

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 956 of 2019

1. Hadma Mandavi S/o Pandu Mandavi, aged about 30 years,

2. Sonadhar Nag S/o Ghasi Nag, aged about 38 years,

Both R/o Village Kachir Para Elengnar, Police Station Darbha
District Bastar Chhattisgarh. **---- Appellants.**

Versus

- State Of Chhattisgarh Through Police Station Darbha District
Bastar Chhattisgarh. **---- Respondent.**

For the Appellants :-	Mr. Vikash A. Shrivastava, Advocate.
For the State :-	Mr. Lalit Jangde, Dy. GA.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava, J.
06.01.2021

Heard.

2. Appellants have been involved in the alleged commission of offence under Sections 147, 148, 149, 323, 395, 506-B of IPC; Sections 25 of Arms Act and Sections 38 & 39 (2) of Unlawful Activity (Prevention) Act.

3. This appeal arises out of order dated 26.03.2019 passed by Special Judge, NIA Act, Jagdalpur by which appellants' application for grant of bail under Section 439 Cr.P.C. has been rejected.

4. The appellants are alleged to be involved in an incident dated 30.04.2018 wherein it has been alleged that on that day a team of armed naxalites arrived at the spot where construction of road was going on and the naxalites stopped the work, assaulted the driver and set on fire the construction machinery. Then

present appellants were also arrested along-with other accused and thereafter investigation was completed and charge-sheet was filed. When the appellants moved an application for grant of bail under Section 439 Cr.P.C., the application was rejected by the Court below by impugned order, giving rise to present appeal.

5. Learned counsel for the appellant would argue that rejection of bail application of the appellants is illegal, inasmuch as, the appellants have been involved in the alleged commission of offence but there is no incrementing material which is proved during trial could lead to their conviction. He would argue that in the present case, the involvement of the appellants is based only on the memorandum statement of co-accused Pandu Madkami but from the memorandum statement of Pandu Madkami or from the present appellant, no recovery of any incrementing material leading to discovery of a fact has taken place. As investigation is completed and charge-sheet has been filed, except that memorandum, there is nothing against the appellants. He would argue that such statements which do not lead to any discovery of fact are not at all admissible in evidence and therefore, present is a case of no evidence against the appellant.

6. On the other hand, learned State counsel would submit that in the present case when the incident happened on 13th of April, 2018, FIR was lodged by one Mohan Kashyap on 02.05.2018 in which, he named number of persons including co-accused Pandu Madkami. Later on, memorandum statement of Pandu Madkami

was recorded on 07.06.2018 and Pandu Madkami has stated that in the incident present appellants are also involved. He would also submits that even though in the FIR or in the case diary statements of the witnesses, appellants have not been named, Pandu Madkami has been named and as Pandu in his memorandum statement recorded by the investigating authority has named present appellants, there is *prima facie* case made out. He would further submits that the incident is of grave nature because it relates to naxalite activity and construction machinery has been alleged to be destroyed.

7. We have heard learned counsel for the parties and perused the impugned order and also the material contained in the case diary including charge-sheet.

8. The involvement of the present appellants is based on the memorandum of the co-accused Pandu Madkami. However, neither in the FIR nor in the case diary statement the present appellants have been named. Moreover, there is no recovery of any incrementing articles like explosive or any other thing which could relate the present appellant with the alleged commission of offence. They not even been identified by anybody. There is no identification done by any of the witnesses. There is considerable force in the submission of learned counsel for the appellants that the name mentioned in a memorandum statement by itself would not construe admissible evidence unless it leads to discovery of a fact. Therefore, in the present case, we find that the appellants

are in jail since 07.06.2018 and even trial has not been concluded till date, taking into consideration all these circumstances particularly the basis on which the appellants are involved in the alleged commission of offence, we are of the view that the learned Court below committed illegality in rejecting the application for grant of bail. In our opinion, appellants were entitled to grant of bail. Accordingly, the impugned order is set aside and the appellants' application for grant of bail is allowed.

9. Each of the appellants shall be released on bail on furnishing a personal bond of Rs.25,000/- along with two local sureties of the like amount to the satisfaction of the concerned trial Court, for their appearance before the concerned trial Court on each and every date, as may be directed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay