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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 5086 of 2019**

1. Jaikumar Kushwaha S/o Shri Ram Prasad Kushwaha Aged About 29 Years R/o Village Karanji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
2. Ramgopal Kushwaha S/o Shri Hari Prasad Aged About 42 Years R/o Village Karanji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
3. Surendra Kumar Kushwaha S/o Shri Ram Prasad Kushwaha Aged About 31 Years R/o Village Karanji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Applicants**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh.

---- Respondent**And****M.Cr.C. No. 5570 of 2019**

1. Lalman Rajwade S/o Kawal Sai Rajwade Aged About 29 Years R/o Village Karji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
2. Ramkumar Rajwade S/o Dharam Sai Rajwade Aged About 35 Years R/o Village Karji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
3. Shobhnarayan Rajwade S/o Ramnath Rajwade Aged About 45 Years R/o Village Karji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
4. Ramdev Rajwade S/o Chandan Ram Rajwade Aged About 30 Years R/o Village Karji, Police Station Patna, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Applicants**Vs**

State Of Chhattisgarh Through The Station House Officer, Police Station Patna, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh.

---- Respondent

For the Applicants	:	Smt. Meena Shastri and Shri Ashok Kumar Shukla, Advocates.
For the Respondent/State	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****09.09.2019**

Heard.

1. Both these applications are decided by a common order as they arise from the similar matter. These are the first bail applications of the applicants filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants who have been arrested in connection with Crime No.44 of 2019, registered at Police Station Patna, District – Koriya, Chhattisgarh for the offence punishable under Sections 147, 148, 302 and 201 of the Indian Penal Code and Sections 3(2), 5(a) and 3(2)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. Learned counsel for the applicants submit that the applicants in both the cases are innocent and have been falsely implicated in this case. The only evidence against them is the memorandum statement recorded by the police which is not admissible evidence. One of the co-accused, namely, Ram Prasad Kushwaha has been granted regular bail by this Court in M.Cr.C. No. 3762 of 2019 vide order dated 12.7.2019 and the applicants in both the cases are similarly placed. Hence, it is prayed that the applicants in both the cases be benefited with grant of regular bail.

3. On the other hand, learned counsel for the State opposes the bail applications and the arguments submitted in this respect. It is submitted that apart from the admission made in the memorandum statement by these applicants there is evidence present to show that these applicants were last

seen together with the deceased of this case which is a strong circumstance against them. The co-accused who has been granted regular bail by this Court had a different case as he was not the assailant and further, the ground for grant of bail was that he was a man aged about 80 years. Hence, for these reasons, none of the applicants deserves to be enlarged on bail.

4. In reply, it is submitted by counsel for the applicants that the last seen evidence is equally present against co-accused – Ram Prasad Kushwaha who has been granted bail and no conviction can be recorded against these applicants only on the basis of the evidence last seen together. Hence, the applications be allowed.

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

6. According to the prosecution case, deceased – Mukesh Kumar Kurre went missing on 16.2.2019. After lodging of missing report on 19.2.2019, the dead-body of the deceased was found on 22.2.2019. During investigation, the applicants in both the cases were apprehended who gave memorandum statements of admitting the guilt and also have led to some recoveries. Further, there is one witness who had last seen together all the applicants with the deceased just before the deceased went missing.

7. It is not a case of any eyewitness account, however, the prosecution against the applicants is based on circumstantial evidence which is present against all these applicants. The co-accused who has been granted bail by this Court, had a different case compared to these applicants, therefore, I do not feel inclined to grant regular bail to the applicants in both the cases.

8. Accordingly, the bail applications filed by the applicants in both the cases under Section 439 of the Cr.P.C. are rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi