

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3574 of 2021

1. Karan Nishad S/o Pusau Ram Nishad, Aged About 37 Years, R/o Near Ama Kua Chowk, Puraina, Old Bhilai, District Durg (C.G.).

---- Applicant

Versus

1. State Of Chhattisgarh, Through Station House Officer, Bhilai-3, Bhilai, District Durg (C.G.).

---- Non-Applicant

For Applicant	: Mr. Anurag Jha, Advocate.
For Non-Applicant/State	: Mr. Anand Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

26/08/2021

- 1) The matter is heard through Video Conferencing.
- 2) The applicant has preferred this First Bail Application under Section 439 of Code of Criminal Procedure, 1973 as he is in jail since 10/03/2020 in connection with Crime No. 86/2020 registered at Police Station Bhilai-3, Bhilai, District Durg (C.G.) for the offence punishable under Section 307 of Indian Penal Code.
- 3) As per the prosecution case on 09/03/2020 at around 09:00 PM complainant Subhash Sharma was sitting alongwith one Govind and another boy in front of his house. At that time the present applicant came there and asked the complainant to accompanying him for having liquor and when the complainant refused, he assaulted him with knife on his neck in an attempt to commit his murder.
- 4) Learned counsel for the applicant submits that the applicant has

been falsely implicated in the crime in question. He submits that the injuries suffered by the victim is not grievous in nature. The ingredients necessary for attracting the offence under Section 307 of Indian Penal Code are missing in this case. He further submits that applicant has no criminal antecedents and there is no apprehension of the applicant tampering with the evidence or absconding, charge sheet has been filed, the applicant is in jail since 10/03/2020 and trial is likely to take some time for its disposal. Therefore, the applicant be released on bail.

- 5) On the other hand, learned counsel for the State opposes the bail application. However, he submits that the applicant has no criminal antecedents.
- 6) Heard learned counsel for the parties.
- 7) In the matter of ***Sanjay Chandra vs. Central Bureau of Investigation, (2012) 1 SCC 40.***, the Hon'ble Supreme Court has observed in Para-22 of the said judgment as under:
 22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.
- 8) In the matter of ***Arnab Manoranjan Goswami Vs. The State of Maharashtra & Ors. in Criminal Appeal No. 742 of 2020 arising out of SLP (Crl) No. 5598 of 2020***, the Hon'ble Supreme Court has reiterated certain factors which are to be

kept in mind while considering the matters for grant of bail to the accused. In Para-57 of the said judgment, it has been observed as under:

57. While considering an application for the grant of bail under Article 226 in a suitable case, the Hight Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarized as follows:
- i. The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
 - ii. Whether there exists a reasonable apprehension of the accused tampering with the witness or being a threat to the complainant or the witnesses;
 - iii. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;
 - iv. The antecedents of and circumstances which are peculiar to the accused;
 - v. Whether *prima facie* the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
 - vi. The significant interest of the public or the State and other similar considerations.
- 9) Considering the facts and circumstances of the case, in particular the pre-trial detention of the applicant who is 37 years old which comes to about one and half years, keeping in view the judgments of Hon'ble Supreme Court in *Arnab Manoranjan Goswami* case and *Sanjay Chandra* case (supra), there is no substantial progress in the trial due to COVID-19 Pandemic disposal of trial is likely to take some time, charge sheet has already been filed, the fact that the applicant has no criminal antecedents and there is no apprehension of the applicant tampering with the evidence or absconding as admitted by both the counsel, the application is **allowed**. It is directed that in the

event of the applicant executing a personal **bond** for a sum of **Rs. 2,00,000/-** with two sureties of Rs. 100,000/- each to the satisfaction of the concerned Trial Court, he shall be released on bail on the following conditions:-

- i. he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such fact to the Court,
- ii. he shall not act in any manner which will be prejudicial to fair and expeditious trial,
- iii. he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial,
- iv. he shall strictly follow the COVID-19 protocol issued by the Central Govt./State Govt./Local Authority,
- v. he shall not involve himself in any offence of similar nature in future.

Let a copy of this order be forwarded to the concerned Police Station forthwith who shall inform the trial Court in the event of applicant involving himself in similar offence in future.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant