

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.No.2048 of 2016**

Basant Adil S/o Ravidas Adil, Aged about 50 years, R/o Hathband,
PS Simga, District Balodabazar (CG)

---- Applicant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station
Simga, District Balodabazar-Bhatapara (CG)

---- Non-applicant

For Applicant : Mr. Kishore Shrivastava, Senior Advocate with
Mr.Kapil Jain and Mr.Soumya Rai, Advocates
For Non-applicant : Mr. D.R.Minz, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

27/04/2016

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.391/2015, registered at Police Station-Simga, District-Balodabazar (CG), for the offence punishable under Sections 406, 409, 420 & 120B of the IPC and Section 3/7 of the Essential Commodities Act.
2. Case of the prosecution, in brief, is that the applicant being registered custom miller of M/s Jawahar Paddy

Processing, Hathband entered into an agreement with the Chhattisgarh State Cooperative Marketing Federation, Balodabazaar-Bhatapara for custom milling of 64000 quintals of paddy and as per agreement lifted 61540.65 quintals of paddy from paddy collection centers and after milling he was required to deposit 41,227.46 quintals of milled rice with the said marketing federation, but the applicant firm only deposited 8084.13 quintals of milled rice and failed to deposit 33143.33 quintals of milled rice amounting to ₹ 8,73,45,381/- and misappropriated that amount and thereby committed the aforesaid offences.

3. Mr.Kishore Shrivastava, learned Senior Counsel along with Mr.Kapil Jain & Mr.Soumya Rai, learned counsel appearing for the applicant would submit that time to supply milled rice was extended by the Government of India till 30.4.2015, but due to unavoidable reasons milled rice could not be deposited after custom milling as per agreement. The applicant had filed the writ petition before this Court in which this Court pleased to grant liberty to the applicant to file an appeal as per clause 15.2 of the agreement before the Secretary, State of Chhattisgarh, Department of Food and Civil Supplies, Raipur and on appeal being filed, the State Government by its order

dated 30.9.2015 dismissed the appeal and directed recovery of ₹ 8,88,61,307/- from the applicant through revenue recovery certificate. He would further submit that no allegation of criminal offence levelled by the State Government till the appeal was rejected by the Appellate Authority as consequence of non-depositing of rice is already provided in the agreement i.e. clause 9.3 and failure to return or deposit rice has already been taken care of in the contract, therefore, no criminal offence is made out against the applicant. He would also submit that dishonour of cheque issued by the applicant at the time of execution of the agreement is a matter to be taken cognizance by the criminal court under Section 138 of the Negotiable Instruments Act, 1881 and ingredients of offence under Section 405 of the IPC is totally missing in this case as there is no dishonest intention on the part of the applicant. FDR deposited by the applicant has already been encashed by the State Government and the applicant did not have a time to challenge the order passed by the State Government in an appeal. The applicant is in custody since 2.12.2015, charge-sheet has already been filed and no useful purpose will be served by detaining him in jail as he is not habitual offender. He

relied upon the judgment of the Supreme Court in the matter of **Sanjay Chandra v. Central Bureau of Investigation**¹ to support his case and submit that the applicant deserves to be enlarged on bail by allowing his application.

4. On the other hand, Mr.D.R.Minz, learned Deputy Government Advocate appearing for the State, would submit that ingredients of offence under Section 405 of the IPC are available in the material collected by the prosecution. Cheque issued by the applicant for security deposit has already been dishonoured and the applicant has failed to deposit 33143.33 quintals of milled rice, though he sought time to deposit the same and time was extended by the Government of India till 30.4.2015, but he failed to deposit and upon verification, it was revealed that no such milled rice available was in his possession/premises and he has already been disposed off the milled rice and as such, he cheated the Government by causing huge loss to the tune of ₹ 8,73,45,381/- and as such, it is not a case for grant of bail.
5. I have heard learned counsel appearing for the parties and perused the case diary.

¹ (2012) 1 SCC 40

6. Taking into consideration the facts & circumstances of the case, nature & gravity of the offence, role of the present applicant, the manner in which the applicant has lifted huge quantity of paddy for custom milling and did not deposit 38440.38 quintals of milled rice after custom milling and milled rice is not found in possession/premises of the applicant, taking into account that cheque issued at the time of execution of agreement has been dishonoured, further taking into account the misappropriated amount i.e. ₹ 8,73,45,381/- and material available in the case diary, I do not find any ground for grant of regular bail to the applicant.
7. Consequently, bail application filed on behalf of the applicant is rejected.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-