

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order On : 11.09.2019

Order Passed on : 25.09.2019

M.CR.C. No. 5120 of 2019

Akahndal, S/o. Dand Dhar, Aged About 39 Years, Caste -Kolta, R/o. Rampur,
Tahsil and Police Station : Pithora, District Mahasamund Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station :,
Pithora, District Mahsamund Chhattisgarh.

---- Respondent

AND

M.CR.C. No. 5793 of 2019

Gourishanker Kaiwart, S/o. Suritram Kaiwart, Aged About 24 Years, R/o.
Village Kishanpur, Police Station and Tahsil : Pithora, District Mahasamund,
Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station :
Pithora, District Mahsamund Chhattisgarh.

---- Respondent

For Applicant (in M.Cr.C. No.5120/19)	: Mr. Jaydeep Singh Yadav, Advocate on behalf of Mr. Vikash Pradhan, Advocate
For Applicant (in M.Cr.C. No.5793/19)	: Mr. Govind Ram Miri, Advocate with Mr. Basant Kaiwartya, Advocate
For Respondent/State	: Mr. Devendra Pratap Singh, Dy.A.G.
For Objector	: Mr. Siddharth Rathod, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V O Order

25/09/2019

1. Both the bail applications are heard and decided together by this common order as they are arising out of the same crime number and the incident.
2. These are the first bail applications 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.87/2018, registered at Police Station – Pithora, District – Mahasamund (C.G.) for the offence punishable under Section 302, 457, 458, 460, 396, 201 of the Indian Penal Code.
3. It is submitted by the learned counsels for the applicants that the applicants have been falsely implicated in this case. The applicants have not committed any offence and there is no material present in the investigation made so far to show the involvement of the applicants in the commission of crime. There is no eye-witness, no evidence of last seen together. The FIR was lodged against unknown person. Subsequent to which one co-accused Dharmendra Bariha was subjected to Narco test, who has named these applicants. Subsequent to which, these applicants were apprehended and interrogated. Seizure of articles made from their possession is doubtful. There is no FSL report in this regard. The statement given in Narco Test has no evidentiary value. Reliance has been placed on the judgment of ***Selvi and Others Vs. State of Karnataka***, reported in ***(2010) 7 SCC 263***

and it is submitted that co-accused Dharmendra Bariha has not consented for Narco Test, therefore, that evidence is not admissible and no complicity is found on the part of applicants in the crime committed. Therefore, it is prayed that the applicants may be enlarged on regular bail.

4. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that co-accused Dharmendra Bariha had consented by Narco test and the test was also conducted with the permission of learned Judicial Magistrate First Class, therefore, the result of the test have been utilized in investigating the case. As regards other evidence, it is submitted that the material has been collected from the spot of incident like hairs and fluids present on the spot. Similarly samples have been obtained from the applicants and other co-accused persons, which has been sent for analysis. The report of the same is awaited, therefore, it is not a case, the applicants are totally absent, therefore, both the applications be rejected.
5. Counsel for the objector after adopting the argument advanced by the learned counsel for the State submits that it is a case of brutal murder of four persons and the investigation has been made to connect the applicants and others with the commission of crime, therefore, no case is made out for grant of bail.
6. In reply, counsel for the applicants submits that recommendations in Selvi case (supra) has not been followed in conducting the Narco test. The memorandum of the applicants were recorded when he was not formally arrested, which is not in accordance with law under the

provisions of Section 27 of the Evidence Act. Hence, the application be allowed.

7. I have heard the learned counsel for both the parties and perused the case diary.
8. According to the prosecution case, four persons Yogmaya Sahu, Chetan Sahu, Tanmay Sahu and Kunal Sahu were found murdered in their residence in the night of 31.05.2018.
9. Co-accused Dharmendra Bariha was arrested and interrogated and thereafter subjected to Narco test. On the basis of the statement made by him in Narco Test, and the recommendation of the scientist who, conducted Narco test, these applicants were apprehended and interrogated. Materials that have been collected from the spot and after obtaining samples from the applicants and others that has been sent for DNA test and the result of the same is awaited. It is not necessary that while interrogating a person, he should be under a formal arrest, it can be deemed that he was in police custody, which is sufficient for the purpose of Section 27 of the Evidence Act. Therefore, after over all consideration of all the facts and circumstances of the case, this Court is of the opinion that present is a not a fit case, in which, the applicants should be enlarged on regular bail.
10. Accordingly, both the the bail applications filed under Section 439 of the Cr.P.C. are rejected.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge