

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7098 of 2021**

Pradeep Yadav S/o Ramadhar Yadav, Aged About 22 Years,
R/o Village Sabag, Police Station Samripat, District
Balrampur-Ramanujganj, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Police Station Chando, District
Balrampur-Ramanujganj, Chhattisgarh.

---- Non-applicant**MCRC No. 7629 of 2021**

Baleshwar Yadav S/o Ramprasad Yadav, Aged About 24
Years, R/o Village Sabag, Police Station Samripat, District
Balrampur-Ramanujganj, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Police Station Chando, District
Balrampur-Ramanujganj, Chhattisgarh.

---- Non-applicant

For Applicant : Mr. Navneet Kumar Yadav, Advocate
(in MCRC No.7098 of 2021)
For Applicant : Mr. Amarnath Pandey, Advocate
(in MCRC No.7629 of 2021)
For Non-applicant/State : Ms. Shubha Shrivastava, P.L.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****14.12.2021**

1. Since both the applications arise out of same crime number, they are being heard and decided by the common order.
2. The applicants have preferred these First Bail Application under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail as they were arrested in connection with Crime No.02 of 2019, registered at Police Station Chando, District Balrampur-Ramanujganj (C.G.) for the offence punishable under Sections

294, 506, 323, 395, 435 of IPC, Sections 25, 27 of Arms Act and Section 8(1)(3)(5) of Chhattisgarh Public Security Act.

3. Case of prosecution is that, on 25.01.2019, when complainant Ramsunder (operator of Poclain Machine), Sagar Singh (driver of Hywa Truck) and Anuj (cleaner of the Hywa Truck) were sleeping on their vehicle at the place of construction of road, 3-4 persons came there in night at about 2.00 A.M., abused them and thereafter, under threat, they have been asked to get down from the vehicle. Those persons set two vehicles on fire and thereafter, left the place of incident. Incident was reported by Ramsunder, who is operator of Poclain Machine, based upon which, aforementioned crime was registered against unknown person. During the course of investigation, applicants have been shown to be arrested, who were already arrested in another crime No.02 of 2019 registered at Police Station, Samari.
4. Mr. Amarnath Pandey, learned counsel for the applicant in MCRC No.7629 of 2021 would submit that incident alleged stated to be taken place in night at about 2.00 A.M., at that time, three persons present on the spot in vehicle. Report was lodged by one of the person present on spot, by name Ramsunder, against unknown persons. In First Information Report, it is mentioned that he will identify the persons upon seeing them, but no test identification parade was conducted by police to identify the accused. It is further argued that arrest and seizure as shown in this instant case is seizure memo prepared by police in crime No.02 of 2019 registered at Police Station, Samri and in this case, there is no seizure of any incriminating article from possession of applicants. In the trial of criminal case based on crime No.02 of 2019 of

Police Station Samri, Sessions Trial bearing No.50 of 2019 was registered. After conclusion of trial, accused persons therein including applicants have been acquitted from the charges levelled under Sections 341, 323, 394, 427, 435 read with Section 149, 120-B, 399 of IPC and Section 8(1)(2)(3)(5) of the Public Security Act, 2005. He submits that two out of three persons present on spot allegedly have been examined before the trial Court in this case and they have not supported the case of prosecution, hence, applicants may be enlarged on bail.

5. Mr. Navneet Kumar Yadav, learned counsel for applicant in MCRC No.7098 of 2021 adopted the submissions of Mr. Pandey and further submits that applicant Pradeep Yadav was also tried in Session Trial No.50 of 2019 and he was also acquitted from the charges. There is no material against applicants to connect in instant case, hence, he may be enlarged on bail.
6. On the other hand, Ms. Shubhra Shrivastava, learned P.L. for the State opposing the submissions of learned counsel for the applicants would submit that looking into nature of offence, in which, applicants have been arrested, they are not entitled for bail.
7. However, upon asking from learned counsel for the State with regard to documents as stated by learned counsel for applicant Baleshwar Yadav with regard to seizure memo, she submits that in the seizure memo, it is mentioned that seizure memo is prepared by police of Police Station, Samri. There is no seizure from possession of applicants in the instant crime. On query, she

also submitted that in this instant case, no test identification parade was conducted by police to identify the accused persons.

8. I have heard learned counsel for the parties.
9. Taking into consideration facts and circumstances of the case, nature of allegations, particularly the fact that offence is reported against unknown person, no test identification parade was conducted to identify the accused persons and there is no seizure of any incriminating article from possession of applicants in instant crime, without commenting anything on merits of case, I am inclined to release the applicants on regular bail.
10. Accordingly, the applications (MCRC Nos. 7098 of 2021 and 7629 of 2021) are allowed and it is directed that the applicants shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety in the like sum to the satisfaction of the 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 the applicants 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