

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No. 8354 of 2020

- Yogesh Agrawal, S/o Late Shri Arun Agrawal, Aged about 50 years, R/o Shriram Nagar, Phase-II, Ward No. 29, House No. 29/514, Shankar Nagar, Tehsil & District Raipur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through Arakshi Kendra Urla, District Raipur, Chhattisgarh

---- Respondent/State

For Applicant	:	Shri Kishore Bhaduri, Advocate alongwith Shri Pankaj Singh, Shri Prateek Sharma & Shri Sabyasachi Bhaduri, Advocates
For Respondent/State	:	Dr.(Ms.) Veena Nair, Deputy Advocate General
For Objector/ Complainant	:	Shri Malay Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Order on Board

18.03.2021

1. The applicant has preferred this first bail application under Section 439 of Cr.P.C. as he is in jail since 18.09.2020 in connection with Crime No. 310/2020 registered in Police Station- Urla, District Raipur (CG) for the offence punishable under Section 307 of IPC.
2. The injured/victim namely Harsh Agrawal is the younger brother of present applicant Yogesh Agrawal. Both the brothers share joint properties regarding which there is a civil litigation pending in the Civil Court at Raipur for partition, possession & permanent injunction and they are living separately.
3. Case of the prosecution in brief is that on 18.09.2020, the applicant arrived in the factory premises, where the tiles are made, and land of the said factory belongs to the applicant and the victim. When applicant's younger brother (victim) was absent from factory, the applicant directed the workers to stop the work. Then one of the workers called the victim, who came there.

Both the brothers went inside the office and had a conversation on the issue. After sometime, both the brothers came out from the office, and while the younger (victim) was going towards the factory, the elder brother (applicant) intentionally drove the car over the victim with an intent to kill him and as a result of which, the victim got grievous hurt and skeletal injuries.

4. Learned counsel for the applicant submit that in this case, there was no intention on the part of the applicant to kill the victim, both met on the date of incident, discussed the issues peacefully regarding dispute between them and came out from the office of victim. They submit that when the applicant started his car, it dashed the victim accidentally as the car had automatic gear system. They submit that the applicant who is 50 years old, has no criminal antecedent, nor any dispute with the victim. They also submit that it is true that the victim sustained severe injuries, but the applicant took victim to the hospital, therefore, the applicant had no intention to kill his brother (victim). They further submit that there is no previous enmity between both the brothers, only one civil suit was filed by the son of the applicant for partition, possession & permanent injunction. They also submit that the applicant is in jail since 18.09.2020 for about six months from the date of incident, charge-sheet has already been filed and conclusion of the trial is likely to take some time. Therefore, the applicant be released on bail.
5. Learned counsel for the State as well as learned counsel for the objector vehemently oppose the contention made by learned counsel for the applicant. They submit that number of injuries were found on the body of the victim and he has not yet recovered from the injuries, till today he is not in a position to move and looking to the injuries found on the body of the victim which were caused by the applicant deliberately, he is not entitled for bail.
6. In this matter, wife of the victim appeared in person before this Court, she has raised objection to grant of bail to the applicant by this Court and she stated that her husband is in conscious condition but he can not move alone

and only 3-4 steps with the help of some person, he can walk

7. In the matter of ***Arnab Manoranjan Goswami Vs. The State of Maharashtra & Ors. in Criminal Appeal No. 742 of 2020 arising out of SLP (Crl) No. 5598 of 2020***, the Hon'ble Supreme Court has on certain factors which are to be kept in mind while considering the matters for grant of bail to the accused. In Para-57 of the said judgment, it has been observed as under:

57. While considering an application for the grant of bail under Article 226 in a suitable case, the Hight Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarized as follows:

- i. The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
- ii. Whether there exists a reasonable apprehension of the accused tampering with the witness or being a threat to the complainant or the witnesses;
- iii. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;
- iv. The antecedents of and circumstances which are peculiar to the accused;
- v. Whether *prima facie* the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
- vi. The significant interest of the public or the State and other similar considerations.

8. Having heard learned counsel for the parties, having regard to the facts and circumstances of the case, it is true that the victim sustained severe injuries but he has already been discharged from the hospital and is taking bed rest at home, it is not in dispute that the applicant is 50 years old, he has no criminal antecedent as admitted by learned counsel for the State as well as learned counsel for the applicant, there is no apprehension of the applicant tampering with evidence or absconding, the detention period of the applicant

for about six months from the date of incident, charge-sheet has already been filed and conclusion of the trial is likely to take some time due to Covid-19 pandemic, keeping in view the judgment of Hon'ble Supreme Court in *Arnab Manoranjan Goswami* case (supra), without expressing any opinion on merits, the bail application is allowed.

9. It is directed that in the event of applicant executing a personal bond for a sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the concerned trial Court, he shall be released on bail on the following conditions:-

- i. 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 fact to the Court.
- ii. he shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- iii. he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- iv. he shall not involve himself in any offence of similar nature in future or else this order granting bail to the applicant shall automatically stand cancelled without further reference to the Bench.

Sd/-

(Gautam Chourdiya)
Judge