

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**SINGLE BENCH:HON'BLE SHRI JUSTICE SANJAY K. AGRAWAL**  
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M.Cr.C No. 774 of 2015

<b><u>APPLICANTS</u></b>	:	Arjun Singh &Others
<b><u>VERSUS</u></b>		
<b><u>NON-APPLICANT</u></b>	:	State of Chhattisgarh

**APPLICATION UNDER SECTION 439 OF THE CODE OF CRIMINAL  
PROCEDURE, 1973**

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**Present :**

Shri Dilman Rati Minj, counsel for the applicants.  
 Shri D.K. Gwalre, Govt. Advocate and Shri S.K. Mishra,  
 Panel Lawyer for the non-applicant/State.

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**ORAL ORDER**  
**(Passed on 20.02.2015)**

1. Invoking jurisdiction of this court under Section 439 of the Cr.P.C., the applicants have filed this application for grant of regular bail stating inter alia that they have been arrested in connection with POR No. 8837/18, Forest Ranger, Duldula, Jashpur, Police Station Tapkara, District Jashpur, for the offence punishable under Section 9 of the Wild Life (Protection) Act, 1972 (for short, the Act, 1972) and under Section 26(i) of the Indian Forest Act, 1927 (for short, the Act, 1927).

2. Case of the prosecution, in brief, is that the applicants haunted Barking Deer which is a animal specified in Schedule-III of the Act of 1972, and concealed the meat of such animal in the forest which is an offence punishable under Section 26(1)(i) of the Act, 1927.
3. Shri Dilman Rati Minj, learned counsel for the applicants would submit that for commission of offence under Section 9 of Act of 1952, punishment is prescribed under Section 51(1) of Act of 1972, and shall, on conviction, be punishable with imprisonment for a term which may be extend to three years or fine with Rs.25,000/- or with both, and proviso to Section 51(1) of Act, 1972 is not applicable because the barking Deer which is allegedly killed by the applicants is neither schedule-I or Schedule-II animal for which imprisonment may extend to seven years and a such offence which the applicants are charged is bailable one and offence under Section 26(1)(i) of Act 1927 is also bailable offence as punishment prescribed in only six months or with fine and therefore, both the courts below have committed an legal error in not granting to them bail in the bailable offence.
4. On the other hand, Shri D.K. Gwalre, learned counsel for the non-applicant/State would submit that offence committed by

the applicants are bailable offence and bail ought to have been granted by the court below.

5. I have heard the counsel appearing for the parties and perused the case diary with utmost circumspection.
6. At this stage it would be appropriate to notice, relevant provisions contained in Act of 1972 as well Act of 1927 and Code of Criminal Procedure ,1973.

**“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 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.]”

“SCHEDULE III

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

[\*\*\*]

- [1. \*\*\*]
2. Barking deer or muntjac (*Muntiacus muntjak*)”

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“The Indian Forest Act, 1927

**26. Acts prohibited in such forests.**-(1) Any person who-

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....
- (h).....
- (i) in contravention of any rules made in this behalf by the [State Government] hunts, shoots, fishes, poisons water or sets traps or snares; or”

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THE FIRST SCHEDULE  
CLASSIFICATION OF OFFENCES

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II – CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS			
Offence	Cognizable or non-cognizable	Bailable or non-bailable	By What court triable
1.	2.	3.	4.
***	***	***	***
***	***	***	***
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate

7. In a decision reported in **Om Prakash and Another v. Union of India & Another** the Supreme Court has held that if the offence is punishable imprisonment for less than three years or with fine only, such offence would be bailable, and held as under:-

“38. The expression "bailable offence" has been defined in Section 2(a) of the Code and set out hereinabove in paragraph 3 of the judgment, to mean an offence which is either shown to be bailable in the First Schedule to the Code or which is made bailable by any other law for the time being in force. As noticed earlier, the First Schedule to the Code consists of Part 1 and Part 2. While Part 1 deals with offences under the Indian Penal Code, Part 2 deals with offences under other laws. Accordingly, if the provisions of Part 2 of the First Schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only, being the third item under the category of offences indicated in the said Part. An offence punishable with imprisonment 31for three years and upwards, but not more than seven years, has been shown to be cognizable and non-bailable.....”

8. From the careful and closed perusal of the aforesaid statutory provision it would appear that the Barking Deer which is a animal listed at serial No.2 in Schedule-3 of the Act of 1972 and for haunting animal of Schedule-3, punishment prescribed under Section 51(1) of the Act, 1972 is up to three years or fine of Rs.25,000/-, or with both, and by virtue of para-2 of schedule-1 annexed with Cr.P.C. which prescribes

the classification of offences against other law, if the offence are punishable with imprisonment for less than three years or with fine only, the nature of offence would be non-cognizable and bailable and it would be triable by the magistrate.

9. The grant of bail to a person accused of bailable offence is provided and governed by Section 436 of the Code of Criminal Procedure.

**“436. In what cases bail to be taken.-** (1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station,. Or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, [may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

[*Explanation.-* Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.]

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of Section 116 [or section 446A].

(2) Notwithstanding anything contained in sub-section(1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may

refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446.”

Thus, by virtue of provisions contained in Section 436 of the Code of Criminal Procedure, a person accused of bailable offence is entitled to be released on bail, if is prepared to give bail when appears or his brought before the court and the police officer or the court is duty bound to release him on bail on such unreasonable terms.

10. The question as to whether a person accused of a bailable offence is entitled to grant bail as a matter of right stands authoritatively concluded by the decision of Supreme Court in case of **Rasiklal v. Kishore S/o Khanchand Wadhwani**, in which it has been clearly held that in bailable offence, the right of accused to get bail is absolute and indefeasible right and the courts have no discretion in granting bail, their Lordships held as under:

“9.....There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the

officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him.”

In the later part of said judgment, it has been further held that, the only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him.

11. Thus, bearing in mind the principles of law laid down in aforesaid **Rasiklal** (supra) and also considering the provisions contained in Section 436 of Cr.P.C., it is quite apparent that in bailable offence, the right of the accused person to bail is absolute and indefeasible right and the courts have no discretion in granting bail and the accused is entitled for bail as a matter of right and the court cannot refuse to grant bail provided that they are ready and willing to offer bail or to execute personal bonds.



12. If the facts of present case is examined in the light of aforesaid proposition of law it quite vivid that the trial magistrate as well as court of Sessions rejected the bail applications of applicants without taking into consideration that both the offences allegedly committed by them are bailable offences as held hereinabove, and therefore, the applicants are entitled to be released on bail as a matter of right. Thus, in the considered opinion of this court, this is a fit case in which the applicants should be enlarged on regular bail.
13. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed. It is directed that each of the applicants namely Arjun Singh, Adhar Singh, Khirodhar Singh, Prem Sai, Bhardwaj Singh, Keshwar Sai and Vijay Ram shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court for appearance as and when directed.
14. Certified copy as per rules.

**Judge**

inder

**Head Note**

*(English)*

In bailable offence bail is absolute right of accused person

(हिन्दी)

जमानतीय अपराधों में जमानत अपराधी का पूर्ण अधिकार है।

(Indrajeet Sahu)  
P.S. to Hon'ble Shri  
Justice Sanjay K. Agrawal