

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No. 2374 of 2018

- Malkeet Singh Gaidu S/o Late Mahender Singh Gaidu Aged About 47 Years R/o- Shanti Nagar Ward, Police Station Bodhghat, Jagdalpur, District- Bastar, Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh

----Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Station- Nagarnar, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh.

---- Respondent

M.Cr.C.(A). No. 246 of 2018

- Vikas @ Vicky Lalwani S/o Kanhaiya Lal Lalwani Aged About 41 Years R/o- 47/2, Atal Bihari Bajpai Ward, Jagdalpur, P.S. Dharampura, District- Jagdalpur, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Station- Nagarnar, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh.

---- Respondent

M.Cr.C.(A). No. 310 of 2018

- Vikram Singh @ Vikky Kushwaha S/o Satendra Kushwaha Aged About 35 Years R/o Frajerpur, Kanker, Distt. Kanker Chhattisgarh, District : Kanker, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Nagarnar Distt. Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh.

---- Respondent

M.Cr.C.(A). No. 302 of 2018

- Ajay Tiwari S/o Shrikrishna Tiwari Aged About 46 Years R/o- Bastar High School Road Sadar Ward Jagdalpur District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- The Police Station Nagarnar, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh.

---- Respondent

M.Cr.C.(A). No. 331 of 2018

- Pappan Bhadouriya @ Brijendra Singh Bhadouriya S/o Late M.S. Bhadouriya Aged About 43 Years R/o- Shanti Nagar Ward Jagdalpur, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- The Police Station Nagarnar, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For Applicants	:	Mr. V. R. Tiwari, Advocate in M.Cr.C. No. 2374/2018. Mr. Pushpendra Singh Baghel, Advocate in M.Cr.C.(A). Nos. 246/2018, 310/2018. Mr. P. K. Tulsiyan, Advocate in M.Cr.C.(A). Nos. 302/2018, 331/2018.
For Respondent	:	Mr. Anant Bajpai, PLfor the State.
For Objector	:	Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11.04.2018

1. Since the above regular bail application and anticipatory bail applications arise out of the same crime number, they are being disposed of by this common order.
2. Applicant - Malkeet Singh Gaidu in (**M.Cr.C. No. 2374 of 2018**), is in constructive custody of the Court by virtue of order dated 16.3.2018 passed by the Supreme Court in SLP (CR.) No. 2167/2018, and he has given appearance before concerned Court and he was not sent to jail.
3. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to applicant - Malkeet Singh Gaidu in (**M.Cr.C. No. 2374 of 2018**), who has been arrested in connection with Crime No. 104/2017 registered at Police Station – Nagarnar, District – Bastar, (C.G.), for the offences under Sections 147, 148, 149, 341, 447, 294, 506 (B), 307 of the Indian Penal Code and Sections 25 & 27 of the Arms Act.
4. All the applicants in **M.Cr.C.(A) Nos. 246/2018, 310/2018, 302/2018 & 331/2018**, have preferred this bail applications under Section 438 of Cr.P.C. apprehending their arrest in connection with Crime No. 104/2017 registered at Police Station – Nagarnar, District – Bastar, (C.G.), for the offences under Sections 147, 148, 149, 341, 447, 294, 506 (B), 307 of the Indian Penal Code and Sections 25 & 27 of the Arms Act.
5. It is submitted on behalf of applicant - Malkeet Singh Gaidu in (**M.Cr.C. No. 2374 of 2018**), that he is innocent and has been falsely implicated in this case, only for the reason that he is the General Secretary of the

Chhattisgarh State Congress Committee and the complainant belongs to the rival political party (B.J.P). This applicant was also President of Bastar Trailer Tipper Sangh (B.T.T.S) from they year 2008-2015. This applicant was not present on the spot on the date of incident. Apart from the offence under Section 307 of IPC, all other offences with which the applicant has been charged with are bailable in nature. Even the offence under Section 307 of IPC is not made out against him. Learned counsel for applicant - Malkeet Singh Gaidu has submits again that a false case has been registered against this applicant which is evident from the documents filed along with this application as Annexure A-5. These documents have been obtained under the Right to Information Act, 2005 and a perusal of which would reveal that the SHO, Police Station – Nagarnar, has been informed by the office of Superintendent of Police, Bastar that in the inquiry conducted by the Additional Superintendent of Police, it has been found that applicant- Malkeet Singh Gaidu was not present on the spot on the date and time of incident and his location was in Jagdalpur. Hence, it is prayed that the applicant be released on bail.

6. It is submitted on behalf of applicant -Vikas @ Vicky Lalwani in **(M.Cr.C. (A). No. 246 of 2018)** that though initially his name does not appear in the FIR but later on the same has been deliberately included on the basis of statement given by the witnesses, hence, he has a good case for grant of anticipatory bail.
7. On behalf of remaining applicants it is submitted that no case is made out against them under Section 307 of IPC. This offence has been added only with intention to send the applicants to jail, hence, it is prayed that these applicants be enlarged on anticipatory bail.

8. Learned counsel for the respondent/State opposes the applications and submits that the anticipatory bail application filed by applicant - Malkeet Singh Gaidu has already been rejected by this Court. There is ample evidence in the case diary showing involvement of all the applicants in crime in question, hence, no case is made out for grant of regular or anticipatory bail to any of the applicants.
9. Learned counsel for the objector adopting the arguments advanced on behalf of the State submits, that the deadly weapons like country-made pistol, revolver, sword etc have been used in commission of crime, hence, the intention to cause death of the injured persons is clearly made out. The plea of alibi taken by applicant - Malkeet Singh Gaidu, needs to be established by him in the course of trial. For the present, it is to be seen whether actual arrest of all the applicants is required for the purposes of investigation or not. In the case of **Sundeep Kumar Bafna Versus State of Maharashtra and another** reported in (2014) **16 SCC 623**, it was observed by the Hon'ble Supreme Court that "arrest consists of the actual seizure or touching of a person's body with a view to his detention. The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer".
10. In reply, learned counsel for applicant - Malkeet Singh Gaidu submits that in Para-8 of the judgment in Sundeep Kumar's case (supra) the Supreme Court has clearly held that Section 439 of Cr.P.C empowers the Sessions Court or the High Court to grant bail if such a person is in custody. Therefore, there is no justification in giving the word "custody" the same or closely similar meaning as arrest or detention. Hence, applicant - Malkeet Singh Gaidu has submitted to the Sessions Court

below and looking to the stay order passed by the Supreme Court, the concerned Court did not send the applicant in detention. The Supreme Court vide order dated 16.03.2018 has stayed the arrest of applicant No.1 for four weeks, which is still under operation.

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

12. According to the prosecution case, on the date of incident applicant - Malkeet Singh Gaidu alongwith co-accused persons stopped the complainant - (Shailu @ Shailendra), who was traveling towards Jagdalpur, then used abusive words, threatened and assaulted him with rod, hockey stick, knife and fire arms causing injuries to injured persons namely – Shrinivas, Basant Singh, Manish Parakh, Rajkumar, and complainant himself. FIR was lodged by the complainant. Perusal of the medical examination report of all the injured persons shows that none of the injured persons has sustained injury on any vital parts of the body caused by sharp or pointed object, no fatal injury to any of the injured person has been reported. The intention to cause death of any of the injured persons is the question which shall be decided by the trial Court itself in the course of trial. Only question for consideration before this Court is whether the applicants are entitled to be released on bail, regular or anticipatory, in the given facts and circumstances of the case. The report of Additional Superintendent of Police submitted to the Superintendent of Police, Bastar, also cannot be ignored at this stage. Hence, taking into consideration all the facts and circumstances of the case, I am of this view that all the applicants deserve to be enlarged on regular bail and anticipatory bail.

13. Accordingly, **M.Cr.C. No. 2374 of 2018** filed under Section 439 of Cr.P.C. is allowed. It is directed that the applicant shall be released on

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

14. Accordingly, the anticipatory bail applications **M.Cr.C.(A) Nos. 246/2018, 310/2018, 302/2018 & 331/2018** are hereby allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offences, they shall be released on bail by the officer arresting them on their executing a personal bond in the sum of Rs.25,000/- each 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 themselves 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 him/her 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