

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT**

Cr. Misc. No. 26/2019

In

Cr. PLA No. 29/2019

**Before: Mr. Justice Syed Arshad Hussain Shah, Chief Judge
(in Chamber)**

Qamar

Petitioner

Versus

The State

Respondent

PRESENT

1. The Deputy Advocate General Gilgit-Baltistan
2. Mr. Muhammad Saleem Advocate for the petitioner

ORDER DATED 29.11.2019

The learned counsel for petitioner is heard at some length. He submits that FIRs Nos. 12/2017, 18/2017 and 19/2019 were registered against petitioner/accused at PS Jall District Diamer. He next contends that after registration of FIRs, local police of PS Jall District Diamer conducted investigation and arrested the petitioner/accused. He next contends that the petitioner/accused filed a bail application before learned Sessions Judge Diamer, which was declined. Having being aggrieved, the petitioner filed Cr. Misc. No. 127/2019 before the learned Chief Court which met the same fate vide judgment dated 04.09.2019.

2. The learned counsel for petitioner argues that the learned Chief Court has passed the judgment/order in hurry and in a hasty manner without considering the justified reasons. He emphasized that there are contradictions in the statements of eye witnesses recorded under section 161 Cr.PC, in the ocular and medical evidence, and in the contents of FIR as well. On the basis of above submissions, he requests for grant of bail to the petitioner.

3. Arguments heard and record perused. The impugned judgment passed by the learned Chief Court Gilgit-Baltistan has also been gone through minutely.

4. I am of the view that this is duty of the Courts to take into accounts all attending facts and circumstances before releasing accused persons on bail. The contradictions in statements of eye witnesses cannot be determined at bail stage. Where a prima facie case is made out against the accused, he is disentitled to the grant of bail. I am convinced with the views taken by superior Courts in the case titled Muhammad Afzal & another vs. The State 1997 SCMR 278, Lal Muhammad Vs. The State 1990 SCMR 315, read with 2016 GBLR 227 State vs. Niamat Ali and Abdul Aziz Vs. Saleh Muhammad 1990 SCMR 346. Relevant portion from the above quoted case laws are reproduced herein blow:

1. Lal Muhammad Vs. The State (1990 SCMR 315)

“a prima facie case has been made against the petitioner which disentitles him from the grant of bail.”

2. Muhammad Afzal & others vs. The State (1997 SCMR 278).

“it is obligatory for the Court to consider all the attending facts and circumstances before deciding to release such an accused persons on bail”.

5. In addition to the above, in Abdul Aziz V. Saleem Muhammad and another (1990 SCMR 346), the Hon’ble apex Court has held that when there is categorical statements of the Prosecution Witnesses (PWs) directly implicating the accused with the commission of offence, the effect of delay in recording statements of Prosecution Witnesses (PWs) could not be determined at bail stage and the bail granted by the High Court was cancelled. Similarly, evaluation of the statement of the accused by comparing with the statements of other witnesses is not justified at this juncture and the petitioners’ request for bail is liable to be refused on the touchstone of law laid down by the apex Courts in the case law cited above. As such, the petitioner is not justified at this juncture to request for grant of bail. It would also be appropriate to mention here that the accused, after occurrence of the incident, remained absconder/ fugitive from the law for a period of about 1 year. A case law cited by the learned Chief Court while deciding the bail petition reported at 2017 SCMR 325 further fortifies the observations of this Court. For the sake of brevity, the relevant portion is reproduced herein below:

“The police have found him guilty during the investigation. He remained fugitive from law for a considerable period of time. So far as the conflict between the ocular account and the medical evidence, pointed by the learned counsel for the petitioner is concerned, suffice it to observe, deeper appreciation of evidence is not desirable at the bail stage. It is for the learned trial Court to determine after recording evidence pro and contra, the guilt or otherwise of the petitioner”.

6. In view of the above discussion, the petitioner is not entitled for concession of bail at this stage. Hence, the instant Cr.PLA No. 29/2019 is rejected and the impugned judgment dated 04.09.2019 passed by the learned Chief Court Gilgit-Baltistan in Cr. Misc. No. 127/2019 as well as order dated 16.04.2019 in Bail Application No. 39/2019 passed by the learned Additional Sessions Judge District Diamer are maintained. Bail Refused.

Chief Judge

Whether the case is Fit to be reported (Yes/ Not).