

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 951 of 2017

- Khemashanker Yadav S/o Arjun Yadav, Aged About 40 Years Occupation Agriculturist, R/o Village Chitkidand Bansjhor, Police Station Dharamjaigarh, District Raigarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Dharamjaigarh, District Raigarh, Chhattisgarh., Chhattisgarh

---- Respondent

24/06/2022	Shri Shashi Bhushan Tiwari, counsel for the Appellant. Shri Gagan Tiwari, Dy. Government Advocate for the State/Respondent. Heard on I.A.No.2/2022, which is the second bail application filed under Section 389(2) of Cr.P.C., praying for suspension of sentence and grant of bail to the Appellant. First bail application of the Appellant was rejected as withdrawn with liberty to revive the same after two years vide order dated 16.01.2018. By virtue of the impugned judgment of conviction and order of sentence dated 18.05.2017 passed by the 1st Additional Sessions Judge, Raigarh (CG) in S.T. No.61/2016, the Appellant has been convicted and sentenced as under :- <table><tr><th>Conviction</th><th>Sentence</th></tr><tr><td>U/s 302 of IPC</td><td>R.I. for life time and fine amount of Rs.1,000/- and in default of payment of fine amount S.I. for additional 3 months</td></tr><tr><td>U/s 201/34 of IPC</td><td>R.I. for 5 years and fine amount of Rs.1,000/- and in default of payment of fine amount S.I. for additional 3 months</td></tr></table>	Conviction	Sentence	U/s 302 of IPC	R.I. for life time and fine amount of Rs.1,000/- and in default of payment of fine amount S.I. for additional 3 months	U/s 201/34 of IPC	R.I. for 5 years and fine amount of Rs.1,000/- and in default of payment of fine amount S.I. for additional 3 months
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Learned counsel for the Appellant submits that the Appellant is innocent and has been falsely implicated in connection with the alleged crime. It is contended further while referring to paragraph 27 of the judgment under appeal that the entire case is based on memorandum statement (Ex. P-6) of the Appellant which is inadmissible in evidence and therefore, the Appellant, who is in jail since 22/10/2015 and as the appeal will take some more time for its final disposal, the Appellant be, therefore, enlarged on bail.

On the other hand, learned counsel for the State while referring to the statement of deceased's son, namely, Sumit Sarkar, who was examined as PW-5, submits that although the entire case is based on memorandum statement of the Appellant, but the alleged memorandum statement has duly been corroborated by this witness, therefore, the Appellant is not entitled to be released on bail and the application deserves to be rejected.

We have heard learned counsel for parties and perused the record carefully.

Considering the totality of the facts and circumstances of the case and the nature of evidence available on record, without further commenting on merits, we are of the view that present is a fit case where the Appellant is entitled to be enlarged on bail.

Accordingly, the application I.A.No.2/2022 is allowed and it is directed that the substantive jail sentence imposed upon the Appellant shall remain suspended during the pendency of this appeal and he shall be released on bail on his furnishing a personal bond in sum of

	Rs.25,000/- with one surety of like sum to the satisfaction of the concerned trial Court. The Appellant need not give appearance anywhere until and unless otherwise so directed in this regard. List the matter for final hearing in due course along with CRA No. 874/2017. <table><tr><td>Sd/- (Sanjay S. Agrawal)) JUDGE</td><td>Sd/- (Parth Prateem Sahu) JUDGE</td></tr></table>	Sd/- (Sanjay S. Agrawal)) JUDGE	Sd/- (Parth Prateem Sahu) JUDGE
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