

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.839 of 2021

- Umakant Vishwakarma, S/o Gangadhar Vishwakarma, aged about 28 years, R/o Kalighat, Ajirma, P.S. Gandhi Nagar, Ambikapur, District Surguja (CG).

---- Applicant

Versus

- State of Chhattisgarh, through SHO, Police Station Gandhi Nagar, Ambikapur, District Sarguja (CG)

---- Non-applicant

For Applicant	:	Mr. Pushkar Sinha, Advocate
For Non-applicant	:	Mr. Vimlesh Bajpai, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

16/8/2021

1. This is an application under Section 438 of CrPC for grant of anticipatory bail to applicant as he apprehends his arrest in connection with Crime No.209/2021 registered at Police Station Gandhi Nagar, District Sarguja (CG) for commission of offence punishable under Sections 307, 34 of IPC and Section 25, 27 of the Arms Act.
2. Case of the prosecution, in brief, is that on 27.4.2021 at about 8:30 p.m. the complainant along with her husband and children was sitting in front of her house, at that time, two unknown persons, who have covered their faces with cloth, entered into her house, asked about their health, suddenly one of them took out pistol, fired gun shot at husband of complainant, who tried to stop gun shot from his hand but after piercing his hand the bullet hit in left side of his stomach. The accused persons thereafter ran away from the spot. Incident is reported to the concerned police station based on which instant crime is registered against unknown persons. During the course of investigation, on 30.4.2021 co-accused Gangadhar and Omprakash, father & brother of present applicant respectively, were arrested and based on their memorandum statements, applicant has also been made accused in instant crime.

3. Mr. Pushkar Sinha, learned counsel for applicant would submit that present applicant is innocent and has been falsely implicated in instant crime. He submits that niece of present applicant died under suspicious circumstances, therefore, he has made complaint before the concerned competent authority seeking inquiry on the ground that his niece has not committed suicide. Said complaint is pending consideration and in which present applicant has raised suspicion upon the complainant being the person responsible for the death of his niece. He further submits that in the complaint itself the complainant has stated that two persons covering their faces with cloth, came to her house and caused gun shot injuries to her husband. FIR is also registered against unknown persons. Co-accused persons were arrested on 30.4.2021 and charge sheet has already been filed against them. However, the police has not conducted test identification parade so as to identify accused persons by the complainant as the persons who entered into house of complainant at the time of incident. Memorandum statements of co-accused persons based on which present applicant is made accused, cannot be accepted to be admissible piece of material against present applicant to involve him in instant crime. In these circumstances, there is no *prima facie* material available in case diary against present applicant so as to connect him with the commission of offence in question. Hence, present applicant may be granted anticipatory bail.
4. Mr. Vimlesh Bajpai, learned Government Advocate for the State opposes the submissions made by learned counsel for the applicant and submits that allegations against present applicant and other two accused persons are serious in nature. All three accused persons after covering their faces with cloth entered into the house of complainant, one of them suddenly took out pistol and fired gun shot at husband of complainant causing injuries on his stomach. On a specific query being put to learned State Counsel with regard to arrest of co-accused persons, he submits that co-accused persons were arrested on

30.4.2021. On being asked whether test identification parade of co-accused persons was conducted, learned State Counsel replied that there is no document in case diary to show that test identification parade of co-accused persons was conducted.

5. I have heard learned counsel for the parties.
6. Taking into consideration the nature of allegations, particularly the fact that the assailants, who came to the house of complainant and caused gun shot injuries to her husband, have covered their faces, and test identification parade of co-accused persons has not been conducted by the police, without commenting anything on merits, I am inclined to grant benefit of anticipatory bail to applicant.
7. Accordingly, this anticipatory bail application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, he shall be released on anticipatory bail by the officer arresting him on his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Arresting Officer. Applicant shall also abide by following conditions:
 - (i) that he shall make himself available for interrogation before Investigating Officer as and when required;
 - (ii) that he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him/her from disclosing such facts to Court or to any police officer;
 - (iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) that he shall appear before the trial Court on each & every date given to him by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-