

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1914 of 2018**

1. Muchaki Deva S/o Lt. Muchaki Podiya Aged About 26 Years Village- Tokanpalli, P.S. -Chintagufa, Tel-Konta,distt. Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh
2. Podeyam Hadma S/o Podeyam Podiya Aged About 25 Years Village- Tokanpalli, P.S. -Chintagufa, Tel-Konta,distt. Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh
3. Kalmu Hidma S/o Lt. Kalmu Bagi Aged About 23 Years Village- Tokanpalli, P.S. -Chintagufa, Tel-Konta,distt. Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh
4. Muchaki Paaddu S/o Muchaki Joga Aged About 25 Years Village- Gogunda, P.S. - Chintagufa, Tel- Konta, Distt. Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh
5. Podeyam Gutta S/o Podeyam Bakka Aged About 28 Years Village- Gogunda, P.S. - Chintagufa, Tel- Konta, Distt. Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh
6. Podeyam Hunga S/o Podeyam Nanda Aged About 26 Years Village- Gogunda, P.S. - Chintagufa, Tel - Konta, Distt. Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh

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- State Of Chhattisgarh Through Police Station Of Chintagufa, Sukuma, District Sukuma, Chhattisgarh, District : Sukuma, Chhattisgarh

---- Respondent

For Appellant	:	Shri Rahul Tamaskar, Advocate
For Respondent/State	:	Shri KK Singh, G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****13/03/2019**

1. This is an appeal arising out of an order dated 24-10-2018 passed by the N.I.A Court (Special Court) Jagadapur, District Bastar in Special Case

No.63/2017, whereby and whereunder the learned trial Court has rejected the application for grant of bail filled by the appellants-accused.

2. Learned counsel for the appellants would argue that the involvement of the appellants in the alleged commission of offence is based only on suspicious circumstances without there being any clinching evidence to make out a prima facie case and in any case, it was a case of encounter between the police and the naxalites, in which, some police officials were killed and the appellants have been involved only on suspicion. He would argue that the so-called diary statement of some of the prosecution witnesses with regard to involvement, are afterthought and recovery of certain weapons or equipments said to be used for preparation of bombs, are false. It is next submitted that no identification parade has been carried out and therefore, at this stage, when charge sheet has already been filed, the learned trial Court ought to have granted bail to the appellants.

3. On the other hand, learned State counsel would argue that the present is a case of commission of grave offence and in an encounter between the police and the naxalites, five police officials were murdered and many injured. He would argue that the involvement of the appellants is based on the ground that the appellants were named in the diary statements of the prosecution witnesses and recovery of weapons or accessories and equipments used for preparation of bombs on their memorandum, and therefore, prima facie case is made out.

4. We have heard learned counsel for the parties.

5. We find that in the present case, as far as appellants No.1 to 4 are concerned, they have been involved with large number of co-accused on the basis of their names stated in the diary statements of the prosecution witnesses or on the basis of recovery of certain articles, which are said to be used for

preparation of bombs and weapons. Name of the appellants have been mentioned in the memorandum statements.

As far as appellants No.5 & 6-**Podayam Gutta and Podayam Hunga** are concerned, we find that these persons have been involved in the alleged commission of offence only on the basis that their names mentioned in the memorandum of one of the accused. Learned State counsel could not point out nor seen in the charge sheet that either in the diary statement of the prosecution witnesses or in the FIR, name of appellants No.5 & 6- **Podayam Gutta and Podayam Hunga** are mentioned. Moreover, it is not pointed out from the charge sheet that recovery of any incriminating article like weapon or accessories for preparation of bombs or seizure of any other incriminating article were made from their possession. It thus appears that as far as appellants No.5 & 6-**Podayam Gutta and Podayam Hunga** are concerned, their involvement is based on their name referred in the memorandum statement of one of the accused-Muchaki Paaddu and no other evidence has been collected against these appellants, though charge sheet has already been filed.

6. Taking into consideration the aforesaid submissions and prima facie case, we are of the view that the appellants No.5 & 6-**Podayam Gutta and Podayam Hunga** are entitled to grant of bail. The application on behalf of other appellants No.1 to 4 are, however, rejected. It is directed that the appellants No.5 & 6-**Podayam Gutta and Podayam Hunga** shall be released on bail on each of them furnishing personal bond of Rs.25,000/- with two local sureties of the like sum to the satisfaction of the concerned trial Court. They shall appear before the trial Court on each and every date of hearing, unless exempted. The appellants No.5 & 6-**Podayam Gutta and Podayam Hunga** shall not leave the

territorial jurisdiction of the trial Court without the leave of the trial Court. If there is any allegation of their involvement in the offence by misuse of liberty, grant of bail to the aforesaid appellants shall be liable to be cancelled.

7. In the result, this appeal is partly allowed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge