

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1891 of 2017

1. Avinash Singh @ Gandhi S/o Surendra Singh, Aged About 30 Years
Occupation Business, Caste Chattriya R/o M L A Nagar Junapara,
Baikunthpur, District Korea Chhattisgarh

---- Applicant

Versus

1. State of Chhattisgarh Through Police Station Baikunthpur, District Korea
Chhattisgarh

---- Non-applicant

For Applicant – Shri Pragalbha Sharma, Advocate.

For Non-applicant/State – Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

06-04-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant is arrested in connection with Crime No.16/2017 by P.S. Baikunthpur, District Korea, C.G. for the offence under Section 294, 307 read with Section 34 of the IPC. Police had registered the said crime number along with applicant's father Surendra Nath Singh. The co-accused, i.e. father of the applicant was granted bail by coordinate Bench dated 03-03-2017 in MCRC No.1114/2017. Though as per the prosecution's case, it is the applicant who had opened fire twice to the complainant which resulted a superficial lacerated injury 3 x 1 cm. on right palm, also an injury present on left hand 1 x 10 cm. and another injury in right palm 1 x 1 cm., besides this, no other injury seen on external surface. The injury was simple in nature as per the doctor who conducted the MLC. The incident happened in front of the house of the present applicant where the complainant was present and father of the applicant also lodged a FIR against the complaint and other two at P.S. Baikunthpur which is registered for the offence under Section 452, 294, 506 Part II, 34, 323 of the IPC alleging that the complainant have used obscene words, gave threat to kill and during heated

conversation, to save life father of the applicant opened fire twice in the air and thereafter the complainant and two other assaulted Surendra Nath Singh who had received simple injuries. With this, the applicant would submit that as per the FIR lodged by the co-accused, his father, his father opened fire in air to save his life. The applicant has not involved for opening fire to the complainant. Learned counsel for the applicant further submits that as per the material received under the RTI Act, in 18 matters police of Baikunthpur registered crime number and complaint cases against the complainant as per Annexure-A/3. As the injury is simple in nature, the applicant is in jail for about 3 months, he will not commit any offence in future, cooperate in court proceedings, he may be granted bail.

3. Per contra, learned counsel for the non-applicant/ State opposed the argument advanced on behalf of the applicant and would submit that police after investigation filed the charge sheet against the present applicant under Section 294, 307, 34, also under Section 25, 27 of the Arms Act for using 12 bore gun illegally without having any licence and also father of the accused is a co-accused with the aid of Section 34 of the IPC. Learned counsel would further submit that may be 18 cases were registered against the complainant, but it does not mean that the applicant may open fire to attempt to take the life of the complainant. Though there is no earlier criminal antecedent of the present applicant, but in the manner the applicant opened fire his act is serious and if at all the complainant was there before the house of the applicant and if at all committing some offence, the applicant would have informed the police or may take other steps to save himself as the complainant was not having any firearm with them. The act of the applicant, prima facie, will be covered under the ambit of Section 307 of the IPC.

4. Perused the matter.

5. Registration of 18 cases against the complainant prima facie indicates

his history though may be correct or may be not correct, the place of incident is before the house of the applicant, father of the applicant also subsequently, later lodged a report against the complainant and two persons showing their conduct and his act, the applicant is in jail since three months, co-accused/father has been granted bail by the coordinate Bench. Injuries received to the complainant is superficial and simple in nature, though the said act prima facie covered under the various limbs of Section 307 of the IPC, the applicant is a permanent resident, upon consideration of the entire material, I am inclined to grant one opportunity to the applicant so that he may now not involve in any of the offences and live peacefully and also to face the trial duly and cooperate in the said trial.

6. Consequently, the instant MCRC is hereby allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- (Rs. One Lac) with one solvent surety of Rs.1,00,000/- to the satisfaction of the Chief Judicial Magistrate Baikunthpur, C.G. for his appearance before the said trial Court as and when directed till conclusion of the said trial.

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

8. Till conclusion of the trial the applicant is directed to mark his appearance before Baikunthpur police on 15th and 28th of every month at 11.00

a.m. positively. If the applicant for not proper and cogent reason fails to appear before the SHO/In-charge of the P.S. twice in a month at appropriate time aforementioned, the said police may inform the same to the committal Court/trial Court and if said Court hold that for no sufficient reason the applicant was negligent in appearance before the said police station, the bail granted to the applicant shall automatically cancelled by the said Court without reference to the Bench under intimation to Registry.

9. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE