

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 490 of 2016

- Ashwani Saini S/o Shri Ramchandra Saini Aged About 45 Years Occupation Business, R/o D-3 Shri Ram Apartment Ram Nagar, Roorkee, District Haridwar (Uttarakhand).

---- Petitioner

Versus

- The State of Chhattisgarh through Station House Officer of Police Station Urla, District Raipur Chhattisgarh.

---- Respondent

For the applicant	:	Mr. Shivang Dubey, Advocate.
For the Respondent	:	Mr. Satish Gupta, Govt. Advocate
For the Objector	:	Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

23.06.2016

1. Apprehending arrest in connection with Crime No. 91 of 2016 registered at Police Station Urla, District Raipur (C.G) for the offences punishable under sections 420, 467, 468 & 471 of IPC the applicant has filed this application u/s 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. As per the prosecution case, the applicant who is consultant of M/s. Ashwani Saini & Company entered into an agreement with Complainant I.A. ENERGY on 26th of October 2015 that the applicant who was operating as a consultant shall get the Power Purchase Agreement executed from the prospective buyers i.e., Uttar Haryana Bijli Vitaran Nigam Ltd. Subsequently within the stipulated period of 100 days the power purchase agreement could not be executed and the

amount of initial payment of Rs.50 lakhs received by the applicant was returned by him by a Cheque of Rs.50 lacs in terms of guarantee for performance of agreement dated 26.10.2015. When the said cheque was presented by the complainant to their Bankers on 29.02.2016, it was returned with an endorsement that "signature differs". Therefore, fraud has been played by the applicant.

3. Learned counsel for the applicant refers to the consultancy agreement dated 26th October 2015 and would submit that at the time of signing the agreement, Rs.50 lakhs was paid. Subsequently it was stated that the agreement contemplated that power purchase agreement would be made and subsequent payment shall be released to the applicant in phased manner. It is further submitted that since the beneficiary i.e., the purchaser of power was identified as Uttar Haryana Bijli Vitaran Niam and the offer of electricity was made at the rate of 5.54 per unit but since the purchaser was getting power lesser than the amount so quoted by the complainant as such it was advised by the applicant to have negotiations on the basis of certain documents. The applicant, therefore, called for the documents from complainant. It is stated that it would be evident from document annexed to the Objection vide Annexure O-3. It is also submitted that though the said documents were asked for by the applicant, but they were not supplied by the complainant, consequently the Applicant could not enter into any negotiation with Uttar Haryana Bijli Vitaran Nigam Ltd. Since by then the time thereof had

elapsed and the time of agreement expired it was for the fault of the complainant the benefit of the agreement could not be finalized. It is further submitted that the applicant has also communicated that the cheque which was issued by him for return of amount bears the same signature which can be verified by the complainant by the head office of the Company with other correspondence. It is further stated that the nature of dispute is purely of civil nature and as the breach of agreement is for the fault of complainant and instead of invoking arbitration clause the complainant has resorted to arm twisting method by lodging FIR. Under these circumstances learned counsel for the applicant prays that he may be enlarged on bail.

4. Per contra, learned State Counsel as also learned counsel for the objector oppose the anticipatory bail. It is contended that the tariff in power agreement was initially fixed and therefore, there could not have been any negotiation for the purpose. It is further submitted that the amount of Rs.50 lakhs which was initially paid by cheque at the time of signing of agreement was returned by the applicant after expiry of agreement and when when the cheque was presented by the complainant it was returned with an endorsement that the signature differs therefore by placing the cheque as a guarantee the fraud was played and there is no document on record to show that the applicant has entered into any agreement with Uttar Haryana Bijli Vitaran Nigam Ltd., to get the prospective power purchase agreement executed.

5. Perused the documents and complaint. The agreement in this case is not in dispute that the applicant had entered into consultancy agreement with the complainant Company I.A. ENERGY. The agreement Clause 3.3 contemplates the payment of service charge by the complainant in 3 instalments. Clause 5 deals with term & termination which contemplates that the agreement shall come into existence on the date of its execution and shall be valid for a period of 100 days from the date of its execution and on expiry of the term, all obligations of the parties towards each other shall come to an end and accordingly the first party has to refund full amount to the second party which has been paid as per clause 3.3 if work is not completed within stipulated time. As appears, after initial payment of 50 lakhs at the time of signing agreement, subsequent clause could not be adhered to and the documents filed alongwith objection contains communications made by the applicant and is copy of E-Mail Communications addressed to complainant. The documents purports that certain documents were sought for by the applicant on the ground that the other electricity suppliers have offered lesser amount of tariff @ Rs.4.25 per unit as against Rs.5.54 per unit offered by the complainant. The communication is dated 12th December, 2015 and the reply thereto also has been placed on record by the complainant.
6. Considering the totality of the facts and circumstances of the case, it appears that an *inter-se* dispute arose between the parties when Power Purchase Agreement

could not be executed and the document also pertains that certain documents were called for negotiation and eventually the agreement failed. The signature of the applicant on cheque has not been disputed. Thus taking into the entire documents, it appears that the nature of dispute appears to be civil nature. Therefore, I am inclined to extend the benefit of provisions of Section 438 Cr.P.C., to the applicant.

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 his executing a personal bond in sum of Rs.25,000/- with one surety 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