

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4140 of 2016

- Mukesh Shrivastava S/o Shri Ram Babu Shrivastava Aged About 52 Years R/o House No. 17 & 18, Aashray Parisar, P.S. Telibandha, Choubey Colony, Raipur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Telibandha, District Raipur, Chhattisgarh.

---- Non-applicant

For Petitioner : Mr. Vimlesh Baipai, Advocate
For State : Mr. R.K. Gupta, Dy. Advocate General
For Objector : Mr. P.P. Sahu, Advocate
Smt. Sheetal Juneja

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

22/07/2016

Heard.

1. Learned counsel for the applicant prays that this is the 4th application for grant of bail only on the ground of delay in trial. It is submitted that the applicant has been arrested as back as on 14.07.2012, but, till date, the trial has not been concluded and thus, without there being conviction, he has virtually undergone sentence for a period of four years. He submits that this is serious violation of applicant's right of speedy trial and violation of fundamental right under Article 21 of the Constitution of India. He further submits that both the eyewitnesses have been examined and only official witnesses remained to be examined, who are not likely to be turn-up early for evidence. Therefore, in these circumstances, the applicant may be granted bail.

2. On the other hand, learned counsel for the respondent and objector opposed the prayer for grant of bail by submitting that the applicant is charged of grave and heinous offence for commission of murder under Section 302 of the IPC for which life imprisonment is provided. It is submitted that even though there is delay in trial, only on that ground, the applicant is not entitled for grant of bail. It is submitted that during the trial, the witnesses i.e. widow of the deceased and his son have been examined and have fully supported the case of prosecution as eyewitness of the incident. In these circumstances, if the applicant is granted bail, there is all likelihood of fleeing away from the justice. Learned counsel for the respondents further stated that the trial is at the fag end, as 38 witnesses have already been examined and only 04 witnesses remained to be examined.
3. True, it is that in the present case, the trial has been delayed and the applicant is in jail since 14.07.2012. Ordinarily, when there is so much delay, the accused is entitled to pray for grant of bail as long detention without conclusion of trial within a reasonable period may violate the fundamental right under Article 21 of the Constitution of India. However, in a case of heinous offence like in the present one, where the applicant is charged of commission of murder, gravity of the charge is also a very relevant factor for considering whether bail should be granted or not. If, I weigh the gravity of offence with the period of detention, I am of the view that only on the ground of delay, irrespective of merit of the case, the applicant is not entitled to grant of bail. More particularly, when in the present case, under the directions of this Court, trial was

expedited and 38 witnesses have already been examined and only 04 witnesses remain to be examined. Further, the possibility of the applicant fleeing away from justice cannot be ruled out.

4. Therefore, I am not inclined to release the applicant on bail only on the ground of delay. However, in the interest of accused, the trial Court is directed to conclude the trial at the earliest. The official witnesses shall be summoned and examined without delay and no prayer for adjournment by any of the parties shall be entertained by the trial Court. If the official witnesses are not present, the trial Court shall be at liberty to issue warrant against them for appearance and examination to ensure that the trial is concluded within the time stipulated by this Court.

Sd/-
(Manindra Mohan Shrivastava)
Judge