

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.7330 of 2021**

1. Rahul Bharti, S/o Chandrashekhar Bharti, aged about 22 years, R/o Devarpara, Bhainsapasra, Balodabazar, P.S. City Kotwali, District Balodabazar-Bhatapara (CG).
2. Javed Khan, S/o Late Aabid Ali, aged about 22 years, R/o Lohiya Nagar, Balodabazar, P.S. City Kotwali, District Balodabazar-Bhatapara (CG)

---- Applicants (In jail)**Versus**

- State of Chhattisgarh, through Station House Officer, P.S. City Kotwali, Balodabazar, District Balodabazar Bhatapara (CG).

....Non-applicant

For Applicants	:	Mr. Shailendra Dubey, Advocate
For Non-applicant	:	Mr. B.P. Banjare, Dy. Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****27.9.2021**

1. This is second application on behalf of applicants for grant of regular bail to them, as they are in custody since 28.6.2020 in connection with Crime No.402/2020 registered at Police Station City Kotwali, Balodabazar District Balodabazar Bhatapara (CG) for commission of offence punishable under Sections 147, 148, 149, 302, 120(b) of IPC and Sections 25, 27 of Arms Act, 1959.
2. Earlier bail application of applicants was rejected on merits vide order dated 2.8.2021.
3. Case of the prosecution, in brief, is that on 27.6.2020 at about 20:30 hrs, Bhagwati Yadav and Ishwar Kurrey were walking

near the house of Bhagwati Yadav. At that time, Bhagwati Yadav received mobile call from Suraj Vaishnav requesting him to get connected with his mother. Upon which, Bhagwati and Ishwar went to house of Suraj Vaishnav situated in Lohiya Nagar. After dialling mobile number of Suraj Vaishnav, Bhagwati gave his mobile phone to Laxmi Vaishnav (mother of Suraj), who while talking on mobile phone went inside the house. At that time, accused Iqbal Khan, Shahrukh Khan, Javed, Raza and Rahul Dewar reached there and started assaulting Bhagwati Yadav. Accused Iqbal and Shahrukh gave knife blows to Bhagwati and thereby caused fatal injuries resulting into his death. Incident was reported to concerned police station based on which FIR is registered against accused persons including applicants.

4. Taking into consideration submissions of learned counsel for both the parties as also statement of Smt. Pooja Yadav, wife of deceased and an eyewitness to incident, recorded before the trial Court concerned, this Court rejected earlier bail application of applicants vide order dated 2.8.2021.
5. Mr. Shailendra Dubey, learned counsel for applicants would submit that on the same set of evidence available on record, co-accused Raza Khan has been granted bail by Co-ordinate Bench vide order dated 27.8.2021 in M.Cr.C. No.2921/2021. In aforementioned bail application also statement of Smt. Pooja Yadav was placed on record along with statements of other witnesses and the Co-ordinate Bench taking into consideration overall facts, submissions made by learned

counsel for parties and material placed on record, enlarged co-accused Raza Khan (applicant therein) on regular bail. Allegation against present applicants are almost identical to allegations levelled against co-accused Raza Khan, hence applicants are also entitled to regular bail on the ground of parity.

6. Mr. B.P. Banjare, learned Deputy Government Advocate for the State opposes the submissions made by learned counsel for applicants and submits that immediately after incident, Ishwar Kurrey, who was accompanying deceased Bhagwati at the time of incident, lodged FIR naming all accused persons including applicants. He read out contents of FIR as also statements of Ishwar Kurrey and Smt. Pooja Yadav, wife of deceased and eyewitness to incident, recorded under Section 161 of CrPC.
7. I have heard learned counsel for parties.
8. In FIR lodged immediately after incident, names of applicants are specifically mentioned to be associates along with accused Iqbal etc. at the time of incident. Smt. Pooja Yadav, wife of deceased and eyewitness to incident, has categorically stated in her statement recorded under Section 161 CrPC that she had seen accused Iqbal, Shahrukh and 4-5 other persons assaulting her husband. Names of other accused persons, apart from accused Iqbal and Shahrukh, were intimated to her by other persons. Copy of evidence of Smt. Pooja Yadav is placed on record vide Covering Memo dated 27.9.2021 and it was also annexed along with earlier bail application.

Smt. Pooja Yadav has stated in her statement that applicants were also involved in the incident of commission of murder of her husband.

9. In the light of statement of eyewitness Smt. Pooja Yadav and other material available in case diary, this Court, in bail proceedings, cannot appreciate and evaluate evidence as to whether there are contradictions and omissions in the evidence of witnesses recorded by trial Court. As this Court has dismissed first bail application of applicants considering statement of eyewitness Smt. Pooja Yadav and further that while granting regular bail to co-accused Raza Khan by the Co-ordinate Bench vide order dated 27.8.2021 in M.Cr.C. No.2921/2021, statement of Pooja Yadav was not considered, I am not inclined to entertain this second bail application and accordingly, it is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-