

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 1205 of 2020

1. Gaurav Shamdani S/o Shri Girdhari Shamdani Aged About 23 Years (Wrongly Mentioned As Girdhari In Order Sheet), R/o Bagdehipara, Nawapara, Rajim District Gariaband Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through Police Station Gobra Nawapara, Raipur , District Raipur Chhattisgarh.

---- Respondent

For Applicant Mr. Kshitij Sharma, Advocate

For Respondent /State Mr. K.K. Singh, Govt. Advocate

(Proceedings through Video Conferencing)

Hon'ble Mr. Justice Prashant Kumar Mishra

Order On Board

11/8/2020

1. Heard.
2. The applicant has preferred this first bail application under Section 439 of CrPC, as he is arrested in connection with Crime No.198/2019, registered at Police Station Nawapara, District Raipur (CG), for the offence punishable under Section 302, 307, 147, 148 & 149 of the Indian Penal Code and under Sections 25 & 27 of the Arms Act.

3. As per the prosecution case on 22-4-2019 Neelam Singh Rajput (since deceased) and Lomesh Nirmalkar were returning on separate motorcycles after attending marriage ceremony of the son of one Sunil Nirmalkar of village Kurra. At 00.45 hours (in the midnight) accused Prakash Mishra was standing near Satnami Para Saw Mill and stopped the deceased by raising his hand. 5-6 more persons were also standing on the road. Prakash Mishra stated that let us celebrate. When the deceased and Lomesh Nirmalkar stopped, accused Abhishek Sharma @ Lalla Sharma, Gaurav Ramdani, Pradeep Yadav, Tarun Tiwari @ Golu Tiwari & Ashish Bhosle @ Ashutosh Bhosle abused and assaulted the deceased by hand & fist. Abhishek Sharma @ Lalla Sharma took out a knife and caused injuries over the person of the deceased after which he became unconscious and later on succumbed to the injuries in the hospital. Seeing the assault Lomesh Nirmalkar ran away from the place. The deceased was alive for about 12 days and subsequently died on 4-5-2019. His case diary statement was recorded on 22-4-2019, which shall now be treated as his dying declaration. As per this statement all the accused persons have initially assaulted the deceased by hand & fist whereas Prakash Mishra and Abhishek Sharma @ Lalla Sharma caused injuries by knife.
4. It has been argued that the deceased died after 12 days of the incident and he refused to obtain treatment. Moreover, fatal injuries have been caused by Prakash Mishra and

Abhishek Sharma @ Lalla Sharma, therefore, the applicant is entitled to be released on bail.

5. Learned counsel appearing for the State, *per contra*, would oppose the bail application.
6. In the case diary, it is found that the deceased was admitted in the Medical College Hospital at Raipur and thereafter at V.Y. Hospital, Kamal Vihar, Raipur, where he died in course of treatment on 4-5-2019. Entire treatment papers are available in the case diary. It is also evident from the case diary statement of the deceased that all the accused persons assaulted him, however, later on only two have inflicted fatal blow, but the fact remains that this applicant has also participated in assaulting the deceased.
7. Accordingly, the bail application, *sans substratum*, is liable to be and is hereby rejected.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri