

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 5840 of 2020**

Gourishanker Kaiwart, S/o. Suritram Kaiwart, aged about 25 years, R/o. Village - Kishanpur, Police Station and Tehsil - Pithora, District - Mahasamund Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through : S.H.O., Police Station - Pithora District - Mahasamund Chhattisgarh.

---- Respondent

For Applicant	: Mr. Govind Ram Miri, Advocate with Mr. Basant Kaiwartya, Advocate
For Respondent/State	: Mr. Devendra Pratap Singh, Dy.A.G.
For Objector	: Mr. Raghavendra Pradhan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board**13/10/2020**

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with Crime No.87/2018, registered at Police Station – Pithora, District – Mahasamund (C.G.) for the offence punishable under Section 302, 457, 458, 460, 396 and 201 of the Indian Penal Code. The first bail application M.Cr.C. No. 5793 of 2019 of the applicant was dismissed on merits vide order dated 25.09.2019.
2. It is submitted by the learned counsel for the applicant that in the previous order, this Court observed, that the materials that have been collected from the spot and samples have been collected and seized from the applicant and others, which have been sent for DNA test and

the result is awaited which appears to be the reason for rejection of the previous application. It is submitted that circumstances have now changed, the DNA test report has been received, in which, it is reported that samples obtained from this applicant have not matched with the articles that have been seized in the investigation. Hence, this report exonerates the applicant from all the allegations made against him. Hence, it is prayed that the applicant may be released on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that in the previous order dated 25.09.2019, this Court has by giving a detailed reasoning rejected the prayer made by the applicant. Only on this basis that DNA report has been filed at present, it can not be said that case is made out for grant of bail to the applicant. The statement of the applicant under Section 27 of the Evidence Act shows the manner, in which, he has participated in the commission of offence, in which, four persons were murdered, therefore, the applicant is not entitled for grant of bail.
4. Counsel for the objector submits that the applicant is being charged and tried for commission of heinous offence regarding murder of four persons. So far only few witnesses have been examined and in the further trial, there is possibility that further evidence will be collected against the applicant to show his participation in the commission of offence. Therefore, the application be rejected.
5. I have heard the learned counsel for both the parties and perused the case diary.

6. Considered on the submissions. There is no need to consider the application again on merits. As regards the ground on which the bail is prayed for that DNA test report is in favour of the applicant, that is still to be examined and determined by the trial Court in the trial itself. There is clear mention in the paragraph 9 of the order dated 25.09.2019, that after over all consideration on all the facts and circumstances of the case, the Court was of the opinion that it was not a fit case for grant of bail to the applicant. There appears to be no change in observation that was made by this Court and this Court can not revisit the facts of the case on the basis of the statement of the witnesses recorded before the trial Court, as the evidentiary value of that is subject to determination by the trial Court itself. Therefore, in my view there is no change in circumstances. Hence, for these reasons, this Court is of the opinion that present is not a fit case, in which, the applicant should be enlarged on regular bail.
7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge