

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 419 of 2021**

- Chhotu Ram Kashyap, S/o Akatram Kashyap, aged about 18 Years, R/o Village Saindal, Police Station Urga, District Korba, Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, Through the Station House Officer, Police Station AJAK Korba, District Korba, Chhattisgarh.

---- Respondent

For Appellant	Shri Govind Ram Miri, Senior Advoate with Shri Basant Kaiwartya, Advocates.
For State	Shri Adil Minhaj, Government Advocate.
For Objector	None despite service of notice.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

18/08/2021

1. The matter is heard through Video Conferencing.
2. Earlier the appellant had filed MCRC No.998 of 2020 which was dismissed on merits vide order dated 18.03.2020 and MCRC No.1535 of 2021 which was dismissed as withdrawn vide order dated 26.02.2021.
3. This appeal by the accused/appellant under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is directed against the order dated 09.01.2020 passed by the Special Judge, SC/ST Act, District Korba, C.G., rejecting his regular bail under Section 439 Cr.P.C. The appellant

is in jail since 27.09.2019 in connection with Crime No.240/2019 for the offence punishable under Section 302 of Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station- AJAK, District Korba, C.G.

4. Case of the prosecution, in brief, is that on 22.09.2019 appellant committed *marpeet* with the deceased- Ashish Kumar, as a result of which deceased sustained injuries on his body and succumb to the same. On report being lodged to the above effect, offence under the aforesaid Sections have been registered against the present appellant.
5. Learned counsel for the appellant submits that appellant is an innocent person and has been falsely implicated in this case. He submits that on the date of incident i.e. 22.09.2019, appellant was attending the school and as per Annexure A-4 attendance register, he was not present on the spot. Even if the allegations against the appellant are accepted, the act attributed to him would at the most make him liable for the offence under Section 304 Part-II of IPC because while making assault on the deceased, he had no intention of causing his death. Reliance has been placed on the decision of Hon'ble Apex Court in the matter of ***Surain Singh Vs State of Punjab*** reported in **(2017) 5 SCC 796**. Appellant is in custody since 27.09.2019, charge sheet has already been filed and due to COVID-19 pandemic, conclusion of the trial is likely to take some time. Therefore, he may be

released on bail.

6. Learned counsel for the State opposes the appeal.
7. Heard learned counsel for the parties.
8. Considering the facts and circumstances of the case, the gravity of the offence, the nature of injuries found on the body of the deceased, the postmortem report confirms the death of the deceased being homicidal, the case diary statements of the eye-witnesses i.e. Devi Bhagwat Kashyap, Santosh Kumar Kashyap, Budhwar Sai and other witnesses, the first bail application of the appellant has already been rejected on merits by the co-ordinate Bench of this Court, the material so far collected against the appellant which is a matter of evidence to be appreciated during trial, without commenting anything on merits of the case, this Court is of the opinion that present is not a fit case to release the appellant on bail. Accordingly, the appeal filed by the appellant being without any substance is hereby dismissed.

Sd/-
Gautam Chourdiya
Judge