

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5431 of 2017

- Akhtari Begum W/o Shakil Mohammad, Aged About 30 Years, Occupation Housewife, R/o Ward No. 6, Near Old Bus Stand, Dabhra (wrongly mentioned as Dabhra), District Janjgir- Champa (Chhattisgarh).
- Sharbari Begum D/o Shaiyad Jafar Shabri, Aged About 34 Years, Occupation Housewife, R/o Madhuban Para, Raigarh, Police Station City Kotwali, Tahsil & District Raigarh (Chhattisgarh).

---- Applicants

Versus

- State of Chhattisgarh Through Station House Officer, Police Station City Kotwali, Raigarh, District Raigarh (Chhattisgarh).

---- Non-applicant

For Applicants – Shri V.R.Tiwari, Advocate.

For Non-applicant/State – Shri Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

14-09-2017

1. Heard the matter finally.
2. Learned counsel for the applicants would submit that City Kotwali, Raigarh, District Raigarh, C.G. police registered Crime No.365/2016 under Section 498A, 326-A/34 of the IPC against total 5 accused persons including both the applicants. During investigation co-accused Saiyad Asgar Sabri, Saiyad Jafar Sabri, Saiyad Sabir Sabri were arrested by the police, police filed charge sheet after their arrest showing both the applicants absconding. The said matter was committed to the Court of Sessions registered as Sessions Trial No.130/2016 against the present applicants police shown them absconding under Section 299 of the Cr.P.C. The trial Court, i.e., First Additional Sessions Judge Raigarh had tried the matter against aforementioned three co-accused for the charges and vide judgment dated 01-03-2017 acquitted all the above three co-accused as the complainant and other material witnesses not supported the case of prosecution. Both the present applicants preferred MCRC No.237/2017, MCRC No.05/2017. The

coordinate Bench and this Court vide order dated 28-04-2017 and 6-04-2017 disposed of both the MCRCAs without any appreciation on its merit as both the applicants intended to surrender before the trial Court and to file an application under Section 439 of the Cr.P.C.; this Court and coordinate Bench directed for the disposal of the application under Section 439 of the Cr.P.C. on the same day. Both the applicants surrendered before the trial Court on 09 August, 2017 and filed the application under Section 439 of the Cr.P.C. for their release on bail. The trial Court after consideration dismissed the application filed by the applicants. Thereafter, both the applicants have preferred the present MCRC after their arrest. Learned counsel for the applicants would further submit that complainant Reshma Anjum is wife of Saiyad Asgar Sabri and other co-accused Saiyad Jafar Sabri is father-in-law and Saiyad Sabir Sabri is brother-in-law of the complainant. Both the present applicants are sister-in-law of the complainant. As the complainant and her mother Rashida, father of the complainant Mohammad Sadik turned hostile, not supported the case of prosecution, after trial the trial Court acquitted the aforementioned three co-accused for the charges as the prosecution failed to prove the charges against the accused in trial. Case of the present applicants is similar to the co-accused. They are in custody since 1 month, 6 days till date, trial may take some time, they were never involved in any of offence and as looking to the aforementioned facts in entirety there are good possibility in favour of the present applicants, they are woman, they may be enlarged on bail.

3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicants and would submit that as both the applicants were absconding for a pretty long time and committed offence as aforementioned sharing common intention along with other co-accused, looking to the entire facts and the role of the applicants, the MCRC may be dismissed.

4. Perused the entire material.

5. As the applicants are in custody since 1 month and 6 days till date, other co-accused as aforementioned after complete trial have been acquitted by the trial Court as there was no any material adduced by the prosecution in the trial, case of both the applicants are similar rather better to the already acquitted co-accused, simply with the fact that the applicants were absconding for a long time may not be basis for rejection of the petition, after consideration of the entire matter, without commenting anything on its merit, I am inclined to grant one opportunity to the applicants so that they shall not involve themselves in any offence and shall live peacefully in society. Consequently, the instant MCRC is hereby allowed. The applicants are directed to be released on bail on each of them furnishing a personal bond in the sum of Rs.30,000/- with one solvent surety of the like sum to the satisfaction of the trial Judge for their appearance before the said Court as and when directed till trial.

6. 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; and (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.

7. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge