

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1895 of 2017

1. Keshav S/o Murha Ram Teli, Aged About 39 Years, R/o Village Kachna, Tehsil Kurud, P.S. Kurud, Birejhar Chowki District Dhamtari Chhattisgarh

---- Applicant

Versus

1. State of Chhattisgarh Through Police Station Kurud, Birejhar Chowki, District Dhamtari Chhattisgarh

---- Non-applicant

For Applicant – Shri Ashish Beck, Advocate.

For Non-applicant/State – Shri U.K.S.Chandel, 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 held arrested in Crime No.90/2017 by police of Police Outpost Birejhar, P.S. Kurud District Dhamtari for the offence under Section 34(2) of the C.G. Excise Act on 03-03-2017. He is remanded by the order of CJM, Dhamtari. He is the first offender, no any earlier criminal antecedent is reported and as per allegation, police has seized 19.980 liters F.L. from the joint possession of the the present applicant and Uttam Nishad. Another accused has not preferred any bail petition. The applicant is not knowing as to whether another co-accused Uttam Nishad preferred any application under Section 439 of the Cr.P.C. before the remand Court/Sessions Court/this Court. As there is no earlier criminal antecedent of the present applicant, he may be granted opportunity to remain in bail during the trial.
3. Per contra, learned counsel for the non-applicant/ State opposed the argument advanced on behalf of the applicant and fairly submitted that in the case diary there is no any earlier criminal antecedent reported by the police.
4. Perused the matter.
5. On due consideration, I am inclined to grant one last opportunity to the

applicant. 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.25,000/- with one solvent surety of the like sum to the satisfaction of the Chief Judicial Magistrate Dhamtari, C.G. for his appearance before the said trial Court as and when directed till conclusion of the said trial.

6. 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.

7. In addition to the argument on behalf of the applicant, learned counsel for the applicant draws attention of this Court regarding provisions of sub-rule Rule 120 of the High Court of Chhattisgarh Rules, 2007, which is reproduced here for relevance:-

"(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."

And would submit that it is not at all humanly possible for applicant/accused to take oath in an affidavit to state whether any bail application has been preferred by co-accused or not and the same is pending or disposed of because co-accused is not obliged to inform the accused regarding his intention to file an application under Section 439 of the Cr.P.C. before this High Court and no one is obliged to inform the fate of said application or regarding pendency of said application, hence, the provision of

sub-rule 2 of Rule 120 of the High Court of Chhattisgarh Rules, 2007 requires reconsideration on behalf of the High Court.

8. Peruse the said sub-rule.

9. On perusal, this Court is also in agreement with the argument advanced on behalf of learned counsel for the applicant that generally any applicant may not know about filing of application by the co-accused before this Court under any provisions of law, i.e., under Section 438, 439 of the Cr.P.C. and generally it is not possible for the applicant to know regarding status of any such application filed if any by co-accused as the same is pending or disposed of, though the Registry of the High Court who is registering the matter under the head of MCRC/MCRCA they may be in a better position, have knowledge whether any co-accused has preferred any petition which is pending or disposed of and if disposed of what is the result of said, also the investigating officer/concerned police may know regarding the moment of entries of copy of the diary as the case diary is requisitioned from the said police station/investigating officer; may be the office of A.G. may know about pendency of any other application by the co-accused in relation with same crime number, offence and police station as they were directed to call for the case diary, but the applicant in general circumstances cannot know the facts regarding filing of any petition by co-accused, its status and result of said petition.

10. In the considered view of this Court, the said sub-rule requires reconsideration on every aspect. With this, Registrar General is directed to place the matter before appropriate for consideration in the matter as deemed fit under the authority.

11. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE