

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**M.Cr.C.(A) No. 833 of 2015**

1. Basant Pandey s/o Late Bhagwat Prasad Pandey aged about 39 Years r/o. Badi Koni, Police Station - Koni, Bilaspur Chhattisgarh.
2. Shekhar Agrawal s/o. M.K. Agrawal aged about 34 Years r/o old Sarkanda, Shiv Ghat, Police Station - Sarkanda, Bilaspur Chhattisgarh.
3. Vikas Agrawal s/o. M.K. Agrawal aged about 30 Years r/o. old Sarkanda, Shiv Ghat, Police Station - Sarkanda, Bilaspur Chhattisgarh

**---- Applicants**

**Versus**

- State Of Chhattisgarh Through : Station House Officer, Police Station - Koni, District - Bilaspur Chhattisgarh

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For Applicants : Mr. Rajeev Shrivastava, Advocate.

For Respondent : Mr. Suryakant Mishra, Panel Lawyer.

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**Hon'ble Shri Justice Inder Singh Uboweja**

**Order on Board**

**19 /11/2015**

1. Heard on I.A.No.1/2015 which is an application for taking additional documents on record.
2. For the reasons stated in the application, I.A.No.1/2015 is allowed and additional documents are permitted to be taken on record.
3. Applicants have preferred this bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail as they apprehend their arrest in connection with Crime No. 61 of 2015, registered in Police Station Koni, District Bilaspur (CG), for offence punishable under Section 3(1)(2)(a) of the Prevention of Damage to Public Property Act, 1984 (for short, "the Act, 1984").
4. The case of the prosecution, in brief, is that present applicants dismantled the passage which was constructed for drainage of water by the Gram Panchayat- Koni, situated in front of the house of Ajay Singh without prior notice or permission and thereby they committed the aforesaid offence.

5. Learned counsel appearing for the applicants would submit that the applicants have not committed any offence and have been falsely implicated in the case. At the time of incident present applicants were not present on the spot. There is no sufficient evidence to connect the applicants with the crime in question. He would further submit that the applicants had already lodged a report against complainant Manish Gadewal, Sarpanch of Gram Panchayat, Koni and as a counter blast, complainant lodged the report against the present applicants. He would further submit that actual aggrieved party is Gram Panchayat Koni and not the complainant. There is no resolution of Gram Panchayat for filing complaint against the applicants. He would further submit that applicant No.1 is a Government servant. The applicants will not abscond and tamper with the prosecution witnesses and will cooperate with the investigating agency, therefore, the benefit of Section 438 of Cr.P.C., may be extended to the present applicants. He would draw the attention of this court to proviso to Section 3(1)(2)(a) of the Act, 1984 which goes to show that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months. In support of his arguments, learned counsel appearing for the applicants has placed reliance on the decision of (2011) 1 SCC 694 in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others** in which it has been held that in cases where court is of considered view that accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted, which after hearing Public Prosecutor, should ordinarily be continued till end of trial.
6. On the other hand, learned counsel appearing for the State, opposed the bail application.
7. I have heard learned counsel for the parties and perused the case diary.
8. Taking into consideration all the facts and circumstances of the case, further taking into consideration that present applicants were not present on the spot at the time of incident, the evidence adduced by the prosecution against the present applicants and further taking note of the fact that before the incident present applicants had already lodged a report against the complainant and as a counter blast, complainant lodged the report against the applicants and further considering the fact

that applicant No.1 is a Government servant and quantum of punishment for the offence punishable under Section 3(1)(2)(a) of the Act, 1984, I am of the considered opinion that *prima facie* it is a fit case where applicants can be extended the benefit of anticipatory bail.

9. Accordingly, the application is allowed. It is directed that in the event of arrest, the applicants Basant Pandey, Shekhar Agrawal and Vikas Agrawal shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like sum to the satisfaction of the Officer arresting them and they shall abide by all the following terms and conditions:

(i) that the accused/applicants shall make themselves available for interrogation before the concerned Investigating Officer as and when required;

(ii) that the accused/applicants 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/her from disclosing such facts to the Court or to any police officer;

(iii ) that the accused/applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy as per rules.

**Sd/  
(I.S.UBOWEJA)  
Judge**