

(2018) 08 CHH CK 0219

Chhattisgarh High Court

Case No: Miscellaneous Criminal Case (MCRC) No. 5458 Of 2018

Mohammad Ismail Khan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Aug. 21, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 302, 307
- Code Of Criminal Procedure, 1973 - Section 439

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Mateen Siddiqui, Anil Pandey, Ajit Singh

Final Decision: Allowed

Judgement

Arvind Singh Chandel, J

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the Applicant who has been arrested in connection with Crime No.116 of 2018 registered at Police Station Kawardha, District Kabirdham for offence punishable under Section 302/34 of the Indian Penal Code.

2. Case of the prosecution, in brief, is that on 1.3.2018, a dispute had taken place between Ayub Khan (the deceased) and the Applicant and his son/co-accused Wasim alias Mintoo. At that time, the Applicant and his son/co-accused Wasim had threatened and beaten Ayub Khan. A report thereof was lodged by Ayub Khan. Thereafter, on 4.3.2018 at about 12:30 p.m., at Muslim Crematory, both the Applicant and his son/co-accused

Wasim started abusing Ayub Khan and co-accused Wasim stabbed Ayub Khan over the stomach 3-4 times and thereafter he ran away from there.

Injured Ayub Khan was taken to the hospital. First Information Report for the offence punishable under Section 307/34 of the Indian Penal Code was registered. During treatment, Ayub Khan died in the hospital on 18.3.2018. Therefore, offence under Section 302/34 of the Indian Penal Code was registered. The Applicant has been arrested on 5.3.2018.

3. Learned Counsel appearing for the Applicant submits that the Applicant has been falsely implicated in the case. He was not present at the place and time of occurrence. Apart from the statement of eyewitness Mohd. Ibrahim, no other eyewitness has stated that at the place and time of occurrence, the Applicant was also present. Allegedly, the assault was made by co-accused Wasim. There is nothing on record on the basis of which the Applicant could be implicated in the case. He is a 55 years old person. He is in custody since 5.3.2018. Therefore, he may be released on bail.

4. Learned Counsel appearing for the State opposes the prayer for bail. He submits that eyewitness Mohd. Ibrahim has categorically stated that at the place and time of occurrence, the Applicant was also present there along with his son/co-accused Wasim and the incident had taken place due to a previous quarrel between the parties. Hence, sufficient material is available against the Applicant also.

5. Learned Counsel appearing for the Objector adopts the argument advanced on behalf of the State and opposes the prayer for bail.

6. I have heard Learned Counsel appearing for the parties and perused the entire case diary with due care.

7. Considering the facts and circumstances of the case, further considering the facts that the alleged assault was made by co-accused Wasim only, no active role was played in the incident by the Applicant, without further commenting on merits of the case, I am inclined to enlarge the Applicant on bail.

8. Accordingly, the bail application is allowed.

9. It is directed that the Applicant shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one solvent surety of the like

sum to the satisfaction of the concerned Trial Court for his appearance before the said Court as and when directed.