

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8598 of 2020

- Deepak Shrivastava @ Bittu, Son of Late Shri Vijay Shrivastava, Aged About 22 Years, Resident of Village-Kacchar, Police-Station-Koni, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer, Police-Station-Kota, District : Bilaspur, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Umakant Singh Chandel, Advocate.
For Respondent/State	:	Mr. B.P. Banjare, Dy. Govt. Advocate.
For Objector	;	Mr. Kishore Bhaduri with Mr. Pawan Kesharwani, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

19/01/2021

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant for grant of regular bail to him as he is in custody in connection with Crime No.242/2020 registered at Police-Station-Kota, District-Bilaspur(C.G.) for the offence punishable under Sections 302, 363, 376, 201, 34 of IPC and Section 4 & 6 of POCSO Act.
2. It is submitted by the learned counsel for the applicant, that the applicant has been falsely implicated in this case. The only evidence against him is the extra-judicial confession made by phone call to a witness. No such mobile phone was seized from the possession of this

applicant and no call details were also collected in the investigation. Further, there is no evidence regarding commission of offence of rape. The applicant has been falsely implicated because of the previous enmity as the deceased herself had lodged one FIR, which was registered as Crime No.8/2020 for offences under Sections 354, 506 of IPC and Section 7 & 8 of POCSO Act. The applicant was granted bail in that case. The co-accused Anand Kewat in this case has been granted bail by this Court, hence, it is prayed that this applicant may also be enlarged on regular bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submission made in this respect. It is submitted that there is ample evidence present in the case against this applicant given by the witnesses, which create a chain of circumstances against this applicant, hence, the applicant is not entitled for grant of bail.
4. Learned counsel for the objector adopts the arguments advanced by the learned State counsel and submits, that the applicant made the phone call from his mobile number to the aunt of the deceased informing, that he has murdered the deceased and giving the details where the body can be found. The witnesses approached the spot found the deceased in injured condition, who was taken to hospital and then declared dead. It is a case of circumstantial evidence and the chain of circumstances is completely against this applicant. The case of the co-accused, who has been granted bail had been different as the only allegation against him was with respect to concealing the evidence of the crime. The family of the deceased are constantly under threat from the friends and relatives of the applicant, therefore, the application be rejected.

5. In reply, it is submitted by the counsel for applicant, that the important evidence to corroborate phone call, that is the phone has not been seized in the investigation. The memorandum statement of the applicant himself is not legally admissible under law, therefore, the applicant is entitled for grant of bail.
6. I have heard the learned counsel for both the parties and perused the case diary.
7. The prosecution case is this, that the complainant Smt. Priya Das Manikpuri received a phone call on the mobile of the deceased, which was in her possession from the mobile phone of the applicant, in which, he made admission that he has murdered the deceased and told about the details that the body will be found. The complainant and other witnesses arrived on the spot and found the deceased, who was alive at that time, but later on declared dead in the hospital. The other investigation shows about the previous incident in which the applicant had outraged the modesty of the victim, who is now deceased and regarding which FIR has been lodged. After lodging of FIR, the case has been investigated and charge-sheet has been filed.
8. Considered on the submissions. After looking to all the facts and circumstances of the case, I am of this view that this is not a fit case for grant of regular bail to the applicant.
9. Accordingly, the bail application filed under Section 439 of Cr.P.C. is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge