

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No.5458 of 2018**

Mohammad Ismail Khan, S/o Late Sheikh Mehbob Miya, aged about 55 years, R/o Regakhar Khurd, Police Station Kawardha, District Kabirdham, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Reserve Centre, Police Station Kawardha, District Kawardha (Kabirdham), Chhattisgarh

---- Respondent

For Applicant	:	Shri Mateen Siddiqui, Advocate
For Respondent/State	:	Shri Anil Pandey, Panel Lawyer
For Objector	:	Shri Ajit Singh, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****21.8.2018**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the Applicant who has been arrested in connection with Crime No.116 of 2018 registered at Police Station Kawardha, District Kabirdham for offence punishable under Section 302/34 of the Indian Penal Code.
2. Case of the prosecution, in brief, is that on 1.3.2018, a dispute had taken place between Ayub Khan (the deceased) and the Applicant and his son/co-accused Wasim alias Mintoo. At that time, the Applicant and his son/co-accused Wasim had threatened and beaten Ayub Khan. A report thereof was lodged by Ayub Khan. Thereafter, on 4.3.2018 at about 12:30 p.m., at Muslim Crematory, both the Applicant and his son/co-accused Wasim started abusing Ayub Khan and co-accused Wasim stabbed Ayub Khan over the

stomach 3-4 times and thereafter he ran away from there. Injured Ayub Khan was taken to the hospital. First Information Report for the offence punishable under Section 307/34 of the Indian Penal Code was registered. During treatment, Ayub Khan died in the hospital on 18.3.2018. Therefore, offence under Section 302/34 of the Indian Penal Code was registered. The Applicant has been arrested on 5.3.2018.

3. Learned Counsel appearing for the Applicant submits that the Applicant has been falsely implicated in the case. He was not present at the place and time of occurrence. Apart from the statement of eyewitness Mohd. Ibrahim, no other eyewitness has stated that at the place and time of occurrence, the Applicant was also present. Allegedly, the assault was made by co-accused Wasim. There is nothing on record on the basis of which the Applicant could be implicated in the case. He is a 55 years old person. He is in custody since 5.3.2018. Therefore, he may be released on bail.
4. Learned Counsel appearing for the State opposes the prayer for bail. He submits that eyewitness Mohd. Ibrahim has categorically stated that at the place and time of occurrence, the Applicant was also present there along with his son/co-accused Wasim and the incident had taken place due to a previous quarrel between the parties. Hence, sufficient material is available against the Applicant also.
5. Learned Counsel appearing for the Objector adopts the argument advanced on behalf of the State and opposes the prayer for bail.

6. I have heard Learned Counsel appearing for the parties and perused the entire case diary with due care.
7. Considering the facts and circumstances of the case, further considering the facts that the alleged assault was made by co-accused Wasim only, no active role was played in the incident by the Applicant, without further commenting on merits of the case, I am inclined to enlarge the Applicant on bail.
8. Accordingly, the bail application is allowed.
9. It is directed that the Applicant shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one solvent surety of the like sum to the satisfaction of the concerned Trial Court for his appearance before the said Court as and when directed.

Sd/-

(Arvind Singh Chandel)
JUDGE