

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.1970 of 2017**

- Kamal Markam S/o Gundhar Singh Markam, Aged About 29 Years R/o Village Koshamguda, Tahsil Police Station And Post Chhura District Gariyaband Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Peeparchedi, Civil And Revenue District Gariyaband Chhattisgarh

---- Respondent

For Applicant	: Dr. NK Shukla, Sr. Advocate with Ms. Priya Mishra, Advocate
For Respondent/State	: Shri Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****11.4.2017**

Heard the matter finally.

2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.26/2016 registered in Police Station Peeperchedi, Civil & Revenue District Gariyaband for the offence punishable under Sections 409 read with Section 34 of the Indian Penal Code.

3. Learned counsel for the applicant submits that the applicant has been arrested on 31.12.2016, after investigation, the police has filed charge sheet and the matter is pending before Chief Judicial Magistrate, Gariyaband as Criminal Case No.181/17. As

per the allegation, the applicant is the accused of embezzlement of Rs.8,26,526/-. The applicant was working as Head Constable in the said police station and has taken the said amount from the almirah of the police station as he was having one key of the said almirah. Learned counsel for the applicant would submit that the applicant is not the Station House Officer, he is merely an Head Constable, one key of the said almirah was also with the SHO, before opening the said almirah/chest, the IO/SHO has not made panchnama/proceedings in the presence of senior police officials and also there was no witnesses present. As per the panchnama six persons were present at the time of opening of the almirah and SHO of said police station Sachin Singh, Sub Inspector was also present. As the other key used to be with the SHO, it cannot be held that prima facie it is the applicant who committed said embezzlement. He is in jail since 31.12.2016, he may be granted bail during trial.

4. On the other hand, learned counsel for the State opposes the bail application and would submit that the applicant before the senior officials made clarification in writing that it is he who has taken the amount and he used the said amount in gambling at Pandripani, Orissa and he lost the money there. He further submits that the said almirah was opened before SHO, other six witnesses, present applicant and mal moharir.

5. In addition to the arguments advanced, learned Senior counsel would submit that the said explanation in writing given by the applicant is not admissible under the law.

6. Perused the material.

7. The evidence collected against the applicant goes to show that the applicant was in charge and in custody of said amount of Rs.8,26,526/- and the said amount was not found at the time of panchnama. On due consideration of the evidence collected against the present applicant, I am not inclined to allow the bail application.

8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is hereby dismissed.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE