

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.3902 of 2020

1. Vikash Jain S/o Santosh Jain Aged About 29 Years R/o Zonal Market, Shop No. 212, Sector 10, Bhilai, At Present R/o Flat No. 18 G, 11 Chauhan Town, Junwani, Bhilai, District- Durg, Chhattisgarh
 2. Ajit Singh S/o Late Mehar Singh Aged About 47 Years R/o Street No. 12, Plot No. 80, Smriti Nagar, Bhilai, Police Station- Supela, District- Durg, Chhattisgarh
- Applicants**

Versus

State Of Chhattisgarh Through Police Station- Pulgaon, District- Durg, Chhattisgarh

---- Respondent

For Applicants	:	Shri P.K. Patel, Advocate
For Respondent/State	:	Shri Alok Bakshi, Additional A.G.
For Objector	:	Shri Kishore Bhaduri, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/09/2020

Heard.

1. The applicants have been arrested in connection with Crime No.643 of 2015 registered at Police Station- Pulgaon, District Durg (CG) for the alleged commission of offence under Section 302, 201, 120-B of IPC.
2. Case of the prosecution is that the applicants and co-accused conspired to murder deceased Abhishek and he was called in the house of applicant No.1/ Vikash Jain and co-accused Kimsi, his wife where he was murdered and then his dead body was packed in the bag and thereafter, it was taken to the house of applicant No.2/ Ajit Singh and buried.
3. Learned counsel for the applicants argues that the entire case of the prosecution against the applicants is based on conjecture and surmises without there being any incriminating evidence collected during investigation. He would submit that the offence against the present applicants under Section 201 IPC on the ground that they caused disappearance of the dead

body by burying in the courtyard of the house of the applicant No.2/Ajit Singh. He would next submit that the allegation of conspiracy, murder, dragging the body from one place to the other place are all based only on the memorandum statement and nothing more. He would further submit that the applicants are languishing in jail since 23.12.2015 and till date, trial has not been concluded or likely to be concluded. Therefore, it is extraordinary situation of the applicants remaining in jail for such a long time without conclusion of trial, even if it is a case of allegation of murder, the applicants deserve to be released on bail.

4. On the other hand, learned counsel for the Objector and State submit that though there is no direct evidence, clinching circumstantial evidence has been brought by the prosecution. It is argued that Kimsi was employee under deceased Abhishek and she was being exploited. Kimsi with her husband Vikash Jain and applicant No.2/Ajit Singh planned murder. It is argued that dead body of Abhishek was exhumed from the premises of the house of accused Ajit Singh. Further submission is that there are witnesses of the prosecution, who have stated in the diary statement regarding purchase of salt bag by the present applicants from the shop and vehicle, in which, they had come has also been identified. It is also argued that the persons, who were involved in digging the pit and thereafter burying body have also stated in their case diary statement regarding involvement of the present applicants. Learned counsel for the State submits that at one point of time, the trial was concluded, arguments were heard but it was to be reopened to examine two more witnesses and therefore, the trial is likely to be concluded early. It is argued that since present is a case of murder, only on the ground of delay in completion of trial, the applicants are not entitled to grant of bail.
5. I have heard learned counsel for the parties and taken into consideration the material disclosed by the State counsel from the contents of the case diary. The involvement of the present applicants is based on circumstantial evidence. The postmortem report indicates that death was homicidal in nature. The dead body of deceased Abhishek is said to be exhumed from the house of the applicant Ajit Singh. According to prosecution, the body was buried in the house of applicant No.2/Ajit Singh. Diary statement of the person from whom bags of salt were produced and also diary statement of those, who had digged the pit and thereafter body was buried also prima

facie involves applicants. Therefore, prima facie case is made out against the present applicants that they have been involved in the conspiracy of murder of deceased Abhishek.

6. Learned counsel for the parties do not dispute that the bail application of Kimsi, wife of applicant No.1/Vikash Jain has been rejected thrice by this Court. Though, it is argued by learned counsel for the applicants that the case of co-accused Kimsi is different from present applicants, looking to the nature of allegation, it is a case of grave offence.
7. The other side of the case is that the applicants have remained in jail since last almost 5 years without trial concluded till date. From the submission of learned counsel for the parties, it appears that trial is at the verge of conclusion. This Court is also not oblivious of the present situation due to pandemic that trial is not taking place.
8. But for the serious nature of allegation of extreme nature involving an offence of murder, long detention perhaps could be a ground for grant of bail. But in the present case as the offence is punishable for life imprisonment, at this stage, this Court is not inclined to grant bail to the applicants on the ground that trial has not been concluded till date. Therefore, the application is rejected. In case, there is no possibility of commencement of trial within three months from today, the applicants may revive their bail application.

Sd/-
(Manindra Mohan Shrivastava)
Judge