

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5718 of 2017

Niwas @ Becha Mistry, S/o. Late Manoranjan Mistry, Aged About 25 Years, R/o. P.V.36, Chandipur, P.S. Pakhanjur, District Kanker (C.G.).

---- Applicant

Versus

State Of Chhattisgarh, Through P.S. Gondatur, District Kanker (C.G.).

---- Respondent

For Applicant : Mr. Arun Kochar, Advocate

For Respondent : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

05.09.2017

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested in connection with Crime No.4/2016 registered at Police Station- Gondatur, District Kanker (C.G.) for the offence punishable under Section 307, 120B, 394, 397/34 of Indian Penal Code. The first bail application was dismissed on merit on 23.08.2016 in MCRC No.4750 of 2016.
2. As per the prosecution case, on 29.01.2016, complainant Subhash Sharma after collection of money from his customers was going back to his village on his motorcycle bearing registration No. C.G. 08 R/4928, at that time, the applicant alongwith others also followed him by motorcycle and co-accused Vikas in order to commit loot fired gun shots at the back of Subhash. Thereafter, a report was made and the applicant and the other co-accused were arrested and on their memorandum, the motorcycle was seized.

3. Learned counsel for the applicant would submit that the main complainant Subhash Sharma PW-3 has been examined and he has not identified the accused; therefore, the applicant may be released on bail.
4. Per contra, learned State counsel opposes the prayer for grant of bail.
5. Perused the case diary and statements. It appears that the complainant PW-3 has become hostile. Considering the facts of this case and the way the gun shot was made and further taking into fact that 22 witnesses have already been examined and the trial is at the fag end, it would not be proper for this Court to evaluate the statement of the witnesses, at this stage, as it would amount to usurp the power of the trial Court while hearing the bail application. Consequently, I am not inclined to release the applicant on bail.
6. Accordingly, the second bail application filed under Section 439 of Cr.P.C. is dismissed. However, the trial Court is requested to expedite the trial.

Sd/-
(Goutam Bhaduri)
Judge