

HIGH COURT OF CHHATTISGARH AT BILASPURMCRC No. 4125 of 2019

Hithlesh @ Mithlesh S/o Kapil Sai Aged About 23 Years Caste- Rajwar, R/o Village- Girwarganj (Bairpara), Police Station And District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- **Petitioner**

Versus

State Of Chhattisgarh Through The Police Station- Surajpur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- **Respondent**

For applicants	:	Shri Rakesh Pandey, Advocate.
For resp./State	:	Shri Arvind Dubey, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/07/2019

1. This Court on three earlier occasions i.e. on 06.12.2017 in MCRC 6723/2017, on 04.07.2018 in MCRC 4687/2018 and again on 05.03.2019 in MCRC 7898/2018 had rejected the bail application of the applicant under Section 439 of the Cr.P.C.
2. The present is the 4th bail application moved by the applicant. The ground for moving the application is only that of delay in trial. Counsel for the applicants submits that out of 21 witnesses sighted by the prosecution till now only seven witnesses have been examined. He further submits that remaining witnesses are mostly departmental witnesses and yet the prosecution has not been able to bring these witnesses for evidence and the

petitioner for no fault of his is languishing in jail since 29.06.2017 i.e. for more than two years period by now. Counsel for the applicants submits that prosecution meanwhile has moved another application under Section 311 of the Cr.P.C. and have sought for adding three more departmental witnesses as prosecution witnesses which would further increase the total number of witnesses from 21 to 24 and it would further delay the trial and therefore the petitioner be granted bail on the ground of delay in trial.

3. State counsel on previous occasion was directed to seek instructions as to what is the reason for delay and on instructions he submits that delay appears on account of an application under Section 311 moved by the prosecution before the Trial Court. The said instructions provided to the State Government is unacceptable and is not what was expected from the respondent State. This Court wanted to know as to what is the reason for delay caused. The respondent State authorities have not been able to give any proper explanation for the delay being caused which by itself means that delay is being caused on account of government officials dealing with the case in as much as they are not able to bring the witnesses to the Court or the witnesses are deliberately avoiding appearance before the Trial Court for leading evidence. This same is a serious issue and this Court finds that such instances are on the rise in the criminal case across the State.

4. Given the aforesaid facts, this Court taking into consideration the overall reasons for rejecting the bail application on three earlier occasions does not find it fit for releasing the applicant on bail at this juncture. However, prosecution is granted four months time to ensure that the entire witnesses

cited by the applicant are made available before the Trial Court for adducing the evidence and the trial is concluded at the earliest.

5. Let a copy of this order be sent to Director General of Police who should take personal care in the issue, not only in this case but also in other similar cases where the witnesses of the department are not appearing. Let a copy of this order be also sent to the Advocate General who should also personally pursue the matter at the earliest at the Government level.

6. Reserving the right of the applicant to revive the application after four months, in case, if the witnesses of the prosecution is not complete by that time.

7. The present bail application thus stands rejected.

Rohit

Sd/-
(P. Sam Koshy)
JUDGE