

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 786 of 2018

1. Arabsai S/o Late Sonu Sai Aged about 50 years, Village- Parsa, P. S.- Kusmi District- Balarampur- Ramanujanj (Chhattisgarh).
2. Brichand s/o Patlu Ram, aged about 40 years, Village Parsa, P.S.- Kusmi District-Balarampur-Ramanujanj (Chhattisgarh).
3. Jagdev Ram S/o Parmeshwer, aged about 48 years, Village- Navgai, P. S. - Kusmi District- Balarampur- Ramanujanj (Chhattisgarh).
4. Ashok Ram S/o Fehku Ram aged about 47 years, Village- Navgai, P. S.- Kusmi district- Balrampur- Ramanujanj (Chhattisgarh).
5. Madhav Ram S/o Parmeshwer Ram, aged about 50 years, Village- Navgai, P. S. - Kusmi District- Balrampur- Ramanujanj (Chhattisgarh).

---- Applicants

Versus

- State Of Chhattisgarh Through: Police Station- Kusmi, District- Balrampur- Ramanujanj (Chhattisgarh).

---- Respondent

For Applicant	: Mr. A. K. Yadav, Advocate.
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

02/04/2018

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicants who have been arrested in connection with Crime No. 65/2007 registered at Police Station- Kusmi, District -Balrampur-Ramanujgunj, (Chhattisgarh) for the offence punishable under Sections 302, 302/34 of the Indian Penal Code.

2. Learned counsel for the applicants submits that the applicants have falsely been implicated in this case as no case is made out against the applicants. He further submits that applicant is in jail since 25.07.2017, there is no material available in the charge-sheet against the applicants, Hence, it is prayed that applicants be enlarged on regular bail.
3. Learned State counsel opposes the bail application and submissions made in this respect that one of the witness has stated that he met with one of the deceased- Jivanti Bai when she was alive and in an injured condition, who made a statement that she was assaulted by Arabsai and his companions, hence there is an oral dying declaration in this case, therefore, they are not entitled for grant of regular bail.
4. Heard both the parties and perused the case diary.
5. The case of the prosecution is that Tizobai, Jeevanti Bai & Sandeep were found dead on 11.09.2007, inquest procedure was conducted and FIR was lodged on 12.09.2007. Investigation remained pending for about 8 to 9 years. In the year 2016 one witness namely Rafel xess gave a statement under Section 161 of Cr.P.C. by stating that he is the witness of oral dying declaration made by Jivati Bai and subsequently on the basis of memorandum statement given by the applicant No. 1 the names of the other applicants were disclosed in this case.
6. Considering the entire material present in the case diary apart from the evidence and oral dying declaration against the applicant No. 1- Arabsai, it appears that no seizure has been made at the instance of the applicant No. 2 to applicant No. 5 in this case and after considering the oral dying declaration of the deceased- Jivanti Bai, I am inclined

that Applicant No. 1- Arabsai is not entitled for grant of regular bail but it appears that Applicant No. 2- Brichand, applicant No.-3-Jagdev, applicant No.-4- Ashok Ram & applicant No. 5-Madhav are entitled to be benefited with grant of regular bail.

7. Accordingly, the bail application filed under Section 439 of Cr.P.C. of Applicant No. 1-Arabsai is rejected and the bail applications of Applicant No. 2 to Applicant No. 5 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 Court, for their appearance as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge