

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 736 of 2015

Prakash Patil S/o Late Jhaduram Patil Aged About 51 Years R/o Ward No. 42, Near Saleem Aara Machin, Thana- Basantpur, Distt- Rajnandgaon, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through: Thana- City Kotwali, Distt- Rajnandgaon, Chhattisgarh

---- Respondent

For Applicant	:	Shri Samir Singh, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

Order On Board

17/08/2015

Heard.

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No.435/2014, registered in Police Station- City Kotwali, District- Rajnandgaon, for alleged commission of offence under Sections 420 and 120-B/34 of the IPC.
2. Case of the prosecution, in brief, is that the complainant was sold a piece of land by the Power of Attorney Holder of the applicant, but when the complainant proceeded to the spot to get construction raised and demarcated, the land could not be identified at the spot.
3. Learned counsel for the applicant submits that only on the basis of complaint, without making proper inquiry and obtaining demarcation of the spot where the land of the applicant is very much available, offence has been registered. He submits that if someone else has encroached upon the land, the applicant cannot be said to have committed any offence. He submits that revenue records recorded the name of the applicant as bhumi-swami of the land bearing khasra number and area stated in the sale deed which devolved upon him after death of his father and appropriate order in that regard was passed by the revenue authority on 19.5.1998.
4. On the other hand, learned counsel for the State submits that prima facie from the

allegation of the complainant, it is revealed at this stage, that the land sold by the applicant is not being identified at the spot by the complainant.

5. It appears that only on the basis of report, without making preliminary inquiry and to get demarcation done at the spot through revenue officer, offence has been registered against the applicant. Therefore, in these circumstances, I am inclined to allow the application.
6. The application is accordingly allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the arresting officer on his furnishing a personal bond in the sum of Rs.20,000/- along with one local surety for the like amount to the satisfaction of the arresting officer with following further conditions that:
 - (i) the applicant shall make himself available for interrogation by the police officer as and when required;
 - (ii) the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;Certified copy as per rules.

Sd/-

(Manindra Mohan Shrivastava)

Judge