

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 671 of 2024**

- Vislavath Akash (wrongly mentioned Vislavath Akaksh) S/o Shri Vislavath Chatriya, aged about 29 years, R/o Kothapalli, Mandal, Police Station Madur, District Mehboobnagar (Telangana), at present beside Old Bodhghat, Police Station Jagdalpur, District Bastar, Jagdalpur (C.G.)

**---- Applicant****Versus**

- State of Chhattisgarh, through Police Station Nagarnar, District Bastar (Jagdalpur) (C.G.)

**---- Respondent***CAUSE TITLE DOWNLOADED FROM CIS PERIPHERY*

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For Applicant	:	Mr. Keshav Dewangan, Advocate
For State	:	Mr. Rajeev Bharat, GA

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**Hon'ble Shri Justice Deepak Kumar Tiwari**  
**Order On Board****01.04.2024**

1. Heard.
2. This is the third 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.171/2021 registered at Police Station Nagarnar, District Bastar (Jagdalpur) (Criminal Case No.176/2022 pending before the JMFC, Bastar at Jagdalpur) for the offence under Sections 420, 409, 467, 468 and 471 of the IPC.
3. The first bail application was dismissed on 13.05.2022 vide order passed in MCRC No.1734/2022, wherein counsel

for the applicant has raised a specific ground that no handwriting expert report has been filed along with the charge sheet. Taking into consideration that the allegations are serious, this Court has rejected the prayer for bail and liberty was granted to the applicant to revive his prayer for bail if the trial is not concluded within next 8 months.

4. The second bail application was moved and the same was also dismissed by this Court vide order dated 15.03.2023 passed in MCRC No.989/2023. While considering the application, learned counsel for the State has drawn the attention of the Court to the fact that Mukteshwar Gedam, who has conducted the enquiry, has not been made witness nor his report has been filed in the charge sheet. Even this Court found that the order sheet of the trial Court did not reflect as to whether the process has been returned served or unserved and the concerned ADPO has also not verified the said fact and brought to the notice of the concerned trial Court, even the concerned presiding officer has not sought any report from the State, therefore, in such circumstances, this Court made an observation that the the concerned Superintendent of Police and the Director, Prosecution shall do the needful in this regard for proper supervision of such cases in which serious fraud has been committed. It was also expected that in the internal enquiry, sufficient progress should be made by the department and it be concluded within a reasonable

time, so that proper recovery proceeding against the erring officials could be initiated. Further liberty was granted to the applicant that if the complainant is not examined within next 4 months, he may revive the bail application.

5. Thereafter, the applicant has moved an application before the Hon'ble Supreme Court vide Special Leave to Appeal (Crl.) No(s). 5104/2023 and the same was disposed of on 19.07.2023, observing that the petitioner is the only accused and the charge sheet was filed more than one year back. The trial Court will file status report in case the trial is not concluded on or before 31.12.2023 and liberty was given to the petitioner to file fresh application for bail in case of change in circumstances or if the trial gets prolonged due to reasons not attributable to the petitioner.
6. When this third bail application came before this Court for consideration on admission on 30.01.2024 and when again counsel for the applicant has brought to the notice of this Court that no hand-writing expert report has been filed with charge sheet and also Mukteshwar Gedam, who has conducted the enquiry, has not been made witness nor his report has been filed in the charge sheet, and also considering the manner of the proceeding, this Court called a report from the concerned trial Court through the concerned

District Judge and also issued a direction that the concerned trial Court should proceed in an expeditious manner in the spirit of Section 309 CrPC and conclude the trial on day to day basis. Counsel for the State was also directed to send a copy of the order to the concerned Director, Prosecution and Superintendent of Police for necessary compliance.

7. In pursuance of the aforesaid direction, Director Prosecution has filed an affidavit after conducting an enquiry through the concerned Deputy Director, Prosecution Dantewada on 7 points and it has been revealed that the concerned Station House Officer did not supply the copy of the charge sheet to the office of Prosecution. He had also not sought opinion from the Prosecution Officer before submitting the charge sheet.
8. Learned counsel for the State would submit that the Police Headquarter had issued a circular to all the Superintendent of Police on 19.03.2019 in the light of the direction given by the Supreme Court in the matter of **State of Gujarat Vs. Kishanbhai and Others (2014) 5 SCC 108** for its compliance before submitting the charge sheet. In the said affidavit, it has been further averred that pursuant to the directions issued by this Court on 30.01.2024, the concerned trial Court took up the matter on day to day basis and out of 75 witnesses 71 have been examined till 27.02.2024.
9. For examination of the Departmental Enquiry Officer, Mukteshwar Gedam, Bank Manager, an application was

moved by the prosecution under Section 311 of the CrPC and the said witness has also been examined on 27.02.2024. It has been further mentioned that FSL report is awaited in the case. Director Prosecution has also brought the lacuna found by the Investigating Officer to the notice of Director General of Police vide its letter dated 06.03.2024 (Annexure R/3) along with the affidavit, the letter issued to the Deputy Director (Prosecution) on 09.02.2024 (Annexure R/1) and the report submitted by the said officer to the Directorate Prosecution on 05.03.2024 (Annexure R/2) and letter issued to the Director General of Police on 06.03.2024 (Annexure R/3) was filed.

10. The Superintendent of Police has also filed an affidavit and stated that the evidence on the part of the prosecution has been closed and it has been further stated that the handwriting report has been received and the same was filed on 06.03.2024 vide (Annexure R/3) and an explanation was also called from the concerned Investigating Officers. Learned trial Magistrate has also sent a report that the said case was transferred to her as the earlier Judicial Officer was proceeded on maternity leave on 19.07.2023 and she has further submitted a report that the trial expected to be concluded at the earliest date as most of the witnesses have been examined.

11. Taking into consideration the fact that concerned Investigating Officer has not supplied copy of the police

report to the concerned District Prosecution Office, due to which, the concerned Prosecutor has given the explanation for such cause, this Court is of the opinion that the said explanation offered by the Prosecutor is not satisfactory and the action of the Investigating Officers for not supplying the copy of the charge sheet to the Prosecution Officer is not proper.

12. Recently, the Criminal Procedure Code which has been now replaced by Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS, 2023") w.e.f 01.07.2024 will take into force except the provisions of the entry relating to Section 106(2) of BNSS, 2023, in the First Schedule [vide Noti. No. S.O. 848(E), dated 23.02.2024] casts a duty on the Investigating Officers while submitting the charge sheet to annex sufficient number of copies of the Police Report. The said provisions of Sections 193 and 230 of BNSS, 2023 read as under:-

**"193. Report of police officer on completion of investigation.-**

- 1) Every investigation under this Chapter shall be completed without unnecessary delay.
- (2) The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.
- (3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered

to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—

- (a) the names of the parties;
  - (b) the nature of the information;
  - (c) the names of the persons who appear to be acquainted with the circumstances of the case;
  - (d) whether any offence appears to have been committed and, if so, by whom;
  - (e) whether the accused has been arrested;
  - (f) whether the accused has been released on his bond or bail bond;
  - (g) whether the accused has been forwarded in custody under section 190;
  - (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;
  - (i) the sequence of custody in case of electronic device;
- (ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;
  - (iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.
- (4) Where a superior officer of police has been appointed under section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.
  - (5) Whenever it appears from a report forwarded under this section that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.
  - (6) When such report is in respect of a case to which section 190 applies, the police officer

shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(8) Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230:

Provided that supply of report and other documents by electronic communication shall be considered as duly served.

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):

Provided that further investigation during the trial may be conducted with the



permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.”

**“230. Supply to accused of copy of police report**

**and other documents.-** In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:—

(i) the police report;

(ii) the first information report recorded under section 173;

(iii) the statements recorded under sub-section (3) of section 180 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of section 193;

(iv) the confessions and statements, if any, recorded under section 183;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of section 193:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided also that supply of documents in electronic form shall be

considered as duly furnished.”

13. From reading of the aforesaid provisions, it is explicit that under Section 193(8) of BNSS, 2023, the Investigating Officer while submitting the Police Report, shall annex such number of copies of the police report along with other documents duly indexed to the Magistrate as required under Section 230. Section 230 further stipulates that the Magistrate shall further ensure and without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, copy of police report and other documents.

14. The powers and functions of the Director of Prosecution, the Deputy Director of Prosecution & Assistant Director of Prosecution shall be to monitor cases for ensuring their expeditious disposal. The relevant provision of Section 20 reads thus:-

**“20. Directorate of Prosecution.-**

- (1) The State Government may establish-
  - (a) a Directorate of Prosecution in the State consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit; and
  - (b) a District Directorate of Prosecution in every district consisting of as many Deputy Directors and Assistant Directors of Prosecution, as it thinks fit.
- (2) A person shall be eligible to be appointed-
  - (a) as a Director of Prosecution or a Deputy Director of Prosecution, if he has been in practice as an advocate for not less than fifteen years or is or has been a Sessions Judge;

- (b) as an Assistant Director of Prosecution, if he has been in practice as an advocate for not less than seven years or has been a Magistrate of the first class.
- (3) The Directorate of Prosecution shall be headed by the Director of Prosecution, who shall function under the administrative control of the Home Department in the State.
- (4) Every Deputy Director of Prosecution or Assistant Director of Prosecution shall be subordinate to the Director of Prosecution; and every Assistant Director of Prosecution shall be subordinate to the Deputy Director of Prosecution.
- (5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1) or sub-section (8) of section 18 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.
- (6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3) or sub-section (8) of section 18 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 19 shall be subordinate to the Deputy Director of Prosecution or the Assistant Director of Prosecution.
- (7) The powers and functions of the Director of Prosecution shall be to monitor cases in which offences are punishable for ten years or more, or with life imprisonment, or with death; to expedite the proceedings and to give opinion on filing of appeals.
- (8) The powers and functions of the Deputy Director of Prosecution shall be to examine and scrutinise police report and monitor the cases in which offences are punishable for seven years or more, but less than ten years, for ensuring their expeditious disposal.
- (9) The functions of the Assistant Director of Prosecution shall be to monitor cases in which offences are punishable for less than seven years.
- (10) Notwithstanding anything contained in sub-sections (7), (8) and (9), the Director, Deputy Director or Assistant Director of Prosecution

shall have the power to deal with and be responsible for all proceedings under this Sanhita.

(11)The other powers and functions of the Director of Prosecution, Deputy Directors of Prosecution and Assistant Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution or Assistant Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(12)The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.”

15. To achieve the aforesaid object of the Legislature for proper monitoring of the cases, it is required by the Prosecutor to maintain a brief, a copy of the Police Report is needed to be supplied to the office of Prosecution in advance.

16. So it is expected that the Investigating Officer shall supply an advance copy of the Police Report to the prosecution. The Superior Police Officer must ensure that proper Police Report, duly indexed and paginated is filed with sufficient number of copies.

17. Learned counsel for the applicant would submit that there is no delay attributed on the part of the applicant. He would further submit that the offence is triable by the JMFC and the applicant is behind the bar for more than 2 years 5 months and he has been arrested on 31.10.2021. He also submits that the Hon’ble Supreme Court has disposed of the bail application on 19.07.2023 and fixed the time line for completion of the trial on or before 31.12.2023. He would further submit that though this Court, while dismissing the

earlier bail application, has categorically pointed out as to the manner of the proceedings and particularly no hand-writing expert report has been filed along with the charge sheet or with a reasonable time. Thereafter, even the Internal Enquiry Officer, Mukteshwar Gedam has not been listed as a witness and only after the intervention of this Court on 30.01.2024, the matter was taken up in the serious term and the prosecution has filed appropriate application under Section 311 of the CrPC to examine the Internal Enquiry Officer and the hand-writing expert report has also been received on 06.03.2024. Earlier to it the concerned officer was not so serious or bother as to the manner of the criminal administration of justice, therefore, considering all these aspects he may be enlarged on bail.

**18.** Per contra, learned counsel for the State opposes the aforesaid submissions and would submit that out of 75 witnesses 71 have already been examined and considering the report of the trial Court, there is no further delay in the trial and also considering the allegations are serious in nature, the applicant may not be enlarged on bail.

**19.** It is well settled that expeditious trial is fundamental human rights of an under trial. Even when the accused moved an application for bail and pointed out the material document i.e. expert report has not been filed before the Court, however, the concerned State agency was not bother or serious about filing of the same in a prompt manner. There

is no proper supervision whether the summons were served or unserved returned to the concerned trial Court. Even the concerned ADPO has not maintained his brief for the reason that the concerned Investigating Officer has not supplied copy of the Police Report to him. The Internal Enquiry Officer of the concerned Bank based upon which the FIR has been lodged was not listed as witness. The prosecution later on filed an application under Section 311 of the CrPC, therefore, considering the manner in which the trial was going on and though the Supreme Court has fixed the time line for expeditious disposal up till 31.12.2023, the offence is triable by the JMFC, the applicant is behind the bar for more than 2 years and 5 months, and this Court has found that the said lapses were not on the part of the applicant/accused, this Court is of the considered view that the applicant has made out a strong case for grant of bail.

20. Accordingly, the application is **allowed** and the applicant is directed to be released on bail on his furnishing a personal bond for a sum of Rs.1,00,000/- with two sureties in the like amount to the satisfaction of the trial Court. He is directed to appear before the trial Court on each and every date given by the said Court. The applicant shall also furnish the details of movable and immovable properties held by him and his family members viz. wife & dependent children and shall not alienate the immovable property without the prior permission of the concerned trial Court.

21. Certified copy as per rules.

22. Before parting with this matter, this Court expects that in every Monitoring Cell Meeting, this type of, the said issue be discussed and appropriate steps be taken in the right directions in accordance with law to strengthen the criminal administration of justice. If any of the Officer is found negligent, then stern action be taken against the said Erring Officer, and all such facts be also brought in the ACRs of the concerned officer.

23. Investigation Officer shall ensure filing of additional set of true copies of the original/supplementary final report/ charge sheet containing all annexures therewith duly paginated and indexed considering the number of accused persons besides one advance copy for the prosecution, while filing the original/supplementary final report/charge sheet in the concerned jurisdictional Magistrate Court or the Special Court (POCSO). Then only, it should be obligated upon the presiding officer of the concerned Court or the Special Court (POCSO) where such filing of final report is done, to effect provision of such documents as filed, free of cost to the accused persons and ensure that an advance copy is supplied to the prosecution, during the Court proceedings.

24. The Director General of Police shall issue appropriate standard operating procedure for filing the charge sheet along with additional sets of true copies of the original/supplementary final report/charge sheet containing all

annexures. It is further expected that in every Police Station, a good quality of photocopies machine is made available and the same be replaced at sufficient intervals.

25. Further, as regards explanation offered by the concerned Prosecution Officer, though he had moved an application before the Copying Section of the concerned Court, but the same was not entertained by them, attention of all the concerned Criminal Courts is drawn towards Rule 641 of the C.G. Rules and Order (Criminal) according to which whenever copies are required by officers of the Central or Provincial Government for official purposes, the same shall be made on plain paper and delivered free of cost. Therefore, the Registrar General is requested to issue a circular in this regard to all the concerned District Judges, Director Prosecution, Director General of Police and Director FSL, in the light of the aforesaid observations, for its strict compliance.

Sd/-

**(Deepak Kumar Tiwari)**  
Judge