

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1301 of 2021**

- Lav Kesh Ogrey (Lokesh), S/o Anil Kumar Ogrey, Aged About 22 Years, R/o Ward No. 11, Lewai (Khisora), Police Station Baloda, District Janjgir- Champa, Chhattisgrh
---- **Applicant (In jail)**

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Baloda, District Janjgir- Champa, Chhattisgarh
---- **Respondent**

For Applicant : Shri Malay Shrivastava, Advocate
For Respondent/State : Shri Vimlesh Bajpai, GA

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board
(Proceeding through Video Conferencing)

05.07.2021

1. Applicant has preferred this application under Section 439 CrPC for grant of regular bail as he was arrested in connection with Crime No.259 of 2020 registered at Police Station -Baloda, District- Janjgir-Champa, Chhattisgarh for the offence punishable under Section 302 of the IPC.
2. Case of the prosecution, in brief, is that on 15.03.2019, deceased-Lata Satnami went to hospital at Korba for taking treatment from Dr Ajay. After taking treatment, while she was returning her house, present applicant met her and dropped the deceased at her house on his motorcycle at about 2.30 pm. On that day at 9 pm, deceased started feeling uneasiness and vomiting, she was taken to hospital where during the course of treatment, she died on 20.03.2019. In her post-mortem report and FSL report, it has come that she died due to over dose of 'Diazepam' tablet. On the basis of statement of Suresh and others recorded by the Police under Section 161 CrPC, present applicant was arrested on 14.12.2020 in the instant crime.
3. Shri Malay Shrivastava, learned counsel for the applicant submits that, applicant has been falsely implicated in the case. As alleged, the incident was on

16.03.2019, on the same night at about 9 pm, deceased was taken to the hospital for treatment due to certain complications. He further referred to the memorandum/letter written by the Police to the Sub-Divisional Magistrate for recording statement (dying declaration) of deceased, who had appointed one Executive Magistrate for recording the same, but it could not be recorded. He further submits that for the first time, brother-in-law of deceased Suresh levelled allegations against present applicant on 20.10.2020, after lapse of more than 1 ½ years of the incident. He submits that except the said allegation, there is no material to connect the applicant in the instant crime. He further submits that contents of FSL report would show excess dose of medicine 'Diazepam' tablet, which is cause of death. Applicant is in jail since 13.12.2020, hence he may be released on bail.

4. Shri Vimlesh Bajpai, learned Government Advocate for the State opposing the submission made by learned counsel for the applicant submits that viscera has been sent for examination and FSL report has been obtained immediately, within two days. Cause of death is due to over dose of 'Diazepam' tablet. He submits that as per the statement of Suresh, deceased accompanied present applicant from Korba to her house and he gave soft drink 'Fruity' to her. He further referred to memorandum statement of the applicant recorded by the Police on 14.12.2020, to submit that applicant admitted his guilt of committing the instant crime.

5. At this stage, Shri Malay Shrivastava, learned counsel for the applicant submits that memorandum statement cannot be taken into consideration at this stage for holding the applicant guilty.

6. I have heard learned counsel for the parties.

7. Taking into consideration the nature of allegation levelled against the present applicant, the fact that deceased was admitted in hospital from 16th to 20th March, 2019, ie till her death; dying declaration of deceased was not recorded; statement of Suresh under Section 161 of CrPC was recorded only on 10.10.2020, after lapse of 1 ½ years of incident, wherein for the 1st time allegation was levelled against the present applicant, without commenting anything on merits of the case, I am inclined to enlarge the applicant on bail.

8. Accordingly, the bail application is allowed. It is directed that the applicant be released on regular bail upon furnishing a bail bond in the sum of Rs.25,000/- (Rupees twenty-five thousand) with one surety in the like sum to the satisfaction of the Court below concerned on the condition that:

- a) Applicant shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
- b) Applicant shall not in any manner, tamper with the prosecution witnesses.
- c) If the applicant is 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