

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 12-9-2019

Delivered on 13-9-2019

MCRC No. 5141 of 2019

- K.B. Shriniwas S/o Fulaiya K.B., Aged about 39 years, R/o Village Gandhi Chawk Aawapalli, P.S. Aawapalli, Revenue District Bijapur, Civil District Dantewadaa (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, Through the Station House Officer, Aawapalli, Revenue District Bijapur, Civil District Dantewada (C.G.).

---- Respondent

For applicant	Mr. Rahil Kochar, Adv.
For non-applicant/State	Mr. Ravi Maheshwari, PL.

Hon'ble Shri Justice Sharad Kumar Gupta

CAV ORDER

1. This is second bail application under Section 439 of the Cr.P.C. Earlier first bail application was rejected by this Court on 29/03/2019 in MCRC No. 1271/2019 considering *prima facie* case against applicant.
2. The applicant has been arrested in connection with Crime No. 04/2019 registered in police station Aawapalli, District Bijapur (CG) for offence punishable under Sections 4 & 5 of Explosive Substance Act, 1908.
3. Prosecution story in brief is that on 04/02/2019 Inspector Sudarshan Singh Dhruv posted at Police Station Aawapalli along with other staff had gone for petrolling. At about 20.50 hours, near Gas Godown, Aawapalli he seized Duracell 10 times longer lasting power 288 pieces, 13 pieces detonators along with fuse wire from the possession of applicant. After returning back to police station he lodged an FIR. Thereafter investigation was done by Sub Inspector Vibhash Kirtaniya.
4. Counsel for the applicant submitted that in the case in hand material witnesses including seizure witnesses have been examined who did not support the prosecution case. Informant

and investigating officer is same person which is Inspector Sudarshan Singh Dhruv, thus investigation is vitiated. RFSL report is not received yet. Thus applicant may be released on bail. He drew my attention in the judgment of Hon'ble Supreme Court in the matter of '**Mohan Lal vs. State of Punjab** [(2018) 17 SCC 627] wherein Hon'ble Supreme Court observed that when informant and investigating officer is a same person, investigation is said to be vitiated.

5. Counsel for the State opposed the bail application, however, submitted that there is no criminal antecedent against the applicant in the police case diary.
6. Mere turning of some witnesses hostile itself is not a sufficient ground to enlarge the accused on bail. Moreover in the case in hand the officer, who conducted alleged seizure is to be examined.
7. In the case in hand I.O. and informant is not the same person rather they are different persons. Thus, applicant does not get any help from the aforesaid judgment of Hon'ble Supreme Court in the matter of **Mohan Lal** (supra).
8. If RFSL report is not received yet, then it is not sufficient ground to enlarge applicant on bail.
9. Looking to the above mentioned facts and circumstances of the case, this Court finds that there is no such change in circumstances which may entitle applicant to be released on bail in second round of litigation. Consequently, the second bail application of the applicant is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge