

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1074 of 2020**

- Sandeep Jain S/o Late Shri Rawalmal Jain, aged about 42 years, R/o. Ganjpara, in front of Alokchand Trilokchand, Durg, Police Station and District – Durg (CG)

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station - Durg, Chhattisgarh

---- Respondent

For Applicant	:	Shri T.K.Jha, Advocate
For State	:	Shri Ravish Verma, Addl. Adv. General

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/08/2020**

Heard.

1. The applicant has been arrested in connection with Crime No.01/2018 registered at Police Station – Durg, District – Durg (C.G.) for alleged commission of offences under Section 302, 34 of IPC and Section 25, 27 of Arms Act.
2. Prosecution case is that the applicant Sandeep Jain was having dispute with his father, one of the deceased in respect of share in the property and their relationships were strained. It is further alleged that on 01/01/2018, the applicant murdered his father and his mother both in the house. According to the prosecution, the applicant had purchased a pistol from the co-accused Bhagat Singh six months before and by this pistol, he inflicted injury on his parents and killed them.
3. Learned counsel for the applicant would argue that the prosecution story, apart from being without clinching evidence, is highly improbable that the applicant would kill his father and mother both in the background of having dispute only with the father. Next submission is that the prosecution case is based only on circumstantial evidence and there is no eye witness. Learned counsel also argues

that the story of the prosecution is completely demolished because one of the prosecution witnesses – Saurabh, nephew of deceased has been examined in the Court and he has clearly stated that when upon a call given by his grand mother to reach home because grand father is not well and something has happened, he reached the house where both his grand parents were found dead having sustained brutal injury and thereafter, he went upstairs and found that the room of the applicant was bolted from outside. Thus, it is argued that *prima facie*, there is no material of involvement of the applicant in the incident and secondly, it is a case where an outsider entered the house and killed his parents while the applicant was sleeping in his own room in the first storey of the building. Next submission of learned counsel for the applicant is that in the present case, trial has remained stayed firstly because of the pandemic situation and later on, because of interim order passed in Criminal Revision No.1275/2019. Therefore, there is no likelihood of early conclusion of trial. The applicant has not misused the liberty. The applicant has a right of expeditious trial and if he is kept in jail without possibility of early conclusion of trial, it will adversely affect his fundamental right of speedy trial. Learned counsel also argues that though the pistol is alleged to have been seized on 01/01/2018, report of armourer and ballistic report is prepared only on 22/03/2018 and there is no description of fire arm as contained in the seizure memo and in the armourer report, which means, that the seized articles has also been changed.

4. On the other hand, learned State counsel submits that the material collected by the investigation, *prima facie* involves the applicant in the alleged commission of offence. The statement of the witnesses recorded under Section 161 CrPC reveal that the applicant had sent his wife to parental house two days before the incident and before two days, all the servants and *chowkidars* were released from duty on 01/01/2018. There were only three members in the family mainly the present applicant and deceased parents. Co-accused Bhagat Singh in his memorandum has stated that present applicant purchased the seized pistol from him six months before. The pistol and magazine were recovered from the backyard of the house on the memorandum of the applicant. The report of armourer and that of the ballistic expert also reveals that the pistol was in live condition and the bullets found in the body of the deceased were fired from the pistol seized on the memorandum of the applicant. Learned State counsel argued that many prosecution witnesses mainly Raju, Kamlesh Yadav and others have stated that relationship of the deceased father and the present applicant were strained and the applicant was afraid that the father may disentitle him from the property in the family. The applicant firstly murdered his father and as this was seen by the mother, he killed his mother also. Learned State

counsel would further argue that present is a case of heinous offence and it cannot be said that the trial is so much delayed that the applicant, despite serious allegations, should be released on bail only on the ground of few months' delay in trial.

5. I have heard learned counsel for the parties and considered material on record.

6. *Prima facie*, it is revealed that on the date of incident, only three members were there in the house mainly the present applicant and deceased parents. There are statements that before the incident, the applicant had sent his wife to her parents' house and all other staff in the house were released from duty. Pistol from which the gunshot was fired, is said to be seized on the memorandum of the present applicant from the backyard of his house. In the memorandum of the co-accused, it has come that pistol was purchased by the applicant from the co-accused six months before. The report of armourer and ballistic expert also *prima facie* reveals that the pistol was live and the bullets found in the body of the deceased were fired from the pistol seized on the memorandum of the applicant. There are statements of existing strained relationship and dispute between the deceased father and the applicant. In the merged intimation and the diary statements of Saurabh, there is no mention that the door of the room of the applicant was locked from outside. However, he has given Court statement during trial in which he has stated regarding his room bolted from outside. At this stage, it is found that the State had moved application for recall and re-examination of this witness Saurabh which was rejected by the Trial Court against which the State filed Cr. Rev. No.1275/2019 wherein an interim order has been passed and further trial has been stayed.

7. True it is that at present, the trial has remained stayed since last few months with no further progress because of interim order passed by the Court. However, present is a case of heinous offence and serious allegations on the applicant that he killed his own father and mother. It is not a case that the trial has remained pending for more than one year because of the interim order passed by the Court. Though the applicant has a right of speedy trial, at the same time, this Court cannot ignore that the applicant is charged of very heinous and grave offence of killing of his own father and mother and the prosecution material, *prima facie* makes out a case. Therefore, only on the ground that trial has remained stayed since last few months, bail cannot be granted to the applicant in such serious matter. Having given my anxious considerations to the nature and gravity of allegations, *prima facie* material

and delay in trial, in my considered opinion, only on the ground of delay, the applicant is not entitled to grant of bail. In view of above consideration, the application is rejected.

The interim bail granted by this Court is also canceled. The applicant shall forthwith surrender before the Trial Court and thereafter, he be sent to jail. In case, the trial is not resumed early either because of the pandemic situation or because of long continuance of interim order passed by this Court, it shall always be open for the applicant to revive bail application on the ground of very long inordinate delay in conclusion of trial.

Sd/-
(Manindra Mohan Shrivastava)
Judge