

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5139 of 2017**

- Sunny @ Amit Lalwani S/o Shri Murlidhar Lalwani, Aged About 31 Years R/o Sihawa Road, Shanti Nagar, Beside Fire Bridge Office, Sihawa Road, Dhamtari, tahsil & District Dhamtari Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer City Kotwali, Dhamtari, Distt. Dhamtari, (Chhattisgarh)

---- Respondent

MCRC No. 5141 of 2017

- Golu @ Vinay Lalwani S/o Shri Mohan Lalwani, Aged About 33 Years R/o Sihawa Road, Shanti Colony, Beside Fire Brigade Office, Police Station Dhamtari, Tahsil And District Dhamtari Chhattisgarh.

----Applicant

Versus

- State Of Chhattisgarh Through Station House Officer City Kotwali, Dhamtri District Dhamtari Chhattisgarh.

---- Respondent

For Applicants	:	Shri BP Sharma, Advocate with Shri NK Mehta, Advocate
For Respondent-State	:	Shri Sangharsh Pandey, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10/08/2017**

1. MCRC No. 5139 of 2017 is the second bail application on behalf of the applicant Sunny @ Amit Lalwani and MCRC No. 5141 of 2017 is the third bail application on behalf of the applicant Golu @ Vinay Lalwani, filed under

Section 439 of the Code of Criminal Procedure for grant of regular bail to both the applicants who have been arrested on 19-1-2017 in connection with Crime No. 12 of 2017, registered at Police Station City Kotwali, Dhamtari, District Dhamtari (CG) for the offence punishable under Sections 186, 332, 353, 294, 506, 452, 323, 427 and 333 read with Section 34 of the IPC.

2. The Second Bail of Golu @ Vinay Lalwani bearing M.Cr.C. No.3595/2017 was dismissed as withdrawn on 27.06.2017 with liberty to repeat after some time and the first bail of both the applicants bearing M.Cr.C. No.949/2017 was dismissed on merits on 15.03.2017.
3. As per the prosecution case, a report was made by one Dinesh Kumar on 15.01.2017 that on 14.01.2017 the present applicants along-with other rice-millers entered into the office of Food Corporation of India when the inspection was conducted by the General Manager and other officials and initially the accused ransacked the office of the FCI, thereafter when the officials went to Quality Control Laboratory, again after some time the applicants came there and started arguing with the officials on some issue and thereafter assaulted the General Manager as a result which he sustained injury on the eye as also fracture of right lamina papyracea.
4. Learned counsel for the applicants would submit that in this case the Section 333 of the IPC was added on the statement of Dr. Nivedita Kolhe, whereas she has not been cited as witness and the primary evidence would show that O.P. Singh who is said to be injured and the injury was stated to be simple in nature. It is further stated that Dr. Manish Tawri (PW-11) who has now been examined has given the report only on the basis of C.T. Scan and has not examined the injured itself which would show that primary evidence have not been adduced of that doctor who has examined the injured. It is further contended that the statement of Dr. Rajesh Suryavanshi

shows that such kind of injury could have been sustained by dash of any heavy insect, therefore, the same cannot be attributed to the present applicants. He further submits that one co-accused Mohan Lalwani has been enlarged on bail and the case of the present applicants is also similar to him, therefore, the applicants may also be enlarged on bail and they are in jail since 19.11.2017.

5. Learned State counsel vehemently opposes the bail applications and submits that the co-accused Mohan Lalwani has been granted bail on the medical ground as the documents filed would also show that he was 80% disabled and he was primarily granted bail on the basis of his age too. It is further submitted that further evidence are still going on and 11 witnesses have been examined, therefore, at this stage it would not be proper to reconsider the bail applications as no change exists.
6. The bail order of Mohan Lalwani and the documents filed along with these bail applications would show that Mohan Lalwani being aged about 60 years and because of ailment and further he was shown to be physically disabled as per Annexure A-12, was enlarged on bail. Therefore, the present applicants cannot claim parity of order on the basis of medical document submitted. Neither the degree of ailment or age is at par with the other co-accused. The fact that whether the primary evidence have been adduced or not and the statement of Manish Tawri (PW-11) who states about the presence of fracture cannot be decided during hearing the bail applications, it would be within the exclusive domain of the trial Court to examine the same. Any observation or finding at this stage would amount to usurp the power of trial Court.
7. Witnesses have already been examined, however, it appears that OP Singh,

who is injured is still to be examined and progress of the trial is satisfactory since 11 witnesses have already been examined. Considering the same, I do not find any change in the circumstances to reconsider the bail again. Accordingly, both the bail applications are rejected.

Sd/-

Goutam Bhaduri

Judge

Ashu