

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6385 of 2020

1. Sudhir Gajwani, S/o Chandrakumar Gajwani, Aged About 26 Years R/o - Shyam Nagar, Police Station - Telibandha, Raipur District - Raipur (C.G.).

---- Applicant

Versus

1. State Of Chhattisgarh, Through District Magistrate, Raipur, District - Raipur (C.G.).

---- Respondent

For Applicant	: Shri Kishore Bhaduri, Advocate.
For Respondent/State	: Miss Veena Nair, Dy. Advocate General.
For Objector:	: Shri Vikas Shrivastava, Advocate.

Hon'ble Justice Shri Gautam Chourdiya
Order on Board

26/11/2020

- 1) The applicant has preferred this First Bail Application under Section 439 of Code of Criminal Procedure, 1973 for releasing him on regular bail during trial in connection with Crime No. 455/2019, registered at Police Station Telibandha, Raipur District - Raipur (C.G.) for the offence punishable under Sections 302, 34 of IPC and Sections 25 & 27 of Arms Act.
- 2) The prosecution story in brief, is that on 12.09.2019 complainant lodged an F.I.R. that his brother Vikash Poptani was moving on the motorcycle with Vijju and maternal uncle of Vijju at night about 1 am., in the morning at about 4:30 am., he received a phone call from Adarsh Panjavani that his brother was murdered by someone. During the course of investigation memorandum of the present applicant Shudhir was recorded and he has disclosed that deceased quarreled every time with him and on fateful day of incident co-accused Nirmal gave knife and told that if deceased quarrel once again with you then you assault the

deceased with knife. On the date of incident a quarrel took place between them, then the present applicant Shudhir assaulted the deceased with knife. Based on this offence has been registered against the present applicant and co-accused.

- 3) Learned counsel for the applicant submits that in this case the similarly situated co-accused Nirmal @ Sahil has already been released on bail by Co-ordinate Bench in MCRC No. 5343/2020 vide order dated 23/09/2020. Since the applicant is said to have assaulted the deceased sharing common intention with the co-accused Nirmal, on the ground of parity he is also entitled for bail.
- 4) Learned counsel for the applicant submits that as per the prosecution case itself the present applicant assaulted the deceased with knife on being exhorted by co-accused Nirmal and as such when the co-accused has been released on bail by Co-ordinate Bench the present applicant also deserves to be granted bail by this Court.
- 5) On the other hand, learned counsel for the respondent/State opposes the bail application.
- 6) I have heard the learned counsel appearing for the parties and perused the case diary.
- 7) It is not disputed by both the counsel in this case there is eye witness namely Vijju who has categorically stated in his statements recorded under Sections 161 and 164 of Cr.P.C. as to the manner in which the present applicant assaulted the deceased with knife which resulted in his death. Accordingly, to the eye witness, co-accused namely Nirmal was not present at the spot and he provided knife to the present applicant only for the purpose of his protection. In this case the knife has been seized from the co-accused Nirmal whereas from the possession of the present applicant his blood stained clothes has been seized, on which human blood was found as per FSL report.

- 8) Looking to the nature and quality of evidence available in the case dairy, the case of the present applicant is quite different from that of the co-accused Nirmal who has been released on bail by the Co-ordinate Bench. Therefore, considering the facts and circumstances of the case, the role played by the present applicant in commission of the offence and the evidence appearing against him, this Court is of the opinion that present is not a fit case to release the applicant on bail. Accordingly, the application is rejected.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant