

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 2522 of 2018**

- Nikoden Xess S/o Lt. Julius Xess Aged About 53 Years R/o- Police Line District- Gariyaband, Chhattisgarh. Permanent Address- Village Dandajor, P.S. Kansabael District- Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through- P.S. C.I.D., Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh.

---- Respondent**And****M.Cr.C. No. 2865 of 2018**

- R.K. Jeevanlal Ratnakar S/o Ramkrishna Ratnakar Aged About 28 Years Constable 12th Battalion Indian Reserve Force, Chhattisgarh Armed Force, Ramanujganj, Balrampur Permanent Address Village Balpur, Tahsil Bilaigarh Distt. Baloda Bazar- Bhatapara Chhattisgarh, District : Balodabazar- Bhathapara, Chhattisgarh

----Applicant**Versus**

- State Of Chhattisgarh Through Police Station C. I. D. Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondent

For the Applicants : Shri Pragalbha Sharma,
& Shri Naveen Shukla,
Advocates.

For the Respondent/State : Shir Vinod Tekam, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17.05.2018.

1. Both the applications are heard and decided together by this common, order, as both the bail applications are arising out the same crime number.
2. These are the first bail application for grant of bail to the applicants who have been arrested in connection with Crime No.01/2015 registered at Police Station – CID, Raipur, District – Raipur, C.G), for the offences under Sections 302, 193, 201 R/w 34 of the Indian Penal Code.
3. It is submitted by the learned counsel for the applicants that these applicants have been falsely implicated in this case. On the date of incident, applicants and other members of National Security Guard were on patrolling duty in the place of incident and they were searching for naxalites. It was at that time had encountered with some suspected members of naxalite groups and firing was opened by these applicants in self-defense, in which one Meena Xalxo died by receiving some gun shots injuries. It is submitted that no case is made out against these applicants according to the definition given in Section 76 of IPC. Similarly, placed the co-accused person has been granted anticipatory bail by this Court, hence, it is prayed that they may also be enlarged on bail.
4. Per contra learned counsel for the State opposes the bail application for grant of bail and the submission made in this respect. It is

submitted that one witness by name Lalit Kerkett. Head Constable has given statement under Section 161 of Cr.P.C. that these applicants without having any order from the superior officer, just due to anxiousness open fire, which resulted in the death of Meena Xalxo, who was not found to be a member of naxalite group as it was found later on, hence, no case is made out for grant of bail.

5. Heard counsel for both the parties and perused the case diary.
6. The case against these applicants briefly discussed above.
7. According to the case of the prosecution, it is not denied that on the date of incident, the applicants being a member of patrolling party was on duty of patrolling and search. On arriving on the spot of incident, it was at that time a women was seen approaching along with two others persons, then the applicants without there being any orders from their superior officers, opened fire because of which deceased Meena Xalxo got injured and succumbed to the injuries. A Special Judicial Commission has conducted inquiry in this case and reported that the incident in this case was not an encounter between the armed forced and naxalite groups. Hence, FIR has been lodged against these applicants.
8. Considered the submission made and the contents of the case diary. The presence of these applicants on the spot is explained that they are members of National Security Guard and they was on duty. Further it is not disputed that area of search were infested with naxalite group and the time of incident has also an importance because the incident is reported to have occurred between 1.15 to

3.45 AM past midnight, hence a question can be raised as to what the deceased and others were doing on the spot in such odd hours, hence, for these reasons, and also that the co-accused person in this case has been granted anticipatory bail by this Court, hence, I am of the view that these applicants may also be released on bail.

9. Consequently, both the applications M.Cr.C. No. 2522/2018 and M.Cr.C. No.2865/2018 filed under Section 439 of the Cr.P.C. are hereby allowed. It is directed that the applicants shall be released on bail on each of them 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 as and when directed.

Sd /-

(Rajendra Chandra Singh Samant)
Judge