

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.2191 of 2017**

- Vijay Kurre S/o Shri Lalji Kurre, Aged About 40 Years R/o Village Rehuta, Police Station City Kotwali, District Mungeli, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Mungeli, District Mungeli, Chhattisgarh.

---- Respondent

For Applicant : Shri Dheerendra Pandey, Advocate
 For Respondent/State : Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****18.7.2017**

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.542/2013 registered in Police Station Mungeli, Distt. Mungeli (CG) for the offence punishable under Sections 302/34 of the Indian Penal Code.

3. Learned counsel for the applicant submits that the applicant has been arrested on 22.12.2016, after investigation, concerned police has filed charge sheet against present applicant and co-accused Sanjay Kurre, which was initially pending before Judicial Magistrate First Class, Mungeli as Criminal Case No.262/2016 later on the matter was committed to the Court of Session and

presently pending before Additional Sessions Judge, Mungeli as Session Trial No.19/17. Learned counsel for the applicant would submit that as instructed and informed, co-accused Sanjay Kurre has not preferred any bail application for his release and he is still in jail. Learned counsel for the applicant would further submit that the incident is of 10.12.2013, name of the deceased is Savant, he died on 11.12.2013, FIR was lodged against the unknown persons on 12.12.2013. The Police during investigation recorded supplementary statement under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code') on 26.10.2016 wherein witness Rajkumari, claims to be the eye witness, submits that she saw the applicant and co-accused Sanjay Kurre beating deceased Savant. Thereafter statement of Rajkumari was recorded under Section 164 of the Code on 04.11.2016 where also she almost repeated the same version. Statement of Heera Singh, claims to be the eye witness, was recorded under Section 161 of the Code wherein he stated that he reached to the spot after a call by Rajkumari and he saw both the accused assaulting Savant. On 26.1.2016 Rajkumari gave written complaint before the police but in the said written complaint there was no disclosure of facts that she saw the incident and also no reason was mentioned regarding delay in filing the written report. In the FIR, the cause of delay in filing the FIR was shown as after merging inquiry. As per the statement of Ganga Das, recorded under Section 161 of the Code on 19.11.2016, when he reached to the spot along with witness Heera Singh, he saw Savant in

unconscious condition and Rajkumari was present there. She told the incident to these witnesses. As per the statement of another witness Yem Prasad, recorded on 18.01.2017 under Section 161 of the Code, prior to four months of recording his statement under Section 161 of the Code, applicant Vijay Kurre made extra judicial confession regarding commission of murder of Savant along with co-accused Sanjay Kurre. As per the statement of another witness Bheekam Khande, recorded on 09.11.2016, Rajkumari informed him regarding the incident. In the statement of Santosh Patley recorded under Section 161 of the Code on 21.12.2016, he submits that about somewhere in the month of June 2016, the applicant made extra judicial confession regarding murder of Savant along with co-accused. Statement of Deepak was recorded on 10.02.2017 under Section 161 of the Code. In the said statement he submitted that witness Rajkumari informed him regarding the incident somewhere in the month of January 2014. Learned counsel for the applicant would submit that the axe was seized from the spot, there is no any evidence collected that the axe belongs to the applicant. Rajkumari, daughter of deceased Savant, despite witnessing the incident, had not disclosed that she saw the applicant and co-accused assaulting Savant, she disclosed the said fact for the first time about three years after the incident. There is no reason for non disclosure of the facts as already there was enmity between the parties and in one more murder case present applicant was involved. Learned counsel for the applicant would further submit that there is no reason for any

of the witnesses to disclose the fact as aforementioned so lately i.e. for about three years which goes to show that the evidence is prima facie false and fabricated hence, the applicant may be released on bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that though there is a long delay in disclosing the commission of offence by the witnesses to the police but ultimately as all the aforementioned witnesses stated against the applicant stating his role in the murder of deceased Savant hence, on due consideration of the entire material, instant M.Cr.C may be dismissed.

5. Perused the entire material.

6. Nothing has been seized from the applicant which could connect him with the crime. Also there is no reason for non disclosure of entire incident as aforementioned to the police, Rajkumari is the core witness and she had narrated the entire story after about three years. All the other witnesses have not witnessed the incident, they all came to know about the incident from Rajkumari, who claims to be witnessed the commission of offence. If the applicant disclosed the facts before the witnesses as aforementioned admitting his guilt, even then they were required to intimate the police immediately.

7. On due consideration of the entire facts collected, and the circumstances, in the considered view of this Court, this is a fit case where the applicant be granted bail.

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

9. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.1,00,000/- with two separate solvent sureties of Rs.50,000/- to the satisfaction of Additional Sessions Judge, Mungeli for his appearance before the said Court as and when directed.

10. 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 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