

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MCRC No. 4282 of 2015

Smt. Gomati Devi, wife of Late Shri Roshan Lal Agrawal, aged about 65 years, Resident of Jagatpur, Police Station Kotwali, Raigarh, District Raigarh ... **Applicant**

Vs

State of Chhattisgarh through Station House Officer Thana Kotwali, District Raigarh (C.G). ... **Non-applicant**

18.08.2015	Mr. Manoj Paranjpe, counsel for the Applicant. Ms. M. Asha, Panel Lawyer, for the State. 1. The present is third bail application. It is stated that the first bail application so far as it relates to present applicant was dismissed as not pressed and it was dismissed as withdrawn on 17.04.2014. Thereafter, the second bail petition was moved on behalf of the applicant which was not pressed and by order dated 27.8.2014, the said application was dismissed as withdrawn with liberty to move the application after star witnesses are examined. 2. The applicant is facing trial under Sections 302 & 201 read with section 34 of IPC in connection with Crime No.859/2013 registered at P.S. Kotwali, District Raigarh. 3. As per the prosecution case, the deceased Seema Agrawal was married to Raj Kumar Agrawal on 23.04.2014 and subsequent to her marriage, she was subject to torture by her in-laws and the members of the family. It was further case of prosecution that ultimately Seema Agrawal died on 11.10.2013 and the initial postmortem report shows that the death was asphyxia due to strangulation and was homicidal in nature. Consequently, the charge sheet was filed and the case is being tried before the Court of Sessions. 4. Learned counsel for the applicant submits that the applicant is in jail since 13.10.2013 and in this case, the Challan was filed on 30.12.2013. It is submitted that initially,	

a suicidal note was recovered and along-with the challan, the same was not filed and on 12.11.2014, the report of hand-writing expert dated 17.04.2014 was filed. It is further submitted that Dr. R.K. Agrawal, the Forensic Expert was also examined and he stated at Para 30 & 31 that cause of death was not known in the postmortem. It is submitted by the counsel that it is a case of hanging as the ligature mark ought to have been visible on the entire neck which was missing in this case and if the same is read along-with suicidal note, it would lead to show that the deceased had committed suicide and it was not a case of strangulation. It is further submitted that initially the prosecution has deliberately not filed the opinion of hand-writing expert, which corroborates the writing of deceased about the suicide. It is further submitted that the Doctor who was crucial witness in this case has been examined and it is stated that had it been a case of strangulation, the facts would not have come in the cross examination. He, therefore, submits that considering the nature of offence that it was a case of suicidal, the applicant may be enlarged on bail.

5. Per contra, learned state Counsel opposes the bail.

6. I have considered the arguments advanced by the learned counsel for the applicant and have also gone through the statement of Doctor which is enclosed with the petition.

7. Twice on earlier occasion, the bail petition was dismissed as withdrawn. A perusal of the statement of Doctor in cross examination would show that the Doctor has stated that in case of strangulation, it is not necessary that the entire ligature mark should be on the neck and has further has stated that under the facts of the particular case, the circumstantial evidence would play a vital role.

8. Reading the entire statement of Doctor, without considering all other evidence any observation at this stage, in the opinion of this Court would lead to usurping the jurisdiction of the trial Court without any consideration of other statements and facts as it would amount to give a verdict of conviction or acquittal. In the facts and circumstances of the

Rao	case, the evidence of the doctor has to be appreciated on conjoint examination of other evidence which has to further come on record as the entire evidence is not complete. For these reasons, I do not find any change of material circumstances in this case so as to consider the bail again on merits. 9. Thus after going through the statement of doctor alone and the report of handwriting expert, without any observation on merits, I am not inclined to allow this petition for bail so as to give a final opinion in respect of trial. 10. Accordingly, this petition is dismissed. Sd/- (Goutam Bhaduri) Judge	
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