

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.4695 of 2015

Anil Kumar Jain, S/o Shri Dharamchand Jain, aged about 50 years, R/o Qr.No.7/5, Rishabh Nagar, Durg, Tahsil & District Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through District Magistrate, Durg, District Durg (C.G.)

---- Non-applicant

For Applicant:	Dr. N.K. Shukla, Senior Advocate with Mr. P.R. Patankar, Advocate.
For Non-applicant:	Mr. Anupam Dubey, Deputy Govt. Advocate.
For Complainant:	Mr. B.P. Sharma and Mr. C.R. Sahu, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/09/2015

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.18/2015, registered at Police Station Mohan Nagar, Durg, Distt. Durg, for the offence punishable under Section 420 read with Section 34 of the IPC.
2. Case of the prosecution, in brief, is that Anish Jain, son of the applicant, entered into an agreement to sell on 23-10-2013 with complainant Pooran Bhagat Panjwani and obtained ₹ 42 lakhs in presence of the applicant and his younger son Sagar Jain. Later on, in reply to the public notice dated 10-9-2014 issued by the complainant, the applicant objected such an agreement and claimed title in himself and also proclaimed that Anish Jain is not the title holder and thereby cheated the applicant.
3. Dr. N.K. Shukla, learned Senior Advocate for the applicant, would submit

that the applicant has not committed any offence and he has been falsely implicated in the crime in question, in fact, the applicant is owner and title holder of said land and house situate at Khasra No.507/12, area 0.014 hectare, Durg and his son from his first wife has without his knowledge and authority of law alleged to have entered into agreement to sell with the complainant and alleged to have obtained ₹ 42 lakhs which the applicant had no notice and no information. As soon as the public notice dated 10-9-2014 was issued at the instance of the complainant giving intimation of the said agreement to sell and inviting objection, the applicant promptly objected by issuing public notice dated 30-9-2014 stating that he has no relation with Anish Jain, his step-son. Dr. N.K. Shukla would further submit that written complaint dated 16-9-2014 has been lodged only after a delay of one year and the complainant is neighbour to the applicant, they know each other very well and the complainant was knowing very well that the applicant is title holder of the said land, despite that he entered into agreement to sell with his son taking advantage of his strain relation with the applicant and his son Anish Jain. Dr. N.K. Shukla would also submit that in the agreement dated 23-10-2013, there is no signature of the applicant. He would also submit that remedy, if any, available to the complainant is to file suit for specific performance of contract in accordance with law or refund of money, if any, against Anish Jain, the applicant's son. The applicant has not taken any penny from the complainant nor he has done any criminal act towards the complainant. Dr. N.K. Shukla would contend that agreement has been entered into between Anish Jain and the complainant whereas, offence has been registered against the applicant without any rhyme or reason, the applicant has neither sold the property to the complainant nor obtained any money, merely because he is the property holder and in that capacity he has

issued public notice refuting the agreement to sell, he has been made scapegoat and offence has been registered against him. The applicant has been arrested on 18-8-2015, charge-sheet has been filed on 23-8-2015 and no custodial interrogation of the applicant is required, as such, he be released on bail.

4. On the other hand, Mr. Anupam Dubey, learned Deputy Govt. Advocate for the State/non-applicant, and Mr. B.P. Sharma, learned counsel for the complainant, would vehemently submit that the agreement dated 23-10-2013 was executed by Anish Jain in presence of the applicant his younger son, the applicant was fully aware of it and was fully knowing the fact that the said house is being sold to the complainant. They would further submit that huge money paid to accused Anish Jain was duly entered in the balance-sheet and income-tax return which is apparent from balance-sheet and income-tax return filed and the complainant has been cheated by executing agreement to sell as such, the application for grant of bail filed on behalf of the applicant deserves to be rejected.
5. I have heard learned counsel appearing for the parties and perused the case diary.
6. It is not in dispute that agreement was entered into between complainant Pooran Bhagat Panjwani and applicant's son Anish Jain. Present applicant is not party in the said agreement to sell. The agreement only recites that the applicant and his younger son were present. It is also not in dispute that the applicant has not taken any money, it is Anish Jain who is alleged to have taken money and executed agreement to sell. The applicant has only refuted the agreement to sell by his public notices dated 15-9-2014 and 30-9-2014. It is also not in dispute that the complainant and the present applicant both are residents of same area and the complainant is neighbour of the applicant.

7. Taking into consideration the nature and gravity of offence, facts and circumstances of the case, considering the fact that agreement was entered into between the applicant's son and the complainant, FIR was made on 16-9-2014 whereas the transaction is of 23-10-2013, further considering the extent of delay and that it is not the case of the prosecution that the applicant has obtained any money from the complainant, nature of dispute, pre-trial detention of the applicant, the fact that charge-sheet has already been filed and no custodial interrogation of the applicant is required, I am of the view that it is a fit case to grant regular bail to the applicant. Accordingly, the application is allowed.
8. It is, therefore, directed that the applicant be released on bail on his 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 his appearance as and when directed.

Sd/-
(Sanjay K. Agrawal)
Judge