

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 2800 of 2016

1. Lakhan, S/o. Vanmali, Aged About 55 Years.
2. Jogi, S/o. Benudhar Dhruw, Aged About 40 Years.

Both are R/o. Village Jogidipa, P.S. Fingeshwar, Tahsil Rajim, Civil District Raipur, Revenue District Gariyaband, Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh, Through Forest Division Officer, Fingeshwar, Civil District Raipur, Revenue District Gariyaband, Chhattisgarh.

---- Respondent

For Applicants : Mr. K.K.Dewangan, Advocate

For Respondent : Mr. Satish Gupta, Govt. Advocate with Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

CAV Order

29.07.2016

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicants who have been arrested in connection with Crime No. P.O.R. No. 6880/01/31/05/2015 registered at Forest Division- Fingeshwar, District Gariyaband (C.G.) for the offence punishable under Sections 9, 39, 50, 51 of the Forest Animal Protection Act, 1972. The earlier bail application was dismissed on 17.11.2015 in M.Cr.C. No.6068/2015.
2. Case of the prosecution, in brief, is that the present applicants along-with two other co-accused have mixed urea into the water of a forest pond and by drinking such water, eight Cheetals and one Ox died and thereafter they took away the dead animals. The incident happened at Reserved Forest Block-34- Khudsa.
3. Learned counsel for the applicants would submit that the present offence is bailable in nature as maximum punishment is up till three

years. Learned counsel placed his reliance in case of **Arjun Singh & Others v. State of C.G.**¹ and would submit that the animal which has been killed i.e. eight Cheetals and one Ox, it would come within the Schedule-III of the Wild Life (Protection) Act, 1972 (for short "*the Act, 1972*") and therefore by application of the aforesaid principle, the case would be bailable one as the offence would fall under Section 51(1) of the Act, 1972. It is further submitted that the Cheetal since is enlisted in Schedule-III and the punishment is prescribed that, may extend to three years or with fine which may extend to twenty-five thousand rupees or with both, will make it a bailable offence as per the classification of offence against other laws as shown in Cr.P.C. Therefore, it is submitted that the offence being bailable one, the applicants are entitled for bail.

4. On the other hand, learned State counsel opposes the prayer for grant of bail. On the query raised by the Court, the State counsel submits that the area wherein the hunting has taken place is a Reserved Forest Khudsa.
5. Heard learned counsel appearing for the parties, perused the Schedule and the charging Section i.e. 51.
6. For ready reference, relevant part of Schedule-III of the Wild Life (Protection) Act, 1972 is reproduced herein below :

Schedule-III

(See sections 2, 8, 9 [***] 11 and 61)

- [1. ***]
2. xxx xxx xxx
[3. ***]
[4. ***]
5. Chital (Axis axis).

* * * * *

7. Section 51 of the Wild Life (Protection) Act, 1972 provides for penalties, which is reproduced herein below :

51. Penalties – (1) Any person who [contravenes any provision of this Act (except Chapter VA and Section 38J)] or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to [three years] or with fine which may extend to [twenty-five thousand rupees] or with both;

[Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a Sanctuary or a National Park or altering the boundaries of a Sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.]

8. Reading of Section 51 wherein Penalties are prescribed, the Section (1) can be sub-divided in different parts. The first part purports that any person who contravenes any provision of this Act or any rule or order made thereunder or who commits breach of condition shall be guilty of offence and the punishment prescribed

is imprisonment which may extend to three years or fine which may extend to twenty-five thousand rupees. The second part of proviso prescribes that if the animal specified in Schedule-I or Part-II of Schedule-II or meat of any animal or animal article or trophy derived from such animal necessarily takes within it's fold of the animal shown in the Schedule-I or Part-II of Schedule-II. The Section further reads where the offence relates to “hunting” in a Sanctuary or a National Park then in all such case offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years. Therefore, by reading of this Section, it would indicate that even in a case if the Schedule-III animal are hunted within the boundaries of a Sanctuary or a National Park then in such case the offence shall be punishable with not less than three years and may extend to 7 years and also with fine not less than Rs.10,000/-. Therefore, necessarily where the offence is covered in second part and the punishment prescribed is not less than 3 years. In such case, the offence would fall in the category of non-bailable offence as has been classified in Cr.P.C. which reads as under :

II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS			
Offence	Cognizable or Non-cognizable	Bailable or Non-bailable	By what Court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Ditto	Ditto	Magistrate of the first class
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate

9. In the light of discussion as above, the principles laid down in case of *Arjun Singh & Others v. State of C.G.*¹ can not be universally

applied in a case when the hunting is made within a Sanctuary or a National Park. In the instant case, the case diary would show that the place where the hunting has taken place is a Reserved Forest, therefore, the submission made by the applicant that the offence would be bailable is misconceived. The case cited by the applicant would not be of any help to the applicant.

10. Accordingly, in the facts of this case, the case of *Arjun Singh & Others v. State of C.G.*¹ will not be applicable in this case. Furthermore, taking into the facts, no change of circumstances has taken place after rejection of earlier bail petition, I am not inclined to entertain this bail application again.
11. In the result, the second bail application filed under Section 439 of Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge