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# HIGH COURT OF CHHATTISGARH, BILASPUR

## MCRCA No. 749 of 2015

Devendra Kumar Sahu S/o Late Sitaram Sahu Aged About 30 Years R/o Bauripara, Shikari Road Ambikapur, District Sarguja Chhattisgarh.

**---- Applicant**

**Versus**

State Of Chhattisgarh Through Gandhinagar, Ambikapur, District Sarguja, Chhattisgarh.

**---- Respondent**

## MCRCA No. 763 of 2015

Dhanesh Kumar Nishad S/o Nikhad Raj Nishad Aged About 34 Years R/o Badgudipara, Azad Chowk, Arang, Police Station & Post - Arang, Civil & Revenue District - Raipur (Chhattisgarh).

**---- Applicant**

**Versus**

State Of Chhattisgarh Through : P.S. - Dallirajhara, District - Balod (Chhattisgarh).

**---- Respondent**

**&**

## MCRCA No. 852 of 2015

1. Mausami Banerjee W/o Rajkumar Banerjee Aged About 33 Years H/no. 11, Greenlay Vihar, Dubey Colony, Mowa, P. S.- Mowa, Raipur, Civil And Revenue Distt. Raipur Chhattisgarh

2. Dolly Banerjee W/o Kaushik Das Gupta Aged About 38 Years R/o H/no.- 3, Dal Dal Siwani, Near Electricity Sub- Station, Tagore, P.S. Mowa, Raipur, Civil And Revenue Distt. Raipur Chhattisgarh

**---- Applicant**

**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station- Dallirajhara, Dallirajhara, Distt. - Balod Chhattisarh

**---- Respondent**

Shri B.D.Guru, counsel for the applicant/s in McrCA No.749/2015.
Shri P.R.Patankar, counsel for the applicant/s in McrC(A) No.763/2015.
Shri Awadh Tripathi, counsel along with Shri Sanjeev Banjare, counsel for the applicant/s in McrC(A) No.852/2015
Shri Satish Gupta, Govt. Adv. for the State.

**Order On Board**

**16/09/2015**

These three bail applications are being disposed off by this common order as in all three cases, allegations are similar alleging commission of offence under Section 420 IPC and Section 3, 4 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short 'the Act of 1978').

2. The applicants, in these cases are apprehending their arrest for alleged commission of offences under Section 420 and Section 3, 4 and 5 of the Act of 1978 on the allegation that the applicants' companies are involved in collecting crores of rupees from small investors on the assurance of high return. In MCrC(A) No.852/15 and MCrC(A) NO.763/15, the applicants are Director / Officers of the company which is involved in collecting money under a collection scheme in the name of real estate business of providing land to the investors on certain terms. In MCrC(A) No.749/15, the company is involved in collecting money from investors and issuing bond on giving high return to the extent of double amount in five years. In all these cases, three companies involved herein have collected huge amount from large number of investors.

3. In MCrC(A) No.852/15, learned counsel for the applicants argued that the scheme which is being carried out by the applicants is not a money circulation scheme or any chit fund scheme or collective investors scheme prohibited under any law. The investors, after full notice and knowledge of the scheme, had voluntarily accepted to become investors in the scheme. Under this scheme, the investors, at a later point of time, would be sold plots according to the investments made. He submits that this can neither be termed as money circulation prohibited under the money circulation act or

collective investors prohibited under the SEBI Act or any other act much less in violation of any of the provisions of the Reserve Bank of India Act or any other banning regulations having force of law. He submits that at present, in case of these applicants, SEBI has already initiated proceedings and has been restricted from carrying out its activity. Under the scheme, the applicants can get registration even at a later point of time.

4. In MCrC(A) No.763/15, learned counsel for the applicant submits that as far as present applicant is concerned, he was the Director of the company for a very short period of less than six months and there are no specific allegations that during this period, the company continued with the activity of collecting huge fund from the investors so as to say that the applicant was equally involved in commission of alleged offence of the Act of 1978. He further submits that the activity which is being carried out by the company was strictly under non banking scheme. The allegation of money circulation or collective investment scheme are not made out. The offence, later on, registered under the provisions of Reserve Bank of India Act are also not grievous in nature.

5. Learned counsel for the applicant in MCrC(A) No.749/15 submits that in the present case, the applicant is not involved in collecting any money in the garb of selling plot in future. There is no element of collecting money in a manner so as to prima facie make out a case under the act of money circulation banned under the Act of 1978. Learned counsel relies upon the judgment in the case of ***State of West Bengal v. Swapan Kumar Guha, 1982 (1) SCC 561.***

6. In all the cases, common submission has been made by learned counsel for the applicants that as far as allegation of commission of offence under Section 420 IPC is concerned, the investors have not come forward with any specific allegation or material against them of some dispute with regard to proper and timely payment of assured amount. It cannot be said that the applicants are guilty of cheating when in most of the cases, the period after which the sum assured was to be paid, is yet not over. Therefore, making allegations of commission of offence under Section 420

IPC, at this stage, is nothing but an apprehension.

7. On the other hand, learned State counsel submits that the company involved in the case in collecting huge money in the name of high return to small investors and thereby collected crores of rupees. The scheme which have been floated by the applicants are found to be money circulation scheme which is banned under the Act of 1978 because the element of quick money through unrealistic high return scheme is involved in all the cases. He submits that in some cases investors have also come out stating that they have been defrauded. The magnitude of offence is such that it is affecting large number of investors of the State who have put their hard earned money which have been collected not only in violation of the Act of 1978 but later on, some more offences are also likely to be registered particularly relating to various norms relating to functioning of the institution.

8. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the nature and magnitude of allegations against each of the applicants in these three cases and that the applicants are involved in money circulation banned under the Act of 1978 and it involves collection of crores of rupees from the investors, I am not inclined to grant bail to the applicants.

9. All the aforesaid applications are therefore rejected.

Sd/-

**Manindra Mohan Shrivastava**
**Judge**

Deepti