

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 4929 of 2018**

Santosh Vishwakarma Alias Lalu S/o Shri Ramprasad Vishwakarma Aged About 26 Years R/o Village Chandrapur-Duhra, P. S. Surajpur, Tehsil And District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through The P. S. Azak Surajpur, District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri B.P. Sharma and Shri M.L. Sakat, Advocates.
For the Respondent/State	:	Shri Ashok Swarnakar, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****01.08.2018**

Heard.

1. This is the first 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. 106 of 2018, registered at Police Station Azak, Surajpur, District Surajpur, Chhattisgarh for the offence punishable under Sections 302 and 201 of the Indian Penal Code and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Learned counsel for the applicant submits that the applicant is in jail since 5.4.2018 and has been falsely implicated in this case. After completion of investigation, the charge-sheet has been filed. No case is

made out against the applicant according to the material present in the charge-sheet. It is submitted that the dead-body was found on 12.3.2018 and the missing report was lodged by the father of Dhanmet on 28.3.2018. The dead-body was not identifiable. The only material that connects the dead-body with Dhanmet is that the clothes on the body of the deceased were identified as that of Dhanmet. Although, the charge-sheet has been filed but till date, it is not confirmed that the dead-body was of the missing Dhanmet. As the process has been initiated for DNA sampling of the dead-body, the result is still awaited. It is also submitted that postmortem report also does not disclose that the deceased has died homicidal death. Hence, the evidence that is available against the applicant is his own memorandum statement which is not admissible in evidence and the recovery at the instance of the applicant is of no consequence. Hence, it is a case of no evidence and 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 the relation of deceased – Dhanmet with the applicant has not been denied by the applicant and in the investigation it has been found that the applicant was in company of deceased – Dhanmet during withdrawal of cash from ATM and that the mobile and ATM cards which belonged to deceased – Dhanmet have been recovered from the possession of the applicant which is of clinching evidence regarding the criminality of the act of the applicant. Hence, no case is made out for grant of regular bail to the applicant.

4. In reply, learned counsel for the applicant submits that the whole case of prosecution is based on the memorandum statement given by the

applicant which is no evidence in the eye of law. There is no finality in the investigation to show that Dhanmet is now deceased and the recovery of mobile etc have no connected proof. Further, the cause of death is also not known. Hence, the applicant deserves to be enlarged on bail.

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

6. The case against the applicant is that deceased – Dhanmet had an affair with the applicant. On 27.2.2018, the deceased made a call from her mobile to the applicant asking to meet her. The applicant met with the deceased who informed that she is pregnant and pressurized the applicant to marry her. She also threatened that if he does not marry her she would disclose about affair to the family members of both of them. It is alleged that the applicant gave assurance to the deceased, he made her to consume liquor and then after having physical relation with her in jungle, he throttled her to death. It is also alleged that the applicant poured petrol on the body of the deceased and burnt her to destroy her identity.

7. During investigation, at the instance of the applicant, a mobile set of deceased – Dhanmet has been recovered. Similarly, 4 numbers of ATM cards have also been recovered from the possession of the applicant. As stated by the witnesses, the deceased was in possession of ATM Cards of bank account in the name of Amrasodh Singh from which the withdrawal was made through ATM, even after the alleged death of the deceased. Possession of ATM Cards of such accounts from the applicant is a strong circumstance against him which needs explanation. Hence, at present it cannot be said that it is a case of no evidence.

8. Learned counsel for the applicant placed reliance on the judgment of the Supreme Court in the case of **State through Central Bureau of Investigation vs. Mahender Singh Dahiya** reported in **(2011) 3 SCC 109** and the same cannot be followed in this case.

9. Considering the material present in the case-diary, I am of the view that the present is not a fit case for grant of regular bail to the applicant.

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

Sd/-

(Rajendra Chandra Singh Samant)
Judge