

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRC No. 9875 of 2021**

- Bashir Khan @ Sonu S/o Shafik Momin aged about 30 Years R/o Ward No.4, at Present Chikhali, Rajnandgaon, District Rajnandgaon Chhattisgarh.

----Applicant

Versus

- State of Chhattisgarh Through Police Station Khairagarh, District Rajnandgaon Chhattisgarh.

---- Non-applicant

For Applicant	: Mr. D.K. Gwalre, Advocate with Mr. UNS Deo, Advocate
For Non-applicant/State	: Mr. Vimlesh Bajpai, Government Adv.

Single Bench: Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****21/12/2021**

1. Applicant has filed this application under Section 439 of CrPC for grant of regular bail as he has been arrested in connection with Istgasa No. 02/2021 registered at Police Station Khairagarh (C.G.) for the offence punishable under Section 41(1+4) of CrPC / Section 379/34 of IPC.
2. Case of prosecution is, that based on the suspicion, applicant was arrested on 12.09.2021 for commission of alleged offence under Section 41(1+4) of CrPC/ Section 379/34 of IPC. After arrest, applicant was enlarged on parole/ temporary bail by learned Additional Chief Judicial Magistrate, Khairagarh (for short "ACJM") *vide* order dated 29.09.2021 in view of direction issued by Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 1/2020** in **In Re: Contagion on Covid-19 Virus in Prison**. Applicant thereafter filed an application before learned ACJM, Khairagarh under Section 437 of CrPC for grant of bail which came to be dismissed *vide* order dated 26.11.2021. Aggrieved by the rejection order of bail, applicant has preferred an application under Section 439 of CrPC before the Sessions Court, Khairagarh which came up for hearing on 02.12.2021. Learned ACJM,

Khairagh dismissed the application *vide* impugned order, hence, applicant approached this Court by way of filing this application.

3. Learned counsel for applicant would submit that applicant was arrested by the police only on the basis of suspicion and not against registration of any crime. Arrest of applicant as available in the case diary/ istagasa report submitted by the police is for commission of offence under Section 41(1+4) of CrPC/ Section 379/34 of IPC. He submits that learned ACJM, Khairagarh, in pursuant to the direction issued by the Hon'ble Supreme Court in Writ Petition (C) No. 01/2020, released the applicant on parole, thereafter, police submitted istagasa report No. 02/2021 for commission of offence under Section 403 of IPC. As the offence alleged against applicant is bailable offence, hence, applicant filed an application under Section 437 of CrPC. Learned Magistrate without considering the application in proper manner and also the provisions under which allegations have been levelled against applicant and the istagasa report submitted by the police, dismissed the application filed under Section 437 of CrPC for grant of bail recording that the allegation levelled against applicant is of serious nature. He submits that aggrieved by the order of rejection, applicant filed an application under Section 439 of CrPC before the Sessions Court, Khairagarh and the learned Sessions Court also without considering that offence charged against applicant is bailable offence has illegally dismissed the application. Learned Sessions Judge has also considered the fact that serious allegations have been levelled against applicant as also sufficient evidence is available, but has not considered that applicant could not be sent behind the bars if the offence alleged is bailable. In support of his submission, learned counsel places his reliance in the matter passed by Hon'ble Supreme Court in **Rasiklal v. Kisore** reported in **(2009) 4 SCC 446**. Learned counsel also submits that as the applicant was released on parole, therefore, he is present before this Court. It is pointed out that during course of proceedings of bail before the Court below also, applicant was present but inadvertently his presence was not recorded.
4. Learned State counsel would submit that the report submitted by the police has been received by him, perusal of record would

show that applicant initially was arrested by the police on suspicion for commission of offence under Section 41(1+4) of CrPC/ Section 379/34 of IPC. It is also pointed out that with the permission of the Court, istagasa report is submitted before the Court of learned ACJM, Khairagarh. In istagasa report, offence alleged against applicant is mentioned under Section 403 of IPC only. He also submits that the offence under Section 403 is a bailable offence.

5. I have heard learned counsel for the parties.
6. Offence alleged against applicant is under Section 403 of IPC which is a bailable offence and the police after conclusion of investigation have submitted istagasa report before the Court of competent jurisdiction. Applicant is present in person before this Court.
7. Hon'ble Supreme Court in case of **Ratilal Bhanji Mithani vs. Asstt. Collector of Customs, Bombay and another** reported in **AIR 1967 SC 1639** considering old provision of CrPC has held as under.

“4. ...A person accused of a bailable offence is treated differently; at any time while under detention without a warrant and at any stage of the proceedings before the Court before which he is brought, he has the right under Section 496 of the Code to be released on bail...”

8. Hon'ble Supreme Court in case of **Rasiklal (supra)** has held thus:

“10. The position of persons accused of non-bailable offence is entirely different. The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to

abide by reasonable conditions which may be imposed on him.”

9. In view of the above facts of the case, and authoritative pronouncement of Hon'ble Supreme Court, learned Court below erred in dismissing the application for grant of bail of applicant against whom charge is under Section 403 of IPC.
10. Accordingly, the application is allowed. It is directed that the applicant shall appear before trial Court and upon his furnishing a bail bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Court shall be released on bail on the conditions that-
 - a) Applicant 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