

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6317 of 2019**

Virendra Prasad Swarnakar, S/o Late Ram Prasad Swarnakar, aged about 45 years, R/o Village Manpur Gandhinagar, P.S. Mohafbil District Gaya (Bihar).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, P.S. Ambikapur, District Surguja (CG).

---- Non-applicant

For Applicant	: Mr. Nishi Kant Sinha, Advocate
For Non-applicant	: Mr. Praveen Shrivastava, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****19.11.2019**

1. This is third bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
2. Perused the case diary provided by the counsel for the State in connection with Crime No.07/2017 registered at Police Station Ambikapur, District Surguja for the offence punishable under Sections 395, 397, 412, 120B, 201 of I.P.C. and Sections 25 & 27 of Arms Act.
3. The first bail application of the applicant was rejected on merits by this Court vide order dated 30.08.2018 passed in M.Cr.C. No.5680/2018 considering prima facie case against him. His second bail application was also rejected on merits by this Court vide order dated 13.05.2019 passed in M.Cr.C. No.2804/2019 considering prima facie case against him.
4. Case of the prosecution, in brief, is that on 04.01.2017 in Manapuram Gold Loan Branch, Bramha Road, Ambikapur a dacoity was happened. 12 kg gold, worth Rs. 2,50,00,000/- and cash of Rs.1,54,000/- have looted by the dacoits. Applicant and other persons knowingly that gold is the subject matter of dacoity purchased 1 kg 450 grams gold from the co-accused Nityanand @ Sunil Pandey, on the price of Rs.30 lakhs. He melt the said gold and converted it in the ornaments. On the memorandum of the applicant, 65 grams gold ornaments have been seized from him.
5. Counsel for the applicant submitted that in the case in hand, 06 prosecution witnesses have been examined before the trial Court. Witnesses of seizure Vinay Kumar Paswan (P.W.3) and Satish Singh (P.W.4) have turned hostile. He further submitted that Jagdamba Prasad

Pandey (P.W.5) lodger of F.I.R. does not support the prosecution case. He drew my attention on para No.3 of certified copy of statement of Jagdamba Prasad Pandey (P.W.5). He further submitted that in the case in hand, Section 412 of IPC does not attract. He further submitted that the applicant is in jail more than one year.

6. On the other hand, counsel for the State opposed the bail application. However, he submitted that there is no criminal antecedent is reported against the applicant as per police case diary.

7. Prima facie it does not appear that the applicant is bonafide purchaser. Allegedly gold was melted, thus prima facie identification has no value.

8. This is true that the detention period of the accused is a relevant factor while dealing with the bail application. But equally, it is also true that looking to the seriousness of the alleged offence and impact of granting bail to the applicant on society are more important and material factors while dealing with the bail application.

9. This is also well settled legal principle that while dealing with the bail application, the Court can neither scrutinize the evidence nor appreciate the evidence. This is also well settled legal principle that while dealing with the bail application, the Court cannot touch the merits and demerits of the case.

10. In the case in hand, Investigating Officer is to be examined.

11. Prima facie it cannot be said that Section 412 of IPC does not attract in the case in hand.

12. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the applicant be released on bail in the third round of litigation. Consequently, the third bail application is rejected.

13. Certified copy as per rules.

SD/-

(Sharad Kumar Gupta)
JUDGE

L/-