

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Criminal Case No. 245 of 2018**

1. Rajesh Kumar S/o Bahoran Singh Kanwar, aged about 26 years, R/o Jhagaraha Dihee Para, Police Station Balco, Civil and Revenue District Korba, Chhattisgarh
2. Ram Singh S/o Jagat Ram Kanwar, aged about 35 years, R/o Jhagaraha Dihee Para, Police Station Balco, Civil and Revenue District Korba, Chhattisgarh

---- Applicants**Versus**

State of Chhattisgarh through Station House Officer, Police Station Shyang, District Korba, Chhattisgarh

---- Respondent

For Applicants	:	Shri Dharmesh Shrivastava, Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/03/2018**

This is the first bail application filed u/s 439 of Cr.P.C. for grant of bail to the applicants who are in jail since 22.03.2017 in connection with Crime No. 02/2017 registered at Police Station Shyang, District Korba (CG) for the offence punishable under Sections 302, 201, 34 of IPC.

2. The case of the prosecution in brief is that on 18.01.2017, the two applicants were in company of deceased Papu Kumar. They took him to an isolated place and assaulted him with a lathi on his head, on account of which, he fell unconscious. Subsequently, they took Papu to a bridge from where they threw him into the Nala giving it a picture of an accident that took place from a motorcycle in which all the three were travelling. Later on, the injured Papu was taken to the hospital in an unconscious condition

where he succumbed to the injuries at night. Subsequently, when postmortem was conducted, the doctor had opined that the cause of death could be homicidal. In the course of investigation, there is a memorandum statement recorded of the two applicants who have admitted their guilt and at the instance of applicant no.1, a Lathi allegedly used in the assault of deceased Papu was recovered.

3. Counsel for the applicant submits that it is a false case in which the applicants have been implicated. In fact, it is a case where a road accident took place and the deceased received injuries as is evident from the initial FIR where the case was registered against the applicants for the offence under Sections 304A, 299, 337 of IPC and it is only subsequently that the offence under Sections 302 and 201/34 was incorporated. He submits that if the entire version of the prosecution is accepted as it is, even then there is no material available to implicate the applicants for the offence under Sections 302 and 201/34 of IPC. He further submits that except for the memorandum statement of the applicants, there is no material which has been seized by the prosecution which could lead to the conviction of the applicants or with which it could be said that the offence stands proved. Thus, prayed for grant of bail to the applicants.

4. State counsel, however, opposing the bail application submits that the memorandum statement, prima facie, establishes the offence and there is recovery of lathi at the instance of applicant no.1 which was used in the offence. Thus, these being the material evidence as of now and also considering the gravity of the offence, the applicants do not deserve to be released on bail.

5. Having heard the rival contentions put forth on either side and on perusal of the record what clearly reflects is that except for the memorandum statement of the applicants recorded during investigation,

there was no additional material available to implicate the applicants. Further, the seizure of Lathi also does not lead to a conclusion as there was no blood stain found on the Lathi. Given the aforesaid facts and circumstances of the case and also taking note of the fact that the applicants are in custody since 22.03.2017, this Court is of the opinion that prima faice, a strong case for grant of bail has been made out.

6. Accordingly, the application for grant of bail is allowed. It is directed that the present Applicants will be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned trial Court for their appearance before the said Court as and when directed.

**Sd/-
(P. Sam Koshy)
JUDGE**