

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1338 of 2020**

- Sheikha Danesh @ Sheikh Azhar Ali(As Mentioned In The Charge Sheet)
S/o Sheikh Zafar Ali, Aged About 29 Years R/o Finland Topsia, Police Station- Telbala, District- Kolkata, West Bengal, Presently Residing At Idgah Bhata Behind Muslim Hall, Police Station Azad Chowk Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station - Azad Chowk Raipur, District- Raipur, Chhattisgarh

---- Non Applicant

For the Applicant	:	Mr. Manish Nigam, Advocate
For Non Applicant	:	Mr. D. C. Verma, G.A.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****22.06.2020**

1. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was rejected by this Court by order dated 06.03.2019 passed in MCRC No.1319 of 2019 considering prima facie case against him.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.167/2018 registered at Police Station- Azad Chowk, District Raipur (C.G.) for the offence punishable under Sections 394, 395, 397 of Indian Penal Code.
4. Case of the prosecution, in brief, is that on 15.07.2018, complainant Prashant Sharma had collected an amount of Rs.31,33,950/- from Wine shops. He kept the said amount in his bag. When he was going to deposit the said amount in the office of Rider Save Guard Private Company, Sundernagar, at that time, some unknown persons stopped his motorcycle and snatched the bag and one mobile bearing SIM No.8878971117 from him. They also caused injury to him. On the memorandum of the applicant, one Air Gun, one mobile and one black bag of the said company containing

Rs.3,00,000/-were seized from him.

5. Counsel for the applicant submitted that there is a delay in trial. There is no possibility of early conclusion of trial. Only 7 witnesses have been examined including complainant. No test identification parade was conducted by Investigating Agency. In the case in hand memorandum and seizure witnesses have turned hostile and did not support the prosecution case. Applicant is in jail since 19.07.2018. P.W. 2 complainant Prashant Sharma did not identify the applicant during the recording of his statement. Co-accused namely Azim Qureshi and Md. Shahid have been released on bail by this Court. Hence, applicant may be released on bail.
6. On the other hand, learned counsel for the State opposed the bail application. However, he submitted that no criminal antecedent is reported against the applicant in police case diary.
7. Though delay in trial and detention period of the accused are material factors for disposal of the bail application of accused but equally it is also true that seriousness of the offence and effect of granting bail to the accused on society are more important and material factor for disposal of bail application of accused.
8. As per the FIR complainant Prashant Sharma lodged the report against the unknown persons hence, if he did not identify the applicant during recording of his statement in the trial Court then applicant is not entitled to get the bail.
9. This is well settled legal position that while dealing the bail application Court neither can scrutinize the evidence nor appreciate the same. Mere turning hostile of memorandum and seizure witnesses does not entitle the applicant to be released on bail.
10. Moreover, in the case in hand, Investigating Officer is to be examined. This Court has earlier discussed in its order dated 06.03.2019 that case of applicant is totally different from those accused.
11. Looking to the above mentioned facts and circumstances of the case, this Court finds that there is no such material change in circumstances which may entitle the applicant to get the benefit of Section 439 CrPC. Consequently, the second bail application is rejected.

Sd/-

(Sharad Kumar Gupta)
Judge