

(2023) 03 CHH CK 0009

In the Chhattisgarh High Court

Case No : Miscellaneous Criminal Case No. 482, 816 Of 2023

Mohammad Ahmad Quraishi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 06-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 91, 439
Indian Penal Code, 1860 — Section 34, 186, 294, 323, 324, 353, 452, 506
Arms Act, 1959 — Section 2(h), 2(l), 25, 27

Citation : (2023) 03 CHH CK 0009

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Mohammad Afroz Athar, Richa Shukla

Final Decision : Dismissed

Judgement

1. Since an identical issue and common question of law involve in both the aforesaid bail petitions, they are heard analogously and are being disposed of by this common order.

2. The applicants have preferred the first bail applications under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail as they are arrested on 21-12-2022 in connection with Crime No 190 of 2022 registered at Police Station Chhura, District Gariyaband (CG) for the offence punishable under Section 25 of the Arms Act and Section 34 of the IPC.

3. The case of the prosecution, in brief, is that a secrete information was received from the informant by the Police of Police Station Chhura, District Gariyaband alleging that two persons coming from Piperhaththa carrying Deshi Katta (country-made pistol) on a motor cycle (Pulsar) bearing registration No. CG-04 NB 1619 and on such information being received the Police party stopped the said vehicle and searched the applicants. On search the applicants were found in illegal possession of one Deshi Katta (country made pistol) for which

they have not given any justifiable reason and thereby the aforesaid offence has been committed.

4. Learned counsel for the applicants would submit that the applicants have no criminal history and the offence alleged is not punishable with death or imprisonment for life. He would further submit that the maximum punishment for the alleged offence is upto seven years and the offence is triable by the Magistrate, therefore, as per the guidelines laid down by the Hon'ble Supreme Court in *Satender Kumar Antil vs. Central Bureau of Investigation* and another, reported in AIR 2022 SC 3386, the applicants can be granted bail. He would further submit that the offence is triable by Magistrate and conclusion of the trial is likely to take some time, the applicants are in custody since 21.12.2022, conclusion of the trial is likely to take some time and the applicant No.1 is permanent resident of village Piperhatghtha Police Station Chhura, District Gariyaband whereas applicant No.2 is a permanent resident of village Simga, Police Station Simga, District Baloda Bazar, therefore, there is no chance of their absconding, therefore, the applicants may be released on bail.

5. On the other hand, learned counsel for the State opposing submissions made by learned counsel for the applicants would submit that country made pistol had been seized from illegal possession of the present applicants. He would further submit that as per provisions of Section 91 of Cr.P.C., the police has sought information from the applicants on 21.12.2022, but they have not given any reply to the same and no justifiable reason was assigned to them to carry the aforesaid country-made pistol, therefore, they have rightly been arrested and would pray for dismissal of their bail applications.

6. I have heard learned counsel for the parties and perused the case diary with utmost satisfaction.

7. Learned counsel for the applicants have filed their written synopsis apart from their submissions wherein it has been stated that this court has already considered bail of other accused who was prosecuted for commission of offence punishable under Sections 294, 506, 323, 324, 452/34 of IPC and Section 25 & 27 of the Arms Act vide order dated 20-02-2023 passed by this court in M.Cr.C. No 248 of 2023 (*Ashif Khan vs. State of CG*) and also considered vide order dated 20-2-2023 passed by this court in M.Cr.C.No 21 of 2023 (*Yogesh Sika @ Sardar vs. State of CG*) in which applicant was prosecuted for offence punishable under Sections 294, 323, 186, 353 IPC and Sections 25 & 27 of the Arms Act and has granted bail to the accused persons. He would further submit the case of the present applicant is similar to that of the aforesaid other accused persons who have already been granted bail. He would further submit that Hon'ble the Supreme Court in the case of *Satender Kumar Antil* (supra) has issued guidelines for grant of bail since the applicant has been charged for commission of offence which is triable by the Magistrate and maximum punishment awarded to the applicants is seven years, final report has been and the applicants are in jail since 21-12-2022, therefore, they may be released on bail.

8. First this Court has to deal with the submissions made by learned counsel for the applicants on the ground of parity with regard to other accused persons who have already been granted bail in different set of facts vide order dated 20-2-2023 in M.Cr.C. No 248 of 2023 (Ashif Khan vs. State of CG) and in M.Cr.C. No 21 of 2023 (Yogesh Sika @ Sardar vs. State of CG) though FIR was registered under Sections 294, 506, 323, 324, 452/34 of IPC and Section 25 & 27 of the Arms Act and offence punishable 294, 323, 186, 353 IPC and Sections 25 & 27 of the Arms. In the cited cases, the applicants have assaulted the victims with hands and fists and in other case, by knife whereas in the present case country made pistol was seized from the present applicants for which they have no offered explanation, therefore, the case laws referred to by learned counsel for the applicant are distinguishable from the facts of the present case and do not stand on same footing. Thus, the submission of learned counsel for the applicants that the applicants are entitled to get bail on parity, deserves to be rejected. Even otherwise the well settled legal position that the period of incarceration is no ground to grant bail. The gravity of the offence and involvement of the applicants have to be looked into.

9. It is not in dispute that the applicants were charged under Sections Section 25 of the Arms Act and Section 34 of IPC for carrying country made pistol. Section 25 of the Arms Act defines punishment of certain offence. The relevant provisions of Section 25 of the Arms Act read as under.

[(1A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine.

(1AA) Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

10. Prohibited ammunition and prohibited arms have been defined in Section 2 (h) and 2(I) o the Arms Act, which read as under:-

“(h) “prohibited ammunition” means any ammunition, containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, 5 [missiles] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;

(i) “prohibited arms” means—

(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or

the magazine containing the missiles is empty, or \ (ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;

(j) "public servant" has the same meaning as in section 21 of the Indian Penal Code (45 of 1860);

(k) "transfer" with its grammatical variations and cognate expressions, includes letting on hire, lending, giving and parting with possession"

11. Hon'ble the Supreme Court in the case of Satender Kumar Antil (supra) has passed the following direction:-

"We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order."

12. Law with regard to grant of bail has been well settled by the Hon'ble Supreme Court in the case of State of Bihar and another Vs. Amit Kumar alias Bachha Rai, reported in (2017) 13 SCC 751 wherein, it has been held at paragraph 11 as under:-

"11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the

facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail".

13. Further in the case of Deepak Yadav vs. State of Uttar Pradesh and others reported in (2022) 8 SCC 559, Hon'ble Supreme Court while considering an application for bail, has observed at paragraph 22 which reads as under:-

"22. As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another, reported in (2010) 14 SCC 496, it is well-settled that the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail".

14. In the light of above state legal position and considering the considering the facts and circumstances of the case and considering nature of offence as the applicants were charged for carrying country made pistol and despite notice given by the prosecution as reflected from case diary, no plausible explanation or document with regard to the ownership of the pistol has been shown. This prima facie shows involvement of the applicants in carrying pistol without any valid license of country made pistol is grave in nature, therefore, considering entirety of the matter, this Court is of the opinion that it is not a fit case for grant of bail to the applicants. Accordingly, both MCRC Nos. 482 of 2023 and 816 of 2023 are rejected.

15. However, liberty is reserved to the applicants to revive the same after recording the statements of material witnesses.

16. The observation made by this Court is not bearing any effect on the trial of the case. The learned trial court will decide the criminal trial in accordance with

evidence, material placed on record without being influenced by any of the observation made by this Court while deciding the present bail applications.

17. Pending interlocutory applications, if any, stand disposed of.