

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2781 of 2016**

1. Sachidanand @ Bhawani Singh, aged about 42 years, S/o Ramadhar Singh, R/o Silar, P.S. - Aurangabad, Bihar at present R/o Borai, Dhamtari, District – Dhamtari (C.G.)
2. Mohammad Yusuf Khan, Son of Mohammad Habib Khan, aged about 36 years, R/o Fatehpur, District- Vaishali, Bihar at present R/o Boraiei, Dhamtari, District Dhamtari (C.G.)

---- Applicants**Versus**

State Of Chhattisgarh Through the Police Station-
Bishrampuri, District – Kondagaon (C.G.)

---- Non-applicant

For Applicants: Shri Vishnu Kosta, Advocate.
For Non-applicant/State: Mr. D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****05/05/2016**

Heard.

(1) The accused/applicants have moved this Second bail application under Section 439 of the Code of Criminal Procedure for releasing them on regular bail during trial in connection with Crime No. 78/2015 registered at Police Station Bishrampur, District Kondagaon for the offences punishable under Sections 34(2), (3) of the Chhattisgarh Excise Act.

(2) Applicant's first bail application was dismissed on merits by this Court by order dated 05.10.2015 passed in M.Cr.C. No.5284/2015 holding that taking into consideration the nature & gravity of the offence; quantity of liquor i.e. 127 bulk liters seized

from the applicants and further taking into consideration the provisions contained in Section 59-A(ii) of the Chhattisgarh Excise Act.

(3) Now, the second bail application has been filed on the strength of testimony of Santosh Yadav, driver; Rameshwar Singh Som, Assistant District Excise Officer & Goutam Sonwani, Driver and out of them two witnesses namely Shri Santosh Yadav & Shri Goutam Sonwani have been declared hostile and they have not supported the case of the prosecution.

(4) Counsel for the applicants submits that since two witnesses have been declared hostile and they have not supported the case of the prosecution, therefore, the applicants are entitled to be released on bail.

(5) 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 bail application has 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

1 (2002) 3 SCC 598

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.”

(6) Likewise, in the matter of **Kalyan Chandra Sarkar V. Rajesh Ranjan alias Pappu Yadav & another**², 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.”

(7) 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

² (2004) 7 SCC 528

³ (2015) 2 Scale 195

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 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.”

(8) In the light of the above-stated principles of law dealing with prayer for bail during trial, it is *quite vivid* that applicants' first bail application was rejected on merits and no change in circumstances warranting admission of second bail application 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.

(9) Accordingly, second bail application filed by applicants for grant of regular bail is hereby rejected being substance less.

Sd/-

(Sanjay K. Agrawal)
Judge

