

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1011 of 2021**

1. Ratiram Gandharv, S/o Ramkhelavan Gandharv, aged about 41 years.
2. Dujje alias Ramsevak, S/o Shyam Singh Dhruv, aged about 60 years.
3. Sukhram Dhruv, S/o Derha Singh, aged about 50 years.
4. Jayasingh, S/o Hira Singh Dhruv, aged about 53 years.
5. Smt. Lalabai, W/o Pherulal Dhruv, aged about 65 years.
6. Smt. Naranti Dhruv, W/o Janakram Dhruv, aged about 40 years
7. Chaitram S/o Anand Gond, aged about 65 years.

All above R/o of Village Ghatoli Chowk Chilphi, Police Station Lormi, District Mungeli (CG)

---- Appellants (In Jail)**Versus**

- State of Chhattisgarh, Chowki Chilfi Lormi, through Police Station Lormi, District Mungeli (CG).

....Respondent

For Appellants	:	Mr. Bharat Sharma, Advocate
For Respondent	:	Ms. Hamida Siddique, Dy. Advocate General.
For Complainant	:	Ms. Rajni Soren, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****24/11/2021**

1. This criminal appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') has been preferred against the order dated 31.8.2021 by which learned Special Judge, SC & ST Act, Mungeli rejected application of appellants for grant of regular bail in connection with Crime No.197/21 registered at Police Outpost Chilfi, Police Station Lormi, District Mungeli (CG) for commission of offence punishable under Sections 506, 306 r/w 34 of the Indian Penal Code (IPC); Sections 4, 5 of CG Tonhi Pratadana Adhiniyam, 2005 (for short 'the Adhiniyam of 2005') and Section 3 (2) (v) & 3 (1)

(zb) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 (for brevity 'the Act of 1989'), as per charge sheet.

2. Case of the prosecution, in brief, is that on 14.6.2021 Yashoda Bai gave intimation in police station that her mother set herself on fire after pouring kerosene. Intimation was recorded and thereafter police reached on spot, recorded statement of injured and thereafter FIR was registered against Rajju, Jagdish, Sushila Bai, Bharat, Sarojini Bai and other villagers for commission of offence under Sections 506, 306 r/w 34 IPC; Sections 4, 5 of the Adhinyam, 2005. Appellants were arrested on 9.7.2021. During the course of investigation, statement of other witnesses were recorded and on completion of investigation, charge sheet was filed against appellants and others for offence defined under Sections 506, 306 r/w 34 of IPC Sections 4, 5 of the Adhinyam of 2005 and Sections 3 (2) (v) & 3 (1) (zb) of the Act of 1989.
3. Mr. Bharat Sharma, learned counsel for appellants would submit that from the allegations initially levelled against appellants it is clear that there is no material attracting ingredients of Section 306 or 107 of IPC. In dying declaration deceased has not alleged that she was instigated or abetted by appellants to commit suicide soon before occurrence. Even daughter of deceased in her statement under Section 161 CrPC, which was recorded on next day of incident i.e. 15.9.2021, has stated that on being asked, her mother told her that as accused Duje Gond, Jagdish Gond, Bharat Gond, Bablu Tiwari, Sushila Bai Gond, Sarojini and others used to quarrel and harass her saying that she is indulged in practising witchcraft, she should go somewhere and die, therefore, she set herself on fire after pouring kerosene. Learned counsel also pointed out that in dying declaration deceased has not stated that soon before incident, appellants have instigated or

abetted or harassed her. There was some property dispute between deceased and her relatives residing in same village. Villagers have also lodged report before concerned police station alleging that at the time of incident, Yashoda Bai, daughter of deceased, was present along with deceased in house and she herself recorded the incident instead of stopping it. Police after completion of investigation have filed charge sheet. Appellants are languishing in jail since 9.7.2021. Two statements of Yashoda Bai are recorded under Section 161 of CrPC. In later statement, graver allegations are levelled. There are as many as 17 enlisted witnesses, conclusion of trial may take some time, hence appellants may be enlarged on regular bail.

4. On the other hand, Ms. Hamida Siddique, learned Deputy Advocate General for the State opposes the submissions made by learned counsel for appellants and submits that there are specific allegations of torture, harassment and abetment to deceased to go somewhere and die. Yashoda Bai and Nirmala Netam in their statement recorded under Section 161 CrPC have made allegation that on the date of incident, appellants tortured and harassed deceased on the ground that she practices witchcraft. Hence, the ingredients of abetment as contained in Section 107 of IPC are attracted in case at hand. She also submits that deceased had also made complaint against appellants and other villagers to one Ramprakash Yadav, representative of Sarpanch of village panchayat, stating that she is having threat of her life from villagers including appellants. Hence there is prima facie involvement of appellants in commission of offence in question.
5. Ms. Rajni Soren, learned counsel appearing on behalf of complainant adopted arguments advanced by learned State Counsel and in addition, submits that this is the case of murder of deceased and not of suicide committed by deceased. Police have not conducted proper investigation.

Deceased stated before her death that she had been set ablaze by Bablu Tiwari @ Pragyesh Tiwari, Bharat Duge, Chaitram, Jaya, Jagdish, Rati Gada, Rajju Naranti, Sarojini, Sushila, Lala Bai, Jal Bai, Sukmat, Jaya's wife. Objector feeling aggrieved by action of police in not registering FIR had submitted representation on 23.6.2021 before the Superintendent of Police, Mungeli. Material available in charge sheet discloses *prima facie* involvement of appellants in commission of crime in question, hence they are not entitled to be released on regular bail.

6. I have heard learned counsel for parties and perused case diary.
7. Perusal of case diary would show that incident was immediately reported to police by Yashoda Bai, daughter of deceased. On 14.6.2021 at 4:00 p.m. dying declaration of deceased was recorded by the Executive Magistrate wherein she stated that on account of harassment and torture by persons named therein, she poured kerosene on her body and set herself on fire. Ramsnehi Dhruv in his statement recorded under Section 161 CrPC has stated that there was some property dispute between deceased and some accused persons.
8. Taking into consideration the facts and circumstances of case, nature of allegations, material collected by police, the fact that charge sheet has been filed, appellants are in jail since 9.7.2021, conclusion of trial is likely to take some time, without commenting anything on merits of case, I am inclined to enlarge appellants on regular bail.
9. Accordingly, the appeal is allowed and it is directed that appellants shall be released on regular bail on their furnishing a personal bond in the sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of trial Court concerned on the conditions that;

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

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-