

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 732 of 2017**

1. Yajendra Banjare S/o Pardeshi Ram Banjare Aged About 46 Years R/o Village Damri, Police Station Khairagarh, District Rajnandgaon, Chhattisgarh, Through Birendra S/o Pardeshi Banjare, Aged About 40 Years R/o Village Damri, Police Station And Tehsil- Khairagarh, District Rajnandgaon, Chhattisgarh.
2. Yogesh Kumar Banjare S/o Yajendra Banjare Aged About 19 Years R/o Village Damri, Police Station Khairagarh, District Rajnandgaon, Chhattisgarh, Through Birendra S/o Pardeshi Banjare, Aged About 40 Years R/o Village Damri, Police Station And Tehsil- Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Petitioners**Versus**

State Of Chhattisgarh Through Police Station Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For the Petitioners : Shri Rakesh Pandey, Advocate.
 For the Respondent/ State : Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****04.07.2017**

1. Heard on admission.
2. Admit.
3. Issue notice to the respondent/ State.
4. Shri Anil S. Pandey, Government Advocate accepts notice on behalf of the respondent/ State.
5. In this petition under Section 482 of the Code of Criminal Procedure, 1973, it is submitted that the petitioners are accused in Sessions Trial No. 1 of 2017 before the Court of Additional Sessions Judge, Khairargarh, District Rajnandgaon, Chhattisgarh being prosecuted for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.

The petitioners are in jail. For the purpose of meeting the expenses of their defence, with the permission of the court below, petitioner No.1 has sold agricultural land which is in his ownership and received Rs.3,00,000/- as consideration. With the permission of the court below, the amount so received has been deposited in the District Co-operative Central Bank, Khairagarh in a fresh account opened in the name of petitioner No.1 – Yajendra Banjare. Petitioner No.1 presented an application for withdrawal of the amount from his own account. The trial court by order dated 15.6.2017 rejected his application.

6. Learned counsel for the petitioner submits that the order passed by the trial court is not in accordance with law and the petitioner has a right to engage a counsel of his own choice for the purpose of his defence in the criminal case. He further submits that, for these reasons the prayer for withdrawal of amount from his own account should have been allowed by the trial court.

7. Learned State counsel has submitted that if the prayer made by the petitioner for withdrawal of amount from his bank account is permitted, the State has no objection.

8. On going through the certified copies of the order-sheets submitted with the petition under Section 482 of the Cr.P.C. it appears that the trial court has facilitated for the petitioners/ accused persons by permitting them to execute sale deed and procure the finance which was intended to be used for defence of the petitioners. The orders passed for facilitating the petitioners in this respect for the reason that they are in custody are not a part of criminal proceeding as provided under the provisions of Cr.P.C. and it

is only on the humanitarian reasons that the criminal courts adopt this practice in helping out the persons detained in custody.

9. Refusing permission to petitioner No.1 from withdrawal of amount from his own account is an uncalled for order and not within the scope of any of the powers exercised under the Code of Criminal Procedure by the criminal court. Every accused person has a right to engage a counsel of his own choice, hence, for this reason the petitioner has made financial arrangements. Though, it is the duty of the court to inform the accused persons regarding availability of free legal assistance from the State Legal Services Authority, District and Taluka Legal Services Authority, even then criminal court cannot compel any person to opt for legal assistance provided by the Legal Services Authority. Hence for these reasons, this petition is allowed at the motion stage with a direction that there is no requirement under law for a person to seek permission of court who is holding an account in bank to withdraw the amount. The role of court in such cases is only to facilitate the person when he is detained in custody so that his requirements are met with. Hence, accordingly facility be provided to the petitioner by the court below for withdrawal of amount from his own bank account.

10. With the above observations, this petition is disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge