

HIGH COURT of CHHATTISGARH, BILASPUR**MCRC No. 8304 of 2021**

- Gopal Yadu S/o Shri Bhagela Yadu aged about 40 Years R/o Village Panchayat Budera, Police Station Kharora, District Raipur Chhattisgarh.

-----Applicant**VERSUS**

- State of Chhattisgarh through: Station House Officer, Police Station Kharora, District Raipur Chhattisgarh.

-----Non-applicant

For Applicant : Mr. Wasim Miyan, Adv.

For Non-applicant/State : Mr. Sameer Oraon, Govt. Adv.

Single Bench: Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****10/12/2021**

1. Learned counsel for applicant submits that this is **Second Bail** application. First Bail application filed by applicant was dismissed on merits. He submits that one of the grounds for dismissal of first bail application is that two out of five eye witnesses were yet to be examined before the trial Court and now all the five eye witnesses based on whose statement under Section 161 CrPC applicant was arrested have been examined and none of them have supported the case of prosecution.
2. Applicant has filed this second bail application under Section 439 of CrPC for grant of regular bail as he has been arrested in connection with Crime No. 322/2019 registered at Police Station Kharora, District Raipur (C.G.) for the offence punishable under Section 302 of IPC.
3. Case of prosecution is, that on 07.08.2019, at about 07:15 hours, applicant started quarreling with deceased and assaulted her by means of hand and fist, during course of scuffle applicant smashed her head on concrete made floor due to which she got injury. Five persons have witnessed the incident, based on their statement

recorded under Section 161 of CrPC, aforementioned crime is registered against applicant and he was arrested.

4. Mr. Wasim Miyan, learned counsel for the applicant would submit that applicant has not committed any offence as alleged against him. He has been falsely implicated. He submits that in the charge-sheet, five persons namely Kumar Yadav, Ganesh Satnami, Mangiya, Jayitri and Thomas @ Sonu Lahri are shown to be eye-witness to the incident. Eye-witnesses have been examined before the trial Court and none of them in their court statement have supported the case of prosecution, they have stated that they do not know about the incident. Applicant is in jail since 08.08.2019 and all the important witnesses have been examined by the prosecution. Out of total 19 enlisted witnesses, 9 witnesses have been examined.
5. Mr. Sameer Oraon, learned State counsel, while opposing the submissions of the learned counsel for the applicant, would submit that Nakul Yadu is one of the important witnesses who is husband of deceased. In his statement, he stated that applicant on several occasions quarreled and assaulted deceased earlier, hence, there is prima facie involvement of applicant in the aforementioned crime. However, upon putting specific query with respect to his own submission whether witness PW-2/ Nakul Yadu, husband of deceased, himself has seen the incident or not, on which, learned State counsel submitted that Nakul Yadu is not an eye-witness to the incident but he was informed by other persons the manner in which incident took place and commission of crime by applicant.
6. I have heard learned counsel for the respective parties.
7. Taking into consideration the facts and circumstances of the case, nature of allegation, submission of learned counsel for applicant that all the five important eye-witnesses have been examined before the

trial Court and have not supported the case of prosecution and further considering period of detention of applicant, without commenting anything on merits, I am inclined to allow the bail application.

8. Accordingly, the bail application is allowed. It is directed that the applicant shall be released on regular bail, upon furnishing a bail bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Court on the conditions that-

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

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

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