

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5094 of 2019

1. Sanjay Dewangan S/o Late Shri Hetram Dewangan Aged About 37 Years, R/o Village Khokhara, P.S. Janjgir, District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through The District Magistrate, Janjgir, District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Non-applicant

MCRCA No. 755 of 2019

1. Rishi Kumar Dewangan S/o Late Hetram Dewangan, Aged About 42 Years, R/o Village Khokhara, Police Station Janjgir, District Janjgir Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Pamgarh, District Janjgir Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

--- Non-applicant

For Applicant – Shri Prafull N. Bharat, Advocate (in MCRCA No.755 of 2019),
Shri Govind Ram Miri and Shri Basant Kaiwartya,
Advocates (in MCRC No.5094 of 2019),
For Non-applicant/State – Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-08-2019

1. As both these applications arise out of the same crime number, i.e., Crime No.201/2019 registered at P.S. Pamgarh, District Janjgir-Champa, Chhattisgarh, they are being decided by this common order.
2. MCRC No.5094 of 2019 has been filed under Section 439 of the Cr.P.C. by applicant Sanjay Dewangan for grant of regular bail as he has been arrested on 17-04-2019 in connection with aforesaid crime number for offence under Section 489A, 489B and 489C/34 of the IPC.
3. MCRCA No.755 of 2019 has been filed under Section 438 of the Cr.P.C. by applicant Rishi Kumar Dewangan as he is apprehending his arrest in connection with aforesaid crime number for offence punishable under Section

489A, B, C of the IPC.

4. It is submitted by learned counsel for applicant Sanjay Dewangan (applicant in MCRC No.5094 of 2019) that he is in jail since 17-04-2019. The case has been investigated and charge sheet has been filed. This applicant has not committed any offence. Fair trial has not been done in this case as in accordance with provisions under Section 102(3) of the Cr.P.C. no information was given to the Magistrate having jurisdiction. Therefore, it is prayed that this applicant may be granted regular bail.

5. It is submitted on behalf of applicant Rishi Kumar Dewangan (applicant in MCRC No.755 of 2019) that there is no legally admissible evidence present in the charge sheet filed against this applicant. Name of this applicant has appeared in the memorandum statement of co-accused Sanjay Dewangan which cannot be made basis of prosecution, further, the FIR also does not disclose the name of this applicant. Hence, on this basis this applicant is entitled for grant of anticipatory bail.

6. Learned counsel for the State/non-applicant opposes the applications and submits that the evidence in this case under Section 489A, 489B and 489C of the IPC are scheduled offences under the National Investigation Agency Act (in short 'the NIA Act'), therefore, under the provision of Section 21 of the NIA Act only appeal shall lie against the bail rejection order and further the application under Section 438 of the Cr.P.C. is not maintainable. Therefore, both the applications may be rejected.

7. Heard learned counsel for the parties and perused the case diary.

8. The case of the prosecution in brief is this that, the police personnel of P.S. Pamgarh, District Janjgir-Champa received a confidential information on 17-04-2019 that two short heighted persons are present in the market of Pamgarh who are in possession of counterfeit currency notes. The police

apprehended co-accused Dhaniram Dewangan and applicant Sanjay Dewangan. On search, counterfeit currency notes of Rs.200, Rs.500/- and Rs.50/- were found in their possession. They have made statement on memorandum that the counterfeit notes were prepared in the house of applicant Rishi Kumar Dewangan with the help of his laptop, printer and other equipment. Hence, this case.

9. Considered on the maintainability of the application under Section 438 and 439 of the Cr.P.C. Section 6 of the NIA Act provides that on receipt of information regarding commission of scheduled offence police shall submit a report to the State Government and then the State Government shall forward the same to the Central Government, thereafter, the Central Government may decide whether the case should be investigated by agency or not. It is clear that no such steps have been taken in this case as provided under Section 6 of the NIA Act before proceeding for investigation of the case by the respondent. What shall be effect of such omission can be determined in the trial against the applicants. There is no disqualifying provision that the investigation so made shall stand vitiated according to any provision in the Act. Further, the NIA Act provides for constitution of Special Courts under Section 11 and also provides that the orders that shall be passed by the Special Court shall be appealable under Section 21 of the NIA Act. In this case, no such information has been provided by the State counsel as to whether any Special Court has been constituted and is functioning in District Janjgir-Champa or any other place having jurisdiction over the cases relating to scheduled offences which may be committed in District Janjgir-Champa. Further, the rejection order in both the cases has been passed by the Court of Additional Sessions Judge, Janjgir-Champa. Therefore, under these circumstances, it is held that there is nothing present to hold that the respondent did not have the jurisdiction to investigate the case and in absence of Special Court under the NIA Act the Court

concerned did not have the jurisdiction to entertain and decide the bail application in both these cases.

10. Considering that the charge sheet has been filed and there is no requirement of applicant Sanjay Dewangan to be kept in continuous detention till end of the trial. Further, the only reason for implicating the applicant Rishi Kumar Dewangan is memorandum statement given by co-accused Sanjay Dewangan, pursuant to which no investigation has been made to recover and seize articles from the house in which both the applicants reside as both these applicants are real brothers. Therefore, on the basis of these discussions made hereinabove, I feel inclined to allow both these applications.

11. Accordingly, MCRC 5094 of 2019 filed under Section 439 of the Cr.P.C. by applicant Sanjay Dewangan for grant of regular bail is hereby allowed. It is directed that this applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court, for his appearance as and when directed.

12. MCRC No.755 of 2019 filed by applicant Rishi Kumar Dewangan under Section 438 of the Cr.P.C. is also allowed. It is directed that in the event of arrest of this applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. This applicant shall also abide by the following conditions :

- (i) that he shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

- (iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

13. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil