

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1068 of 2015

- Barjinder Singh, S/o Iqbal Singh, Aged About 58 Years, R/o Muthanagar, Shyam Nagar, Telibandha, Raipur, Distt. Raipur (Chhattisgarh).
--- **Petitioner**

Versus

- State of Chhattisgarh Through P.S. Telibandha, Raipur (Chhattisgarh).
--- **Respondent**

For the applicant	:	Mr. Manish Sharma, Advocate.
For the Respondent	:	Mr. Neeraj Jain, Govt. Advocate.
For the objector	:	Mr. Raza Ali, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

27.11.2015

1. Apprehending arrest in connection with Crime No. 327 of 2015 registered at Police Station Telibandha, Raipur, Distt. Raipur Chhattisgarh for the offence punishable under Sections 420 IPC, the applicant has filed this application under Section 438 Cr.P.C.
2. As per the prosecution case, the complainant Vineet @ Vinod Khemnani lodged a complaint that the applicant owned a house situated at Shyamnagar, Telibandha on a plot admeasuring 2400 sqft wherein the built up area was 1800 sqft in the ground floor and 150 sqft in the first floor. The said house was agreed to be sold by the applicant by agreement of sale dated 09.01.2014 for a sale consideration of Rs.90,51,000/- and out of that, Rs.25 lakhs was paid in advance as earnest money. It is further alleged that in the said agreement, six months time was provided to get the sale deed executed after providing all the documents and

subsequently it came to the knowledge that the said property was charged to the Bank and further a BSNL tower was installed in the premises and therefore, offence of fraud has been committed.

3. Learned counsel for the applicant submits that the agreement dated 09.01.2014 was for sale of the house for a consideration of Rs.90,51,000/- and the time was essence of the contract and in such case, the charge, if any, would have been liquidated within the time and further the applicant himself did not violate the terms of the agreement and after 1 1/2 years, the complainant has filed application u/s 156(3) Cr.P.C., before the Court below so as to recover the amount of earnest money. He submits that the nature of transaction is of purely civil nature as no suit for specific performance was filed and instead of resorting to civil proceedings, the complainant has initiated the criminal proceedings and therefore, no case is made out against the applicant.
4. Per contra, learned State Counsel as also learned counsel for the objector oppose the bail and submit that according to the statement recorded, the property was charged to the Bank which was not disclosed, therefore, within the stipulated period of time the sale deed could not be executed and therefore the crime is committed.
5. I have perused the case diary and the agreement which is the nucleus of this dispute. The agreement is with respect to sale of the house wherein it appears that the earnest money of Rs.25 lakhs was paid, thereafter a dispute arose and ultimately, the sale deed has not been executed.
6. Taking into the nature of submissions and perusal of the case diary, the documents and the statements, prima facie it appears that that the dispute is of civil nature, therefore, I

am inclined to allow this bail application.

7. Accordingly, the application is allowed and 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 officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the officer arresting him or the concerned Investigating Officer. The applicant shall also abide by the following conditions :-

- (i) that he shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that he 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 any police officer;
- (iii) that he shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-

**GOUTAM BHADURI
JUDGE**