

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C. No. 3106 of 2017

Balram Dubey, S/o. Laxmi Narayan Dubey, aged about 40 years, R/o. Balaji Nagar, Aghanpur, Police Station – Parpa, Jagdalpur, District – Jagdalpur (C.G.)

----Applicant

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station -Kotwali, District- Bastar, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. V.R. Tiwari, Advocate
For Respondent/State	:	Ms. M. Asha, Panel Lawyer
For Objector	:	Ms. Fouzia Mirza, Advocate and Mr. P.K. Tulsyan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18/05/2017

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.330/2016, registered at Police Station – Kotwali, District – Bastar (C.G.) for the offence punishable under Section 307 of Indian Penal Code. The first bail application was dismissed on 30.01.2017 in M.Cr.C. No.42/2017.
2. Case of the prosecution, in brief, is that on 04.10.2016 the applicant assaulted one Tarun Chauhan, who is a practicing advocate and inflicted 3 to 4 stab injuries by knife which were enough to cause

death thereby the offence has been committed. The dispute arose over the payment of professional fee between the parties.

3. Learned counsel for the applicant would submit that after rejection of first bail, the FIR has been registered against the complainant through intervention of High Court though report was made earlier. It is stated that it was registered on 14.02.2017 under Crime No.44/2017 and the complainant along with other have been made an accused. He would submit that the incident happened on account of payment of professional fees. It is submitted that the complainant made all influence being the advocate as such, no advocate from Jagdalpur was defending the applicant as such the case was initially transferred to Kondagaon. Thereafter at Kondagaon also, the advocate did not appear on behalf of the applicant and subsequently again petition was filed before High Court and the case was transferred to Raipur and trial is going there. It is stated, in the trial, the doctor has been examined and despite the different dates given for evidence of other witnesses and the complainant, they have not appeared in person before the Court for recording of their statement and avoided service of summons. The counsel further referred to telephonic conversation and would submit that the transcript of telephonic conversation would show the role played by the complainant – Tarun Chauhan how he abused and referred to CD. It is further submitted that despite the dates have been given, the witnesses have not appeared before the Court and there is no chances of tampering of witness at this stage. Considering the facts of this case and the applicant is in jail since

05.10.2016, the applicant may be enlarged on bail.

4. On the other hand, learned counsel for the State as well as learned counsel appearing on behalf of the objector opposes the bail application. It is submitted on behalf of the objector that there is no change of circumstances at this stage to reconsider the bail application again and there are chances of intimidation, therefore, it is prayed that the applicant may not be released on bail.
5. I have heard learned counsel appearing for the parties.
6. Perused the case diary and the documents filed along with the bail application. Perusal of the documents shows that presently FIR is registered against the complainant for the incident happened on 04.10.2016 i.e. the same date under Crime No.44/2017 and the reference is made in such FIR that after the order of the High Court and investigation, the same is registered. Therefore, it was not registered earlier despite the report. The order of the Coordinate Bench of this Court dated 26.10.2016 passed in T.P.(Cr.) No.19/2016 and dated 07.12.2016, passed in T.P.(Cr.) No.22/2016, would show that though the incident was of Jagdalpur, and since no advocate agreed to defend the case of the applicant at Jagdalpur, it was transferred to Kondagaon and similar incident happened at Kondagaon also, thereafter, the case is transferred to Raipur. The transcription of the CD is also perused, wherein abusive language is used. The order sheet also shows that on different dates, the case was fixed for evidence and except the doctor, the other witnesses have not appeared and on three occasions witnesses remained absent for want of service of summons. Taking into such fact and

the fact the FIR which is registered against the complainant on 14.02.2017 under Crime No.44/2017 also will have a bearing and further taking into to the fact that the case was transferred from Jagdalpur to Kondagaon then Raipur as no advocate agreed to defend the applicant, it is felt that the entire system can not be hijacked at the behest of the complainant and further considering the fact that the applicant is in jail since 05.10.2016 and appears witness could not be produced for more than 3-4 occasions except one and considering the pre-trial detention, this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
8. It is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed. The trial Court is also requested to expedite the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge