

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No.9088 of 2018**

Isakh Shah, son of Samsuddin Shah, aged about 25 years, R/o LIG-2/735, Vishwa Bank Colony, Kurud, P.S. Jamul, Tahsil and District Durg (CG).

---- Applicant**Versus**

State of Chhattisgarh, through District Magistrate, District Durg (CG).

---- Non-applicant**AND****MCRC No.9344 of 2018**

Richardson Bhatti, son of Sulkhkhan Singh Bhatti, aged about 27 years, R/o Gali No.0, H.No.429, Near Jain Mandir, Shantinagar Supela, Police Station Supela, Bhilai, District Durg (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Police Station Ranitrai, District Durg (CG).

---- Non-applicant

For Applicants : Mr. Shrawan Agrawal and Mr. Jitendra Gupta, Advocates

For Non-applicant : Ms. Sangeeta Mishra, Govt. Advocate and Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****11.02.2019**

1. Above mentioned two bail applications arise out of a common Crime No.101/2018 registered at Police Station Ranitarai, District Durg for the offence punishable under Sections 379, 411, 34, 420, 467, 468, 471 of Indian Penal Code, therefore, they are being heard analogously and decided by this common order. All the two are first bail applications filed under Section 439 of the CrPC.
2. Prosecution story in brief is that on 11.09.2018 at village Belhari, 25 H. Beam Electric Poles were stolen by some unknown persons.
3. Counsel for the applicants respectively submitted that the applicants are innocent and have been falsely implicated in the present case hence they may be released on bail. They further submitted that co-accused Nagesh Kumar Koushik, Jitendra Kumar Yadav and Dharmendra Kumar Singh have been

enlarged on bail on 30.10.2018 & 2.11.2018 by this Court in M.Cr.C. No.8059/2018, M.Cr.C. No.8122/2018 and M.Cr.C. No.8567/2018 respectively. Hence the applicants may also be granted bail on ground of parity.

4. Counsel for the State opposed the prayer for grant of bail, however, he submits that no criminal antecedent is reported against the applicants in police case diary.

5. The Fourth Additional Sessions Judge, Durg has rejected the bail applications of the applicants on the ground that they had stolen the aforesaid poles and handed over to co-accused Nagesh Kumar Koushik.

6. There is no memorandum of the applicants. Nothing was seized from the possession of applicants regarding stole property.

7. It was in the notice of Fourth Additional Sessions Judge, Durg that the High Court has already granted bail to the co-accused Nagesh Kumar Koushik, Jitendra Kumar Yadav and Dharmendra Kumar Singh.

8. This Court had granted bail to co-accused Nagesh Kumar Koushik, Jitendra Kumar Yadav and Dharmendra Kumar Singh vide orders dated 30.10.2018 & 2.11.2018 passed in M.Cr.C. No.8059/2018, M.Cr.C. No.8122/2018 and M.Cr.C. No.8567/2018 respectively. Case of the applicant is not severer to that of co-accused who have been granted bail by this Court, rather the case of the applicant is much better than that of co-accused.

9. The certified copy of the order sheet dated 03.11.2018 reflects that the Fourth Additional Sessions Judge, Durg had the knowledge that the said co-accused have been bailed out by this Court even then he rejected the bail application of the applicant.

10. In **Deepak Kumar Ratre -v- State of Chhattisgarh**, [2001(2) MPHT 89 (CG)] following judicial precedent has been laid down by this Court in para 9:-

“The grant of application in favour of some of the accused should earnestly persuade a judicial officer to grant bail to the co-accused if the allegations are identical or there are no material differences in the allegations. This Court had been repeatedly saying that if the allegations are identical or almost similar then similar should be treated similarly. I fail to understand as to why a judicial officer should act arbitrarily and in such a whimsical manner in rejecting the application for grant of bail. If the three named persons were granted bail, by any other judicial officer, then so long as the said order is in existence or is not set aside by any revisional court then such order would provide a foundation in favour of the co-accused for his release. It would be hight of the judicial impropriety to say that because some judge

had granted bail to some of the co-accused, the same order would not enure to the benefit of the co-accused before any other judge.”

11. Looking to the facts and circumstances of the case, it transpires that there is no material difference in the allegation leveled against the applicant and the said co-accused. Parity demands that if allegations are identical or almost similar or case of the applicant is less severe, then similar or less severe should be treated similarly. Once a co-accused is granted bail then other co-accused whose role is similar or not more severe is also entitled for bail.

12. The Fourth Additional Sessions Judge, Durg did not consider the aforesaid settled legal principles though it should have considered this aspect.

13. It is also notable that it was totally irrelevant that as before passing the bail order by this Court, the Court below had rejected the bail application of an accused therefore it would not allow the subsequent bail application of the same accused or other accused who had been levelled similar allegation.

14. Looking to these facts and circumstances of the case, looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefits of Section 439 of the CrPC to the applicants. Accordingly, the bail applications (M.Cr.C. No.9088/2018 & M.Cr.C. No.9344/2018) are allowed.

15. It is directed that in case, each of the applicants i.e. Isakh Shah and Richardson Bhatti furnish one solvent surety for a sum of Rs.25,000/- each along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that they shall appear before the Trial Court at 11:00 am as and when directed till trial and they would co-operate during the trial, they shall be released on bail.

16. Certified copy as per rules.

SD/-

(Sharad Kumar Gupta)
JUDGE

L/-