

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****CR.R. No. 316 of 2021**

Emant Kumar Sahu S/o Gambhir Ram Sahu Aged About 28 Years Caste- Teli, R/o Village- Nayaparabori, Post- Khapri, P.S. and District- Balod, CG since of unsound mind through his legal representative (father)- Gambhir Ram Sahu S/o Baisakhu Ram aged asbout 66 Years Caste- Teli, R/o Village- Nayaparabori, Post- Khapri, P.S. and District- Balod, CG

----Applicant**Versus**

State of Chhattisgarh, through- Station House Officer, P.S.- Balod, District- Balod, (CG)

----Non-applicant

 For Applicant : Ms. Aditi Singhvi, Adv.
 For respondent/State : Mr. V.K. Agrawal, Panel Lawyer

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****13-7-2021**

1. This criminal revision has been filed by the applicant against the order dated 23-3-2021 passed by the 1st Addl. Sessions Judge, Balod, District Balod (CG) in ST No. 33/2015 (State of Chhattisgarh -v- Emant Kumar Sahu) whereby the application under Section 330, 338 and 339 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') has been rejected.

2. Learned counsel for the applicant submits that S.T. No. 33/2015 under Section 302, 201, 435 and 323 of the Indian Penal Code is pending against the applicant/accused, but since he is a person of unsound mind, therefore, case is pending against him since 2015 without framing of charge and the applicant is in jail, follow up treatment of the applicant is going on from State Mental Health Hospital, Sendari, Bilaspur. He further submits that it has been opined by the doctor of said hospital that '**At present, applicant is unable to face Court trial**', despite that, learned Court below has dismissed the application filed by the applicant through his father Gambhir Ram Sahu. He further submits that since the applicant is unable to face Court trial and defend himself due to unsoundness of his mind, Court below ought to have released him

on bail and handed over his custody to his father. Therefore, the order impugned passed by the Court below is erroneous and not sustainable.

3. Per contra, learned State Counsel submits that the impugned order passed by the Court below is well founded and a reasoned order, therefore, no interference in the same is called for.

4. I have heard learned counsel for the parties and perused the material available on record.

5. On perusal of the impugned order, it is found that as per medical report of the accused, the doctor has opined that '**At present he is unable to face Court trial**'.

6. Section 330 of the Cr.P.C. reads as under :-

“330. Release of person of unsound mind pending investigation or trial:--(1) Whenever a person is found under Section 328, or Section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

2. xxx xxx xxx
3. xxx xxx xxx”

7. A perusal of above provision shows that if a person is of unsound mind or he is facing mental retardation, and due to that, he is incapable of entering defence, then the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail, but the friend or relative who is seeking bail of such person, should undertake that

he will regularly provide treatment to him from the nearest medical facility and to prevent him from doing injury to himself or to any other person. But, in this case, the application filed by Gambhir Ram Sahu who is father of the applicant, does not contain any such undertaking as provided under proviso of sub-section (1) of Section 330 of the Cr.P.C. Therefore, learned Court below mentioning these facts has rightly rejected the application filed by the applicant through his father.

8. Since the application filed by the father of accused does not contain necessary undertaking as provided by law, therefore, in view of above, I do not find any infirmity in rejection of the application filed by applicant/accused by the impugned order.

9. On the basis of above facts, I am not inclined to allow this revision petition. However, since the application filed by father of the accused was rejected by the Court below on technical ground, and looking to the medical opinion as has been referred by the Court below in its impugned order, the father of the accused is granted liberty to file the application afresh under the said relevant provisions of Cr.P.C. and if such an application is filed then learned Court below shall decide the same on its own merit in accordance with law.

10. With the above directions, instant revision petition is disposed of.

Sd/-
N.K. Chandravanshi
Judge