

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 866 of 2021**

- Mohd. Hussain S/o Janmohammad, aged about 42 years, caste Musalman, R/o Village Kalyanpur, Police Station Surajpur, Tahsil Ramanujnagar, District Surajpur Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: SHO, Police Station Surajpur, District Surajpur, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Achyut Tiwari, Advocate
For Non-applicant- State	: Mr. B.P. Banjare, Dy. Govt. Adv.

Hon'ble Shri Parth Prateem Sahu, Judge***(proceedings through video conferencing)*****ORDER****02/08/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No. 85/2021 registered at Police Station Surajpur, District Surajpur (C.G.) for the offence punishable under Sections 302/34 of IPC.
2. Case of the prosecution is that, deceased Kulsum Ansari was married to present applicant. On 05.02.2021, Kulsum Ansari suffered burn injury, thereafter, she was immediately taken to hospital. From where, she was referred to DKS Super Specialty hospital, Raipur, where she succumbed to burn injury on 16.02.2021. Merg was intimated by Nasimuddin, brother of deceased, making allegation against the present applicant that his sister intimated him that it is present applicant who along with co-accused Ishrat Jahan who burnt his sister by pouring kerosene oil upon her. Based on the merg intimation, instant crime was registered against present applicant.
3. Mr. Achyut Tiwari, learned counsel for the applicant would submit that the relationship of applicant with his deceased wife was cordial. From their wedlock, they were blessed with three children by name, Mohd.

Gausul aged 21 years, Tarannum Fatima Ansari aged 13 years and Tabassum Ansari aged 18 years. The allegation levelled by the brother of deceased is absolutely false and baseless. He was not present on the spot at the time of incident. The allegation levelled by the brother of deceased is that the present applicant poured kerosene oil upon the deceased and co-accused Ishrat Jahan set her on fire with match stick is absolutely false. At the time of incident, children of present applicant were present in the house and they have not made any allegation as alleged by the brother of deceased. He also submits that co-accused Ishrat Jahan has been enlarged on bail in MCRCA No. 820/2021 on 29.07.2021 and the case of present applicant is on the same footing, hence, he may be enlarged on anticipatory bail.

4. On the other hand, Mr. B.P. Banjare, learned State Counsel, opposing the submissions made by learned counsel for the applicant and submits that specific allegation against present applicant of pouring kerosene oil upon her wife has been made by the Nasmuddin, brother of deceased. He submits that as per the allegation, deceased herself intimated her brother the manner in which the incident took place. Based on which, instant crime was registered against the present applicant. Considering the order passed by this Court on 29.07.2021, learned counsel for the applicant was asked to read out the statement of Tarannum Fatima recorded under Section 161 of CrPC and also as to what are the other materials available in the case diary to connect the present applicant in the crime, he submits that except the merg intimation and the statement of brother of deceased, there is no any other material available in the case diary. He read-over the statement of Tarannum Fatima Ansari, one of the daughters of present applicant.
5. I have heard learned counsel for the respective parties.
6. Tarannum Fatima in her statement recorded under Section 161 of CrPC stated that at the time of incident, she along with her sister were present in the house. In the morning dispute took place between applicant and the deceased on the ground that deceased also wanted to go along with present applicant to his work place to which present applicant refused and thereafter he went out for his work. Witnesses were watching Television. There was electricity

failure and after sometime she heard the scream of her mother from kitchen, thereafter, she rushed to the kitchen where she saw her mother was surrounded with fire, her mother ran away from the house, thereafter, some person and her uncle extinguished the fire and took her to hospital. Though, the deceased was admitted in the hospital from 05.02.2021 to 16.02.2021, her statement was not recorded.

7. Taking into consideration the nature of allegation and the facts and circumstances of the case, particularly, the statement of daughter of deceased recorded under Section 161 of CrPC, who was present at house at the time of incident, without commenting anything on the merits of the case, I am inclined to enlarge the applicant on anticipatory bail.
8. Accordingly, application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question (85/2021), 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 concerned arresting Officer. Applicant shall also abide by the following conditions:
 - (i) that the applicant shall make himself available for interrogation before the Investigation Officer as and when required;
 - (ii) that the applicant 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/her from disclosing such facts to the Court or to any police officer;
 - (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
 Judge