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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 6457 of 2018**

Shiv Kumar Dewar S/o Sirpanch Dewar Aged About 32 Years R/o Village-Nayapara Mahasamund, police Station Mahasamund, Tahsil And District Mahasamund Chhattishgarh, District : Mahasamund, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station Mahasamund, District Mahasamund Chhattishgarh., District : Mahasamund, Chhattisgarh.

---- Respondent

For the Applicant : Shri Gurudev I. Sharan, Advocate.
For the Respondent/State : Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****17.09.2018**

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 The first bail application of the applicant was dismissed as withdrawn in M.Cr.C. No. 5529 of 2018 dated 2.8.2018. The applicant has been arrested in connection with Crime No. 192 of 2018, registered at Police Station Mahasamund, District Mahasamund, Chhattisgarh for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

2. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. The case was investigated and there is practically no evidence for the prosecution of the applicant in this case. The evidence of Savni, daughter of the applicant, which has been relied upon by

the prosecution has been rebutted by the witness herself in her statement under Section 164 of the Cr.P.C. Further, there is no other investigation to show that the death of the deceased occurred in some place other than the railway-track where the dead-body was found. Hence, 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 there is sufficient evidence present in the record for the prosecution of the applicant. Hence, the applicant is not entitled for grant of regular bail.

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

5. The dead-body of deceased – Heeralal was found on the railway-track on 23.3.2018. The morgue intimation was recorded. The postmortem report and morgue enquiry show that the death of the deceased was accidental. Subsequent to that, a development has taken place when on 1.5.2018, statement of Savni, daughter of the applicant was recorded in which she made allegation against the applicant and the co-accused person. Subsequently, the evidence of Savni, daughter of the applicant, which has been relied upon by the prosecution has been rebutted by the witness herself in her statement under Section 164 of the Cr.P.C. There is no eye-witness to this case and there is no investigation to collect proof regarding cause of death of the deceased in some place other than the railway-track. Hence, looking to the evidence that is proposed for the prosecution against the applicant, I am of the view that in this case the applicant deserves to be enlarged on bail.

6. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

7. It is directed that applicant shall be released on bail on 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. In case any default is committed by the applicant/s in appearing before the concerned trial Court, this order granting bail shall stand cancelled automatically.

Sd/-

(Rajendra Chandra Singh Samant)
Judge