

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

BEFORE:-

*Mr. Justice Sardar Muhammad Shamim Khan, Chief Judge.
(In Chamber)*

**Crl. Appeal No. 01 of 2023 in
Crl.PLA No. 38/2022**

Shafqatullah etc

Petitioners

Versus

The State

(Respondent)

Present:-

Mr. Muhammad Iqbal , Advocate for petitioners.
Mr. Mir Muhammad Prosecutor-General for State.
Complainant in person.

Date of hearing: **29.03.2023**

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:- Through instant Criminal Petition filed under Article 75 of the Gilgit-Baltistan Order, 2018, the petitioners namely Shafqatullah and Sajjadullah seek Leave to Appeal against the impugned Order dated 04.11.2022 passed by the learned Chief Court, whereby, their post arrest bail in case FIR No.16 of 2022 dated 29.08.2022 offences under sections 324, 506(ii), 337-A, 337-F & 147, PPC registered at police station Jal District Diamer was dismissed.

2. Brief facts of prosecution's case as narrated by the complainant in the FIR are that on 29.08.2022 a scuffle/altercation took place between the two groups (complainant party and accused party). During the said scuffle, cross-firing/stoning was exchanged between the parties and thereafter the complainant party launched an attack at the accused party , whereby, Qudrat Ullah and Shafqat Ullah

sustained injuries on their persons. In retaliation the accused party (petitioners) also made firing at the complainant party whereby Abdul Rehman, Faizan, Muhiuddin and Ikram Uddin sustained injures on their persons. Hence instant FIR was registered.

3. Learned counsel for the petitioners contended that no specific attribution has been assigned to the petitioners, rather there was general allegation against the petitioners that they alongwith other co-accused resorted to firing and stoning at the complainant party; that all the injuries sustained by the complainant party were simple in nature, therefore, the application of offence under section 324, PPC against the petitioners requires further inquiry; that infact the complainant party was aggressor whereas the petitioners acted in self defence; that co-accused of the petitioners namely Sibghatullah and Zia Ullah whereas Ikram Uddin accused from the complainant party were admitted to post arrest bail, therefore, the petitioners are also entitled for the same relief keeping in view the rule of consistency. Thus, it is submitted that by accepting instant appeal, the petitioners may be admitted to post arrest bail.

4. Learned Prosecutor-General has vehemently opposed the instant appeal on the grounds that both the petitioners are nominated in the FIR; that there was specific allegation against them that they were armed with firearm weapons and resorted to firing at the complainant party, whereby, Abdul Rehman, Faizan, Ikram Uddin and Muhiuddin sustained injuries ; that during investigation crime weapons were recovered from the possession of the petitioners; that the offences alleged against the petitioners come within the ambit of prohibitory clause of section 497 Cr.P.C. Thus, it is submitted that instant Crl. Appeal is liable to be dismissed.

5. Arguments heard. Record perused.

6. It has been noticed that on 29.08.2022 a scuffle/altercation took place between the two groups (complainant party and accused party). According to prosecution' own case, firstly the complainant party (Muhiuddin, Ubaid-ur-Rehman, Ikramuddin, Faizan and Muhammad Rafique) launched an attack at the accused party , whereby Qudrat Ullah and Shafqat Ullah (petitioner No.1) sustained injuries. In retaliation the accused party (Qudrat Ullah, Shafqat Ullah,

Sajjad Ullah (petitioners), Sibgatullah and Zia Ullah) also made firing at the complainant party whereby Abdul Rehman, Faizan, Ikram Uddin and Muhiuddin sustained injuries on their persons. Learned Law Officer has frankly conceded that the injuries on the persons of both the parties were declared simple in nature. The learned Law Officer has further conceded that he does not know whether the police secured the empties from the spot or not and he also showed ignorance that whether the crime weapons allegedly used by the petitioners during the occurrence were sent to Armourer for expert opinion regarding their working condition or not. As both the parties were injured during this occurrence, therefore, it is a case of two versions and in such situation every accused would be responsible for his own act, therefore, vicarious liability would not be attracted in this case. Prima facie from the contents of FIR, it is evident that the complainant party launched an attack whereas the accused party (petitioners) acted to save them. As the all the injuries sustained by the complainant party were simple in nature, therefore, the application of offence under section 324, PPC against the petitioners requires further inquiry. It has further been noticed that Sibghatullah and Zia Ullah co-accused with similar allegation preferred their post arrest bail which was allowed by learned Chief Court G.B vide order dated 04.11.2022. Similarly, from the complainant side, Ikram Uddin who firstly launched an attack at the accused party was also admitted to post arrest bail by this Court vide order dated 30.11.2022, therefore, the petitioners are also entitled for the same relief keeping in view the rule of consistency. The petitioners are behind the bars since their arrest and are no more required by the police for the purpose of further investigation. No useful purpose would be served by keeping the petitioners in jail for an indefinite period.

7. For what has been discussed above, instant Criminal Appeal is accepted and petitioners are admitted to post arrest bail subject to their furnishing bail bonds in the sum of Rs. 2,00,000/- each with one surety each in the like to the satisfaction of the learned trial court.

- scd -
Justice Sardar Muhammad Shamim Khan
Chief Judge