

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 544 of 2021****Reserved on 29-1-2021****Delivered on 2-2-2021**

Hemshankar Sahu S/o Puranik Sahu Aged About 35 Years R/o Village -
Parsada- Kala, Police Station -Fingeshwar, District Gariyaband (CG)

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station Fingeshwar District -
Gariaband (CG)

---- Non Applicant

For the Applicant : Shri Mohd. Afroj Athar, Advocate

For Non Applicant : Shri R. Verma, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. This is 3rd bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was rejected by this Court by order dated 14-8-2019 passed in MCRC No.4700 of 2019 considering prima facie case against him. His 2nd bail application was rejected as withdrawn vide order dated 20-10-2020 passed in MCRC No. 6118/2020.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No. 84/2019 registered at Police Station-Fingeshwar, Distt. Gariyaband (C.G.) for the offence punishable under Sections 306 of IPC.
4. Case of the prosecution, in brief is that applicant is husband of deceased Yogeshwari Sahu. Marriage of applicant was solemnized with deceased in the year 2003. Applicant was harassing deceased after consuming liquor. On 20-5-2019 deceased consumed poison,

subsequently she died in CHC Fingeshwar.

5. Learned counsel for the applicant submits that the applicant is in jail since 4-6-2019, trial is delayed, there was no *mens rea* in part of applicant, the ingredient of Section 107 of IPC are missing, no witnesses supported the prosecution story, if the prosecution story is taken in *toto*, even then only the offence of cruelty is made out. Hence, the applicant may be released on bail.
6. Counsel for the applicant cited the order of coordinate bench of this Court passed in WPCR No. 1075/2019 (Sandeep Mishra -v- State of CG and others) dated 3-2-2020, the judgment of Hon'ble Supreme Court in the matter of **Gurjeet Singh -v- State of Punjab** passed in Cr.A. No. 1492-1493 of 2020 dated 26-11-2019.
7. Aforesaid order passed by coordinate bench of this Court and aforesaid judgment of Hon'ble Supreme Court relate to final disposal of the case on merits hence, at this stage applicant does not get any help from them.
8. This is true that period of detention of the accused and delay in trial are the material factors for disposal of bail application of accused but it is also equally true that seriousness of the offence and impact of grant of bail to the accused on society are more important and material factors for disposal of the bail application filed by the accused.
9. In the case in hand P.W. 7 Dilip Sahu, P.W. 8 Laxman Sahu, P.W. 12 Smt. Kanti Sahu stated against the applicant during recording of the evidence by the trial Court.
10. In the case in hand 13 prosecution witnesses have been examined and some are yet to be examined.
11. At this stage, prima facie it cannot be said that Section 107 of IPC does not attract in the case in hand and element of *mens rea* is absent.
12. Prima facie it cannot be said at this stage that there was no proximate nexus between the commission of suicide by the deceased and the alleged cruelty committed by the applicant.
13. Looking to the above mentioned facts and circumstances of the case, looking to the evidence available on record, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on

society, the 3rd bail application is rejected. However, trial Court is directed to expedite the trial and dispose of the case as early as possible preferably within 2 ½ months from the date of receipt of copy of this order.

14. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge

Pathak