

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 626 of 2016

- Pramod Shukla S/O Shri Hetram Shukla Aged About 58 Years R/O Village Saliyapara, Post - Tahsil Police Station - Pali, District Korba Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through S.H.O., Police Station City Kotwali, Raigarh, District Raigarh Chhattisgarh.

---- Respondent

For Applicant : Mr. Sudeep Agrawal, Advocate

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

19-08-2016

1. This application under Section 438 of Cr.P.C has been filed by the applicant apprehending his arrest in connection with Crime No. 247 of 2016 registered at Police Station City Kotwali, Raigarh, District Raigarh (CG) for offence punishable under Sections 420, 409/34, 120-B of the IPC and Sections 13(2) & 13(1)(d) of Prevention of Corruption Act.
2. As per case of the prosecution, the applicant who was Chief Municipal Officer was discharging the job of Municipal Commissioner, Raigarh in the year 2014. Certain GS pipes purchase were ordered by the Municipal Commissioner for which a tender was invited. According to the tender, 2% commercial tax was to be deducted and 5% security amount should have been deducted from the successful tenderer. The applicant in order to facilitate the tenderer has not deducted the said sums and thereby the aforesaid offence was committed.

3. Learned counsel appearing for the applicant would submit that the applicant was discharging the job of Municipal Commissioner, Raigarh and the deduction of 2% commercial tax was not within the domain of the present applicant. It is the official procedure for which even if deduction has not been made, separate forum is available under the Commercial Tax Act. It is further submitted that deduction of 5% security amount that too was not within the domain of the applicant and no criminality has been committed by the applicant and only false allegations have been attributed to the applicant. , therefore, the applicant being Municipal Commissioner may be extended the benefit of anticipatory bail.
4. Per contra, learned State counsel opposing the prayer for grant of anticipatory bail would submit that initially enquiry was conducted by the Joint Collector wherein it was found that 2% commercial tax was not deducted and 5% security deposit was also not deducted, thereby the applicant has committed the aforesaid offence.
5. I have heard learned counsel for the parties and also perused the case diary and documents.
6. Perusal of the enquiry report shows that primary allegations have been made against the applicant that he has failed to deduct 2% commercial tax and 5% security deposit from the successful tenderer.
7. Taking into consideration all the facts and circumstances of the case, nature of allegations leveled against the applicant, considering the case diary and documents and further on due consideration in facts of case the principles laid down in case of **Bhadresh Bipinbhai Seth vs. State of Gujarat & another**, reported in (2016) 1 SCC 152, would be applicable taking into the

job discharged by the applicant as Commissioner, Municipal Corporation wherein it has been held that if not essentially required custodial interrogation should be avoided, I am of the considered opinion *prima facie* that it is a fit case where the benefit of anticipatory can be extended to the applicant.

8. 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 his executing a personal bond in the 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

Raju