

**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. 05/2016

In

Cr. PLA No. 02/2016.

The State & others

Petitioners.

Versus

Ehsanullah & 03 others

Respondents.

PRESENT:-

1. The Advocate General Gilgit-Baltistan for the State.
2. Mr. Munir Ahmed Advocate alongwith Mr. Johar Advocate for complainant.
3. Mr. Amjad Hussain Advocate alongwith Mr. Manzoor Ahmed Advocate and Mr. Ali Nazar Khan Advocate-on-record on behalf of the respondents/accused.

DATE OF HEARING: - 25.05.2017.

DATE OF DETAIL ORDER:- 21.08.2017.

ORDER.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Appeal for cancellation of bail has arisen out of the impugned order by the learned Chief Court whereby the bail to the respondents/accused was allowed. The petitioners being aggrieved by and dissatisfied with the said impugned order filed this petition for leave to appeal. This court vide order dated 04.05.2016 granted leave to appeal and the case was heard on 25.05.2017.

2. Briefly, the facts of the case are that on 17.05.2015 an FIR No. 37/2014 under Section 302, 324, 337 (D)/34 PPC was registered against the respondents at Police Station Chilas District Diamer on the report of complainant namely Altaf son of Bakha. Similarly, FIR Nos. 38, 39, 40 and 41/2014 were also lodged by the

State under Section 13 of Arm Ordinance. The complainant stated that the deceased Imam Malik was in Chilas in connection with attending a case in the Court of Sessions Judge Diamer. At about 11:10 AM alongwith eye witnesses namely Najeeb son of Safa and Musa son of Abdul Jabbar were present in the premises of Nakir Market when suddenly accused Altaf son of Muhammad Tayar, Ehsanullah son of Muhammad Tayar, Nadeem son of Muhammad Ghani and Shafi son of Ghafoor attacked Imam Malik with lethal arms and murdered him. Whereas the FIR lodger ran away to find safety but accused Abujah son of Mirbaz and Muhammad Ghani son of Mir Khan attacked him with fire arms and injured him. In pursuance of the said FIR the accused were arrested and arms used in commission of murder of deceased Imam Malik and injured Altaf son of Bakha were recovered from the accused/respondents.

3. After completion of investigation, police has submitted challan in the competent Court of law. The case was fixed for framing charge but on one or other pretext the accused have been delaying the case and charge has yet not been framed. Later on, the accused had successfully got transferred the case from the Court of Sessions Judge Diamer to the Court of Sessions Judge Gilgit. The respondents/accused filed bail petition in the learned Trial Court and after rejection of the said bail petition, the respondents filed another bail petition before the learned Chief Court which upon hearing was allowed. The co-accused namely Abujah and Muhammad Ghani were granted bail by the learned Judicial

Magistrate Chilas against which the petitioners filed bail cancellation before the learned Sessions Judge District Diamer which upon hearing was also dismissed. Being aggrieved the petitioners/complainants filed bail cancellation against the co-accused before the learned Chief Court which is still pending adjudication.

4. The learned Advocate General alongwith learned counsels appearing on behalf of complainant submit that it was a day light murder case. The FIR of the said offence has been registered promptly and the accused have been nominated & charged directly by the eye witnesses/prosecution witnesses attributing them specific roles in commission of the offence. They reiterate that the names of the accused were nominated in the FIR which was registered without any delay. The respondents/accused were arrested and the weapons of the murder of deceased Imam Malik and injured person Altaf were recovered from them on their pointation. They further submit that the case fixed for framing of charge of the accused/respondents yet the respondents adopted delaying tactics from day one of the case. Subsequently, they were succeeded to get transfer their case from the Court of Sessions Judge Diamer to the Court of Sessions Judge at Gilgit. They submit that the accused/respondents later on moved bail Application before the learned Sessions Judge Gilgit which upon hearing was dismissed vide order dated 15.08.2015 in bail application No. 29/2015. Per learned counsels the respondents/accused being

aggrieved filed Civil Misc. No. 94/2015 in the learned Chief Court which upon hearing was allowed on the ground that no Postmortem report was conducted by observing that the number of injuries can not be determined at the moment which makes the case of respondents a case of further inquiry. On the contrary, the Postmortem of the deceased was carried out and the copy of the postmortem report is available on record of the case file. The statement of the injured eye witness namely Altaf was corroborated by the PWs i.e. Muhammad Musa and Mohbat regarding the attack on the said Altaf by respondents and others with fire arms upon the deceased. Per learned counsels there are sufficient material on record to believe that the respondents have committed the said brutal murder of deceased and injured the complainant. Consequently, the impugned order is not sustainable.

5. On the other hand, the learned counsels for the respondents supports the impugned order dated 17.12.2015 passed in Criminal Misc. 94/2015 by the learned Chief Court. They contend that the statements of PWs be relied upon in toto. It can not be divided into parts similarly one part can not be relied upon by ignoring the other part. Per learned counsels the co-accused have been granted bail by the learned Judicial magistrate relying upon such divided statements of PWs, hence, the main accused are also entitled for bail on the principle of consistency. The witnesses of locality could not be associated as provided under Section 103 Cr. PC. The respondents have been falsely implicated in this case by

the police. No postmortem was carried out by the respondents which also make the case doubtful. Per learned counsels the statements of PWs involving the petitioner in doubtful manner in the commission of alleged offence itself make the case of further inquiry. They pray that the impugned order may graciously be maintained to secure the ends of justice.

6. We have heard the learned counsels for the respective parties at length, tentatively perused the material on record of the case file and gone through the impugned order passed by the learned Chief Court. We have also perused the statements recorded under Section 161 Cr.PC of the injured person and two other eye witnesses who attributed the active roles of the respondents and their co-accused which prima facie connect the respondents in commission of alleged offence. We agree that the provisions of Section 497 Cr.PC are not punitive in nature as there is not concept of punishment before judgment. The question of grant or refusal of bail is, however, to be determined judiciously leaving regard to the facts and circumstance 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.PC, 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 the 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 prime facie satisfied that some tangible evidence can be offered which, if left unrebutted, 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. In our considered view, on the tentative assessment of the material on record and going through the statements of injured person and other eye witnesses recorded under Section 161 Cr. PC & specific roles attributed to the respondents in committing the alleged murder, prima facie, there are sufficient grounds to believe that the respondents were involved in the commission of alleged offence.

7. In view of the above discussions, this appeal was allowed vide our short order dated 25.05.2017. Consequent thereto, the bail granted to the respondents namely Ehsanullah son of Muhammad Tayar, Altaf son of Muhammad Tayar, Nadeem son of Muhammad Ghani and Shafi son of Abdul Ghafoor residents of Thor, Tehsil Chilas District Diamer were cancelled. The impugned order dated 17.12.2015 passed in Criminal Misc. 94/2015 by the learned Chief Court was set aside. The order of transfer of case from Sessions Judge Diamer to the Sessions Court Gilgit is also set aside. We,

therefore, order that the case in hand be transferred from the Court of District & Sessions Judge Gilgit to the Court of District & Sessions Judge Diamer for trial forthwith. The cases registered vide FIRs Nos. 38-41/2014 under Section 13 of Arm Ordinance submitted in the Court of Judicial Magistrate for Trial are also ordered to be transferred to the learned District & Sessions Judge Diamer to club with the main case and the same be heard together. Our observations and order for cancellation of bail are tentative in nature and the learned Trial Court has to proceed with & conduct the trial expeditiously, hear and decide the case independently in accordance with law. These were the reasons of our short order dated 25.05.2017.

8. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?