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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.5568 of 2015**

Awadh Nayak, son of Shri Manshram Nayak, aged about 46 years, Occupation Assistant Grade-III, Clerk B.E.O. Office, Berla, R/o Village Hasda, Tahsil & Police Station Berla, Civil & Revenue District Bemetara (CG) **---- Applicant**

Versus

State of Chhattisgarh, through Police Station Berla, Civil & Revenue District Bemetara (CG) **---- Non-applicant**

For Applicant : Shri Sanjay S. Agrawal, Advocate
 For Non-applicant: Shri Om Prakash Sahu, Government Advocate
 for the State.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/10/2015

(1) The applicant's first bail application filed under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.155/2013 registered at Police Station Berla, District Bemetara (Chhattisgarh) for offences punishable under Sections 420, 408, 467, 468, 471/34 of IPC was rejected on merits by order dated 09.01.2015 in M.Cr.C. No.7127/2014.

(2) The applicant's repeat bail application (Second bail application) was dismissed by this Court finding no change in circumstances to entertain the said application by order dated 19.03.2015.

(3) The present third bail application has been filed by the applicant along with the statement of five prosecution witnesses who are

examined by the prosecution during course of trial namely Haldhar Kumar (PW-1), Hemant Jaiswal (PW-2), Sarvendra Malik (PW-3), Ramesh Kumar (PW-4), Mohd. Daud Ansari (PW-5) stating that prosecution has failed to bring material evidence against the applicant.

(4) Mr. Sanjay S. Agrawal, learned counsel for applicant; vehemently submits that prosecution has examined its five star witnesses out of charge-sheet listed witnesses to bring home the offence, but failed to bring any incriminating evidence against the present applicant. Mr. Agrawal referring to the statements so recorded would submit that now, when the prosecution case is unfolded in the trial doesn't *prime facie* show involvement of the applicant in offence in question, than considering the merits of the statement of prosecution witnesses so recorded by the prosecution would be a ground to claim regular bail based on changed circumstances as applicant is in jail on 15.10.2014, therefore this application (3rd) for grant of bail be allowed and applicant be enlarged on bail.

(5) Per contra, Mr. Om Prakash Sahu, learned Government Advocate on advance copy would oppose the bail application and would submit that appreciation of the evidence brought during trial by the prosecution is a matter concerning merits of the matter and by appreciating the evidence on record bail, that too third bail application should not be entertained and as such application for bail having been rejected on merits firstly and finding no change in the circumstances, second bail application has also been rejected, therefore third application for grant of bail deserves to be rejected.

(6) I have heard learned counsel for the parties and also perused

the record available with utmost circumspection.

(7) It is not in dispute the applicant's first bail application for grant of regular bail was rejected on merits by this Court by order dated 09.01.2015 and thereafter second bail application filed was also rejected by order dated 19.03.2015 finding no change in circumstance to entertain second bail application. It is also not in dispute that both the orders rejecting first bail application on merits and second bail application finding no change in circumstance have become final as no further challenge was made by the applicant.

(8) The law in this regard is also very settled. In cases where earlier bail applications have been rejected, there is further onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bails application have been rejected. In the matter of **Ram Govind Upadhyay V. Sudarshan Singh & others**¹, their Lordships of the Supreme Court have laid down the duty of criminal court to grant bail after once refusing and it succinctly held as under:-

“It is a duty incumbent on the High Court to explicitly state the reason as to why the sudden departure in order of grant as against the rejection just about a month ago.”

It was further held:-

“The High Court thought it fit not to respond any reason, far less any cogent reason, as to why there should be departure, when in fact such a petition was dismissed earlier, not very long ago. The consideration of period of one year spent in jail cannot be relevant consideration in the matter of grant of bail.”

(9) Likewise, in the matter of **Kalyan Chandra Sarkar V. Rajesh**

¹ (2002) 3 SCC 598

Ranjan alias Pappu Yadav & another², their Lordships of the Supreme Court, considered the admissibility or otherwise of confessional statement and effect of evidence already adduced by the prosecution and the merit of evidence and held that merit of evidence and evidence to be adduced are all matters to be considered at the stage of trial by holding 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 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.”

(10) Very recently, their Lordships of the Supreme Court have reiterated and followed the law laid down in **Kalyan Chandra Sarkar case** (Supra) in the matter of **Dr. Vinod Bhandari V. State of M.P.**³, by holding that a detailed examination of the evidence to be avoided while considering the question of bail and pertinently held as under:-

“22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a Brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prime

2 (2004) 7 SCC 528

3 (2015) 2 Scale 195

facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that should be excluded from consideration, for the purpose of bail is untenable. This Court had negative a somewhat similar contention in Kalyan Chandra Sarkar.”

(11) In the light of the above-stated principles of law dealing with prayer for bail during trial, it is *quite vivid* that applicant's first bail application was rejected on merits and no change in circumstances was found while considering the second bail application, and both orders having been attained finality and as such the effect of evidence brought by the prosecution and the merits of evidence is a matter to be considered at the stage of trial as held by their Lordships of the Supreme Court in matter of Kalyan Chandra Sarker (Supra) reiterated in the matter of Dr. Vinod Bhandari (Supra), this Court has no option except to reject this bail application at the admission stage as the same has no reason to stand.

(12) Accordingly, the third application filed by applicant for grant of regular bail is hereby rejected being substance less.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-