

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5518 of 2017**

Bharat Singh Markam S/o Dashrath Markam, Aged About 33 Years R/o Village Sitali Tahsil Kondagaon District Kondagaon, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Police Station Kondagaon District Kondagaon, Chhattisgarh.

---- Respondent

MCRC No. 5256 of 2017

1. Ramiram Markam, S/o Dashrath Markam, Aged About 23 Years
 2. Dashrath Markam S/o Vir Singh Markam, Aged About 90 Years
- R/o Village Sitali Tahsil Kondagaon, District Kondagaon, Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh Through The Police Station Kondagaon, District Kondagaon, Chhattisgarh.

---- Respondent

For applicants	Mr. P.K. Tulsiyan, Adv.
For Respondent/State	Mr. Neeraj Jain, Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****31-8-2017**

1. As MCRC No. 5518/2017 and MCRC No. 5256/2017 arise out of same incident and crime number, they are being disposed of by this common order.
2. In MCRC No. 5518/2017, applicant has filed an applicant I.A. no. 1/2017 for urgent hearing on the ground that as the case diary is available in CMRC No. 5256/2017, hence both may be heard together.
3. I.A. No. 1/2017 is hereby allowed.
4. Heard the matter finally.
5. The applicants have preferred these applications for grant of bail

as applicant Bharat Singh Markam is arrested on 27-7-2017 and applicants Ramiram Markam and Dashrath Markam are arrested on 6-7-2017 in connection with Crime No. 178/2016 registered in PS Kondagaon, Distt. Kondagaon (CG) for offence punishable under Section 294, 506 and 307 of the Indian Penal Code, 1860. He further submits that earlier police filed charge sheet against one Harishchand Markam in the aforementioned matter. Said matter was being tried before the court of Session, Kondagaon as ST No. 87/2016. In the said charge sheet present applicants were not made accused. On 10-5-2017 an application was filed by the prosecution under Section 319 of the Cr.P.C. praying that these three applicants may also be made accused as their role is surfaced in the statement of few witnesses. The trial Court while allowing the said application under Section 319 of the Cr.P.C. held that all the three present applicants be also tried along with accused Harishchand Markam and issued warrant of arrest. Thereafter all the above applicants were arrested as mentioned above. Learned counsel for the applicants further submits that the applicants are the father and sons. Other party is in relation in the family tree. There was some dispute regarding land received on partition. In the light of said dispute the present incident happened. As per allegation, it is Harishchand Markam who assaulted the complainant by axe and present applicants were present there sharing common intention and with this helped main accused. The injured Tolaram sustained following three injuries :-

- i. Incised wound over right side of the back size 5 x 3 x 1 cm

- ii. Incised wound over left shoulder size 5 x 3 x 1 cm
- iii. Damage to right lung.

The injured was admitted in the hospital for only 1 and half an hour. The incident is of 6-8-2015. Nothing is surfaced in the charge sheet whether the injured had any further complication in the injuries. Main co-accused Harishchand Markam has been granted bail by the coordinate bench in MCRC no. 7778/2016 dated 7-12-2016. Case of the present applicants is better than the co-accused Harishchand Markam as they shared common intention and helped him in the incident. The applicants are the first offender. They will not repeat the offence in future. They may be enlarged on bail.

6. Per contra, learned State counsel opposes the arguments advanced on behalf of the applicants and submits that looking to their role surfaced in the charge sheet, both the MCRCs may be dismissed.

7. Perused the entire matter

8. As the applicants Ramiram and Dashrath are in custody since 1 month and 25 days and applicant Bharat Singh Markam is in custody since 1 month and 4 days, they are first offenders, initially charge sheet was filed only against co-accused Harishchand Markam, he has been granted bail and he is the main accused, case of the present applicants is better then that of co-accused Harishchand Markam, trial may take some time, all the above applicants are made accused only when the prosecutor filed an application under Section 319 of the Cr.P.C. and initially police had not filed charge sheet against them, on consideration of entire facts, I am inclined to grant one

opportunity to the applicants to live peacefully in the society without committing any crime. Consequently, instant MCRC is allowed. The applicants are directed to be released on bail on each of their furnishing a personal bond in the sum of Rs. 25,000/- with one solvent surety of the like sum for each applicant to the satisfaction of the trial Court for their appearance before the said trial Court till disposal of the trial regularly as and when directed by the said Court.

9. It is made clear that this order granting bail to the applicants shall stand cancelled automatically without reference to the bench by the Court below if (i) the trial Court finds that the applicants suppressed filing or pendency of any other application for grant of bail before this court or the Hon'ble Apex Court intentionally, (ii) the applicants do not cooperate in the trial; (iii) the applicants are found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicants remain 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.

10. Copy of the order be placed in the file of MCRC No. 5256/2017.

11. CC as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge