

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 2711 of 2018**

Jai @ Dhananjay Mahanand S/o Poshan Lal Mahanand Aged About 24 Years R/o Sidharth Nagar, Near Kali Mandir, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station Incharge Pulgaon, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh.

---- Respondent

For the Applicant : Shri Arvind Dubey, Advocate.
For the Respondent/State : Shri Vinod Tekam, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****28.06.2018**

Heard.

1. This is the second bail application of the applicant. The first bail application of the applicant was dismissed as withdrawn in M.Cr.C. No.477 of 2018 vide order dated 23.2.2018. The applicant has been arrested in connection with Crime No. 25 of 2017, registered at Police Station Poolgaon, District Durg, Chhattisgarh for the offence punishable under Sections 302, 307, 323, 212, 147, 148 and 149/ 34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act.

2. Learned counsel for the applicant submits that the applicant is in jail since 13.01.2017 and has been falsely implicated in this case. All the co-accused persons have been granted bail by this Court. The main witnesses have been examined and they have not made any adverse statement

against the applicant. Hence, this is a change in the circumstances, on that basis, it is prayed that the applicant be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that all the witnesses have not been examined in the trial. Apart from eyewitnesses, there is also circumstantial evidence of recovery and seizure at the instance of this applicant. Hence, for this reason, he is not entitled for grant of bail.

4. Heard counsel for both the parties and perused the case diary.

5. According to the prosecution case, on the date of incident, deceased – Abhishek Rathi and Aniket Rathi alongwith their companions were present outside the Arjun Dhaba when Ronak Dubey and his companions came on the spot and because of some dispute they engaged in quarrel and it was at that time, this applicant assaulted Aniket Rathi with a sharp edged weapon on his back and Abhishek Rathi on his chest causing injuries to them and resultantly Abhishek Rathi died. After lodging of FIR, the case has been investigated.

6. According to the case of prosecution, this applicant is the main assailant who used the sharp weapon to cause injury to deceased – Abhishek Rathi and injured – Aniket Rathi. Although there is hostility of witnesses, it cannot be said that there is total absence of evidence because it is within the jurisdiction of the trial Court to sift and weigh the evidence and come to a conclusion about the charge against this applicant. Number of other witnesses are remaining to be examined. Hence, under these

circumstances, I do not feel inclined to grant bail to the applicant.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi