

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 909 of 2016**

Sunil Gupta, S/o Shri M.L. Gupta, Aged About 47 Years, R/o A C C Jamul Colony, Jamul, Bhilai, P.S. Jamul, Tahsil & District Durg, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Jamul, District Durg, Chhattisgarh.

---- Respondent

For applicant – Shri Kishor Shrivastava, Sr. Advocate, Shri Prem Francis, Shri Ashish Shrivastava, Shri Brijesh Mishra and Shri Soumya Rai, Advocates.

For Respondent/State – Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

29/09/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No. 451/2015 registered at Police Station Jamul, District Durg (C.G.) for offence punishable under Sections 307, 323 r/w. 109, 506 Part 2 of Indian Penal Code.

2. As per the prosecution case, the applicant who is Cluster Head of Jamul Cement was going to the factory on 26/09/2015. At that time, while entering he was intercepted by few of the workers of company namely Mechanlay Bharat Engineering Company who were given job of expansion for ACC. It was alleged that the workers were not paid dues for certain months. Thereafter, during such interaction scuffle took place in between security person of the applicant i.e. one gunman Virendra Singh and during such time Virendra Singh fired a gun shot whereby Ashok Singh had received the bullet injury. Thereby, the applicant and the other

co-accused had tried to commit offence to kill said Ashok Singh.

3. Learned counsel for the applicant submits that on the date of incident when the applicant was coming to the factory, he was intercepted by few of the workers of Mechanlay Bharat Engineering Company who were engaged for expansion of the company project. It is stated that entire amount of the wages were being paid by company Mechanlay Bharat Engineering Company who were their contractor and complainant was not engaged by the company of the present applicant. However when he was intercepted, it was assured that he being Cluster Head of ACC he would look into the matter. Subsequently, some scuffle took place between gunman of the applicant Virendra Singh and bullet fire was made by Virendra Singh by which Ashok Singh got injury. It is contended that thereafter, Magistrial Enquiry was conducted and it was found that the applicant was not involved in the crime in any manner whatsoever. Subsequently the charge sheet was filed after due investigation by the police and it was only against Virendra Singh not against the applicant. Subsequently at the time of framing of charge an application was moved by Virendra Singh to discharge him but the same application was dismissed. Subsequently by an order dated 2/08/2016 cognizance were taken against this applicant. Therefore, he would further submit that against taking of cognizance a Cr.M.P. No. 930/2016 was filed before the court wherein by an order dated 2/09/2016 coordinate bench of this court has stayed the order dated 2/08/2016 whereby the cognizance was taken. In such circumstances though the Cr.M.P. is pending the applicant apprehends his arrest irrespective of the right which is to be adjudicated in Cr.M.P.No.930/2016. Therefore, learned counsel submits that the applicant may be granted benefit of anticipatory bail.

4. Learned State counsel opposes the prayer for grant of anticipatory bail.

5. Perused the statement of the witnesses as also background of this case. As appears, initially in Magistrial enquiry applicant was exonerated by the State. Subsequently, charge sheet was also filed against Virendra Singh alone. After committal of case at the time of framing of charge cognizance was taken by trial court against this applicant. Such taking of cognizance is under judicial scrutiny of this court in a separate Cr.M.P. No.930/2016. In view of this, it appears that since magistrial enquiry already conducted and initially charge sheet was filed only against Virendra Singh, taking into totality of facts and circumstances as appears no custodial interrogation may be required against the applicant as per principle laid in case of **Bhadresh Bipinbhai Sheth Vs. State of Gujarat & Another** reported in **(2016) 1 SCC 152**. Therefore, I am inclined to extend benefit of anticipatory bail to the applicant.

6. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions:-

- (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

(iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-

(Goutam Bhaduri)

JUDGE

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