

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1043 of 2015

- Deenanath Churendra S/o Ubhay Churendra Aged About 44 Years
Caste Gond, R/o Village Awaspara, Pankhanjur, P.S. Pankhajur, Civil
& Revenue Distt. Kanker, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through P.S. Pankhanjur, Kanker, Distt. Kanker,
Chhattisgarh.

---- Respondent

For Applicant	: Shri Awadh Tripathi, Advocate
For Respondent/State	: Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

03/12/2015

Vide judgment and order dated 2.11.2015 passed in Criminal Case No. 1630/2013, the applicant was convicted under Section 409/34 IPC and was sentenced to undergo RI for three years. Against this order, appeal was preferred by the petitioner before the Sessions Judge Kanker. Along with the appeal, the applicant has also filed application under Section 389 of the Cr.P.C. However by the judgment impugned, learned Sessions Judge has rejected the application.

Counsel for the applicant submits that by applying wrong provision of law the application filed by the applicant had been rejected. He submits that the provision of Section 389(3) Cr.P.C. is not applicable in this case. The applicant has already remained in jail for about 1 year 8 months and therefore the appellate court ought to have allowed the application as filed by the applicant under Section 389 Cr.P.C.

Opposing this submission, State counsel has argued that during trial initially the applicant was absconding and once the discretion has been exercised by the lower court, no interference is called for.

Heard counsel for the parties and perused the order impugned.

Though the order impugned appears to have been passed on wrong

premises, instead of interfering with the said order the appellate court is directed to decide the appeal of the applicant as expeditiously as possible preferably within three weeks from the next date of hearing.

It would be the duty of the applicant to apprise the court below about passing of this order.

Sd/-

Pritinker Diwaker
Judge