HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC(A) No. 345 of 2016

Narendra Kumar Sariya S/o Paltu Sariya Aged About 50 Years R/o Qtr. No. 06L, Gali No. 04, Near Satnam Bhawan, Sector-06, Bhilai, Tahsil & District Durg Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through : Station House Officer, Police Station Dhamdha, Tahsil & District Durg Chhattisgarh

---- Respondent

For applicant – Shri T.K. Tiwari, Advocate.
For Respondent/State – Shri Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

26/04/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No. 182/2015 registered at Police Station Dhamdha, Dist.-Durg (C.G.) for offence punishable under Sections 420, 467, 468 & 471 of Indian Penal Code.

2. As per the prosecution case the applicant Narendra Kumar Sariya had applied for a loan of Rs.5 lakhs and with him co-applicants were Nageshvar Sariya and Paltu Ram brother and father of the applicant. Loan was obtained by the applicant along with the co-applicants in the year 2011 from Grih Finance Company and the property was mortgaged for construction of house. House loan was however not re-paid and in the meanwhile original owner of the property executed sale in favour of the applicant. Thereafter, a sale deed was executed by Paltu Ram father of the applicant on 23/07/2012 without re-payment of the loan. Thereafter, Narendra Kumar also executed a sale in favour of Srikant Pandey and Shashikant Pandey. Subsequently, a complaint was made by the finance company about fraud committed. Thereafter, court under Section 156 (3) of Cr.P.C. directed to register the FIR.

3. Learned counsel for the applicant submits that applicant is an employee of Bhilai Steel Plant, he himself was paying the loan and transaction were in between father and the son and since there were some reasons loan could not be re-paid and property was ultimately attached by order of the competent authority under the provisions of SARFAESI Act and orders were passed on 27/11/2015. He therefore submits that if for non payment of loan the property is attached by an order no criminality can be attributed to this applicant, therefore the applicant may be granted benefit of anticipatory bail.

4. Learned State counsel opposes the prayer for grant of bail.

5. I have perused the case diary and the documents. Case diary and the documents would reveal that after loan was availed by the applicant and his father a sale deed was executed by Paltu Ram the father in favour of the applicant. Case diary would show that complaint has not been made by Srikant Pandey and Shashikant Pandey who have alleged to be subsequent purchasers and the documents shows that property has already been attached by the competent authority in exercise of power under the SARFAESI Act. In view of the same, considering the nature of transactions and taking into fact the property is already attached under the order of competent Authority and complaint is only by financer bank, I am inclined to extend 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, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions:-

(i) that the applicant shall make himself 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) the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
JUDGE

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