

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.4817 of 2015

Yogeshwar Upadhyay, S/o Shri Deendayal Upadhyay, aged about 36 years, Chief Municipal Officer, Tilda Nevra, District Raipur, permanent resident of Kali Mai Ward, Mungeli, Tahsil and District Mungeli (C.G.), Civil Distt. Bilaspur, Revenue Distt. Mungeli (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through Anti Corruption Bureau, Raipur

---- Non-applicant

For Applicant:	Mr. B.P. Sharma, Advocate.
For Non-applicant:	Mr. Ramakant Mishra, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/09/2015

1. The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure, 1973 for releasing him on regular bail during trial in connection with Crime No.49/2015, registered at Police Station: Anti Corruption Bureau, Raipur, for the offence punishable under Sections 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988.
2. Case of the prosecution, in brief, is that the applicant while working as Chief Municipal Officer, Municipal Council, Tilda-Nevra, in order to make payment of Rs.22,50,000/- to complainant Sourabh Constructions, Tilda, demanded Rs.3,50,000/- as illegal gratification and as part payment, obtained Rs.15,000/- on 11-8-2015, the same was recovered from the possession of the applicant, and thereby committed the offence.
3. Learned counsel for the applicant submits that the applicant has not committed any offence, he has been falsely implicated in the crime in question and he is in custody since 11-8-2015. Out of Rs.22,50,000/- Rs.14,02,798/- has already been paid to the complainant firm and there is no question of making demand, Rs.15,000/- allegedly recovered is the amount

of beneficiaries i.e. Aanganbadi workers which has been given to the applicant for construction of toilets and trap proceeding has already been completed, no useful purpose will be served in keeping the applicant in custody, therefore, he be released on bail.

4. On the other hand, learned State counsel opposes the application and submits that total cost of construction work awarded to the complainant is Rs.22,50,000/-, the applicant demanded Rs.3,50,000/- at the rate of 16% of the total construction cost which is apparent from the complaint of the complainant and tainted money of Rs.15,000/- was given to the applicant which was recovered from his possession. The applicant's hand became pink when washed with sodium carbonate solution as such, there is demand and acceptance of illegal gratification other than legal remuneration and subsequent recovery and, therefore, *prima facie*, the applicant is not entitled to be released on bail.
5. I have heard learned counsel appearing for the parties and perused the case diary.
6. Taking into consideration the nature and gravity of offence, facts and circumstances of the case, further considering the demand made by the applicant to make payment against the work executed by the complainant, recovery of tainted money from the applicant, severity of punishment, incriminating material evidence against the applicant in the case diary and following the law laid down by Their Lordships of the Supreme Court in the cases of **Nimmagadda Prasad v. Central Bureau of Investigation**¹ and **Subramanian Swamy v. C.B.I.**², I am not inclined to grant regular bail to the applicant. Consequently, the application is rejected.

Sd/-
(Sanjay K. Agrawal)
Judge

1 (2013) 7 SCC 466

2 (2014) 8 SCC 682