

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 567 of 2021**

1. Ajay Kumar Jaiswal, S/o Shri Shivnath Prasad Jaiswal Aged About 44 Years
2. Shubham Jaiswal S/o Shri Anil Jaiswal Aged About 22 Years

Both Residents Of Bus Stand, Bagicha, Ward No. 07, Bagicha, Jashpur,
Bagicha, Chhattisgarh

---- Applicants (In Jail)

Versus

- State Of Chhattisgarh Through- P.S. - Bagicha, Distt. Jashpur, Chhattisgarh

---- Respondent

For Applicants	: Shri Jitendra Shrivastava and Shri Ashutosh Trivedi, Advocates
For Respondent/State	: Shri Vikram Sharma, Dy GA

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

02.03.2021

1. Applicants have preferred this application under Section 439 of CrPC for grant of regular bail as they have been arrested in connection with Crime No.05 of 2021 registered at Police Station Bagicha, District Jashpur (CG) for the offences punishable under Sections 294, 323, 506, 341, 392/34 of the IPC.
2. Case of the prosecution, in brief, is that on 03.01.2021 at about 4.30 pm when complainant Kaushal Kumar was going to his friend on Rowny Road with money, he was called by his friends, where Shubham Jaiswal has asked him to leave the place. This was objected by the complainant. Complainant asked Shubham Jaiswal to leave the place and not to make any comment under the influence of liquor. To this, Shubham Jaiswal went towards his house and after some time, came there along with his uncle Ajay Jaiswal, brothers Honey Jaiswal and Chotu Jaiswal and assaulted the complainant. They have also snatched Rs.3,500/- kept in his pocket.

3. Shri Jitendra Shrivastava, learned counsel for the applicants submits that complainant Kaushal Kumar was actually demanding money from Shubham Jaiswal, applicant-2, stating that he lost his money in gambling. When Shubham refused to do so, complainant Kaushal Kumar started abusing and assaulting him. Other family members tried to intervene the incident. Applicant-2 lodged FIR against Kaushal Kumar on 03.01.2021 bearing FIR No.4 of 2021. In return, Kaushal Kumar lodged another FIR against Shubham Jaiswal and other three family members, by name Ajay Jaiswal, Honey Jaiswal and Chotu Jaiswal. Instant crime which has been registered against present applicants, except only offence alleged under Section 392 of IPC, all other offences are bailable. He also pointed out that Applicant-2 is tax payer and there is no need for him looting Rs.3,500/- from the complainant. Allegation of commission of offence under Section 392 of IPC is levelled to implicate the applicants in grievous offence. Applicants are in jail since 04.01.2021 and looking to the nature of allegations against them, they may be granted benefit under Section 439 of the CrPC.

4. Shri Vikram Sharma, learned Dy Government Advocate for the State controverting the submissions made by learned counsel for the applicant, submits that so far as the submission made by learned counsel for the applicants that they also lodged FIR against the complainant punishable under Sections 294, 323 and 506 of the IPC is concerned, upon medical examination of Shubham Jaiswal, no injury has been found on his person. He further pointed out that Shubham Jaiswal was involved in another crime under the gambling Act. He further

pointed out that there are criminal antecedents against Applicant-1, of cases under Sections 107 and 116 of the IPC and other cases under Sections 294, 354 of IPC, and 3 of the SC/ST Act. Crime which is registered against Applicant-1 in the year 2020 bearing No.8 of 2020 for offences punishable under Sections 341, 186, 294 and 506 B of the IPC. In this year also there is crime registered against Applicant-1 under Section 107 and 116 of Cr PC showing him to be habitual offender, hence they are not entitled for benefit under Section 439 of the Cr.PC.

5. Shri Jitendra Shrivastava, learned counsel for the applicants submits that the crime registered in the year 2020 against applicant-1 is when the attempt of electricity dis-connection is made from his residents during the lock down period. In the said crime, he has been granted anticipatory bail from the Court below. He further pointed out that there is no other criminal antecedents against Applicant-2 except gambling Act in the year 2016.

6. I have heard learned counsel for the parties.

7. The counter case registered against complainant Kaushal Kumar is not in dispute. In the counter case, complaint made by Applicant-2 against the complainant is under Sections 294, 323 and 506 of IPC which is prior to the FIR lodged by the complainant in this case.

8. Taking into consideration nature of allegations levelled against the applicants and further taking into consideration that all other offences alleged against the applicants, except 392 are bailable, pre-trial detention, case triable by Magistrate, and also considering the counter

case registered against the complainant, in which he has been enlarged bail; without commenting on merits of the case, I am inclined to enlarge the applicants on bail.

9. Accordingly, the bail application is allowed. It is directed that the applicants be released on regular bail upon furnishing a bail bond in the sum of Rs.10,000/- (Rupees ten thousand) each with one surety in the like sum to the satisfaction of Court below concerned on the condition that:

- a) Applicants shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
- b) Applicants shall not in any manner, tamper with the prosecution witnesses.
- c) If the applicants are found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE