

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 2004 of 2019**

Santosh Kumar Sah, S/o Jiya Lal Sah, aged about 28 years, R/o Village Raila Thana Mada, District Singraouli (M.P.). **---- Applicant**

**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Ambikapur, District Surguja (CG). **---- Non-applicant**

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| For Applicant     | : Mr. N.K. Malaviya, Advocate                     |
| For Non-applicant | : Mr. Vinod Tekam & Mr. Wasim Miyan, Panel Lawyer |

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**Hon'ble Shri Justice Sharad Kumar Gupta**  
**Order On Board**

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**11.04.2019**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending before any other Court.
2. Perused the case diary provided by the counsel for the State in connection with crime No.512/2018 registered at Police Station Ambikapur, District Surguja for the offence punishable under Sections 398, 395, 323 of IPC and Sections 25 & 27 of Arms Act.
3. Case of the prosecution, in brief is that on 07.10.2018 at about 11:50 p.m. complainant Vikram Pratap Singh was going to Safeguard Room by motorcycle after collecting Rs.4,85,180/- from Foreign Liquor Shop, Boripara. On the way, three unknown masked persons stopped him, one person gave blow, another person got down him from the motorcycle and third person pointed the pistol on his chest and gave threat to kill. Two persons robbed one bag from him containing Rs.4,85,100/- and one purse containing Rs.1900/-, some documents, his motorcycle bearing registration No. C.G.15 D.D. 7697 and his mobile set of Redmee company from him. On the memorandum of applicant, Rs.40,000/- cash and his own motorcycle were seized from him.
4. Counsel for the applicant submits that the applicant has not committed any offence. He is innocent and has been falsely implicated in the present case, therefore, he may be released on bail.
5. On the other hand, counsel for the State opposes the bail application. However, he submits that no criminal antecedent of the applicant is reported in case diary.

6. In the case in hand, this Court has grant bail to co-accused Aftab Shekh on 01.02.2019 passed in M.Cr.C.No.316/2019. This Court has also rejected the bail application of co-accused Vikram Saket on 14.03.2019 passed in M.Cr.C. No.1512/2019.
7. As per enclosed certified copy of Additional Sessions Judge, Ambikapur, District Surguja dated 18.02.2019 the allegation made against co-accused Aftab Shekh is that he had arranged pistol for co-accused to commit offence, the applicant had actively participated in alleged crime hence the case of the applicant is different from co-accused Aftab Shekh.
8. In **Deepak Kumar Ratre -v- State of Chhattisgarh**, [2001(2) MPHT 89 (CG)] following judicial precedent has been laid down by this Court in para 9:-  

“The grant of application in favour of some of the accused should earnestly persuade a judicial officer to grant bail to the co-accused if the allegations are identical or there are no material differences in the allegations. This Court had been repeatedly saying that if the allegations are identical or almost similar then similar should be treated similarly. I fail to understand as to why a judicial officer should act arbitrarily and in such a whimsical manner in rejecting the application for grant of bail. If three named persons were granted bail, by any other judicial officer, then so long as the said order is in existence or is not set aside by any revisional court then such order would provide a foundation in favour of the co-accused for his release. It would be hight of the judicial impropriety to say that because some Judge had granted bail to some of the co-accused, the same order would not enure to the benefit of the co-accused before any other Judge.”
9. In the memorandum of co-accused Aftab Sheikh, it has been mentioned that he had arranged pistol, but as per settled legal procedure of law the statement of co-accused Aftab Shekh that he had arranged pistol for other co-accused person is not admissible in evidence.
10. Looking to the facts and circumstances of the case, it transpires that there is no material differences in the allegation leveled against the applicant and co-accused Aftab Shekh. Parity demands that if allegations are identical or almost similar or case of the applicant is less severe, then similar or less severe should be treated similarly. Once a co-accused is granted bail then other co-accused whose role is similar or not more severe is also entitled for bail.
11. First Additional Sessions Judge, Ambikapur, District Surguja has wrongly

distinguished the case of the applicant from the case of co-accused Aftab Shekh.

12. Looking to the above facts and circumstances of the case and looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Accordingly, the bail application is allowed. It is directed that if the applicant furnishes one solvent surety for a sum of Rs.25,000/- along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that he shall appear before the Trial Court at 11:00 am as and when directed till trial and he would co-operate during the trial, he shall be released on bail.

13. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)  
**JUDGE**

L/-