

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C.(A) No. 754 of 2016

1. Hiralal Chouhan, S/o. Late Shri Dalpat Chouhan, aged about 32 years, R/o. Gayatri Nagar, Jhopadi Para, Rajgamar, Korba, P.S. - Balco, Tahsil and District – Korba (C.G.)

----Applicant

Versus

1. The State of Chhattisgarh, through, S.H.O., Police Station – Balco Nagar, District – Korba (C.G.)

---- Respondent

For Applicant : Mrs. Indira Tripathi, Advocate

For Respondent/State : Ms. Shobha Kashyap, Dy.Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/09/2016

1. Apprehending arrest in connection with Crime No.155/2014 registered at Police Station – Balco Nagar (Police Chowki – Rajgamar), District – Korba (C.G.), for offence punishable under Section 363, 364, 364(A), 365, 302 and 201 of Indian Penal Code, the applicant has preferred this application for grant of anticipatory bail.
2. Case of the prosecution, in brief, is that a report was made by the Laxminarayan on 02.05.2014 that his son is missing. Subsequently, the dead body of his son was found and initially two persons Deepak Kumar and Vinod Kumar were arrested and trial commenced. Subsequently, during the course of trial statement of Laxminarayan was recorded before the Court on 20.10.2014 and certain documents were exhibited. In such evidence allegations were also attributed against the present applicant. The trial Court, thereafter on 24.03.2015, by invoking Section 319 of Cr.P.C.

summoned the applicant. The summons were not served to the present applicant. In the meanwhile two of other co-accused were tried and they were sentenced in different sections of I.P.C. substantially under Section 302 of I.P.C. Thereafter, the present application is preferred on the ground that applicant is apprehending arrest.

3. Learned counsel for the applicant would submit that since the applicant used to stay in front of the house of the victim and after the arrest of the son, the applicant and their family went away to the other place and was not in know of the fact that notices have been issued to the applicant could not be served as such no appearance can be made by applicant. Reliance was placed by the learned counsel in case of *Brindaban Das and Others Vs. State of West Bengal, reported in (2009) 3 SCC 329* and it is submitted that nature and scope by invocation of Section 319 of Cr.P.C. was completely bad as no statement is made against this applicant. Therefore, the counsel prays that the applicant may be extended the benefit of anticipatory bail.
4. Per contra, the learned State counsel opposes the prayer for grant of bail.
5. Perused the order dated 03.02.2015, wherein after evaluating one of the statement, trial Court has issued arrest warrant to the present applicant. The said arrest warrant remained unserved, thereafter 5-6 dates were passed. Eventually the case was decided against two accused, who were arrested and they were convicted. Perusal of the order sheet would show that applicant was absconding. It is improbable to believe that the applicant did not know about pendency

of the case since the case was pending against the son of the present applicant. The case law relied on by the applicant is not applicable in the facts and circumstances of the case as this Court is not examining the merit of issuance of the arrest warrant under Section 319 of Cr.P.C. Considering the facts and circumstances of the case and the fact that the applicant was absconding after the notices were issued, it is not a case, where the benefit of Section 438 of Cr.P.C. can be extended to the applicant as it can not be stated that custodial interrogation of the applicant may not be required. Therefore, I am not inclined to grant anticipatory bail to the applicant.

6. Accordingly, the anticipatory bail application is dismissed.

Sd/-
(Goutam Bhaduri)
Judge