

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1737 of 2017**

1. Nemuchand S/o Saradhu Aged About 51 Years Caste Gond, R/o Village Karka, Police Station Mechka, Tahsil- Nagari, District Dhamtari, Chhattisgarh.
2. Punarad S/o Narsingh Aged About 50 Years Caste Gond, R/o Village Karka, Police Station Mechka, Tahsil- Nagari, District Dhamtari, Chhattisgarh.
3. Gesram S/o Balaram Aged About 21 Years Caste Gond, R/o Village Karka, Police Station Mechka, Tahsil- Nagari, District Dhamtari, Chhattisgarh.
4. Bhanwar Singh S/o Nemuchand Aged About 20 Years Caste Gond, R/o Village Karka, Police Station Mechka, Tahsil- Nagari, District Dhamtari, Chhattisgarh.
5. Arun S/o Ramesh Aged About 21 Years Caste Gond, R/o Village Karka, Police Station Mechka, Tahsil- Nagari, District Dhamtari, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through, Forest Range Officer, Arsikanhar, Udanti Sitanadi Tiger Reserve, District Dhamtari, Chhattisgarh.

---- Respondent

For Applicants	: Smt. Indira Tripathi, Advocate
For Respondent/State	: Shri Anant Bajpai, PL

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order****17.4.2017**

1. Learned counsel for the applicants would submit that she had filed the affidavit as required under sub-rule (2) of Rule 120 of the High Court of Chhattisgarh, Rules, 2007 (for short the Rules 2007).

2. Also perused the note of the office. As there was no default in accordance with the format of affidavit prescribed under the Rules 2007, with this, the matter was not listed in default.

3. Perused sub-rule (2) of Rule 120 of the Rules 2007 which is reproduced as under :

(2) In a case where the number of accused are more than one, the affidavit shall state as to whether or not bail application of a co-accused is pending or has been disposed of in the High Court.

4. Perused the affidavit as prescribed in the said Rule in support of application under Section 439 Cr.P.C. which is hereby reproduced for relevance:

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
(CHHATTISGARH)**

M.Cr.C.No...../Year

Applicant : A

Versus

Non-applicant B

Affidavit

I.....S/o.....agedyears R/o

District..... do hereby state on oath as under :-

(a) That, I am applicant's **Relative** (relation to be disclosed) and conversant with the facts of the case. I am authorized by the applicant to move an application for his release on bail.

(b) That, I am authorized by the applicant to swear this affidavit on his behalf in support of the bail application.

(c) That, this is the **First/Second/Subsequent (No.) bail application** of the applicant before this Hon'ble Court. No other

application of the nature is pending either before this Hon'ble Court or Court below.

(d) That, I have engaged Mr.....Advocate as applicant's counsel to move and argue the bail application before this Hon'ble Court on his behalf.

(e) That the contents of the bail application are true to my personal knowledge.

Deponent

Verification

I.....the deponent, do hereby verify that the contents of the affidavit from paras 1 to 5 are true to my personal knowledge.

Verified and signed on thisday ofat.....

Deponent

Identified by me:

5. On perusal of said sub-rule, it appears that either the format is not in accordance with the said sub-rule or the said sub-rule is not in accordance with the affidavit as required in the format which appears anomaly requires consideration of the High Court. In the considered view of this Court, the matter requires consideration whether the provided sub-rule (2) and the format of affidavit regarding MCRC/MCRC(A) are appropriate as required or not.

6. It appears that none of the both affidavits in the format given for MCRC/MCRC(A) is as required under sub-rule (2) of Rule 120 of the Rules 2007. With this, the Registrar General is directed to take steps to put up the matter before the appropriate

authority for consideration and formulation if needed after obtaining necessary permission if required.

7. Heard the matter finally.

8. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicants, who have been arrested in connection with crime No./POR No.7922/2016 registered at Police Station Forest Range Officer, Arsikanhar Udanti Sitanadi Tiger Reserve District Dhamtari (CG), for the offence punishable under Sections 27, 29, 31, 38, 51, 52 of the Wild Life (Protection) Act, 1972 and Section 3 (1) (a) of the Prevention of Damage to Public Property Act, 1984.

9. Learned counsel for the applicants submits that there are total 22 accused persons in the case including the present applicants. The matter is pending before the J.M.F.C. Nagari, District Dhamtari (CG) as Cr. Case No. 39/2017. The applicants are in jail for more than 3 months. The maximum punishment is upto 5 years. The applicants are first offender. They are poor and tribals. As per allegations the applicants have encroached the forest land and caused damage to the public property allegedly for Rs.1,76,86,871/- by destroying the residence of wildlife, which was estimated hypothetically for the loss of environment and the plant under 20 cm circle. The said loss if at all caused by all the accused and merely and hypothetical and imaginary in course of habitat. They had cleaned the land for their residence and

agriculture. In an another POR No. 8366/13 registered by the same authority, this Court had granted bail under Section 439 Cr.P.C. in MCRC No. 422/2017 vide order dated 1.2.2017. She submits that trial will take some time, therefore, the applicants may be released on bail.

10. On the other hand, learned counsel for the State opposes the bail application. He submits that as per calculation, there is loss of under 20 cm circle plant, ecological loss as per standard fixed by the PCCF (CG) Raipur. Also there was violation of many provisions aforementioned in connection with Act of 1972.

11. I have heard the counsel appearing for the parties and perused the matter.

12. From the facts of the case, it appears that the applicants are the villagers residing in the said Tiger Reserve. The calculation chart shows the loss to the public property. The applicants may defend themselves in the light of said chart on all the factual aspect. The punishment is maximum for a period of 5 years in the matter. The calculation chart may required to prove before the concerned criminal court so as to hold the applicants guilty. The applicants are in jail for more than 3 months. The lease of land is also under consideration though as per law the State Govt. cannot issue lease unless and until the formalities as required under the forest law are completed. On due consideration, I am inclined to grant an opportunity to the

applicants so that they may remain in the society without committing any similar offence in future.

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

14. It is directed that the applicants shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the J.M.F.C., Nagari, District Dhamtari for their appearance as and when directed.

15. It is made clear that this order granting bail to the applicants shall stand cancelled automatically without reference to the Bench by the Court below if (i) the trial Court finds that the applicants suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicants do not cooperate in the trial; (iii) the applicants are found to be involved in any offence of the like nature; and (iv) the trial Court finds that the applicants remain absent without any sufficient and cogent reason. If bail is cancelled automatically in view of the above , the Court below may proceed further under the provisions of law, under intimation.

Certified copy as per rules.

**Sd/
(Chandra Bhushan Bajpai)
JUDGE**