

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4548 of 2021**

- Subash Mandal S/o Gorang Mandal Aged About 42 Years R/o Bhagat Singh Chowk, Tikrapara, Police Station Tikrapara, Raipur , Tehsil And District Raipur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Fingeshwar, District Gariyaband Chhattisgarh.

---- Respondent

MCRC No. 4769 of 2021

- Ujjawal Chandrakar S/o Shri Pawan Chandrakar Aged About 29 Years R/o Tikrapara Raipur , Thana Tikrapara, Tahsil And District Raipur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The House Officer, Police Station Fingeshwar, District Gariyaband Chhattisgarh.

---- Respondent

For Applicants	:-	Mr. Lukesh Kumar Mishra, Adv & Mr. Y.C. Sharma, Senior Advocate with Mr. Sunil Sahu, Adv
For Respondent-State	:-	Mr. Arjit Tiwari, PL

Hon'ble Shri Prashant Kumar Mishra, Ag.CJ
Order On Board

20/09/2021

1. Heard.
2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicants, who have been arrested in connection with Crime No.91/2021, registered at Police Station Fingeshwar, Dist. Gariyaband, C.G. for the offence punishable under Sections 379, 34 of the I.P.C. read with Section 4, 21 of the Mines and Minerals (Development and Regulation) Act, 1957 {It is mentioned in the bail application as 'the Mining Act'}.
3. Applicants have allegedly removed diamonds by committing illegal mining and carrying the same on a Honda Activa two wheeler. 440 stones looking like diamonds out of which 400 were found to be actual diamonds were recovered when the two wheeler was intercepted near Borid Square within P.S. Fingeshwar District Gariyaband.
4. Learned counsel for the applicants submits that pursuant to the order passed by the Hon'ble Supreme Court in WPC No.1/2020 on 07.5.2021 in the matter of In Re : **CONTAGION OF COVID 19 VIRUS IN PRISONS** and thereafter the resolution passed by the High Power Committee on 12.5.2021, the applicants have already been released on bail which has now being continued by the Hon'ble Supreme Court till further orders. Thus, the applicants are presently released on bail, therefore, they are entitled to remain on regular bail.
5. Mr. Arjit Tiwari, learned State counsel submits that even if the applicants may have been released pursuant to the order passed

by the Hon'ble Supreme Court and the High Power Committee, when the matter is examined on merits, the seriousness of the offence is to be looked into.

6. True it is that, while exercising power under Section 439 Cr.P.C. the seriousness of the offence is to be looked into but at the same time it is also to be examined that the offence still remains an offence triable by JMFC. Similarly, one of the factors governing exercise of jurisdiction would be the attending circumstances concerning the applicant and to consider such circumstances the order passed by the Hon'ble Supreme Court and the High Power Committee is one such important aspect of the matter which cannot be ignored while exercising powers under Section 439 of the Cr.P.C. on merits.
7. Considering all relevant aspects of the matter, I am inclined to release the applicants on bail.
8. Accordingly, the application is allowed and the applicants are directed to be released on bail on each of them executing a personal bond for a sum of Rs.50,000/- with one surety for the like amount to the satisfaction of the trial Court. They are directed to appear before the trial Court on each and every date given by the said Court.

Certified copy as per rules

SD/-
(Prashant Kumar Mishra)
Acting Chief Justice

Ayushi