

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Shariat Appellate Jurisdiction]

**PRESENT:**

*Raja Saeed Akram Khan, J.*

*Ghulam Mustafa Mughal, J.*

Criminal appeal No.46 of 2019

(Filed on 03.07.2019)

Zahid Iqbal alias Kala Khan son of Abad Khan,  
caste Rajpat, r/o village Kheri Rajgan, Tehsil  
Dadyal, District Mirpur.

....APPELLANT

**VERSUS**

1. Allah Ditta son of Riasat Khan, caste  
Rajput, r/o village Kheri Rajgan, Tehsil  
Dadyal, District Mirpur.

....RESPONDENT

2. State through Additional Advocate-  
General of Azad Jammu and Kashmir.

....PROFORMA RESPONDENT

(On appeal from the judgment of the Shariat  
Appellate Bench of the High Court dated  
29.05.2019 in application No.51 of 2019)

FOR THE APPELLANT: Ch. Muhammad Mehfooz, Advocate.

FOR ACCUSED-RESPONDENT: Sardar Ejaz Nazeer, Advocate.

FOR THE STATE: Mr. Muhammad Zubair Raja, Addl. Advocate General.

*Date of hearing:* 21.01.2020

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— The titled appeal has been filed against the judgment of the Shariat Appellate Bench of the High Court (High Court) dated 29.05.2019, whereby, the application for grant of bail filed by the accused-respondent, herein, has been accepted.

2. The facts in brief are that a case in the offences under sections 302, 337H(2) and 34, APC was registered at police station, Dadyal on the application of the appellant, herein and during investigation sections 337F(1) APC and 15(2) of the Arms Act, 2016

were also added. In the application, the allegation levelled against the accused is that he, along with co-accused attacked the complainant party. The co-accused, Javed Iqbal fired at the wife of the complainant who succumbed to the injury and at that time the accused also made indiscriminate firing with Kalashnikov. After registration of the case, the police arrested the accused. The accused moved an application for grant of bail in the Additional District Court of Criminal Jurisdiction, Dadyal which was rejected. The accused feeling aggrieved filed an application for grant of bail before the High Court. The learned High Court while accepting the application released the accused on bail, hence, this appeal.

3. Ch. Mohammad Mehfooz, Advocate, the learned counsel for the complainant-appellant argued that the learned High Court

while releasing the accused on bail failed to exercise its discretion in a judicious manner. He added that the case against the accused is proved through the ocular account but the learned High Court on the strength of corroboratory evidence released him on bail which is not permissible under law. He contended that the High Court dived deep, whereas, under law at the bail stage deeper appreciation of evidence cannot be made. He submitted that the accused along with co-accused attacked the complainant party and due to the fire of the co-accused the wife of the complainant was died, therefore, the case against the accused is of vicarious liability but the learned High Court has not considered this aspect of the case in a legal manner. He submitted that the place, manner of occurrence and presence of the accused at the spot is very much proved from the material

available on record but despite that the learned High Court extended him the concession of bail. He also submitted that the after release on bail accused is pressurizing the complainant party and in this regard an affidavit has also been filed along with appeal which has not been rebutted by the other side. The learned counsel referred to and relied upon the case law reported as *Zahid Shah v. The State* [2001 PCr.L.J. 134] and prayed for setting aside the judgment passed by the learned High Court.

4. On the other hand, Sardar Ejaz Nazeer, Advocate, the learned counsel for accused strongly opposed the arguments advanced by the learned counsel for the complainant-appellant. He submitted that no illegality has been committed by the learned High Court while passing the impugned judgment. The allegation levelled against the

accused is that he made reckless firing with the Kalashnikov but neither the alleged Kalashnikov has been recovered from the accused nor empties were found at the spot during the investigation. In this regard, the learned counsel drew the attention of the Court towards the contents of *challan* and submitted that in such situation the case against the accused becomes one of further inquiry. He further added that the case against the accused is also doubtful and it is settled principle of law that the benefit of doubt must go to the accused even at bail stage. He lastly submitted that it is also settled principle of law that once bail has been granted by the Court of competent jurisdiction the same cannot be interfered with until it is found that the bail granting order is patently illegal. He referred to and relied upon the case law reported as *Bahram v. Zubair Ahmed* [2019 YLR 2185].

5. Mr. Muhammad Zubair Raja, Addl. Advocate-General, adopted the arguments advanced by the learned counsel for the appellant.

6. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with the impugned judgment. The allegation levelled against the accused is that at the time of occurrence he along with co-accused was present at the spot and made reckless firing with a Kalashnikov, however, from the tentative assessment of the available record shows that during investigation neither the Kalashnikov nor the empties have been recovered. It has been mentioned by the police in the *challan* that during investigation neither the presence of the accused on the spot with firearm weapon has been testified nor the empties of the Kalashnikov have been

found at the place of occurrence. The relevant portion of the *challan* reads as under:-

"وقوعہ سے دوران ملاحظہ موقع نہ تو کلاشکوف کے خول چلیدہ دستیاب ہوئے  
ہیں اور نہ ہی دوران تفتیش بروز وقوع کلاشکوف سے مسلح ہونا تصدیق ہوا  
ہے۔"

In such state of affairs, in our view the learned High Court has rightly formed the opinion that the case of the accused falls within the ambit of further inquiry. The learned counsel for the appellant during the course of arguments submitted that the case against the accused is proved through the ocular account; therefore, the learned High Court was not justified to release the accused on the strength of corroboratory evidence. The appellant, except the copies of FIR and *challan* has not appended with the file any other material; thus, at this stage, when the trial is in progress, no opinion can be formed in this regard and this aspect shall be considered by



the trial Court at the conclusion of the trial. The police after completion of investigation has already presented the *Challan* in the Court of competent jurisdiction and trial is in progress, therefore, no useful purpose can be achieved while recalling the concession of bail. The learned counsel for the appellant also submitted that the accused is threatening the complainant party, however, we do not intend to recall the concession of bail mere on such verbal assertion as nothing is available on record to show that the accused actually has acted as such; if the accused is misusing the concession of bail the complainant may adopt the legal course against him and bring this fact into the notice of the trial Court. The bail has been granted to the accused by the Court of competent jurisdiction and under law the same cannot be recalled in routine until and unless it is found that the bail granting order is patently

illegal, erroneous, factually incorrect and has resulted into miscarriage of justice, whereas, in the instant matter, no such elements have been found in the bail granting order. The learned counsel for the accused in this regard has rightly relied upon the case law reported as *Bahram v. Zubair Ahmed* [2019 YLR 2185].

In view of the above finding no force this appeal stands dismissed.

Mirpur,

**JUDGE**

**JUDGE**

22.01.2020

Zahid Iqbal v. Allah Ditta and another

**ORDER:**

The judgment has been signed. The same shall be announced by the Addl. Registrar Branch Registry Mirpur after notifying the learned counsel for the parties.

Mirpur,  
22.01.2020

**JUDGE**

**JUDGE**