

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 9573 of 2021

1. Shesh Dev Patel (Malakar), S/o Late Shri Tekram, Aged About 62 Years.
2. Hemsagar Patel (Malakar), S/o Shri Tekram, Aged About 40 Years.

All are Agriculturist, R/o Village- Barampura, Thana- Sariya, Tahsil- Baramkela, District- Raigarh (C.G.)

--- Applicants

Versus

The State of Chhattisgarh, Through the Station House Officer, Police Station- Sariya, District- Raigarh (C.G.)

--- Respondent

For Applicants	:	Mr. Sunil Sahu, Advocate.
For State/ Respondent	:	Ms. Anjali Singh Chouhan, P.L.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

21/12/2021

1. This is the third bail application filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to them, who have been arrested on 19.06.2020 in connection with Crime No. 60/2020, registered at Police Station- Sariya, District- Raigarh (C.G.) for the offence punishable under Section 147, 148, 294, 323, 506, 307 of I.P.C.
2. The first bail application filed by the applicants bearing MCRC No. 6010 of 2020 & MCRC No. 6153 of 2020 respectively were dismissed as withdrawn by the Coordinate Bench of this Court vide its order dated 27.04.2020 reserving liberty in favour of the applicants to revive the prayer for grant of bail at an appropriate stage. The second bail applications filed by the applicants bearing MCRC No. 471 of 2021 & MCRC No. 1315 of 2021 respectively were dismissed on merits by the Coordinate Bench of this Court vide its order dated 18.03.2021 & 10.03.2021 respectively considering the fact that the victim- Dileshwar Patel

and other members of his family were attacked by the accused persons by means of *danda*, club, hand & fist and the victim has suffered fracture of left fronto parietal bone and was having intracranial bleeding as also bleeding from nose and the applicant No. 2-Hemsagar Patel (Malakar) has taken active part in making assault. Thereafter, final report was submitted and trial bearing Sessions Trial No. 03/2020 was also registered.

3. Learned counsel for the applicants would submit that injured-Dileshwar Patel (PW-7) was declared hostile by the prosecution as per his court statement, wherein he has stated that he has not suffered injury from any act of the applicants, but he has lost his balance while parking his motor-cycle and fell into drain and sustained injury on his head as well as on his body and while the cross-examination, Dileshwar Patel (PW-7) has reiterated the same and has denied the factum of assault by the applicants and also with regard to cause of injury sustained by him. He would further submit that Pankaj Malakar (PW-1) on whose strength, FIR has been lodged, has also been declared hostile by the prosecution as per his court statement, wherein he has also reiterated the same story, which has already been deposed by Dileshwar Patel.
4. Learned counsel for the applicants would further submit that once the injured person has become hostile, there is no chance of conviction of the applicants and the applicants are in jail since 19.06.2020, hence, it is prayed that the applicants may be enlarged on bail.
5. On the other hand, learned counsel for the State opposing the bail application would submit that in the medical report, there is clear allegation against the applicants regarding commission of offence and as per medical report, if proper treatment was not provided to the injured, he would succumb to death. Hence, the application for grant of bail may be rejected.
6. I have heard learned counsel for the parties and perused the case diary.

7. Considered the facts and circumstances of the case, the fact that the injured-Dileshwar Patel and the person on whose strength, the FIR has been lodged, have already been declared hostile by the prosecution and further considering the fact that the applicants are in jail since 19.06.2020, I am inclined to allow the bail application of the applicants.
8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
9. It is directed that the applicants shall be released on bail each of them on their furnishing a personal bond for a sum of Rs. 25,000/- each with one surety each for the like amount to the satisfaction of the concerned trial court. They shall appear before the trial court on each and every date given by the said trial court, till disposal of the trial.

Certified copy as per rules.

Sd/-
(Narendra Kumar Vyas)
Judge