

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Criminal Case No. 254 of 2018**

1. Dhanraj Kshani S/o Santosh Kshani, aged about 19 years, R/o Devridih near Shani Mandir, Police Station Torwa, Tahsil and District Bilaspur, Chhattisgarh
2. Selu @ Vikram Nanahare S/o Santunand Nanahare, aged about 19 years, R/o Devridih, near Shani Mandir, Police Station Torwa, Tahsil and District Bilaspur, Chhattisgarh

---- Applicants**Versus**

State of Chhattisgarh through Station House Officer, Police Station Torwa, District Bilaspur, Chhattisgarh

---- Respondent

For Applicants	:	Shri D. C. Verma, Advocate
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16/03/2018**

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 10.12.2017 in connection with Crime No. 421/2017 registered at Police Station Torwa, District Bilaspur (CG) for the offence punishable under Sections 115, 120B, 34 of IPC.

2. The allegation as per the prosecution against the present applicants is that they were engaged by one Lakhan Kashyap and Ashish Kashyap, the two main accused persons for killing Ishwar Rajwade, the husband of one Minakshi who earlier had some affair with accused Ashish Kashyap. Ashish Kashyap in order to take vengeance from Minakshi had instructed his nephew Lakhan Kashyap for eliminating Ishwar Rajwade and for which Lakhan Kashyap is said to have further engaged the present applicants and

other accused persons on contract. The deal was for Rs.2,00,000/- of which one lakh was given in advance by Ashish Kashyap to Lakhan Kashyap who in turn is said to have given the said amount to the present applicants and the other accused persons. From the possession of applicant no.1, an amount of Rs.20,000/- and a sword were recovered and from applicant no.2, Rs.10,000/- in cash, a knife and one mobile were recovered.

3. Contention of the counsel for the applicants is that the applicants have been falsely implicated in the case and that the only material available against the present applicants is the memorandum statement of co-accused Lakhan which is of no consequence as the charge against the applicants is that of abetment and the ingredients as are required under Section 115 of IPC is not available in the case diary so as to make out a case of abetment. In the absence of materials for making out an offence under Section 115 of IPC, the offence of conspiracy under Section 120 of IPC would not stand. Thus, prayed for grant of bail to the applicants.

4. State counsel, however, opposing the bail application submits that the nature of offence is very serious for grant of bail. He submits that the recovery of cash and other articles from the applicants gives a prima facie involvement of the applicants in commission of the offence. He submits that if the applicants are released on bail at this juncture, the same can also be crucial for the witnesses on behalf of the prosecution and therefore, prayed for rejection of the bail application.

5. On perusal of the record and the submissions put forth on either side, if we look into the nature of allegations what clearly reflects is that the offence ultimately has not been committed. Moreover, except for the memorandum statement of Lakhan Kashyap, there does not appear to be any substantive material available in the case diary for implicating the

applicants for the offence under Section 115 or for that matter 120 of IPC. Moreover, what is reflected is that the cash amount which has been recovered cannot be said to be the same cash which was handed over by Ashish Kashyap to Lakan Kashyap and which in turn was further transmitted to the present applicants. There is no material to identify the said cash paid by Ashish Kashyap to Lakan Kashyap if at all. Moreover, the seizure of mobile and motorcycle from the applicants also may not be of great consequence for the reason that these are the materials which are common in the society. In the given facts and circumstances of the case, this Court is of the opinion that prima facie, 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**