

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 113 /2016

Smt. K Anita, W/o. Shri K. Suraj, Aged About 39 Years, R/o. Q. No. 03, B, Street No.46, Sector-8, Bhilai, P.S. Sector-6, Distt. Durg, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh, Through Police Station, Durg, Chhattisgarh.
2. Smt. Sunita Das, W/o. Devrat Das, Aged About 40 Years, R/o. Blok C, Q. No. A, Bank Colony Sector-08, Bhilai, Distt. Durg, Chhattisgarh

---- Respondents

For Applicant	:	Mr. Arvind Singh, Advocate.
For Respondent No.1	:	Mr. Anant Bajpai, Panel Lawyer
For Respondent No.2	:	Mr. Malay Kumar Bhaduri, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

25/04/2016

1. Apprehending arrest in connection with Complaint Case No.7384/2015 pending before Judicial Magistrate First Class for the offence punishable under Section 403, 415, 417, 457, 468, 471 of Indian Penal Code, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. As per the prosecution case, a complaint was filed by the respondent No.2 which was registered under Section 403, 415, 417, 457, 468 & 471 of Indian Penal Code wherein it was stated that a cheque bearing No.546619 along with other cheques were lost on 24.05.2012, for which a report was made and the applicant who happened to have received the said cheque has filed a case under Section 138 of Negotiable Instrument Act (*for short "N.I.Act"*). As per the complaint, the said cheques were being forged and were

being misused by the applicant so as to prosecute the complainant under Section 138 of N.I. Act.

3. Learned counsel for the applicant would submit that the applicant was a holder of the cheque which was given by the complainant and the said cheque was lodged with the Bank and was dishonoured, for which a notices under Section 138 were also issued. Subsequently, payment having not been made, a complaint has been filed and after filing of the complaint, notices were issued and after receipt of the notice, the instant complaint has been filed by the respondent No.2, therefore, it is submitted that the entire issue cannot be adjudicated that whether the cheque is forged or not in a separate proceeding and it has to be decided on the same proceeding. He relied on *AIR 1996 SC 1592* in between *Surjit Singh & Balbir Singh* and further submits that under the circumstances, there is apprehension of arrest.
4. Per contra, the learned State counsel and learned counsel for the complainant opposes the prayer for grant of anticipatory bail. Learned counsel for the complainant would submit that only the notices are issued and after the notices are issued, the applicant can very well approach to the Court below and at present this application is not tenable. It is further submitted that the extraordinary circumstances do not exists in this case. He further submits that under the circumstances, the anticipatory bail application may be dismissed.
5. Perused the documents along-with the bail application. Admittedly, the application was filed by the applicant under Section 138 of N.I. Act for dishonour of the cheque, which was alleged to have been issued by the respondent/complainant. Subsequently, after the receipt of summons of complaint U/s. 138 of N.I.Act, a complaint was filed that the said cheque which was lost has been misused by

fabrication. Perusal of the police report would show that the cheque No. 546619 was not shown to have lost by the complainant in the report dated 24.05.2012. Even otherwise, once the petition under Section 138 has been registered, the future of the said petition could not have been decided in a separate proceeding as it would amount to decide the complaint U/s. 138 of N.I. Act itself on merits. The complainant can raise all the defence with the proceeding under Section 138 of N.I. Act, which is pending adjudication; therefore, in view of the above, this is a fit case to extend the benefit of anticipatory bail to the applicant.

6. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, she shall be released on bail by the officer arresting her on furnishing a personal bond to a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Trial Court. The applicant shall also abide by the following conditions :
- (i) that the applicant shall make herself available for interrogation before the investigating officer as and when required;
 - (ii) that 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/her from disclosing such facts to the Court or to any police officer;
 - (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) that the applicant shall appear before the trial Court on each and every date given to her by the said Court till disposal of the trial.

Certified copy, as per rules.