

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M.Cr.C. No. 1439 of 2021

1. Tirta Ram S/o. Deshnath Ram, aged about 47 years.
 2. Abraham Xaxa S/o. Tirta Ram, aged about 22 years.
- Both are by Occupation -Labour, R/o. Village -Khara Kona, (Bijapara),
Police Station -Lundra, Distt – Surguja, (CG).

---- Applicants.

Versus

State of Chhattisgarh through Station House Officer, Police Station
-Lundra, Distt -Surguja, Chhattisgarh..

--- Respondent

For Applicants	:	Mr. Rahul K. Mishra, Advocate.
For Respondent/State	:	Mr. Vimlesh Bajpari, GA.
For Objector	:	Mr. Sanjay Pathak, Advocate.

(Proceedings through video conferencing)

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

12/07/2021

Heard.

1. This is first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicants, who have been arrested in connection with Crime No.107/2020, registered at Police Station – Lundra Distt -Surguja, (C.G), for the offence punishable under Sections 302 & 34 of the Indian Penal Code.
2. Case of the prosecution is that on 08.10.2020, dead body of Tingle Ladka was lying in the village, merge was intimated by Ayush Ladka (son of deceased) upon which, FIR was registered for the offence under Section 302 of IPC against un-known person. During the course of investigation, memorandum statement of present applicants were recorded, on memorandum of applicant No.1 -Tirta Ram, one Bamboo Stick has been recovered from his possession. Based upon which, applicants have been made accused in the instant crime.

3. Learned counsel for the applicants submits that except memorandum statements of accused persons no any other materials collected by the Investigating Agency to implicate or involved present applicants in instant crime. The bamboo stick said to be recovered from the possession of applicant No.1 is found in the house of every persons in the village. He further submits that statement of Vishnu Bhaskar stating that applicant No.1 has intimated him about incident committed on his Mobile Phone is also not reliable as call details is not forming part of charge sheet. No date is mentioned in the statements of witnesses recorded under Section 161 of Cr.PC. Only on the basis of suspicion, applicants have been arrested, they are in jail since 09.10.2020. Hence, they may be release of bail.
4. Learned State Counsel opposes the submissions made by learned counsel for the applicants. He submits that Police during the course of investigation, has recorded statement of 4 witnesses including wife, son, daughter-in-law of deceased and one independent witness Vishnu Bhaskar. He referred to the statement of Vishnu Bhaskar to argue that applicant No.1 himself has intimated him about the incident on his Mobile Phone, there is admission and acceptance of guilt by Vishnu Bhaskar. Applicants in their memorandum statements have also admitted their guilt, hence, they are not entitled for grant of bail. On putting a specific query to learned State Counsel with regard to date of recording of statements under Section 161 of Cr.PC of witnesses by the Police, he replied that no date is mentioned in case diary. He also submits that apart from statement of Vishnu Bhaskar, memorandum statement of present applicants and seizure, there is no eye-witness in the case, case

is fully based on the circumstantial evidence. Call details are not available.

5. Learned counsel for the Objector opposes the bail application. He submits that applicant No.1 himself has stated about commission of crime to Vishnu Bhaskar on his Mobile Phone. Applicants have admitted their guilt in memorandum statement, hence, they are not entitled for grant of bail.
6. Heard learned counsel for the parties.
7. Considering the entire facts and circumstances of the case, nature of allegations levelled against applicants, fact that FIR was registered against known person, no eye-witness of incident, Police has made accused the present applicants only on the basis of their memorandum statements, statement of Vishnu Bhaksar making allegation that applicant No.1 has given him a call intimated about crime is not supported by prosecution upon collecting calls details, period of detention of applicants, without commenting anything on merits of the case, I am inclined to allow this bail application.
8. Accordingly, bail application is allowed. It is directed that applicants shall be released on regular bail, on their furnishing a bail bond in sum of **Rs.25,000/-** each with one surety in the like sum to the satisfaction of the Court on the conditions that-
 - a) Applicants shall appear as and when directed by the investigating agency during the course of investigation.
 - b) Applicants shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
 - b) They shall not, in any manner, tamper with the prosecution

witnesses.

c) If They are 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

Jamal/-