

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.3590 of 2020**

- Shiv Patel S/o Late Kanhaiya Lal Patel Aged About 39 Years R/o Village-Kharakona, Bargidih P.S. Lunda District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Kotwali - Ambikapur District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondent

For Applicants	:	Shri Sunil Tripathi, Advocate
For Respondent/State	:	Shri Ravish Verma, GA
For Objector	:	Shri Neeraj Mehta, Advocate

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/08/2020**

Heard.

1. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.208/2020 registered at Police Station Kotwali, Ambikapur, District Surguja for the offence punishable under Section 302, 201, 120-B of IPC and Section 27 of Arms Act. The applicant was arrested on 11-04-2020.
2. Prosecution case is that the co-accused Akash Gupta had purchased certain property from the family of Balraj Agrawal and an amount of Rs.1,67,00,000/- was paid, but despite repeated demand, remaining amount to be paid, were not being paid to Akash Gupta. It is the prosecution case that thereafter, Akash Gupta entered into a conspiracy with co-accused Shrawan Kumar Yadav @ Siddharth Yadav and Ramesh Agrawal and pistol was purchased from the present applicant and thereafter on 10-04-2020, demand was made by Akash Gupta from the deceased Sunil and Sourabh Agrawal S/o

Balraj Agrawal, quarrel took place and Sunil and Sourabh Agrawal denied further liability and at this juncture, Siddharth @ Shrawan Yadav and Akash Gupta opened assault with firearms and knife, inflicting injury on Sunil and Sourabh, resulting in their death.

3. Learned counsel for the applicant submits that as far as the present applicant-Shiv Patel is concerned, he is being involved in the alleged conspiracy on the basis of the memorandum given by Akash Gupta, who had serious dispute with Sunil and Sourabh, the deceased. But, in the memorandum itself, Akash suggest that conspiracy to murder Sunil and Sourabh was hatched after purchase of pistol. Learned counsel for the applicant would submit that firstly, the statement in the memorandum regarding purchase of pistol from the applicant is not legally admissible evidence against the applicant and except that memorandum statement, there is no other evidence collected by prosecution to prove purchase of pistol from the applicant. Secondly, it is argued that even if it is assumed that pistol was purchased prior to 13-03-2020 by Ramesh Agrawal from the present applicant, it was a simple purchase of fire arm, but there is nothing to show that by that time, any conspiracy to murder was hatched. Mere purchase of pistol from the applicant prior to hatching of conspiracy by the other accused does not involve the applicant in the offence of murder. The applicant, except at the time of purchase of pistol, never alleged to have met with the remaining accused much less present at the time of incident on 10-04-2020. Therefore, at the most, offence under Section 25 & 27 of the Arms Act could be registered against the applicant. As investigation is complete, charge sheet has been filed, the applicant may be granted bail.

4. On the other hand, learned counsel for the State as learned counsel for the Objector opposes the bail application by submitting that hatching of conspiracy, involved the aforesaid acts by the various members of group, but at different point of time, towards fulfillment of commission of offence of murder. The purchase of pistol from the present applicant was part of conspiracy and therefore, the present applicant-Shiv Patel is equally involved in the conspiracy. He would submit that all the three accused had gone to Shiv Patel for purchase of Pistol, which clearly shows that having conspired to murder Sunil and Sourabh, they met with the present applicant and purchased pistol from him, which was a step towards committing act of conspiracy.

5. Having considered the submission of learned counsel for the parties and the material on the record as well as in the case diary, as disclosed by the

learned State counsel, involvement of the present applicant in the alleged offence is based on the memorandum statement of co-accused Akash Gupta. According to that memorandum statement, pistol was purchased from the applicant by Ramesh Agrawal. Hatching of conspiracy to murder, even according to the memorandum statement, had taken place after purchase of pistol. Neither in the memorandum statement nor any other material evidence contained in the prosecution papers, it has come that the applicant played any other role in hatching of conspiracy of committing any act in furtherance of conspiracy much less he sharing with other accused in such conspiracy. The applicant is not even stated to be present on 10-04-2020. Therefore, there is a considerable force in the submission of learned counsel for the applicant and an arguable case that against the present applicant, the element of conspiracy is not supported by any clinching evidence and in the absence of any authority to sale firearm, if at all proved, could only lead to commission of offence under Section 25 & 27 of the Arms Act.

6. Taking into consideration the aforesaid circumstances of the case and material on record, I consider it to be a fit case for grant of bail.

7. Accordingly, the application is allowed. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- along with two local surety of the like amount to the satisfaction of the trial Court on the condition that he shall appear before the trial Court regularly on each and every date of hearing, unless exempted.

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
Judge