

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3865 of 2020**

Obed Kumar Mehar S/o Tikewshwar Aged About 31 Years R/o Village And
P.S. Bhasma, District- Sundergarh, Odhisa.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station- Torwa,
District- Bilaspur, Chhattisgarh

.....Non-applicant

For the Applicant	:	Shri Sachin Nidhi, Adv.
For Non Applicant	:	Shri D.C. Verma, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**Oral Order****30-9-2020**

1. This is 3rd bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. His no other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was rejected by this Court vide order dated 18-9-2019 passed in MCRC No. 5363/2019 considering prima facie case against him. His 2nd bail application was dismissed for want of prosecution vide order dated 28-2-2020 passed in MCRC No. 492/2020.
3. The applicant has been arrested in connection with Crime No. 496/2018 registered in police station Torwa, Distt. Bilaspur (CG) for offence punishable under Section 420, 468, 120-B/34 of the IPC and Sections 66(C) and 66(D) of the Information Technology Act.
4. Case of the prosecution, in brief, is that applicant and other co-accused applying the screen device in ATM booths, prepared cloned ACM cards. They were withdrawing cash from the account of other account holders by using cloned ATM cards. On the memorandum of applicant series of articles like laptop, mobiles, 20 cloned ATM cards were seized from him. It is alleged that Rs. 30,000/- were withdrawn from the account of complainant Arijit Roy by using cloned ATM card.
5. Counsel for the applicant submits that as regards offence under

Section 420 of IPC, compromise has been done between the applicant and complainant Arijit Roy. He drew my attention on certified copy of the order of the trial Court dated 29-7-2019 wherein the applicant has been acquitted of the offence punishable under Section 420/34 of the IPC. He is in jail since 18-3-2019, FIR is delayed by 8 days. He drew my attention on true copy of the statement of Seizure witness P.W. 4 Ram Prasad Yadav who has turned hostile and has not supported the prosecution case. He also drew my attention on true copy of statement of witness of memorandum P.W. 6 Lallu Chauhan who has also turned hostile. The applicant has been enlarged on bail in all other cases. No CCTV footage is available, no case is made out against the applicant. Co-accused Srimant Das alias Babu has already been bailed out by the coordinate bench of this Court. He drew my attention on photocopy of order of coordinate bench dated 25-8-2020. Hence the applicant may be released on bail.

6. On the other hand, counsel for the State opposed the bail application. He submitted that as per police case diary total 10 criminal cases of similar types have been registered against the applicant.
7. This is true that period of detention of the accused and delay in trial are the material factors for disposal of bail application of accused but it is also equally true that seriousness of the offence and impact of grant of bail to the accused on society are more important and material factors for disposal of the bail application filed by the accused.
8. This is also well settled legal position that while deciding bail application this Court can neither scrutinize nor appreciate the evidence. It is only the trial Court which is competent to do it at the time of appreciation of evidence.
9. Mere turning hostile of some witnesses is itself not a sufficient ground for grant of bail. Moreover, in the case in hand, IO is yet to be examined.
10. This Court earlier rejected the bail application of the applicant on 18-9-2019. Thereafter on 25-8-2020 the coordinate bench of this Court granted bail to the co-accused Shrimant Das @ Babu. The order of the coordinate bench also does not reveal that rejection order passed by this bench was considered. Hence, the applicant does not get any

help from the aforesaid order of the coordinate bench.

11. Looking to the other charges, looking to the facts and circumstances of the case, considering the totality of the facts of the case, this Court finds that this is not a fit case where the applicant may be released on bail in 3rd round of litigation. Consequently, the 3rd bail application is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge