

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. Cr. C. No. 1900 OF 2016**

Rahul Sinha S/o Jailal Sinha, Aged 25 Years, Caste Kalar, R/o Ward No. 3, Bus Stand Ambaragh (Wrongly Mentioned as An.) Chauky, P.S. Ambagarh (Wrongly mentioned as An.) Chauky, District Rajnandgaon, C.G.

---Applicant**Versus**

State of Chhattisgarh, Through P.S. Ambagarh Chauky, District Rajnandgaon.

---Non-applicant

For Applicant	:	Dr. N.K. Shukla, Sr. Advocate with Mr. Sumit Singh, Advocate
For Non-applicant	:	Mr. Dilmanrati Minj, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****22/04/2016**

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. 14/2016, registered at Police Station Ambagarh Chaoky, District Rajnandgaon, C.G., for the offence punishable under Sections 306, 305 of I.P.C. & 66(A) of I.T.

Act.

2. Case of the prosecution, in brief, is that, applicant threatened a girl, aged about 16 years on 04/01/2016 through Whats App message, which constitutes abatement and in consequence of that, she committed suicide by pouring kerosene oil upon her body and setting her ablaze and thereby committed aforesaid offence.

3. Learned counsel for the applicant would submit that applicant has not committed any offence and has been falsely implicated in this case. He would further submit that Whats App message relied by the prosecution sent by the applicant on 04/01/2016 would *per se* not constitute the offence under Sections 306 and 305 of I.P.C. as no ingredients of Section 306 of I.P.C. are available. He would further submit that though the charge sheet has been filed but no certificate in terms of Section 65-B(2) of the Evidence Act has been issued by the Service Provider, therefore, alleged CD cannot be admitted in evidence and as such, there is no evidence against the present applicant. He would also submit that applicant is in jail since 20/01/2016, therefore, he may be released on bail. He placed reliance in the matter of **Anvar**

P.V. v. P.K. Basheer and others¹, in which, Their Lordships of the Supreme Court have observed as under:-

“16. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A opinion of examiner of electronic evidence.”

4. He further placed reliance in the matter of **State of Kerala and others v. S. Unnikrishnan Nair and others**², relating to abatement.

5. On the other hand, learned counsel for the State would oppose the prayer for grant of bail and submit that question of admissibility of evidence can be raised at the time of trial, therefore, applicant is not entitled to be released on bail.

6. I have heard learned counsel appearing for the parties and perused the case diary.

7. Taking into consideration the facts and circumstances of the case; further taking into consideration the nature and

1 AIR 2015 SC 180

2 AIR 2015, SC 3351

gravity of offence; role of the applicant in offence in question; material available in the case diary, charge sheet has already been filed, nature of defence with regard to non-production of certificate as required under Section 65-B(2) of the Evidence Act and keeping in view the law laid down by the Supreme Court in **Anvar P.V.** and **State of Kerala** (supra), this Court is of the opinion that present is the fit case, in which, the applicant should be enlarged on regular bail.

8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

9. It is directed that applicant shall be released on bail on furnishing a personal bond in the sum of **Rs.25,000/-** with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.

10. Certified copy as per rules.

Sd/-

(Sanjay K. Agrawal)
Judge