

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.794 of 2020**

1. Sukhram Kashyap S/o. Mahangu Kashyap Aged About 46 Years
Residence At Village Pichchikoder, P.S. Mardum, District Bastar
(Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh
2. Somadu Mandavi S/o Late Gagaru Ram Mandavi Aged About 35 Years
Resident At Village Pichchikoder, P.S. Mardum, District Bastar
(Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh
3. Katakash Kashyap S/o Pohda Ram Kashyap Aged About 35 Years
Resident At Village Pichchikoder, P.S. Mardum, District Bastar
(Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh
4. Gobel Mandavi S/o. Late Gagaru Mandavi Aged About 40 Years Resident
At Village Pichchikoder, P.S. Mardum, District Bastar (Chhattisgarh),
District : Bastar(Jagdalpur), Chhattisgarh

---- Appellants(In Jail)**Versus**

- State Of Chhattisgarh Through The Police Station Mardum, District Bastar
(Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent**Present:-**

Shri P. K. Tulsyan, counsel for the appellants.
Smt. Hamida Siddiqui, Dy.AG for State.

**Division Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt. Justice Vimla Singh Kapoor**

Order On Board**09/12/2020**

1. This appeal arises out of order dated 19-09-2020 passed by the Special Judge, N.I.A Act, Jagdalpur, by which, the application for grant of bail filed by the appellants has been rejected.
2. Learned counsel for the appellants would argue that the learned Court below without due consideration of the submission made before it in support of prayer for grant of bail and without due consideration of the material on record has rejected the bail application only on the basis that there are serious allegations on the appellants being involved in the banned organization of Naxalite. He would submit that in the present case, when FIR was lodged

immediately after the incident on 28-02-2018, the owner of the tractors, which are said to be burnt, did not name the present appellants. It is next submitted that in the case diary statement of Lokesh, the Clerk, though appellants have been named, but it cannot be said that there cannot be more than one person of the same name, therefore, in such a case, it was necessary to conduct test identification parade. Further submission is that after long delay, some concocted witnesses have been prepared by the prosecution, whose statements are mechanical and only to falsely implicate the appellants, their names have been mentioned. Learned counsel for the appellants would further argue that from the possession of the appellants, bows, arrows, sword and axe have been recovered, but no explosives have been recovered nor any material to show that the appellants are otherwise involved in the naxalite activity. It is also submitted that the trial is not concluded till date. It is submitted that the appellants are in jail since 03-03-2018 and almost two years and 9 months have elapsed, therefore, the appellants may be granted bail as only on the allegation of commission of serious offences, the appellants cannot be kept in jail for indefinite period. He would submit that because of the pandemic situation, trial have been delayed and there is no likelihood of early conclusion of trial.

3. On the other hand, learned State counsel opposes the bail application by submitting that in the present case, there are serious allegations of commission of offence under Section 147, 148, 149, 323, 435, 427, 395, 342 of IPC, Section 25 & 27 of the Arms Act and Section 38(2), 39(2) of Vidhi Virudh Kriya Kalap Nivaran Adhiniyam, 2008. Learned State counsel would submit that the clerk of owner of the tractor, whose statements are recorded on the next date of FIR i.e. on 01-03-2018, has clearly stated that name of the present appellants are involved in the act of setting as many as 9 tractors on fire. Learned State counsel would argue that the present appellants have been involved on serious allegations of they being associate of naxalites and involved in the naxalite activity. Apart from Clerk-Lokesh, there are other witnesses of the prosecution namely Piraram, Dhanaram, Madrupa, Kosa Poyami and Golu Ram Poyami, who have also named the present appellants as involved in the naxalite activity. Therefore, there is a prima facie case against the appellants. It is also submitted that though the present appellants remained in jail for a long period, but only on that ground, the appellants are not entitled to bail, because the offences are grave in nature.

4. We have heard learned counsel for the parties and perused the impugned order and also the material disclosed from the case diary.

5. We find that number of arguments have been raised before this Court by

the learned counsel for the appellants and even in the impugned order. From the impugned order, it is revealed that number of grounds have been raised seeking grant of bail, however, learned Special Judge has not considered any thing, but only on the ground of serious allegations, the applications have been rejected. We, therefore, have considered the submissions.

6. True it is that test identification parade has not been conducted, but the appellants have been named immediately after the incident by the Clerk of owner of tractor, who is an eye-witness of the incident. On the very next day, the Clerk, who was stated to be present at the time of incident has given its case diary statement i.e. on 01-03-2018, in which, all the appellants have been named. Allegations against the appellants is that they are involved in the naxalite activity being associate of naxalites. Allegation of setting on fire as many as 9 tractors, are belonging to the complainant. Apart from the offences alleged against the appellants under the Indian Penal Code and Arms Act, particularly taking into consideration that the appellants have been charged for commission of offence under Section 38(2) & 39(2) of Vidhi Virudh Kriya Kalap Nivaran Adhiniyam, 2008 and involvement of the appellants on the assumption of gravity of the offence, scales above the period of detention.

7. Accordingly, the appeal is dismissed. Nevertheless, the appellants are entitled to expeditious trial of the case as the appellants cannot be kept in jail for indefinite period only on the ground of allegations of serious offence. In order to strike balance, while we are not inclined to interfere with the order of rejecting application for grant of bail, we think it proper that the trial may be expedited and conclude the same at the earliest because the appellants remained in jail for a period almost close to three years. It is stated that out of 20 witnesses, two witnesses have been examined. We can take notice of the fact that the trial is now commenced after 17-11-2020 due to physical opening of the Courts, the Special Judge is directed to conclude the trial within a period of four months. Presence of the witnesses shall be ensured, if necessary, through coercive process of warrant, if they do not appear.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E

SD/-
(**Vimla Singh Kapoor**)
J U D G E

