

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR• **MCRC No. 2251 of 2020**

- Kamlesh Kumar Purame S/o Mohan Purame Aged About 27 Years
R/o- House No. 125, Ward No. 12, Jabkasa, Jabkasa Nedgaon,
Rajnandgaon, District- Rajnandgaon, Chhattisgarh, District :
Rajnandgaon, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- S.H.O., P.S.- Manpur, District-
Rajnandgaon, District : Rajnandgaon, Chhattisgarh

---- Respondent

For Applicant.	: Mr. Hemant Gupta, Advocate.
For Respondent/State	: Mr. H.S.Ahluwalia, Dy.Advocate General

Hon'ble Smt. Justice Rajani Dubey
Order on Board

15.7.2020

1. Heard.
2. Registry has pointed out the default that the applicant has not filed this application under Section 439 of the Code of Criminal Procedure and has wrongly filed this application under Section 438 of the Cr.P.C. The Registry has also pointed out the default that the applicant has not filed an application before the Court below and has filed instant bail application before this Court.
3. The applicant has filed this bail application under Section 439 (wrongly written as 438) of the Code of Criminal Procedure for grant of regular bail as he has been arrested in connection with Crime No.04/2020 registered at Police Station :Manpur, District Rajnandgaon (CG) for the offence punishable under Section 376 (D) of the IPC.

4. Learned counsel for the applicant submits that both the Courts, i.e. the Sessions Court and the High Court, both exercised concurrent powers under Section 439 Cr.P.C. In COVID-19 pandemic situation where entire world is suffering and people are dying due to spread of it on large scale, therefore, the application filed under Section 439 Cr.P.C. before this Court is maintainable. He submits that it becomes mere formality of litigation or to get formal orders of rejection, which amounts to waste of precious legal time of the Courts and proximity of litigations, therefore, this is a strong, legal and sufficient ground to file bail application under Section 439 of Cr.P.C. directly before this Court. He placed reliance on **Sundeep Kumar Bafna Vs. State of Maharashtra and Anr., SCC 2014 Vol -16, 623.**
5. Learned counsel for the State opposes the bail application and submits that as per High Court direction, the Sessions Court of Rajnandgaon is hearing urgent matters.
6. I have heard learned counsel for both the parties and perused the material available on record.
7. The High Court of Chhattisgarh Rules, 2007 provides proforma of application under Section 439 Cr.P.C. In para 2 of its format, the applicant has to give details of lower court's rejection order, is mandatory. It is also prescribed in Practice Directions Notification No.3491/2008 dated 22nd April, 2008 that in bail matters both under Section 438 and 439 Cr.P.C., certified copy of the order passed by the Sessions Judge is mandatory.
8. The Hon'ble Apex Court in the matter of **Tirupati Balaji Developers (P) Ltd. and Others Vs. State of Bihar and Others,(2004) 5 SCC,** has held in para 31 as under :

"31. Though, the jurisdiction conferred on the Supreme Court under Article 136 is very wide and no technicality can prevent or hinder the effective exercise of such jurisdiction yet as a rule of prudence and self-imposed discipline the superior forum refuses to exercise its jurisdiction in the first instance if the grievance raised is capable of being taken care of by any lower forum competent to do so".

9. Looking to the Rules of this High Court (High Court of Chhattisgarh Rules, 2007) and the guidelines of the Hon'ble Apex Court in the matter of **Tirupati Balaja Developers** (supra) as also after going through the bail application, it is clearly apparent that there is no exceptional situation in this case so as to decide the matter directly without approaching the lower court.
10. Accordingly, I.A.No.2, application for exemption from filing typed copy of handwritten documents stands disposed of. Consequently, without further commenting on merits, the bail application filed under Section 439 Cr.P.C. is dismissed. However, the applicant is at liberty to approach the concerned court for grant of bail.

Sd/
(Rajani Dubey)
Judge