

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1494 of 2021

1. Tekram Yadav, S/o Shri Anup Yadav, aged about 18 years, R/o Village Jaitpur, P.S. Lalpur, Tehsil & District-Mungeli (CG)
2. Anil Kumar, S/o Shri Chandrika Das, aged about 19 years, R/o Village Jaitpur P.S. Lalpur Tehsil & District Mungeli (CG)

---- **Applicants** (In jail)

Versus

- State of Chhattisgarh Through District Magistrate Mungeli, District-Mungeli, Chhattisgarh

---- **Non-applicant**

For Applicants	:	Mr. Rupesh Trivedi, Advocate
For Non-applicant	:	Mr. BP Banjare, Dy. Government Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

19.7.2021

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants, who are in custody since 16.10.2020 in connection with Crime No.602/2020 registered at Police Station City Kotwali, Mungeli (CG) for commission of offence punishable under Sections 302, 450, 394, 307/34 & 449 of the Indian Penal Code.
2. As per case of the prosecution, in the mid night of 09.10.2020, electric fan of house of complainant stopped as a result he woke up and saw that electric bulb of courtyard was tilting. After opening doors of room when he came out, he found two persons sitting in the courtyard of house. Seeing the complainant, one person attacked on him, caught hold of his neck and due to pressing of neck, the complainant became unconscious. Other person went inside the room. When the complainant gained consciousness in the morning, he went

inside the room, found his wife Khorbahrin Bai lying in dead condition, lock of trunk was broken and amount of Rs.5 Lakh kept in it, which he received as sale price on sell of his agriculture land, was missing. Complaint was lodged in concerned police station on next day against unknown persons based on which instant crime was registered. In the course of investigation, present applicants were arrested in connection with instant crime and based upon memorandum statement of applicant No.1, cash of Rs.20,000/-, one mobile and one motorcycle were seized from his possession. Likewise, on the basis of memorandum statement of applicant No.2, cash of Rs.20,000/- and one motorcycle was seized from his possession.

3. Mr. Rupesh Trivedi, learned counsel for applicants submits that from the contents of FIR and statement of complainant recorded under Section 161 of CrPC, it is apparent that complainant has not identified the accused persons due to dark night. He further submits that identification parade was not conducted by the police to identify present applicants. Present applicants have been made accused only on the basis of their memorandum statements. There is nothing in the charge sheet to connect present applicants with instant crime. Articles seized on memorandum are not the articles of complainant.
4. Mr. BP Banjare, learned State Counsel opposes the submissions made by learned counsel for applicants and submits that based on memorandum statements of applicant No.1, cash of Rs.20,000/-, one mobile phone & one motorcycle were seized from his possession, whereas on the basis of memorandum statement of applicant No.2, cash of Rs.20,000/- & mobile phone was seized from his possession. Hence, it is apparent that present applicants were involved in commission of instant crime, therefore, they are not entitled for regular bail.
5. I have heard learned counsel for the parties.

6. Taking into consideration the nature of allegations, the manner in which alleged crime is committed in the dark night, the fact that complainant has not identified accused persons, except memorandum statements of present applicants there is no other material in charge sheet to connect them with instant crime, I am of the view present is a fit case where applicants should be released on regular bail.
7. Accordingly, the application is allowed and it is directed that applicants shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the trial Court concerned on the conditions that;
 - a) they shall appear before the trial Court concerned regularly on each and every date unless exempted from appearance.
 - b) they shall not, in any manner, tamper with the prosecution witnesses.
 - c) If applicants are found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.
8. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-