

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.6467 of 2021**

- Bahadur Paikra, son of Pandra Paikra, aged about 48 years, Occupation-Cultivator, resident of Village Durgapur, Police Station Shankargarh, District Balrampur Ramanujanj (CG)

---- Applicant (In Jail)**Versus**

- State of Chhattisgarh, through Station House Officer, Police Station Shankargarh, District Balrampur Ramanujanj (CG)

....Non-applicant

For Applicant	:	Mr. Jitendra Shrivastava, Advocate.
For Non-applicant	:	Mr. Sameer Oraon, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****17.12.2021**

1. This is first application under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail to applicant as he is in custody since 5.3.2021 in connection with Crime No.40/2021 registered at Police Station Shankargarh, District Balrampur Ramanujanj (CG) for commission of offence punishable under Section 302 of the Indian Penal Code.
2. Case of prosecution is that on 3.3.2021 deceased Bhajanlal along with his brother Kaleshwar had gone to attend a marriage in village Durgapur. After marriage ceremony, at about 6:30 p.m. brother of deceased returned home, took his meals and slept. In night at about 2:00-2:30 a.m. one Fuleshwar alias Jamla came to house of deceased and informed Kaleshwar that Kaliyan informed him over telephone that somebody killed his brother Bhajanlal and thrown his body in Durgapur near the house where marriage was solemnized. On receipt of said information, he rushed to spot and found his brother lying dead. Merg intimation was given to concerned police station on

4.3.2021 based upon which aforementioned crime is registered against unknown person. During course of investigation, based on confessional statement of applicant recorded by police, he was arrested in aforementioned crime.

3. Mr. Jitendra Shrivastava, learned counsel for applicant would submit that applicant was made accused in instant crime on the basis of his confessional statement made before police in police station. He submits that except confessional statement there is no other material connecting applicant with crime in question. Confessional statement recorded by police, that too in police station, is not admissible in evidence. Incident is of night, neither there is any eyewitness to incident nor any incriminating article is seized from possession of applicant except one club, which is normally available in houses situated in villages. Further, no blood stain is found on club seized from possession of applicant. Some important prosecution witnesses including Village Kotwar were examined before trial Court, but they have not supported case of prosecution, which is evident from copies of deposition sheets of prosecution witnesses No.1 to 5 filed along with Covering Memo dated 23.11.2021. Applicant is in jail since 5.3.2021, hence he may be enlarged on regular bail.
4. Per contra, Mr. Sameer Oraon, learned Government Advocate for State opposes submissions of learned counsel for applicant and submits that as per case diary/charge sheet, applicant made a confession before witness Rambali, Kotwar of village Durgapur, thereafter his confessional statement was recorded by police in Police Station Shankargarh. There is prima facie material against applicant showing his involvement in crime in question. Hence, applicant is not entitled to be enlarged on regular bail. On being asked, learned State Counsel submits that except confessional statement of applicant, there is no other material connecting applicant with crime in question. There is no eyewitness to incident, as per charge sheet.
5. I have heard learned counsel for the parties.

6. Taking into consideration entire facts and circumstances of case, nature of allegations, material collected by prosecution during course of investigation; submission of learned counsel for parties that applicant is arrayed as accused on the basis of his confessional statement recorded by police in police station; the fact there is no eyewitness to incident; further considering statement of Rambail, Kotwar of Village Durgapur, without commenting anything on merits of case, I am inclined to enlarge applicant on regular bail. Accordingly, application is allowed and it is directed that applicant shall be released on regular bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to satisfaction of trial Court concerned on the conditions that;

- a) he shall appear before the trial Court concerned regularly on each & every date unless exempted from appearance.
- b) he shall not, in any manner, tamper with prosecution witnesses.
- c) If applicant is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-