

COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C. (A) No. 1371 /2015

Nikhil Vardani, S/o. Ashok Vardani, Aged About 22 Years, R/o. Risaipara, Nayapara Ward, Dhamtari, Tehsil & Distt. Dhamtari, Chhattisgarh.

---- Applicant

Versus

The State Of Chhattisgarh, Through: Police Station- Kotwali, District Dhamtari, Chhattisgarh.

---- Respondent

For Applicant : Mr. D.K.Gwalre, Advocate

For Respondent : Mr. Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03/02/2016

1. Apprehending arrest in connection with Crime No.194/2015 registered at Police Station- Kotwali, District Dhamtari (C.G.) for the offence punishable under Section 186, 332, 353, 147, 148, 149, 294, 153-A, 506-B & 333 of the Indian Penal Code, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. This is the second anticipatory bail application. The first anticipatory bail application was dismissed as withdrawn on 10.12.2015 with liberty to surrender and apply for regular bail before the concerned Court.
3. As per the prosecution case, the applicant being the part of the mob attacked the police when the commotion in between two different sects took place on 08.07.2015 and the Addl. S.P. & A.S.I. sustained injuries; thereby the offence was committed.
4. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case and he placed his reliance in (2010) 1 SCC 684 and would submit that since the applicant till

date has not been arrested, therefore, the anticipatory bail application though earlier was withdrawn can be entertained. He further submits that under the facts and circumstances of this case, the applicant should be enlarged on anticipatory bail.

5. Per contra, learned State counsel opposes the prayer for grant of anticipatory bail and would submit that the applicant's name appears in the FIR that he actively involved in the commission of the crime; therefore, he may not be enlarged on bail.
6. I have heard learned counsel appearing for the parties and perused the case diary.
7. Perusal of the earlier bail order dated 10.12.2015 shows that the similar anticipatory bail application was withdrawn with liberty to surrender and apply for regular bail before the concerned Court, however, instead to abide by own submission the applicant preferred to file this second bail application. The grounds have been raised that till date the applicant has not been arrested. In the earlier bail rejection order dated 10.12.2015, it was observed that the bail application was dismissed with observation that if the regular bail application is filed before the concerned trial Court, the concerned trial Court shall consider and decide the same on merits, as early as possible, preferably on the same day. However, the applicant to his choice has again preferred this application without following it's own submission. The filing of the application cannot be arrested but if certain orders have been passed at the behest of the applicant then in such case the applicant has to follow the same. The High Court cannot be made an instrumental to the choice of the applicant that after obtaining an order, the applicant elects to choose the same, whether to follow or not ? Furthermore, it has been stated by the State counsel that the applicant has been named in the FIR and admittedly the applicant is absconding and in

his absence the charge sheet has been filed. Therefore, since the applicant is shown to be absconding and in the earlier occasion the applicant himself has chosen to withdraw the bail application to move regular bail application after surrender, this bail application cannot be entertained in view of the existing facts. Further, prima faice as it appears in the case diary that the applicant has been named in the FIR, therefore, this is not a case where the benefit of Section 438 can be extended to the applicant.

8. Accordingly, the anticipatory bail application filed under Section 438 of Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge