

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7768 of 2017

1. Ekbal Khan S/o Firoj Khan @ Bachcha Khan Aged About 18 Years R/o Village Murgeeyatola, Thana Baddhiya, Tahsil And District Siwan Bihar , Bihar
2. Sonu @ Saddam Khan, S/o Firoj Khan @ Bachcha Khan Aged About 23 Years R/o Village Murgeeyatola, Thana Baddhiya, Tahsil And District Siwan Bihar , District : Siwan, Bihar

---- Applicants

Versus

- State Of Chhattisgarh R/o Police Station Arkshikendra Kotwali, Rajnandgaon, Distt. Rajnandgaon Chhattisgarh, Chhattisgarh

---- Respondent

MCRC No. 1 of 2018

- Badshah Ahmed S/o Shri Abdul Karim, Aged About 27 Years R/o Khaguriya Ward No. 40, Gopalganj Bihar 841428, Bihar

---- Applicant

Versus

- State Of Chhattisgarh P. S. Kotwali, Rajnandgaon Through District Magistrate Rajnandgaon Chhattisgarh, Chhattisgarh

---- Respondent

MCRC No. 501 of 2018

- Dheeraj Kumar S/o S/o Harendra Rao, Aged About 25 Years Kargahiyapur, Police Station Betiya District West Champaranya Bihar , Bihar

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer Police Station Kotwali, Rajnandgaon District Rajnandgaon Chhattisgarh, Chhattisgarh

---- Respondent

MCRC No. 8033 of 2017

- Jiaul Hak S/o Son Of Nasruddin @ Dhansai Alam, Aged About 21 Years R/ Village Patra, Police Station Manjagarh, District Gopalganj, Bihar., Bihar

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Kotwali, Rajnandgaon, Chhattisgarh., Chhattisgarh

---- Respondent

MCRC No. 8070 of 2017

- Mohammad Azam @ Alam S/o S/o Sheikh Nizamuddin Miya, Aged About 45 Years R/o Village Jagarnath, P. S. Manjagarh, District Gopalganj Bihar, Bihar

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Kotwali, Rajnandgaon Chhattisgarh, Chhattisgarh

---- Respondent

MCRC No. 970 of 2018

- Samiraul @ Samir S/o Mohd. Basruddin Aged About 35 Years By Occupation Shop (New Style Mens Wear) R/o Village Pathra, Post Manjagarh, Thana Manjagarh District Gopalganj Bihar, District : Gopalganj, Bihar

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Kotwali, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Respondent

&

MCRC No. 1268 of 2018

- Abid Hussain S/o Navi Ahmad Aged About 18 Years R/o.- Village Pathra, Post- Manjagarh, Thana Manjagarh, District- Gopalganj,

Bihar., District : Gopalganj, Bihar

---- Applicant

Versus

- The State Of Chhattisgarh Through- Police Station Kotwali, District- Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Respondent

For Applicants	:	Mr. Arvind Dubey, Advocate in MCRC No.7768/2017.
		Mr. PKC Tiwari, Senior Advocate with Mr. Ashutosh Trivedi in MCRC No.1/2018.
		Mr. Goutam Khetrapal, Advocate in MCRC No.501/2018.
		Mr. B.D.Guru, Advocate in MCRC No.8033/2017 and MCRC No.1268/2018.
		Mr. Parag Kotecha, Advocate in MCRC No.970/2018 and 1268/2018.
For Respondent/State	:	Mr. Anil S. Pandey, Govt. Advocate in MCRC Nos.7768/2017, 1/2018, 501/2018, 8033/2017 & 8070/2017.
		Mr. Anupam Dubey, Dy. Govt. Advocate in MCRC No.970/2018 & MCRC No.1268/2018.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

05/03/2018

1. Since the above bail applications arise out of the same crime number, they are being disposed of by this common order.
2. All these applications are first bail application of the applicants under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the applicants as they have been arrested in connection with Crime No.340/2017 registered at Police Station - Kotwali, District -

Rajnandgaon (C.G.) for the offence punishable under Sections 384, 420, 467, 468, 471, 120B & 201 of Indian Penal Code (for short 'IPC').

3. Learned counsel for the applicants submits that applicants are innocent and have been falsely implicated in the crime in question without there being any evidence against them. Charge-sheet has been filed against these applicants after completion of investigation. No case is made out against them on the basis of material present in the charge-sheet. This is a case in which there is no direct evidence against any of the applicants. The trial against applicants is pending for the last about nine months and the applicants are in jail. The complainant of this case has left the India for a period of six months and there is no likelihood of her returning back soon. Applicants are languishing in jail without there being any fault on their part in delaying the trial against them.
4. Mr. Tiwari, learned Senior Advocate submits that a delayed FIR has been lodged in this case by complainant Seema Khubchandani and the contents of FIR are vague. Applicant Dheeraj Kumar Rao was apprehended on suspicion and in his memorandum statement he has disclosed name of other applicants herein. Seizures made from the applicants do not connect them, in any manner, with the offence alleged to have been committed. The caller who threatened and compelled the complainant to deposit amount in various bank accounts is yet to be identified. The investigation has been made in haste which is otherwise incomplete. If the allegations made by the complainant are believed to be true then additional investigation is required in this case.
5. It is submitted by Senior counsel for the applicants that although this is a case of no evidence against these applicants but the concerned trial

Court Magistrate and the Sessions Judge have refused to grant bail to these applicants for petty reasons which shows that sub-ordinate Courts are shirking from their duties. Relying on the judgment of the MP High Court in Surendra Kumar vs. State of Madhya Pradesh reported in 1994 JLJ 603, it is submitted that the Court is concerned with the liberty of the accused and also with safeguarding course of justice. In this judgment it was observed by the Supreme Court that there is a general complaint that Magistrates and Sessions Judges decline to exercise jurisdiction merely because the offence is non-bailable without examining the facts and circumstances of the case. That would be abdication of jurisdiction and responsibility. This tendency has led to the very unfortunate consequence of accused who are likely to be sentenced to imprisonment for a period of one or two years or even less than one year. It is further submitted by learned Senior Advocate that one of the co-accused has been granted bail in this case. All the applicants herein stand in similar footing and they are also entitled to be released on regular bail on the ground of parity.

6. Learned counsel for the applicant in MCRC No.1268 of 2018 adopting the arguments advanced by learned Senior Advocate submits that applicants are in jail since 29.8.2017, therefore, he may be released on regular bail.
7. Learned counsel for the applicant in MCRC No.7768 of 2017 submits that applicants Ekbal Khan and Sonu @ Saddam Khan have not given any memorandum statement. There is no evidence against them. Hence, it is prayed that they are entitled for grant of regular bail.
8. Learned counsel for the applicant in MCRC No.8033 of 2017 submits that only one mobile was seized from this applicant and his

memorandum statement was not recorded, hence, there is no evidence to connect him with the crime in question. This applicant is in jail since 1.9.2017. Hence, it is prayed that he may be released on regular bail.

9. Learned counsel for the applicant in MCRC No.8070 of 2017 submits that neither any memorandum statement of this applicant was recorded nor any seizure was made from him. Even then he has been arrayed as an accused in this case. He is in jail since 2.9.2017. Hence, it is prayed that he may be released on regular bail.

10. Learned counsel for the applicant in MCRC No.501 of 2018 submits that co-accused of this case has already been granted bail by the Sessions Court. However, the bail application of these applicants was rejected on the ground that they are residents of other State. Reliance is placed in the judgment of Supreme Court in **Sanjay alias Bablu alias Keja Vs. State of Gujrat, reported in (2002) 10 SCC 403** wherein it was observed by the Supreme Court that refusal to grant bail merely on the ground that the accused hailing from another State may abscond from the jurisdiction of the Court granting bail, not justified. The trial against the applicant and others is tribal by JMFC and there is no likelihood of completion of trial at the earliest. Hence, it is prayed that the applicants be granted bail.

11. Learned counsel for the State opposes all the bail applications and submissions made in this respect. Charge-sheet has been filed. Subsequent to that, further investigation is being carried out and supplementary charge-sheet shall be filed very soon. On the basis of complaint made by the complainant, one accused namely Dheeraj Kumar Rao was traced through account number, in which, the deposit

was made by the complainant on being coerced to do so under threat. According to seizure made from these applicants, numbers of ATM cards, fake bank account numbers and fake bank account papers were seized from their possession. Co-accused, who has been granted bail, has got the relief on different ground and his case is not similar to that of these applicants. According to the material present in the case diary, it is a case of organized crime against society. There is evidence that these applicants were engaged in committing similar offences in various other States as well. Hence, for these reason, none of the applicants are entitled for grant of regular bail.

12. In reply, Senior Advocate Shri PKC Tiwari submits that the evidence available in the charge-sheet is not legally admissible and believable, therefore, case has been made against the applicants. Hence, they are entitled for grant of bail.

13. Heard both the parties and perused the case diary.

14. The case against the applicants is this, that on 03.05.17 complainant Seema Khubchandani was going to Mumbai from Rajnandgaon in a train. Co-accused Pooja & Nisha @ Usha, who were also travelling in the same train, made acquaintance with the complainant and obtained her mobile number and other information. Thereafter, the complainant received calls on her mobile phone, in which she was threatened by the caller saying that her family members will be killed if she would not make deposit in the account number supplied to her by the caller. Due to this extortion, complainant deposited a total sum of Rs.10 lacs in 25 transactions. Subsequent to that FIR was lodged on 28.10.2017.

15. No information could be received about the above co-passengers from the Department of Railways. One bank account held in the name of

Sonu Singh resident of Cuttack, Odhisha was investigated and on the basis of mobile number supplied by the account holder, applicant Dheeraj Kumar Rao was traced and his memorandum statement was recorded by the police in which he disclosed that he along with co-accused persons formed a group which was engaged in opening fake bank accounts and the same were being used for getting deposits of extortion money. Co-accused persons i.e. applicants herein, were apprehended and seizures of articles like mobile sets, passbook, computer system, ATM Cards etc. were effected from them.

16. ATM Cards of fake accounts have been seized from applicant Samirul alias Sameer, Abid Hussain and Dheeraj Kumar Rao. As per material present in the case diary regarding which some investigation has been done and some investigation is pending, as submitted by the learned counsel for the State. Hence, I am not inclined to grant bail to the applicants Samirul alias Sameer in MCRC No.970 of 2018, Abid Hussain in MCRC No.1268 of 2018 and Dheeraj Kumar Rao in MCRC No.501 of 2018. However, looking to the evidence that is proposed to be brought against the remaining applicants by the prosecution in proof of charge against them, applications for grant of bail to remaining applicants namely Ekbal Khan and Sonu @ Saddam Khan in MCRC No.7768 of 2017, Badshah Ahmed in MCRC No.1 of 2018, Mohd. Ajam @ Alam in MCRC No.8070 of 2017 and Jiaul Hak in MCRC No.8033 of 2017 deserve to be allowed.

17. Accordingly, M.Cr.C. No.7768/17 (Ekbal Khan & Sonu alias Saddam Khan), M.Cr.C. No.1/18 (Badshah Ahmed), M.Cr.C. No.8070/17 (Mohd. Ajam alias Alam), and M.Cr.C. No.8033/17 (Jiaul Hak), are allowed. It is directed that the applicants shall be released on bail on their

furnishing a personal bond for a sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.

18. So far as M.Cr.C. No.970/18 (Samirul alias Sameer), M.Cr.C. No.1268/18 (Abid Hussain) & M.Cr.C. No.501/18 (Dheeraj Kumar Rao) is concerned, the same are hereby rejected.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha