

HIGH COURT OF CHHATTISGARH, BILASPUR
M.Cr.C.No.3339 of 2018

Samalsai @ Somla, S/o Sukhdev Ram Ghasi, aged about 25 years, R/o Bondna, Police Station Shakargarh, Dist. Balrampur-Ramanujganj (CG)

---Applicant

Versus

State of Chhattisgarh, Through the Station House Officer, Police Station Shankargarh, District Balrampur-Ramanujganj (CG)

---Non-Applicant

For Applicant	:	Mr.Jitendra Shrivastava, Advocate
For Non-applicant	:	Mr.Gary Mukhopadhyay, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

02/07/2018

1. This is the bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.15/2018, registered at Police Station-Shakargarh, District-Balrampur-Ramanujganj (CG), for the offence punishable under Sections 457 and 380 of the IPC.

2. Learned counsel for the applicant would submit that the applicant was arrested for offence under Sections 379 of the IPC and Section 41 (1-4) of the CrPC and he was granted bail by the Judicial Magistrate First Class, Ambikapur on 6.2.2018, but thereafter the concerned Police Station also registered the offences under Section 457 and 380 of the IPC and again arrested him on 22.2.2018 and his bail application has been rejected.

3. On the other hand, learned counsel for the State would oppose the bail application.

4. I have heard learned counsel appearing for the parties and

perused the case diary.

5. The applicant has already been granted bail by the Judicial Magistrate First Class, Ambikapur on 6.2.2018 and therefore, he could not have been arrested. In the matter of **Manoj Suresh Jadhav & Ors. v. The State of Maharashtra** (SLP (Crl.) No(s). 10179/2017 in the identical facts situation the Supreme Court observed as under:-

“By order dated 02.06.2016, the petitioners were granted bail for offence punishable under section 509 read with section 34 of the Indian Penal Code (for short, the 'IPC') by the learned Additional Sessions Judge, Pune.

During the course of investigation, the police added another offence under section 376 of the Indian Penal Code in the FIR against the petitioners and re-arrested them. Being aggrieved, the petitioners filed writ petition before the High Court which was dismissed. Hence, the special leave petition.

It is not permissible for the respondent-State to simply re-arrest the petitioners by ignoring order dated 02.06.2016 passed by the learned Additional Sessions Judge, Pune, which was in force at that time.

We direct that the petitioners shall be released on bail on the same condition/s as imposed in the aforesaid order dated 02.06.2016 by the learned Sessions Judge, Pune.

Having regard to the provision of Section 439(2) of the Code of Criminal Procedure, the respondent-State is at liberty to apply for cancellation of bail and seek the custody of the petitioners-accused.”

6. Reverting to the facts of the present case, the applicant having been granted bail for the offence by the jurisdictional Magistrate, the respondent/State could not re-arrest him during currency of the bail order.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the 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. However, the respondent-State is at liberty to apply for cancellation of bail and seek the custody of the applicant/accused, if any.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-