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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.5425 of 2017**

- Jitendra Yadav S/o Gadadhar Ram Yadav Aged About 28 Years (Not Mentioned In The Order Sheet Of The Learned Court Below), Caste- Mahkul, R/o Tildega, Tahsil- Pathalgaon, Civil And Revenue District Jashpur, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through: The Station House Officer, Police Station Pathalgaon, Civil And Revenue District- Jashpur, Chhattisgarh

---- Respondent

 For Applicant : Shri Vinod Tekam, Advocate
 For Respondent/State : Shri Sumit Jhawar, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

07.9.2017

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.136/2017 registered in Police Station Pathalgaon, Distt. Jashpur (CG) for the offence punishable under Sections 395 of the Indian Penal Code.

3. Learned counsel for the applicant submits that the applicant has been arrested on 03.7.2017, after investigation police has filed supplementary charge sheet against present applicant under Section 173(8) of the CrPC which is presently pending before the Additional Judge to the Court of Additional Sessions Judge, Kunkuri, Distt. Jashpur as Session Trial No.38/2016. Initially the police has filed charge sheet against co-accused Raj Kumar Nat,

Ritesth Rajput and Parvesh Alam, which was registered as Session trial No.38/16. All the above three co-accused were granted bail by the Coordinate Bench in MCRC No.7190/16, 7777/16 & 4929/16. All the above three accused persons were tried by said trial Court and vide judgment dated 28.12.2016 all the three accused persons were acquitted for the charges under Section 395 of IPC. The Police has filed supplementary charge sheet against one co-accused Kundan Tati, a juvenile, before Juvenile Justice Board. After the surrender and formal arrest of the present applicant, the police after investigation filed supplementary charge sheet which is pending before the same trial Court bearing same session trial number as aforementioned. Learned counsel for the applicant would further submits that the applicant is the first offender, except his name surfaced in the disclosure statement of the other co-accused persons, no evidence has been collected against the present applicant. There is no memorandum recorded by the present applicant, nothing has been seized from him, no test identification parade was conducted by the police to identify the applicant by the complainant and other witnesses. With this, there is no incriminating material to connect the applicant with the offence. He is in custody since long and as per the allegation, 5 accused persons looted Rs.5,000/- from the shop of the complainant. Unnamed FIR was lodged. In the entirety, there is no admissible evidence against the applicant hence, the applicant may be enlarged on bail.

4. Per contra, learned counsel for the respondent/State opposed the arguments advanced on behalf of the applicant as the applicant was absconding and he received Rs.1,000/- as share of looted property, but he spent the same and the same cannot be recovered from him, hence, the instant bail application may be dismissed.

5. Perused the entire material.

6. The applicant is in custody for two months and twenty four days, there is no memorandum statement of the applicant, nothing has been seized from the applicant, no any test identification parade was conducted by the prosecution, the applicant was not known to the complainant and witnesses prior to the incident, other three co-accused have been acquitted as aforementioned, prima facie there is no material to connect he applicant with the offence, on consideration of the entire facts, I am inclined to grant one last opportunity to the applicant so that he will not commit any offence in future and shall remain peacefully in the society.

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

8. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.30,000/- with one solvent surety of like sum amount to the satisfaction of concerned trial Judge for his appearance before the said Court as and when directed.

9. 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