

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 591 of 2021**

Deepak Kashyap, S/o Naresh Kashypa, aged 33 years, R/o Village Vijaynagar, P.S. Vijaynagar, P.S. Ramanujganj, District Balrampur, Ramanujganj (C.G.)

-----Applicant**Versus**

- State of Chhattisgarh, Through : Station House Officer, Outpost Vijaynagar, P.S. Ramanujganj, District Balrampur, Ramanujganj (C.G.)

---- Non-applicant

For Applicant	:	Mr. Shakti Raj Sinha, Advocate.
For Non-applicant	:	Mr. Sudeep Agrawal, Dy. Advocate General.

Hon'ble Mr. Justice Parth Prateem Sahu**Order on Board.****03/03/2021**

Heard.

1. Applicant has preferred this application under Section 439 Cr.P.C. for grant of regular bail as he has been arrested in connection with Crime No. 143/2020 registered at Police Station Ramanujganj, District Balrampur, Ramanujganj (C.G.) for the offence punishable under Sections 302, 201 read with Section 34 of IPC.
2. Case of the prosecution, in brief, is that on 24.07.2020 at about 7 am in the morning dead body of Pawan Kashyap was found floating in the Well of Raj Kumar Gupta. The present applicant has lodged a merg intimation, on the basis of which the police started investigation

and recorded statements of the witnesses namely Rajesh Kashyap, Archana, Ibrahim Ansari, Mumtaj Ansari, Raffiquiddin Ansari and Pratima, on the basis of which offence under Sections 302, 204 read with Section 34 of the IPC was registered. During course of investigation, on suspicion Jagdish Bhuia was taken into custody, memorandum statement of Jagdish Bhuia was recorded. Based on the memorandum statement, present applicant along with two persons namely Fekan Bhuia, Radharam have been arrested.

3. Mr. Shakti Raj Sinha, learned counsel for the applicant submits that the Police, after conclusion of the investigation, have filed charge sheet before the court below, in which, the statements of the witnesses recorded under Section 161 Cr.P.c along with other documents have been made part, but the memorandum statement of Jagdish Bhuia is not made part of the charge sheet, which shows that prosecution is not relying upon the memorandum statement of Jagdish Bhuia, based on which the applicant has been arrested. He further argued that in statements of local villagers recorded under Section 161 Cr.P.C., it has come that Pawan Kashyap was having extra marital relationship with wife of Fekan Bhuia. Prior to the date of incident, some quarrel took place between Jagdish Bhuia, Fekan & Radharam with deceased – Pawan Kashyap, in which the applicant intervened. He further argued that charge sheet is filed and there is no prima facie incriminating material in the entire charge sheet against the applicant involving him in the aforementioned crime.

4. On the other hand, Shri Sudeep Agrawal, learned Deputy Advocate General for the State/non-applicant submits that Archana, wife of Pawan Kashyap (since deceased), in her statement recorded under Section 161 of Cr.P.C., has stated that Pawan Kashyap was having some property dispute with the present applicant and similarly the memorandum statement of Jagdish Bhuia available in the case diary shows that it is the present applicant, who conspired and participated in the commission of offence. However, on specific query being made by this Court with regard to the submissions of learned counsel for the applicant that memorandum statement of Jagdish Bhuia was not made part of the charge sheet, he admits that from perusal of the charge sheet filed before the court below and indexing of the documents shows that memorandum statement of Jagdish Bhuia is not made part of the charge sheet.
5. I have heard learned counsel appearing for the respective parties.
6. Taking into consideration the fact that the statement recorded under Section 161 of Cr.P.C. of Archana, Ibrahim Ansari and further that the memorandum statement of Jagdish Bhuia, based on which, the applicant has been arrested, is not made part of the charge sheet, his pre-trial detention; without further commenting on merits, I am inclined to release the applicant on bail.
7. Accordingly, the bail application is allowed. It is directed that the applicant be released on regular bail on his furnishing a bail bond in the sum of Rs.10,000/- with one surety in the like sum to the satisfaction of the trial Court concerned on the conditions that-

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

Certified copy as per rules.

Sd/-

(Parth Prateem Sahu)
Judge

Dubey/-