

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1228 of 2021**

Ganga Prasad Chhatar S/o Late Akul Chhatar, Aged About 75 Years, R/o Village Panchayat Ranbhata, Post Bunga, Tahsil Pusour, District Raigarh Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Police Thana Pusour, District Raigarh Chhattisgarh.

---- Non-applicant

For Applicant	: Shri Sanjay Agrawal, Advocate
For Non-applicant/State	: Shri B.P. Banjare, Dy. Govt. Advocate
For objector	: Shri Abhishek Saraf, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****05.10.2021**

1. The applicant has preferred this first bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as he is apprehending his arrest in connection with Crime No.186 of 2021, registered at Police Station Pusour, District Raigarh (C.G.), for offence punishable under Section 302/34 of Indian Penal Code.
2. Case of the prosecution in brief, is that, on 19.08.2020, deceased Mahendra Mishra was in the house of applicant. Mother of deceased asked one Rudra Pratap Rajak to somehow bring Mahendra Mishra to his house. He on the request of mother of deceased, went to house of applicant where he saw that Rudra Pratap Rajak was sitting on sofa in drawing room where applicant, his two sons Janmajay, Rajkumar and one Chaitra Ratre was present. When Mahendra Mishra was coming out from the house

of applicant, he fell down. He was again taken back by the persons present there including two sons of applicant in drawing room. When Mahendra Mishra put to sit on sofa, he laid down on sofa set. This was intimated to father of deceased on his phone and one another person, namely, Sanjay Chhattar went on motorcycle to the house of deceased to intimate the condition of deceased. He found father of deceased present in the house and both of them came to house of applicant. They have asked the deceased as to what happened to him, but he was unable to reply them. They somehow bring the deceased to their house and looking to the condition of deceased, he was taken to Metro Hospital at Raigarh at about 4.00 pm, where during the course of treatment, he died at about 4.40 pm. Merg was reported to concerned Police Station, based on merg inquiry, First Information Report was registered on 27.08.2021 for the aforementioned offences against applicant along with three other persons.

3. Shri Sanjay Agrawal, learned counsel for the applicant would submit that there is no eyewitness to the incident as alleged. He further submits that deceased was in the habit of taking intoxications like liquor and *ganja*. On the date of incident, deceased came to house of applicant where along with his two sons, one Chaitra Ratre was present. After some time, when Rudra Pratap Rajak (eyewitness) came to house of applicant, deceased Mahendra Mishra went out of the house and fell down on road. Deceased was again brought back to drawing room of applicant. Mahendra Mishra has not narrated any act of incident

as alleged to Rudra Pratap Rajak or made any comment against the applicant or his family members, which shows that applicant has not committed any offence as alleged against him. He was taken to hospital by his father and after his death, postmortem of deceased was conducted, but in postmortem report, there is no mention that nature of death of deceased to be of homicidal in nature. Applicant is aged about 75 years and there is no evidence of involvement of applicant in alleged offence, hence, he may be enlarged on anticipatory bail.

4. Per contra, Shri B.P. Banjare, learned Deputy G.A. representing the State opposing the submissions made by learned counsel for the applicant, would submit that deceased Mahendra Mishra prior to the time of incident was in the house of applicant where applicant along with his two sons and one Chaitra Ratre was present. He further submits that in the house of applicant itself, condition of deceased became severe. On mobile phone, deceased intimated his father that he has been assaulted and he is unable to walk, hence, there is involvement of applicant in commission of aforementioned crime.
5. However, upon specific query to learned counsel for the State with regard to contents of postmortem report, he submits that in postmortem report, it is mentioned that injuries on the part of deceased are not found to be sufficient in ordinary course to cause death and cause of death is mentioned to be under investigation and it can be opined only after receipt of viscera

report. He read over the statement of Rudra Pratap Rajak stating him to be eyewitness of the incident.

6. Shri Abhishek Saraf, learned counsel for the objector would submit that prior to the time of incident, deceased Mahendra Mishra was found in the house of applicant. On mobile phone, deceased intimated his father that he has been beaten. Condition of deceased became severe in the house of applicant from where he was brought on motorcycle with the help of others by his father and within an hour of treatment at hospital, he succumbed to the injuries, hence, applicant is not entitled for the benefit under Section 438 of Cr.P.C.
7. I have heard learned counsel for the parties.
8. Though the deceased was found present in the house where along with applicant, his two sons Janmajay, Rajkumar and one Chaitra Ratre, but when eyewitness Rudra Pratap Rajak went to house of applicant, he saw deceased sitting on sofa. After reaching of Rudra Pratap Rajak, deceased went out of the house of applicant and fell down, who was again brought back to drawing room of applicant with the help of other persons present and there is no other eyewitness.
9. Taking into consideration entire facts and circumstances of the case, nature of allegations, considering the age of applicant, contents of postmortem report, without commenting anything into the merits of the case, I am inclined to release the present applicant on anticipatory bail.

10. Accordingly, bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on anticipatory bail on his furnishing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like sum to the satisfaction of the arresting officer and he shall be abide by the following conditions :-

(i) he shall make himself available for interrogation by a police officer as and when required;

(ii) he 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 facts to the Court or to any police officer.

(iii) he shall not influence the witnesses during pendency of the trial.

Certified copy as per Rules.

Sd/-

(Parth Prateem Sahu)
Judge