

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

(Proceedings through Video Conferencing)

MCRC No. 5286 of 2021

- Ishu Miri, S/o Shri Tiharu Miri, Aged About 20 Years, R/o Village Samoda, Police Station Arang, District Raipur Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh, Through- Station House Officer, Police Station Arang, District- Raipur, Chhattisgarh. **---- Non-Applicant**

MCRC No. 5305 of 2021

1. Karan Dewangan, S/o Shri Naresh Dewangan, Aged About 19 Years, R/o Village- Samoda, Police Station- Aarang, District- Raipur, Chhattisgarh.
2. Parmeshwar Chakradhari, S/o Shri Bhukhan Lal Chakradhari, Aged About 19 Years, R/o Village- Samoda, Police Station- Aarang, District- Raipur, Chhattisgarh. **---- Applicants**

Versus

- State of Chhattisgarh, Through- Station House Officer, Police Station- Arang, District- Raipur, Chhattisgarh. **---- Non-Applicant**

For Applicants	:	Smt. Renu Kochar, Advocate
For Non-Applicant/State	:	Shri Anand Verma, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

18.08.2021

- 1) Since both cases arise out of same crime number, they are being disposed of by this common order.
- 2) First bail applications of the applicants were rejected on merits by this Court vide order dated 09.02.2021 in MCRC Nos. 91 & 304 of 2021 and liberty was granted to them in case trial is not concluded within a period of 5 months they shall have repeat their prayer for bail.
- 3) The applicants have preferred these Second Bail Applications

under Section 439 of Code of Criminal Procedure, 1973 as they are in jail since 04.11.2020 in connection with Crime No.476/2020 registered at Police Station- Arang, District- Raipur (C.G.) for the offence punishable under Sections 306, 34 of IPC.

- 4) Case of the prosecution, in brief is that on 07/05/2020 complainant Amarlal Kosle lodged a report at the Police Station Arang that on 06/05/2020 his daughter Shivani Kosle (since deceased), aged about 16 years, was sleeping in her room. At about 1'O' clock in the night he came down from the terrace as it was raining and found the room of his daughter locked from inside. On being called, his daughter did not open the room and when he peeped through the window he saw her hanging. Immediately thereafter he pushed open the door, lowered her body down from noose but by that time she had died. During investigation a suicide note was seized by the Police. It is the further case of the prosecution that deceased was having love affair with accused Ishu but he deserted her and that applicants Karan Dewangan and Parmeshwar Chakradhari were continuously harassing her as a result of which she committed suicide.
- 5) Learned counsel for the applicants submit that the applicants have been falsely implicated in the crime in question. Learned counsel for the applicants further submits that the applicants are the young offenders, they have no criminal antecedents, charge-sheet has already been filed, no witnesses have been examined till now, there is no progress in trial, there is no likelihood of the applicants tampering with the prosecution evidence or absconding and the applicants are in jail since 04.11.2020 and trial is likely to take some time for disposal. Therefore, the applicants be released on bail by this Court.
- 6) On the other hand, learned counsel for the Non-Applicant/State opposes the bail applications, however, he submits that the applicants have no criminal antecedents.
- 7) In the matter of **Sanjay Chandra v. 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 on 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) Having heard learned counsel for the parties, having regard to the facts and circumstances of the case, the nature of allegation made against the applicants, charge-sheet has already been filed, there is no progress in trial, no witnesses have been examined till now, since the date 09.02.2021 when first bail application of the applicants was dismissed as withdrawn with liberty to repeat their prayer for bail in case trial is not concluded within five months, the detention period of the applicants, who are 19 & 20 years old, keeping in view the judgments of the Hon'ble Supreme Court in **Sanjay Chandra** (supra) and **Arnab Manoranjan Goswami** (supra), the fact that the applicants have no criminal antecedents, there is no likelihood of the applicants tampering with the prosecution evidence or absconding as admitted by both the counsels, conclusion of trial may take some time, in the changed facts & circumstances of the case, without commenting anything on merits of the case, the applications are allowed.

10) It is directed that in the event of each of the applicants executing a personal bond for a sum of Rs. 1,00,000/- with two sureties of Rs. 50,000/- each to the satisfaction of the concerned trial Court, they shall be released on bail on the following conditions:-

(a) they 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,

(b) they shall not act in any manner which will be prejudicial to fair and expeditious trial, and

(c) they shall appear before the trial Court on each and

every date given to them by the said Court till disposal of the trial,

(d) they shall not involve themselves in any offence of similar nature in future,

(e) they shall strictly follow the COVID-19 protocol issued by the Central Government/State Government/Local Authority.

Let a copy of this order be forwarded to the concerned police station forthwith who shall inform the trial Court in the event of applicants involving themselves in similar offence in future.

Sd/-
(Gautam Chourdiya)
Judge

Nadim