

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. NO. 2388/ 2015**

Sagar Singh Chauhan S/o Shri Ujjawal Singh Chauhan, aged about 35 years,
Occupation Labour, R/o Village-Kasailya, Police Station and Tahsil
Gharghoda, District Raigarh (C.G.)

---Applicant

Versus

The State of Chhattisgarh, through the Officer in charge of Police Station
Gharghoda, District Raigarh (C.G.)

---Non-Applicant

For Applicant	:	Mr. Roop Naik, Advocate
For Non-Applicant	:	Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****26/06/2015**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.475/2013, registered at Police Station Gharghoda, District-Raigarh (C.G.), for the offence punishable under Section 302 of I.P.C.

2. Case of the prosecution, in brief, is that on 01/12/2013 applicant caused death of Kamleshwar by smoothing and thereby committed offence.

3. Learned counsel for the applicant would submit that applicant has not committed any offence and has been falsely implicated in the offence in question. He would further submit that First Information Report has been lodged on 17/12/2013 and the memorandum of present applicant was recorded on 19/07/2014. He would further submit that pursuant to the memorandum statement, no seizure has been made from the present

applicant and as such, such a memorandum is not admissible in law. He would also submit that no custodial interrogation is required and no useful purpose would be served by keeping him in jail. He would lastly submit that charge sheet has been filed and applicant is in jail since 19/07/2014, therefore, he may be released on regular bail.

4. On the other hand, learned counsel for the State would oppose the bail application and referring to the statement of prosecution witness- Gunja Sarthi, he would submit that deceased was last seen together with the company of applicant and the applicant has already made memorandum/confessional statement and shown the place of occurrence. He would lastly submit that looking to the nature and gravity of the offence and the manner, in which, applicant has murdered deceased Kamleshwar, is not entitled to be released on regular bail.

5. The admissibility or otherwise of the confessional statement and the effect of evidence already adduced by the prosecution is no longer *res-integra* and stands concluded by judgment of their Lordships of the Supreme Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and another**¹ by observing as under:-

“19. The next argument of learned counsel for the respondent is that *prima facie* the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a *prima facie* case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and

1 (2004) 7 SCC 528

the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.”

6. Quite recently the aforesaid statement of law laid down in **Kalyan Chandra Sarkar** (supra) has been reiterated and followed by Supreme Court in **Dr. Vinod Bhandari v. State of M.P.**²

7. Thus, following the decisions of the Supreme Court in **Kalyan Chandra Sarkar and Dr. Vinod Bhandari** (supra), it is held that admissibility or otherwise confessional statement cannot be looked into at the stage while considering the application for grant of bail otherwise it would amount to prejudging the issue, as such, the submission of the learned counsel for the applicant that such a memorandum is inadmissible in evidence at this stage cannot be considered and his argument deserves to be rejected.

8. Coming back to the other submission, it would appear that it is a case of the prosecution that deceased Kamleshwar was last seen together along with the applicant as the prosecution witness- Gunja Sarthi has clearly stated that she has seen deceased Kamleshwar and applicant in the cycle going towards Ambedkar Chowk from Uraopara.

9. Considering the nature and gravity of offence and evidence brought on record at this stage by the prosecution, this Court is not inclined to release the applicant on regular bail.

10. Accordingly, bail application filed under Section 439 of the Cr.P.C. is rejected.

Certified copy as per rules.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari

