National Accountability Bureau stating therein that upon investigation alongwith with National Bank of Pakistan, it revealed that National Bank of Pakistan Sost Branch failed to deposit amounting to Rs. 217,992,535/- into Government account. Moreover, National Bank of Pakistan Head Office failed in reporting/classification of an amount of Rs. 1.75 billion while reporting to State Bank of Pakistan and National Bank of Pakistan Sost Branch also failed to deposit the Government Revenue within stipulated period rather the collected amount was deposited with

inordinate delay spread over entire period i.e. 2002-2013. The competent authority conducted an inquiry against the respondents on 18.03.2015 under the authorization of Muhammad Mujtaba Khan, Deputy Assistant Director & Sher Ahmed Khan, Expert F&A which was later on authorized to Muhammad Abbas Khan, Assistant Director on 11.12.2015 and subsequently the said inquiry converted into investigation on 18.03.2016.

3. During the course of inquiry/investigation, it was also revealed that during the period 2002-2013, the National Bank of Pakistan Sost Branch collected a total sum of Rs. 7.685 Billion on account of custom duty, sales tax and income tax out of which a sum of Rs. 7.467 Billion was got deposited in the Government account while remaining amount of Rs. 217.99 million was not deposited. Furthermore, a sum of Rs. 102.421 million had been deposited after collecting from clearing agents/importers during the period from July, 2013 to March 2015 and Rs. 115.571 million was deducted by State Bank of Pakistan through debit entry to National Bank of Pakistan. Whereafter it was also revealed that the respondents accused namely Basharat Hussain son of Shah Fareen and Fida Hussain son of Muhammad Shafi in connivance with other accused/ Bank officials, illegally and malafidely managed to clear goods from the custom authorities without paying the custom duties & taxies caused huge loss to the national exchequer to the tune of Rs. 30,738,758 and 8,110,071 respectively.

4. The learned Additional Prosecutor General appearing on behalf of the petitioner submits that the respondents are prima facie linked with the offences as they defrauded the bank through depositing cheques of various amounts which were later on dishonored. He submits that the respondents fraudulently caused huge loss to the Government exchequer which has deteriorated the image and damaged the reputation of the institution. Subsequently a enormous irreparable loss was caused to the economy of the country. As per the learned Additional Prosecutor General twelve traders/business men are, prima facie, involved in the scam, therefore, the bail, which is otherwise barred under Section 9(b) of the National Accountability Bureau Ordinance, 1999 was granted by the learned Chief Court. The Modus Operandi adopted by the respondents was that when the consignments arrive at Silk Route Dry Port Sost, custom authorities assess the duties and taxes on the imported goods and hand over the GDs to Clearing agents (respondents) for payment in NBP Sost Branch. The clearing agents approach the said branch and deposit the cheque/amount against the taxes dues. The cashier after receiving the amount stamps the GDs and returns the same to clearing agents. The clearing agents bring the GDs to a custom authority and get their consignments cleared. The customs authorities mark the consignments "out of Charge". However in this case the cashier stamped the GDs without receiving the amount from the respondent clearing agents. The amount was recorded in the bank scroll provided to custom

authorities but in reality the amount was never deposited in the National Bank. In the reconciliation process, a total of 237 GDs were pending amounting to Rs. 217,992,535/- out of which, Bank has so far recovered Rs. 112,016,571/- however the amount of Rs. 105,975,964/- is still recoverable from bank officials on behalf of the traders/clearing agents. He prayed that while passing judgment and granting bail to the respondents the aforementioned facts & material on record was not considered by the learned Chief Court in its impugned judgment dated 28.06.2016 passed in Writ Petition No. 55/2016 which may graciously be recalled. He submits that there are reasonable grounds to believe that the respondents have committed the alleged offence, hence, the bail granted by the learned Gilgit-Baltistan Chief Court is not sustainable and be cancelled.

5. On the other hand, the learned counsel for the respondents supports the impugned judgment dated 28.06.2016 passed by the learned Gilgit-Baltistan Chief Court. He contends that the arrest of respondents is based on malafidy, illegal, unwarranted and unlawful on the part of the National Accountability Bureau/petitioner. He also contends that there is nothing on record against the respondents which connect them with corruption and corrupt practices as the respondents were/are neither the employees of any Government organization nor office bearers of the National Bank of Pakistan. He also contends that the alleged fraud/embezzlement of Rs. 2.2 billion and the subsequent

shortage of deposit was the fault of the officers/officials of National Bank of Pakistan not on the part of the respondents/clearing agents. As per the learned counsel for the respondents two functionaries of the National Bank of Pakistan at Sost namely Izzat Baig, the then Branch Manager Sost Branch and Mr. Kifayat Ullah, the then Recovery Manager of the said Branch were responsible for the said embezzlement who later on were discharged from the liability after settling a "Plea Bargain" with the National Accountability Bureau. Subsequently they deposited only Rs. 2.2 million each against the total embezzled amount of Rs. 2.2 billion. He further contends that the petitioner has started investigation against the respondents which is illegal and unlawful. He contends that the arrest of the respondents and their subsequent detention by the National Accountability Bureau authorities is illegal and the same is violation of the fundamental rights of the respondents guaranteed by the Constitution of Pakistan 1973 as well as by the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. He contends that the learned Gilgit-Baltistan Chief Court has rightly granted the post arrest bail to the respondents by accepting their Writ Petition vide impugned judgment dated 28.06.2016 in Writ Petition No. 55/2016. He prays that the said impugned judgment may pleased be maintained being passed in accordance with law.

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 judgment dated 28.06.2016 in Writ Petition

No. 55/2016 passed by the learned Gilgit-Baltistan Chief Court. We are in agreement with the learned counsel for the petitioner that prima facie, the National Accountability Bureau authorities have made out a case of corruption and corrupt practices against the respondents as sufficient material is available on record and reasonable grounds exist in their involvement which disentitled them for concession of bail.

7. It is not disputed that the High Court or Chief Court in exercise of its jurisdiction under article 199 of The Constitution of Islamic Republic of Pakistan, 1973 or under the provisions of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 empowered to grant a bail to a person under The National Accountability Bureau Ordinance, 1999 as all the grounds which are relevant for grant of bail under the ordinary law can generally be considered in constitutional jurisdiction. The provision of section 497 Cr.P.C. are not punitive in nature as there is no concept of punishment before judgment. The question of grant/refusal of bail is to be determined judiciously leaving regard to the facts and circumstances of each case. Where the prosecution satisfies the Court, that there are reasonable grounds to believe that the accused has committed the crime falling in prohibitory clause of section 497 Cr.P.C. the Court must refuse bail. On the other hand where the accused satisfies the Court that there are no reasonable grounds to believe that he is guilty of such offence, then the Court must release him on bail. For arriving at the conclusion

as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or imprisonment for ten years, the Court will not conduct a preliminary trial/inquiry but will only make a tentative assessment, i.e., will look at the material collected by the police for and against the accused and prima facie satisfied that some tangible evidence can be offered which, if left un rebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So, the Court will not minutely examine the merits of the case or plea of defence at bail stage.

8. In view of the above discussions, we converted this petition into an appeal and the same was allowed. The impugned judgment dated 28.06.2016 in Writ Petition No. 55/2016 passed by the learned Gilgit-Baltistan Chief Court was set aside. Consequent thereto the bail granted to the respondent No. 01 & 02 namely Basharat Hussain son of Shah Fareen Trader/Clearing Agent resident of Thole Nagar and Fida Hussain son of Muhammad Shafi Trader/Clearing Agent resident of Sikandarabad District Nagar were hereby cancelled. These were the reasons for our short order dated 08.11.2016.

9. The learned National Accountability Bureau Court Gilgit was also directed to hear and decide the case on its own merits expeditiously within a period of six (06) months without

influencing by any of observation(s) either made by this court or by the learned Chief Court.

10. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?