

(2007) 10 CHH CK 0003
In the Chhattisgarh High Court

Sanjay Kumar Singh and Others	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 197, 200, 210, 307
Penal Code, 1860 (IPC) — Section 294, 307, 32, 323, 325

Citation : (2008) 1 CGLJ 155

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Judgement

Dilip Raosaheb Deshmukh, J.—This order shall govern M.Cr.C. (A) No. 3864 of 2006, M.Cr.C.(A) No. 158 of 2007, M.Cr.C. (A) No. 200 of 2007, M.Cr.C. (A) No. 206 of 2007, M.Cr.C. (A) No. 211 of 2007, M.Cr.C. (A) No. 236 of 2007 and M.Cr.C. No. 242 of 2007.

2. The following chart will show the details of the applications for anticipatory bail being disposed of by this order:

	Sl. M.Cr.C.(Name of
Arising Offence Register- No. A). No. the out of Under ed at Applicant Sections	
Complai- 294, 323, 32 J.M.F.C. 6 e Sanjay ntcase 5, Ambikapur Kumar No.186/	1. 3864/200 Constabl
394 & Singh 06 452/34	
2. 158/2007 T.I. -do- -do- -do- D.K.Singh	
do- -do- -do- Babloo (Private party)	3. 200/2007 Vijay @ -
Crime 323,294, Police Umed No.353/ 506 and Station Singh 06 307 IPC	4. 206/2007 Dr.Lal
Ambikapur Constable -do- -do- P.S. Sanjay Gandhi- Kumar nagar Singh	5. 211/2007
do- Ambikapur D.K. (Rural) Singh	6. 236/2007 T.I. -do- -

- ii. Basant Singh,
- iii. Koushal Prajapati
- iv. Arvind Singh,
- v. Bhupendra Nath Patel and
- vi. Praveen Kumar Rai -----

3. Brief facts are that on 12.10.2005, i.e. on the date of Dussehra festival at 10.30 P.M., Constable Khageshwar Singh of Police Station Ambikapur accompanied with one Vijay @ Babloo went to Jaiswal Hotel situated in Ambikapur and asked for Paneer curry. At that time, half the shutter of the hotel had been pulled down. On refusal by Manager Kaushal Prasad Prajapati and the waiters, a quarrel erupted with the angry constable and his companion Vijay, which was soon followed by a fight. On receiving information from Constable Khageshwar Singh on cell phone, City Superintendent of Police Dr. Lal Umed Singh, Town Inspector D.K. Singh and Head Constable Sanjay Kumar Singh rushed to the Jaiswal Hotel in a police jeep and entered the hotel. It is alleged that Town Inspector D.K. Singh, Constable Khageshwar Singh and Head Constable Sanjay Kumar Singh committed robbery of cash, gold chain and a cell phone while voluntarily causing hurt to Shyamlal Jaiswal. Constable Khageshwar Singh stabbed waiter Gajendra Panika by a knife at the iliac fossa causing an incised wound resulting in protruding of intestine from the wound. Gajendra Panika was very much frightened. Despite the injury, he hid himself in a store room of the kitchen of the hotel and was rescued the next day and hospitalised for treatment. Basant Singh was also stabbed by Constable Khageshwar and received injuries.

4. Shyamlal Jaiswal, Kaushal Prasad Prajapati and other waiters of the hotel were taken to the police station in the jeep. It is alleged that upon being exhorted by Dr. Lal Umed Singh, the then C.S.P. Ambikapur, he was severely beaten by Constable Khageshwar Singh resulting in fracture of left temporal bone and other injuries of serious nature. A written report was lodged by Shyamlal Jaiswal at Police Station Ambikapur on 13.10.2005. However, the police did not respond and took no action. A private complaint was filed on 30.06.2006 before the Judicial Magistrate First Class, Ambikapur by Shyamlal Jaiswal against the then C.S.P. Dr. Lal Umed Singh, Town Inspector D.K. Singh, Head Constable Sanjay Kumar Singh, Constable Khageshwar Singh and Vijay @ Babloo. Upon recording statements u/s 200 Cr.P.C. in complaint case No.186 of 2006 lodged by Shyamlal Jaiswal, the Judicial Magistrate First Class, Ambikapur took cognizance of offences u/s 294, 323, 325, 395, 452/34 I.P.C. against the then C.S.P. Dr. Lal Umed Singh, Town Inspector D.K. Singh, Head Constable Sanjay Kumar Singh, Constable Khageshwar Singh and Vijay @ Babloo and issued warrants of arrest

against them. Kaushal Prasad Prajapati, Manager of the hotel, also lodged a complaint at police station, Ambikapur, upon which Crime No.691 of 2005 was registered.

5. The following injuries were found on Shyamlal Jaiswal on 13.10.2005:

- i. Lacerated wound over nose 1 cm x 0.5 cm x skin deep.
- ii Lacerated wound over left eyelid brow 2 cm x 5 cm x skin deep.
- ii Contusion over right zygomatic area face 2 cm diameter.
- iv. Lacerated wound upper lip 1 cm x 0.5 cm. x skin deep.
- v. Contusion over left knee 2 cm x 2 cm
- vi. Tenderness over left thigh.

6. The injury report of Constable Khageshwar reveals that he had received some abrasions, one superficial lacerated wound over the left eyebrow and swelling over right hand and right mandible, which were simple in nature and X-ray did not reveal any bony injury.

7. Gajendra Panika and Basant @ Kanhaiya, waiters of the hotel preferred Writ Petition No. 6213 of 2005. A direction was issued in W.P. No. 6213 of 2005 to the Station House Officer, Police Station Ambikapur to record the reports of Basant @ Kanhaiya and Gajendra Panika in detail and to investigate on such report.

8. In pursuance of the direction issued in writ petition 6213 of 2005 upon reports being lodged by Gajendra Panika and Basant @ Kanhaiya, on 29.08.2006 Crime No. 353 of 2006 was registered against Dr. Lal Umed Singh, C.S.P., D.K.Singh, T.I., Head Constable Sanjay Kumar Singh and Constable Khageshwar Singh under Sections 323, 294, 506, 307 read with Section 34 I.P.C. On the basis of report lodged by Constable Khageshwar Singh, on 12.10.2005 Crime No. 690 of 2005 for offences punishable u/s 307 and 342/34 I.P.C. was registered against Gajendra Panika and 5 others shown in Sr. No. 7 in the chart above.

9. In the order dated 07.08.2006 passed in W.P. No. 6213 of 2005, the injuries sustained by the waiters namely Gajendra Panika and Basant @ Kanhaiya were noted as under:

From perusal of Annexure P/4, it is evident that petitioner No. 2 Basant alias Kanhaiya was sent for medical examination though Sainik Rajivram of Police Station, Ambikapur. When he was brought to hospital, he was unconscious having incised wound on right side of back side of chest 2 cm x 0.25 cm deep, incised wound left arm with swelling 2 cm x 0.25 cm deep. He was admitted in hospital on 13.10.2005. Annexure P/3 clearly shows that petitioner No. 1 Gajendra was admitted in Government hospital for treatment on 13.10.2005 who was injured having MLC injuries on abdomen. He was operated for exploratory Laprotomy. From Annexure P/1, it is evident that wound on iliac fossa with intestine protruding was found. It is also evident that he was admitted on

13.10.2005 and was discharged on 26.10.2005.

10. This Court noted the apathy of the Chhattisgarh Police in complying with the warrants of arrest repeatedly issued against its officers and one Vijay Ambastha by the trial Court of J.M.F.C. Ambikapur having jurisdiction in complaint case No. 186 of 2006 and a report of the D.G.P. Chhattisgarh was sought. It was reported that Town Inspector D.K. Singh, Head Constable Sanjay Kumar Singh and Constable Khageshwar Singh were not traceable and absconding. It was also mentioned that orders for initiating departmental enquiry against T.I. Devendra Kumar Singh and Head Constable Sanjay Kumar Singh were issued to Superintendent of Police, Surguja. It was also informed that disbursement of salary of Constable Khageshwar Singh who was absconding after the occurrence was stopped from October, 2006. It was also mentioned that the Superintendent of Police, Ambikapur was directed to constitute a special team and to execute the warrants of arrest. The tall claims made in the report fell to the ground in view of the fact that during the hearing T.I. Devendra Kumar Singh and Head Constable Sanjay Kumar Singh were present before this Court on 10.09.2007 and 18.09.2007. A report received from the J.M.F.C. Ambikapur on 17.09.2007 revealed that fresh warrants of arrest for 10.10.2007 have been issued and sent to D.G.P. Chhattisgarh. On a specific query, it emerged that no Rojnamcha Sanha entry was made at police station, Ambikapur on 12.10.2005 which would show that upon receiving a telephone call, the police party comprising of Dr. Lal Umed Singh, the then C.S.P., T.I. D.K. Singh and Head Constable Sanjay Kumar Singh had proceeded from the police station to the spot i.e. Jaiswal Hotel or that upon receiving such information T.I. D.K. Singh was informed by wireless to proceed to the spot with the police party. The Rojnamcha Sanha entry at 1.30 A.M. on 13.10.2005 revealed that entry was made only on return of the police party at the police station.

11. Shri Sunil Tripathi, learned Counsel applicant- Head Constable Sanjay Kumar Singh submitted that no overt act was attributed to Head Constable Sanjay Kumar Singh in the complaint filed by Shyamlal Jaiswal as also by Arvind Maravi, a staff of the hotel, who was examined u/s 200 Cr.P.C. On this premise, learned Counsel prayed that anticipatory bail should be granted to Head Constable Sanjay Kumar Singh.

12. Shri Kishore Bhaduri, learned Counsel for the applicant-Vijay Ambastha argued that in the report lodged by Kaushal Prasad Prajapati on 13.10.2005 (Crime No. 691 of 2005), no allegations were made against Vijay Ambastha. It was also submitted that Vijay Ambastha @ Babloo was also not made a party in the Writ Petition No. 6213 of 2005 filed by Gajendra Panika and Basant Singh @ Kanhaiya Singh. Learned Counsel for the applicant submitted that there were absolutely no allegations against Vijay Ambastha @ Babloo regarding any participation in the act of looting. It was submitted that at the most it could be said that there was prima facie case u/s 342 and 323 I.P.C. against Vijay Ambastha @ Babloo. On these grounds, learned Counsel prayed that anticipatory

bail should be granted to Vijay Ambastha @ Babloo.

13. Shri Kanak Tiwari, learned Senior Advocate appearing on behalf of T.I. Devendra Kumar Singh and Dr. Lal Umed Singh, raised two pure questions of law. One, that before taking cognizance of offence u/s 294, 323, 325, 394 and 452/34 I.P.C. the Judicial Magistrate First Class, Ambikapur ought to have considered in complaint case No. 186 of 2006 the question whether sanction u/s 197(1) of Cr.P.C. was required or not before taking cognizance. Placing reliance on K.L. Verma Vs. State and Another, , it was emphatically argued that the question u/s 197(1) of Cr.P.C. could be raised even at the stage of an application for grant of anticipatory bail. Reliance was also placed on a catena of decisions rendered by the Apex Court in Matajog Dobey Vs. H.C. Bhari, Gauri Shankar Prasad Vs. State of Bihar and Another, , B. Saha and Others Vs. M.S. Kochar, , N.K. Ogle Vs. Sanwaldas @ Sanwalmal Ahuja, , Rizwan Ahmed Javed Shaikh and Others Vs. Jammal Patel and Others, , Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, , Abdul Wahab Ansari Vs. State of Bihar Another, and Bakhshish Singh Brar Vs. Gurmej Kaur and Another, , Rakesh Kumar Mishra Vs. The State of Bihar and Others, and Director of Inspection and Audit and others Vs. C.L. Subramaniam, .

14. It was further submitted that a perusal of the complaint case No. 186 of 2006 pending before the J.M.F.C., Ambikapur, made it crystal clear that along with the complaint, an application was filed by the complainant purporting to be under Sub-section (1) of Section 210 Cr.P.C. to the effect that upon a report in relation to the same incident lodged by Kaushal Prasad Prajapati i.e., the Manager of the Jaiswal Hotel, Crime No. 691/2005 u/s 294, 323 read with Section 34 I.P.C. had been registered, and therefore, a report be called from the Police in relation to investigation in Crime No. 691/2005 under Sections 294, 323 read with Section 34 I.P.C. It reveals that the Magistrate even before recording statements u/s 200 Cr.P.C. had, on 11.07.2006, received a report from the Station House Officer, Police Station, Gandhinagar, Ambikapur that in Crime No. 691/2005 offence u/s 307, 294, 323 read with Section 34 I.P.C. had been registered against Khageshwar Singh and Babloo @ Sanjay @ Vijay Ambastha. It was therefore, contended that when according to the complainant, the police had registered Crime No. 691/2005 against Constable Khageshwar Singh and one another in relation to the same offence for which a private complaint had been filed, the Magistrate ought not to have proceeded any further and stayed the proceedings of such enquiry contemplated u/s 200 Cr.P.C. till a report of the Police Officer conducting investigation was received.

15. Lastly, Shri Kanak Tiwari, learned Senior Advocate submitted that although the relief u/s 482 Cr.P.C. cannot and should not be granted in an application u/s 438 Cr.P.C., but some relief should be granted to the Police Officers, namely, Dr. Lal Umed Singh, T.I., D.K. Singh and Head Constable Sanjay Kumar Singh by staying execution of the warrants of arrest issued against the above Police Officers till such period during which the above petitioners could file objections u/

s 197(1) or 210(1) Cr.P.C. before the trial Court or file application u/s 482 Cr.P.C. However, in the facts and circumstances mentioned in this order, this relief cannot be granted in an application u/s 438 Cr.P.C.

16. It is painful to notice that despite pendency of these applications since long, Shri Akhil Agrawal, Panel Lawyer, who regularly appeared for the State, expressed his inability to argue. On 26.09.2007, Shri G.D.Vasvani, Government Advocate, who was to argue this matter, was informed to be present in the Court on 01.10.2007. However, he remained absent. Upon this, learned Advocate General was called to make a submission, who informed that the matter has been entrusted now to Shri Naval Kishore Agrawal, Deputy Advocate General. Shri Naval Kishore Agrawal, Deputy Advocate General also expressed his inability to argue because he had not received the file, and therefore, submitted that he would only oppose the prayer formally. In this manner, no submissions were made in this matter by the State even on questions of law u/s 197(1) and 210(1) of the Cr.P.C. raised by Shri Kanak Tiwari, learned Senior Advocate appearing for T.I. D.K. Singh and Dr. Lal Umed Singh. The complete apathy of the State in this matter has shocked the judicial conscience of this Court.

17. Shri P. Diwaker, learned Senior Advocate appearing on behalf of Shyamlal Jaiswal and petitioners in M.Cr.C. (A). No. 242/2007 and opposing M.Cr.C. (A.) No. 3864/2006, M.Cr.C. (A.) No. 158/2007 and M.Cr.C. (A.) No. 200/2007 argued that the questions of law u/s 197(1) and 210(1) Cr.P.C. raised by Shri Kanak Tiwari, learned Senior Advocate for the petitioners-Dr. Lal Umed Singh and T.I. D.K. Singh could not be raised in proceedings u/s 438 Cr.P.C. Placing reliance on Raj Kishor Roy Vs. Kamleshwar Pandey and Another, , it was urged that the question whether the police officials/accused persons acted in the course of performance of duties or whether such a defence is pretended or fanciful can only be examined during the course of trial, and therefore, such a question should be left open to be decided in the main judgment which may be delivered by the trial Court upon conclusion of trial. It was further urged that although cognizance was taken by the trial Court on 07.08.2006 in complaint case No. 186/2006, yet till date no such application was filed by T.I.D.K. Singh and Head Constable Sanjay Kumar Singh in the trial Court. Distinguishing the decision of K.L. Verma (supra) learned Sr. Advocate argued that in that case the question of sanction u/s 197(1) was not adjudicated upon in the matter u/s 438 Cr.P.C. but an application had been filed to that effect before the High Court by K.L. Verma, upon which, the High Court had issued notices on the question whether sanction u/s 197 of the Cr.P.C. was required for taking cognizance. In the present case, it was open to the petitioners to file such an application before the trial Court.

18. Placing reliance on B. Saha and Others Vs. M.S. Kochar, , it was also urged that the question whether sanction u/s 197(1) Cr.P.C. necessary or not would depend on the facts and circumstances of each case and should be left to be decided by the trial Court at the time of pronouncing judgment and should not be adjudicated upon by this Court while considering an application u/s 438 Cr.P.C.

Placing reliance on State of Orissa through State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, , it was urged that the question of sanction u/s 197(1) Cr.P.C. does not get immediately attracted on institution of complaint case.

19. It was further argued that Sub-section (1) of Section 210 Cr.P.C. mandates the Magistrate to stay the proceedings of such enquiry upon a complaint, only when the investigation by the police is in progress in relation to the offence which is a subject matter of the enquiry or trial held by the Magistrate. Although the complainant Shyamlal Jaiswal had made an application before the trial Court for seeking a report from the police in relation to the Crime No. 691/2005 registered upon a report lodged by Kaushal Prasad Prajapti on 13.10.2005, it would appear in paragraph 18 of the complaint itself that it was averred that the police had per force got the report signed by Kaushal Prasad Prajapti to save their own skin and to save their high police officials. This was further substantiated by the testimony of Kaushal Prasad Prajapti in paragraph 7 that he did not lodge any report and when the police took him along with others to the police station, they got a report signed by him. Referring to paragraph 6 of the statement of Kaushal Prasad Prajapti u/s 200 Cr.P.C. before the trial Magistrate, it was also argued that on 12th and 13th of October, 2005, Kaushal Prasad Prajapti was detained in the police lock-up, and therefore, there was no question of any report being written by the police at his instance on 13.10.2005. If a report was to be made spontaneously by Kaushal Prasad Prajapati, it would have been made immediately after the incident, i.e., 12th October, 2005 itself when he was taken to the police station. It was further urged that it was open to the petitioners in M.Cr.C. (A). No. 3864/2006, M.Cr.C. (A). No. 158/2007 and M.Cr.C. (A). No. 200/2007 to make an application u/s 210(1) Cr.P.C. if felt necessary and to obtain an adjudication upon it from the trial Court. Such a point could not be urged or raised in an application u/s 438 Cr.P.C. particularly in view of the conduct of the police till today in not completing investigation in Crime No. 353/2006 or arresting the real culprits in complaint case No. 186/2005 which clearly shows that although the offence was committed on 12.10.2005, cognizance was taken by the trial Court on 07.08.2006 and warrants of arrest were repeatedly issued by the Court, yet till date the police did not comply with such orders, despite a report being sought from the D.G.P. Chhattisgarh by this Court on 29.06.2007 and 10.09.2007. The very fact that Head Constable Sanjay Kumar Singh and T.I. D.K.Singh were present in Court on two hearings shows the complete apathy of the Chhattisgarh Police in upholding the rule of law. It was further argued that Crime No. 353/2006 was registered only after a direction by this Court in W.P. No. 6213 of 2005 on 07.08.2006 and not on the initiation of the complaint case by Shyamlal Jaiswal. Placing reliance on Sankaran Moitra Vs. Sadhna Das and Another, , it was further urged that in order to attract Section 210 Cr.P.C., it has to be shown that investigation by the police was in progress in relation to the same offence. In the present case, the trial Court did not take cognizance of offence u/s 307 Cr.P.C. whereas in Crime No. 353/2006 the police

had registered the offence u/s 307 I.P.C. against the culprits. In this manner, it could not be said that the investigation by the police was in relation to the same offence for which a complaint was filed.

20. It was also urged that the so-called report by Kaushal Prasad Prajapati was per force by the police. There is no mention of the offences committed by the petitioners-Dr. Lal Umed Singh, T.I. D.K. Singh and Head Constable Sanjay Kumar Singh, upon reaching the Jaiswal Hotel or about the merciless beatings of Shyamlal Jaiswal at the police station. In this manner, it cannot be said that Crime No. 691/2005 registered by the police on 12.10.2005 per force on the so-called report of Kaushal Prasad Prajapati related to the same offence which is the subject matter of enquiry or trial by the Magistrate. Therefore, it was unnecessary for the Magistrate to stay the proceedings in the complaint case.

21. As regards M.Cr.C. (A.) No. 242/2007, it was argued that bail was granted to the co-accused Shyamlal Jaiswal vide order dated 31-01-2007 passed in M.Cr.C. (A.) No. 3928/2006 in Crime No. 690/2005 by this Court and, therefore, on parity, the applicants were also entitled to bail. It was further argued that although Constable Khageshwar did not suffer any grievous or incised injury yet an offence u/s 307 I.P.C. was registered against the applicants as a counterblast. On these premises, it was urged that the applicants in M.Cr.C. (A.) No. 242/2007 were entitled to bail.

22. I have considered the rival submissions and have also perused the trial Court record in complaint case No. 186/2006, the case diary as also the documents annexed with the applications.

23. So far as the arguments advanced by Shri Kanak Tiwari, learned Senior Advocate that the question of the applicability of Section 197(1) Cr.P.C. can be considered in an application u/s 438 Cr.P.C., it needs to be noticed that in K.L. Verma (supra), the Apex Court was not considering the question of applicability of Section 197(1) of Cr.P.C. in the application u/s 438 Cr.P.C. but in another matter. The Petitioners T.I. D.K. Singh and Head Constable Sanjay Kumar Singh did not move any application u/s 197(1) Cr.P.C. before the trial Court. Before the trial Court, Dr. Lal Umed Singh also did not press for decision upon his preliminary objection dated 12.12.2006 which concerned only him, perhaps because he was granted anticipatory bail by this Court.

24. So far as M.Cr.C. (A). No. 206/2007 by Dr. Lal Umed Singh, M.Cr.C. (A). No. 211/2007 by Sanjay Kumar Singh and M.Cr.C. (A). No. 236/2007 by T.I. D.K. Singh in relation to Crime No. 353/2006 registered u/s 323, 294, 507, 307/34 I.P.C. is concerned, a report u/s 173 Cr.P.C. has not been filed in Crime No. 353/2006 till now, and therefore, the question of applicability of Section 197(1) Cr.P.C. in Crime No. 353/2006 does not arise because the Court has not yet taken cognizance of the offences. The State has also maintained complete silence on this issue before this Court. So far as M.Cr.C. (A). No. 3864/2006, M.Cr.C. (A). No. 158/2007 and M.Cr.C. (A). No. 200/2007 are concerned, it is open to

the petitioners-T.I. D.K.Singh and Head Constable Sanjay Kumar Singh to raise such objection u/s 197(1) of Cr.P.C. before the trial Court or to make an application u/s 482 Cr.P.C. for quashing the order dated 07.08.2006 taking cognizance for offences under Sections 294, 323, 325, 394, 452 read with Section 34 of the I.P.C. by the trial Court. In the fact situation in its entirety, it would, therefore, not be appropriate to consider the question of sanction u/s 197(1) Cr.P.C. in the proceedings u/s 438 Cr.P.C. The inaction of the police officials as also the long silence of the State in this matter despite several opportunities being given by the Court is also alarming because no material was placed by the State in support of its officers by showing that sanction u/s 197(1) Cr.P.C. was necessary. On the other hand, the report of the Director General of Police, Chhattisgarh dated 12.09.2007 shows that disciplinary action has been taken against T.I. D.K. Singh, Constable Khageshwar and Head Constable Sanjay Kumar Singh. In none of the citations relied on by Shri Kanak Tiwari, learned Senior Advocate the question of Section 197(1) Cr.P.C. has been considered in an application u/s 438 Cr.P.C.

25. As regards the objection u/s 210(1) Cr.P.C. is concerned, without expressing any opinion on its merits and in view of the facts submitted by Shri P.Diwakar, learned Senior Advocate and mentioned in paragraphs 19 and 20 (supra), it would be open to the petitioners - Dr. Lal Umed Singh, T.I., D.K. Singh and Head Constable Sanjay Kumar Singh to move an application u/s 210(1) Cr.P.C. before the trial Court or u/s 482 Cr.P.C., as may be felt necessary.

26. So far as the applicant-Dr. Lal Umed Singh, the then C.S.P. Ambikapur is concerned, he was ordered to be released on anticipatory bail by order dated 01.12.2006 in M.Cr.C. (A) No. 2570 of 2006. No overt act either of exhorting or in any manner participating in the commission of offence was attributed to him by Shyamlal Jaiswal, owner of the hotel in his statement on oath before the J.M.F.C. Ambikapur. Crime No. 353 of 2006 registered against him by police station, Ambikapur on the report of Gajendra Panika, pursuant to an order dated 07.08.2006 passed by this Court in W.P. No. 6213 of 2005 is an off-shoot of the same offence. Although in Crime No. 353 of 2006 a case u/s 307 read with Section 34 of the I.P.C. has also been registered against Dr. Lal Umed Singh, but upon a perusal of the case diary, I find no overt act is attributed to him in the assault. Since Shyamlal Jaiswal, in his statement paragraph 4 in complaint case No. 186/2006 has not stated that Dr. Lal Umed Singh exhorted any police officer to assault him, the Manager or the waiters and considering the facts and circumstances of the case, applicant - Dr. Lal Umed Singh, the then C.S.P. Ambikapur deserves grant of bail on ground of parity. Application M.Cr.C. (A). No.206 of 2007 is therefore allowed.

27. It is ordered that in the event of arrest of Dr. Lal Umed Singh in Crime No. 353 of 2006 for offences under Sections 323, 294, 506 and 307 of I.P.C. of Police Station, Ambikapur (Rural) he shall be released on bail on his furnishing a personal bond for Rs. 30,000/- with a local solvent surety in like amount to the

satisfaction of police officer causing his arrest for his appearance, as and when directed, during investigation and on completion of investigation before the trial Court on condition that he shall not dissuade the prosecution witnesses in any manner from stating true facts before the trial Court. The aforesaid condition shall be incorporated in the bail bond and surety bond and a single breach of any condition will entail the consequence of cancellation of bail. The order shall remain effective for a period of one month from today during which period the applicant shall be at liberty to move an application for regular bail.

28. So far as the applicants - Kaushal Prasad Prajapati, Manager of the Hotel and his waiters Gajendra Panika, Basant Singh @ Kanhaiya Singh, Arvind Singh Maravi, Bhupendra Nath Patel and Praveen Kumar Rai in M.Cr.C. (A). No. 242 of 2007 are concerned, the offence under Sections 307 and 342 of 34 of I.P.C. was registered against them on the basis of a report lodged by Constable Khageshwar Singh who is the main culprit absconding after the occurrence. The case diary reveals that simple injuries like abrasions and contusion were found on Constable Khageshwar Singh and no incised injury or bony injury was found. During the course of arguments, it emerged that Shyamlal Jaiswal, the owner of Jaiswal Hotel, was granted bail vide order 31.01.2007 passed in M.Cr.C.No. 3928 of 2006 in Crime No. 690 of 2005 registered by Police Station Gandhi Nagar, Ambikapur for offence u/s 307 and 342 read with Section 34 I.P.C., upon a report lodged by Constable Khageshwar. The F.I.R. lodged by Constable Khageshwar in Crime No. 690 of 2005 does not mention as to who had assaulted him and in what manner. Merely on an allegation by Constable Khageshwar that Shyamlal Jaiswal and his staff would have killed him, an offence u/s 307 and 342/34 I.P.C. was registered by the police.

29. Considering the facts and circumstances of the case in its totality, the simple nature of injuries found on Khageshwar and the fact that since co-accused Shyamlal Jaiswal has been granted bail, I am of the considered opinion that the applicants-Gajendra Panika, Basant Singh @ Kanhaiya Singh, Koushal Prajapati, Arvind Singh Maravi, Bhupendra Nath Patel and Praveen Kumar Rai in M.Cr.C. (A). No. 242 of 2007 are also entitled to anticipatory bail on grounds of parity. Application M.Cr.C. (A) No. 242 of 2007 is allowed.

30. It is ordered that if in the event of arrest of Gajendra Panika, Basant Singh @ Kanhaiya Singh, Koushal Prajapati, Arvind Singh Maravi, Bhupendra Nath Patel and Praveen Kumar Rai in Crime No. 690 of 2005 for offences punishable under Sections 307, 342/34 of I.P.C. in Crime No. 690 of 2005, they shall be released on bail on their furnishing a personal bond for Rs. 30,000/- each with a local solvent surety in the like amount to the satisfaction of police officer causing their arrest for their appearance during investigation as and when directed and on completion of investigation before the trial Court. The order shall remain effective for a period of one month from today during which period the applicants shall be at liberty to move an application for regular bail.

31. So far as the applicants Head Constable Sanjay Kumar Singh M.Cr.C. (A). No.

3864 of 2006 and M.Cr.C. (A). No. 211 of 2007, Town Inspector Devendra Kumar Singh M.Cr.C. (A). Nos. 158 of 2007 and 236 of 2007 and Vijay @ Babloo M.Cr.C. (A). No. 200 of 2007 are concerned, there is a strong prima facie case against them under Sections 294, 323, 325, 394 and 452 read with Section 34 I.P.C. in complaint case No.186/2006. Considering the facts and circumstances of the case in its entirety, the fact that departmental enquiry has also been ordered to be initiated against fugitives from law i.e. T.I. Devendra Kumar Singh and Head Constable Sanjay Kumar, the fact that in Crime No. 353 of 2006 the police has also registered a criminal case u/s 323, 294, 506 and 307 I.P.C. read with Section 34 of the I.P.C. against these police officers and Vijay @ Babloo, the nature of injuries sustained by Shyamlal Jaiswal, Gajendra Panika and Basant Singh @ Kanhaiya Singh and the delay occasioned in investigation of Crime No. 353/2006 due to these police officers and one Vijay @ Babloo fleeing from law, I am of the considered opinion that the applicants- Head Constable Sanjay Kumar Singh, Town Inspector Devendra Kumar Singh and Vijay @ Babloo are not entitled to anticipatory bail. M.Cr.C. (A) Nos. 3864/2006, 158/2007, 200/2007, 211/2007 and 236/2007 are therefore dismissed.

32. In case the warrants of arrest issued by the J.M.F.C. Ambikapur in case No. 186/2005 are not yet served, the J.M.F.C., Ambikapur shall issue fresh warrants of arrest against the above mentioned police officials and Vijay @ Babloo and send it per messenger on the same day to the Superintendent of Police, Ambikapur, who shall, get them executed under his supervision, failing which, the Superintendent of Police shall appear in person before this Court to explain on 22nd October, 2007. A report shall also be submitted by the Superintendent of Police, Ambikapur regarding the arrest of the culprits in Crime No. 353/2006. A copy of this order for ensuring compliance be given to the Advocate General, Chhattisgarh, and another copy be sent to J.M.F.C. Ambikapur forthwith for compliance. Record of the trial Court be sent back forthwith by special messenger so as to reach on 10.10.2007.

33. Before parting with the matter, it is clarified that all the observations made hereinabove are only for the limited purpose of deciding the applications for bail u/s 438 Cr.P.C. and may not be understood as expressing any opinion one way or the other on the applicability of Section 197(1) or 210(1) Cr.P.C. As and when such an objection is filed before the trial Court, it shall be decided strictly on its own merits without being influenced/inhibited by any of the observations made by this Court.