

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRA No. 950 of 2016

1. Soheli Ali @ Jimmi S/o Sultan Ali Aged About 22 Years R/o Near Sarkari Kuan Masjid Kota, P.S. Saraswati Nagar, Raipur, Tahsil & District Raipur, Chhattisgarh.
2. Sunil @ Sony Nayar S/o Santosh Nayar Aged About 22 Years R/o Kota Colony House No. 138, P.S. Saraswati Nagar, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Appellants

Versus

- State Of Chhattisgarh Through The Police Station Saraswati Nagar, Raipur, District Raipur, Chhattisgarh.

---- Respondent

And

CRA No. 989 Of 2016

- Aniket @ Nikki S/o - Late Sureshchandra Sharma Aged About 20 Years R/o - Near Sarkari Kuwa, Kota, P.S. - Saraswati Nagar, Raipur, Tahsil & Distt. - Raipur Chhattisgarh

---- Appellants

Vs

- State Of Chhattisgarh Through : The Police Station Saraswati Nagar, Raipur, District Raipur Chhattisgarh

---- Respondent

And

CRA No. 983 Of 2016

- Dinesh Mishra @ Monu S/o Krishna Kumar Aged About 22 Years R/o In Front Of Durga Mandir Stadium, Kota, P.S. Saraswatinagar, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Appellants

Vs

- State Of Chhattisgarh Through The Station House Officer, Police Station Saraswati Nagar, Raipur, District Raipur, Chhattisgarh.

---- Respondent

And

CRA No. 1062 Of 2016

- Manoj Patnayak S/o Gouri Shankar Patnayak Aged About 24 Years R/o Village Kota, Near Government Well, Police Station Saraswati Nagar, Raipur, Tahsil & District Raipur Chhattisgarh

---- Appellants

Vs

- State Of Chhattisgarh Through Police Station - Saraswati Nagar, Raipur, Tahsil & District Raipur Chhattisgarh

---- Respondent

03/03/2017	<p>Shri V.C. Ottalwar, counsel for the appellants in CRA No.950/2016 &989/2016.</p> <p>Shri Devesh Kela, counsel for the appellant in CRA No.983/2016.</p> <p>Shri Kishore Bhaduri, counsel for the appellant in CRA No.1062/2016.</p> <p>Shri Avinash Mishra, P.L. for the State.</p> <p>Shri Sunil Otwani, counsel for objector Abhijeet Singh @ Aju Thakur (PW/10).</p> <p>As all the four appeals arise out of common judgment dated 27.06.2016, I.A.Nos.01/2016, applications for suspension of sentence and grant of bail to the appellants, filed in respective appeals are being disposed of by this common order.</p> <p>By the impugned judgment dated 27.06.2016 passed by the VI Additional Sessions Judge, Raipur in S.T.No.240/2012, the accused/appellants stand convicted under Sections 148, 302/149 and 326/149 of IPC & sentenced to undergo R.I. for three years, imprisonment for life with fine of Rs.500/- each and R.I. for ten years with fine of Rs.500/- each respectively, with default stipulations.</p>	

In respect of accused/appellant Aniket @ Nikki in Cr.A.No.989/2016 it has been argued :-

(i) that identification is doubtful because of various reasons in particular that relative of Abhijeet Singh @ Aju Thakur (PW/10) is higher police officer.

(ii) that accused/appellant Aniket was taken on police remand for three days but there is no evidence by the prosecution as to where he was taken or was kept during this period.

(iii) that Sunil Yadav (PW/1) has not fully supported the prosecution case and likewise, in para 11, he has completely falsified the identification parade.

(iv) that Sheikh Ahmed (PW/2) has also not fully supported the prosecution case.

(v) that accused/appellant Sunil @ Sonu Nayar in CRA No.950/2016 had also suffered injuries but the prosecution has not explained the same, whereas as per the statement of Investigating Officer (PW/12), he noticed blood oozing from his body.

(vi) that the case diary statement of PW/10 is undated.

In respect of accused/appellant Dinesh in Cr.A.No.983/2016 it has been argued as under :-

(i) that none of the witnesses has named this accused.

(ii) that test identification in respect of accused/appellant Dinesh Mishra has not been conducted.

(iii) that no recovery has been made from the accused/appellant Dinesh showing his involvement in the commission of crime.

Shri Kishore Bhaduri, counsel for appellant Manoj Patnayak in CRA No.1062/2016 submits as under:-

(i) that PW/10 has not alleged any overtact against the accused/appellant Manoj.

(ii) that as per the statement of Sunil Yadav (PW/1), accused/appellant Manoj caused injury to the deceased by belt, however, there is no corresponding injuries either on the body of deceased or on injured. This witness has further admitted the fact that he did not disclose to police that any belt injury was caused by accused/appellant Manoj.

(iii) that Satish Singh (PW/12) – Investigating Officer has admitted the fact that during investigation he could not collect any evidence against accused/appellant Manoj. Placing reliance on the judgment in the matter of ***Nagesar Vs. State of Chhattisgarh*** reported in ***(2014) 6 SCC 672*** it has been argued that mere presence of the accused at the place of occurrence would not automatically involve him in the commission of offence in particular the commission of murder. It has been further argued by Shri Bhaduri that the test identification parade Ex.P/31 in respect of accused/appellant Manoj Patnayak is doubtful because in the same it has nowhere been stated as to how and in what manner the appellant Manoj has been identified.

Opposing the bail applications, it has been argued by the State counsel :-

(i) that injured Abhijeet Singh @ Aju Thakur (PW/10) while supporting the prosecution case has categorically stated as to the manner in which the incident had taken place. He submits that even in his

161 Cr.P.C. statement he has stated against the accused/appellants. It has been argued that in the test identification parade, PW/10 has duly identified the appellants Soheli Ali and Aniket @ Nikki.

(ii) that name of the accused/appellant Dinesh Mishra is there from the beginning and specific role has also been assigned to him.

(iii) that as per the cross-examination of Sunil Yadav (PW/1), it is apparent that accused/appellant Manoj Patnayak was also present.

(iv) that as per the test identification (Ex.P/31), accused/appellant Manoj Patnayak has been identified by PW/10, the injured witness.

(v) that the deceased was outside the hotel selling eggs and when he intervened to pacify the quarrel, the accused/appellants have brutally killed him.

Shri Sunil Otvani, counsel appearing for objector placing his reliance on the decision in the matter of ***Anil Kumar Vs. State of U.P.***, reported in ***AIR 2003 SC 1596*** submits that delay in conducting the test identification parade would not be fatal in the present case. Likewise, he argued that in view of judgment of the Apex Court in the matter of ***Ch. Pulla Reddy and Ors. Vs. State of A.P.*** reported in ***AIR 1993 SC 1899***, the presence of the accused/appellants at the place of occurrence and role played by them clearly prove their involvement and they are not entitled for bail.

We have heard the parties and perused the record.

Considering the allegations levelled against appellants Soheli Ali @ Jimmi and Sunil @ Sony Nayar

in Cr.A.No.950/2016, appellant Aniket @ Nikki in Cr.A.No.989/2016 and appellant Dinesh Mishra in Cr.A.No.983/2016 & role played by them, we are not inclined to release them on bail.

However, considering the role played by accused/appellant Manoj Patnayak in Cr.A.No.1062/2016 and the evidence available against him, we are inclined to released him on bail.

Accordingly, the application (I.A.No.01/2016) filed in CRA No.1062/2016 is allowed.

It is directed that the jail sentence imposed upon the appellant Manoj Patnayak in Cr.A.No.1062/2016 shall remain suspended during the pendency of this appeal and he shall be released on bail on his furnishing a personal bond in the sum of Rs.10,000/- with one surety in like sum to the satisfaction of the concerned trial Court. The accused/appellant Manoj Patnayak need not give appearance anywhere until and unless otherwise directed.

Certified copy as per rules.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge