

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 747 of 2017**

1. Najim Ali S/o Shri Hashim Ali, Aged About 30 Years R/o Chakradhar Nagar, Raigarh, District Raigarh, Chhattisgarh.
2. Majid Ali S/o Shri Hashim Ali, Aged About 28 Years R/o Chakradhar Nagar, Raigarh, District Raigarh, Chhattisgarh.
3. Abdul Anwar @ Kallan, S/o Shri Abdul Jabbar, Aged About 35 Years R/o Chakradhar Nagar, Raigarh, District Raigarh, Chhattisgarh.
4. Abdul Kayyum, S/o Shri Abdul Salim, Aged About 20 Years R/o Chakradhar Nagar, Raigarh, District Raigarh, Chhattisgarh.
5. Kamaluddin S/o Late Shri Fariduddin, Aged About 38 Years R/o Chakradhar Nagar, Raigarh, District Raigarh, Chhattisgarh.

---- Applicants**Versus**

State Of Chhattisgarh Through Police Station Tumgaon, District Mahasamund, Chhattisgarh.

---- Respondent

For the Applicants : Shri Kishore Bhaduri and Shri Chandresh Shrivastava, Advocates.
 For the Respondent/State : Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****22.09.2017**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.
2. It is submitted by counsel for the applicants that a complaint was lodged by Israr Ahmed naming the applicants and others alleging that they were instrumental in abduction of his son - Maiku @ Nazeer Ahmed for the purpose of wrongful confinement. The First Information Report was registered, the case has been investigated and the charge-sheet has been filed against the accused persons and the applicants were shown as absconding persons.

3. It is submitted by counsel for the applicants that complainant - Israr Ahmed had filed a petition of Habeas Corpus i.e. W.P.(HC) No. 2673 of 2009 in which this Court directed the petitioners to appear before the Investigating Officer and record their statements and in compliance to this order the petitioners recorded their statements. It is submitted that the only piece of evidence on which the prosecution is launched the evidence of last seen together. As per the contents of the statements of the witnesses, the factum of last seen together, the person alleged to have been abducted Maiku @ Nazeer Ahmed stated before the witnesses who saw him last, that he was travelling with the accused persons in the Jeep from Raipur to Raigarh, showing his willingness to be in their company. It is submitted that as per the statement of the witnesses under Section 161 of the Cr.P.C. Maiku @ Nazeer Ahmed was seen travelling in the jeep on 21.9.2008.

4. A reference has been made to Annexure-A/4, the report submitted by the respondent in W.P.(HC) No. 2673 of 2009 and in paragraph 11 of this report it is stated by the respondent/ State that Maiku @ Nazeer Ahmed was subsequently seen on 8.12.2008 in Raigarh and lastly, it is submitted that Maiku @ Nazeer Ahmed is still untraceable.

5. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the statement of the witnesses on the factum of last seen together is sufficient for the prosecution of the petitioners and co-accused persons and the offence under prosecution is of grievous nature. Hence, the applicants are not entitled for bail.

6. Heard counsel for both the parties and perused the case diary.
7. After going through the contents of the charge-sheet and the case-diary and the evidence on which the prosecution against the applicants is proposed, without further commenting anything on merits of the case, it appears that the applicants are entitled to be released on anticipatory bail.
8. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the Officer arresting them on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicants shall also abide by the following conditions:
- '(i) that the applicants shall make himself available for interrogation before the Investigating Officer as and when required;
 - (ii) that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer;
 - (iii) that the applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge