

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6028 of 2019

Order Reserved on : 25/09/2019

Order Delivered on : 03/10/2019

- Amit Jogi, S/o Ajit Jogi, aged about 42 years, R/o Civil Lines Raipur, Presently residing at Marwahi Sadan, Infront of IG Office Nehru Chowk, Tehsil-Bilaspur, District-Bilaspur, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station-Gaurela, Civil & Revenue District-Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	:Mr. Surendra Singh, Sr. Adv. with Mr. Vivek Sharma & Mr. Gary Mukhopadhyay, Advocates.
For Respondent/State	:Mr. S.C. Verma, Advocate General with Mr. Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

03/10/2019

1. This is first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.35/2019 registered at Police Station–Gaurela,District–Bilaspur (C.G.) for the offence punishable under Sections 420, 465, 467, 468, 471 of the Indian Penal Code.
2. Learned Senior Counsel for applicant submits that applicant is innocent and has been falsely implicated in this case. He is in jail since

3.9.2019. No offence of forgery is made out against this applicant. It is alleged that this applicant had submitted an application for grant of caste certificate making false declaration, but the fact remains that the caste certificate was issued by the competent authority, which cannot be said to be forged. As the caste certificate was issued by the Officer concerned having authority under the law, therefore, it cannot be said that use of the said caste certificate for the purpose of contesting elections etc. is an offence punishable under Section 471 of IPC. Further, it is submitted that the applicant has only made statement in his application for issuance of caste certificate that he is residing since birth in the place, which cannot be interpreted as his place of birth. An election petition was filed against this applicant bearing Election Petition No.03/2014 and the same was decided on 30.1.2019 in which it has been specifically observed by the learned Election Judge in Paragraph No.43 that perusal of entire order-sheets do not reflect that this applicant has made a statement that he was born in Sarbahara. This judicial observation cannot be overruled by the police authorities.

Another ground raised for grant of interim/regular bail is this, that the applicant is suffering from serious ailments and he is continuously undergoing treatment and in support thereof relevant documents are also filed along with application. After the arrest of applicant, he had to be shifted to CIMS, Bilaspur for medical reasons and looking to condition of applicant, he was referred to and admitted in Apollo hospital, Bilaspur which clearly shows that the applicant has past medical history. The applicant has been recently treated in the Medanta Hospital on 28.4.2019, subsequent to which he was again admitted in the Shri Balaji Hospital, Raipur and documents showing the said fact are filed as Annexure-4 which refers to several ailments

which the applicant is suffering. He submits that the applicant has right to get better medical treatment from a hospital of his choice and also for the reason that the specialized treatment that he was getting in the Medanta Hospital in New Delhi, is not available in the State of Chhattisgarh.

Relying on the decision of the Hon'ble Supreme Court in the matter of ***Mukesh Kishanpuria vs State of West Bengal***, reported in **(2010) 15 SCC 154**, it is submitted that availability of power to grant interim bail in regular bail application includes the power to grant interim bail. Further, reliance has been placed on the judgment of Supreme Court in ***Arnesh Kumar vs. State of Bihar*** reported in **(2014) 8 SCC 273** and it is submitted that there is specific direction of the Supreme Court in Para-7 of the judgment to make compliance of Section 41 of CrPC and to make arrest only when such arrest is necessary. Applicant is ex-Member of Legislative Assembly and political leader from a party. There is no chance of his absconding from lawful authorities and he is ready to co-operate with the investigation in all respects. Further, the offence is alleged to have taken place in the year 2013 and FIR has been lodged only on 3.2.2019 i.e. after a long lapse of about six years, which shows that there may be some political reason behind lodging of this FIR, therefore, it is prayed that application be allowed.

3. Learned Advocate General appearing for respondent/State vehemently opposes the application and submissions made in support of the application for grant of bail. It is submitted that it is a clear case of false declaration made by the applicant in the year, 2013, regarding his place of birth and also regarding his date of birth which is mentioned

as '7.8.1978' in the declaration form, whereas the applicant was actually born in Dallas, Texas (USA) and his date of birth is '7.8.1977'. The statement of witnesses namely Patwari Rewati Raman Singh and B.S. Meshram are against this applicant, therefore, the affidavit dated 28.10.2013 was intentionally and deliberately filed making false statement, which shows that the applicant has obtained caste certificate in a fraudulent manner. The offences under all the Sections registered against applicant are made out which are supported with evidence so far collected in the investigation. It is also submitted that this applicant has a checkered criminal history and there are in total 13 cases registered against him and one of these cases registered against the applicant is for offence of murder. It is further submitted that the medical ground raised does not have any substance for the reason that the applicant was provided with treatment by the State in Apollo Hospital between 7.9.2019 & 10.9.2019 and he was discharged when his condition was improved. He has been examined by all the experts in the field of Cardiology, Neurology etc. and now he is only advised to follow the treatment advised. The applicant has also been evaluated for his medical condition in Shri Balaji Hospital, Raipur and it is his own request to have a second opinion from Medanta Hospital or CMC or AIIMS, Delhi, therefore, the applicant is making a pretext for grant of bail.

Reliance has been placed on the judgment of Supreme Court in ***P. Chidambaram vs. Directorate of Enforcement***, reported in **2019 SCC OnLine SC 1143**. It is submitted that the Hon'ble Supreme Court has emphasized the need of arrest in the process of investigation of cases involving serious allegation, therefore, it is prayed that applicant is not entitled for grant of regular bail, the application be rejected.

4. In reply, it is submitted by the learned Senior Advocate appearing for applicant that this applicant was tried and acquitted of charge of murder in the case against him. The appeal against that judgment was filed before this Court which was dismissed, thereafter, it is learnt that appeal has been filed before Supreme Court by a private party in which this applicant has not received any notice till date. All the other matters against this applicant are proceedings of preventive nature under Criminal Code of Procedure and some other criminal prosecution which are connected with political activities carried out by the applicant as he is a political leader. It is also submitted that the statement / declaration which has been made basis of this accusation has been clearly rejected in the judgment of this Court delivered in the aforementioned election petition. Further, it is within the domain of High Power Scrutiny Committee to examine veracity of a caste certificate issued under the provisions of **Chhattisgarh Scheduled Caste Scheduled Tribe and Other Backward Classes (Regulation Of Social Status Certification) Act**.
5. Heard both the parties and perused the case diary.
6. FIR has been lodged by Sameera Painkra stating that this applicant filed a false affidavit in the year 2013 making a statement that his place of birth is village Sarbahara, Gourela and his date of birth is of year 1978, whereas the applicant was born in Dallas, Texas, USA and his date of birth is different. On the basis of this declaration, the applicant had obtained a false caste certificate and made use of the same for contesting election. Hence, this case.
7. Considering on the entire material present in the case diary. The applicant is in jail since 3.9.2019 i.e. in judicial remand, which shows

that there is no longer requirement for any custodial interrogation to be made from this applicant for the purposes of this case. The observation made in the judgment of election petition has relevance. It is not necessary that the Court should draw any such conclusion that no offence is made out against the applicant. Even if the offences are made out, the considerations for grant of regular bail are on different footing. So far as the criminal instances that have been referred to by the learned Advocate General, is concerned, most of the cases are pending against him and as per submission of learned Senior Counsel for the applicant, the applicant has been acquitted of the charge of murder and this fact has not been contradicted by the State Counsel. Therefore, for the reason that there is no requirement of any custodial interrogation of the applicant and also there is no requirement for his continue detention for the purpose of investigation and that this applicant is suffering from various ailments and further, the offences registered against the applicant is triable by the JMFC, this Court is of the opinion that present is a fit case where the applicant can be enlarged on regular bail.

8. Accordingly, the bail application filed under Section 439 of Cr.P.C. is allowed. It is directed that the applicant shall be released on bail on furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed. The applicant shall also abide by the following conditions :-

- (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;

- (ii) that the applicant 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 the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) further condition is imposed that applicant shall not leave the country without prior permissions of the Court concerned.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha