

**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 1804 of 2021**

- Sanjay Kumar, s/o. Ramesh Kumar, aged about 19 years, Caste Bareth, resident of village Jarve, Police Station Nagarda, Tahsil Sakti, District Janjir – Champa (CG).  
---- **Applicant**

**Versus**

- State of Chhattisgarh through the District Magistrate, District Janjgir-Champa (CG) & Station House Officer, PS Nagarda, District Janjgir – Champa (CG).  
---- **Non-applicant**

For Applicant : Mr. Hari Agarwal, Advocate.

For State : Mr. B.P. Banjare, Dy. Govt. Advocate

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**Hon'ble Shri Justice Narendra Kumar Vyas**

**Order on Board****17-05-2021**

1. The applicant has preferred this first bail application under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail as he is in jail since 6-9-2020 in connection with Crime No. 103 of 2020 registered at Police Station Nagarda, District Janjgir-Champa (CG) for the offence punishable under Sections 302, 147 & 341 of IPC.
2. The case of the prosecution, in brief, is that on 5-9-2020 onde Rahul Yadav son of Busahu Yadav filed a merg intimation stating that the body of the deceased namely Ravishankar Saarthi s/o. Itwari Ram Saarthi was lyibng in the field near Sonumuda Pilari Stream. Thereafter, merg report was registered, punchnama was prepared and postmortem was conducted in which it was stated

that death of deceased seems to be homicidal in nature and as such an offence being crime No. 103 of 2020 under Section 302 of IPC was registered against the unknown person. Thereafter, during the course of investigation, it was found that on 4-9-2020 at around 2 pm one Dilip Kumari called the deceased and then the deceased told said Dilip Kumari over telephone to meet him at around 7 pm and at around 9 pm deceased went to meet said Dilip Kumari in the Gothan of the village and thereafter around 10 pm said Dilip Kumari told the deceased to return to his home. Thereafter, when he was returning back to his home, he informed Dilip Kumari over telephone that around 6 -7 boys of village were assaulting him near Sakra Pul and asked her to bring someone for help, upon which said Dilip Kumari reached the spot with one Sonam and saw that the accused applicant along with other co-accused persons namely Pushpendra Kavar, minor Hemlal, minor Ghanshyam Patel, minor Purshottam Kavar and Anup Kumar Mahant were assaulting the deceased with fists and blows and thereupon said Dilip Kumari and Sonam told the accused persons to stop, to which they refused and thereafter said Dilip Kumari and Sonam returned back . Thereafter, on 5-9-2020 in the afternoon, news relating to finding of a dead body of deceased was spread in the village. On the basis of said report, FIR was registered against the present applicant and other co-accused persons. The applicant and other co-accused persons

have been arrested on 6-9-2020. After completion of investigation, charge sheet for offence punishable under Sections 302,147 and 341 of IPC has been filed and presently Sessions Trial No. 21 of 2020 is pending consideration before the court of First Additional Sessions Judge, Sakti District Janjgir Champa (CG).

3. Learned counsel for the applicant submits that the applicant is an innocent and has been falsely implicated in this case. Although there is allegation that the deceased was dead because of thrashing given by the applicant and other co-accused persons, but the postmortem shows that the cause of death of deceased is electrocution, therefore, the allegation is false. He would further submit that the applicant is in jail since 6-9-2020 and conclusion of the trial is likely to take some time, therefore he may be released on bail. In support of his arguments, learned counsel for the applicant has placed the order dated 13-4-2021 passed by Co-ordinate Bench of this Court in **CR.R.No. 172 of 2021 (Hemlal Kenwat and another vs. State of CG)** and **CR.R.No. 2021 (Ghanshyam Patel vs State of Chhattisgarh)** wherein co-accused Hemlal Kenwat and Purushottam Kumar Kanwar and Ghanshyam Patel have been granted bail and prayed for grant of bail on the same ground of parity.
4. On the other hand, learned counsel for the State opposes the bail application and would submit that there is sufficient material

which shows the clear involvement of the applicant in the crime in question, therefore, he is not entitled to be released on bail.

5. I have heard learned counsel for the parties and perused the case diary and have also gone through the order cited by the counsel for the applicant. In the case of Hemlal Kenwat, Purushottam Kumar Kanwar and Ghanshyam Patel (CR.R.No. 172 of 2021 and 202 of 2021) the Co-ordinate Bench of this Court has granted bail to the other co-accused persons who are juvenile and there is no legal impediment for not granting bail to the juvenile as per provisions of 12 (I) of Juvenile Justice (Care and Protection of Minor) Act, 2015. This is not the present position. Present applicant is a major and two eye-witnesses namely Dilip Kumari and Sonam clearly deposed involvement of the applicant which cannot be lost sight while considering the application for grant of bail at this stage. The order cited by learned counsel for the applicant is clearly distinguishable from the facts of the present case. The stand taken by the applicant that there is difference between the cause of death of the deceased, may be a defence which may be available to the applicant during the course of trial, but the same cannot be considered for grant of bail in view of the fact that in the case diary two eye-witnesses have deposed against the present applicant.

6. Considering the facts and circumstances of the case, the manner in which the gravity of the offence has been committed, considering the material facts present in the case diary, statement of two eye-witnesses establishes the involvement of the applicant, therefore, I am not inclined to grant bail to the applicant.
7. Accordingly, the instant bail petition filed by the applicant is liable to be and is hereby dismissed.
8. It is made clear that the observation made by this court is only for considering the bail application filed by the applicant and the trial court will not be influenced by any of the observations made by this court while deciding the Sessions trial, in accordance with law and material placed on record.

Sd/-

**(Narendra Kumar Vyas)**  
**Vacation Judge**

Raju