

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 518 of 2021**

- Ghasi Ram Otti @ Ghasiya Ram, S/o Bindu Ram Otti, aged about 40 years, Caste Gond, Village Hathigaon, Police Station Raighar, District Navrangpur, Odisha.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Khallari, District Dhamtari, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Mohammad Afroz Athar, Advocate.
For Respondent/State	:	Mr. Soumya Rai, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Hon'ble Shri Justice Arvind Singh Chandel****Judgment on Board****22/10/2021**

1. This appeal is directed against the order dated 02.02.2021 by which the learned Special Judge, (National Investigation Agency), Bilaspur has rejected the petitioner's application under Section 439 of the Cr.P.C. and declined to entertain the same on the ground that earlier bail applications of the appellant have been rejected by this Court.
2. Mr. Mohammad Afroz Athar, learned counsel appearing for the appellant, submits that order passed by the learned Special Judge, (National Investigation Agency) is without jurisdiction and without authority of law and finding recorded by that Court is also perverse. Mr. Athar, learned counsel while drawing the attention of this Court

towards the order passed by this Court in M.Cr.C. No. 4070/2018, M.Cr.C. No. 6156/2019 and M.Cr.C. No. 8043/2020 would submit that the order impugned dated 02.02.2021 is without jurisdiction and without authority of law and as such petitioner is only accused of transporting explosives for which maximum jail sentence prescribed is 3 years and he is in jail for more than 4 years i.e. kept in custody from 05.10.2017. As such, in view of memorandum statement, he is entitled to be released on bail.

3. Learned State counsel would submit that the petitioner's three applications have been rejected by this Court in M.Cr.C. No. 4070/2018, M.Cr.C. No.6156/2019 and M.Cr.C. No. 8043/2020 and therefore, the learned NIA Court has rightly held that the order on the part of NIA Court is strictly in accordance with law.
4. We have heard learned Counsel for the parties and considered their rival submissions made herein above and also gone through the record available.
5. The appellant preferred bail application before this Court in M.Cr.C. No. 4070/2018 which has been rejected on merits on 09.07.2018, thereafter, he preferred M.Cr.C. No. 6156/2019 which has been dismissed as withdrawn on 14.10.2019 and thereafter, M.Cr.C. No. 8043/2020 has also been rejected on 08.01.2021. However, again the application was sought to be made under Section 439 of the Cr.P.C. that has been rejected by learned NIA Court holding that once application is rejected on merits by this Court, it would not be

appropriate to entertain the application on merits. The learned Special Judge (National Investigation Agency) has also observed that offences are of serious nature.

6. It appears from the record that this Court in three successive applications have already rejected the petitioner's application on merits and in that view of the matter, learned NIA Court has rightly held that unless liberty is granted by this Court, the NIA Court cannot entertain the application on merit and it will be a case of judicial indiscipline and even after considering the matter on merits and after hearing learned counsel for the parties, we do not consider that the learned Special Judge (National Investigation Agency) is unjustified in not granting to the bail to the petitioner on merits as there is sufficient material on record to implicate the Accused to the offences registered against him.
7. Accordingly, the criminal appeal is liable to be and is hereby dismissed.
8. The certificate for appeal to the Supreme Court, as prayed for is hereby declined.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge