

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 579 of 2016**

- Murlidhar Agrawal S/O Late Gajanand Agrawal, Aged About 55 Years
R/O Dhabra Road, Kharsiya, District Raigarh (Chhattisgarh)

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, P. S. Kharsiya,
District Raigarh (Chhattisgarh)

---- Respondent

&

MCRCA No. 583 of 2016

- Anand Agrawal S/O Late Gajanand Agrawal Aged About 53 Years R/O
Dhabra Road, Kharsiya, District Raigarh (Chhattisgarh)

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, P S Kharsiya,
District Raigarh (Chhattisgarh)

---- Respondent

For Applicant in M.Cr.C.(A) : No. 579 of 2016	Dr (Shri) N.K. Shukla, Sr. Advocate with Mr. Shailendra Shukla, Advocate
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For Applicant in M.Cr.C.(A) : No. 583 of 2016	Mr. Manish Dixit Sr. Advocate with Mr. Y.C. Sharma, Advocate
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For Respondent/State	:	Mr. Anupam Dubey, Dy.G.A.
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For Objectors	:	Mr. Rajiv Shrivastava and Mr. Sudeep Agrawal, Advocates.
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Hon'ble Shri Justice Goutam Bhaduri**Order on Board****02-08-2016**

1. Since both the aforesaid two bail applications are in similar nature which arise out of same Crime No. 194 of 2016, they are heard analogously and are being disposed of by this common order.

2. The applicants have preferred the instant bail applications under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail apprehending their arrest in connection with Crime No. 194 of 2016 registered at Police Station Kharsiya, District Raigarh(CG) for the offence punishable under Section 420 of the IPC .
3. Case of the prosecution, in brief, is that on 8-5-2016 first information report was lodged by Draupadi Devi Agrawal, wife of Gajanand Agrawal and mother of the present applicants, against the applicants that initially the applicants committed forgery under Section 420 of the IPC as in the year 1961 Gajanand Agrawal, husband of the complainant opened Gudakhu factory in the name and style of “ M/s. Agrawal Gudakhu Factory” which was sole proprietor-ship firm and same was managed by Gajanand Agrawal alone. Thereafter, its trade mark was registered as “Thota Chhaap Gudakhu” on 16-5-1962 and Gajanand Agrawal was the sole proprietor and owner to use the same . It was further stated that after 1992 when the business was further carried out, other brothers of Gajanand Agrawal were also added and everybody flourished and in the year 1983 present applicants who were not earning members also joined as partners. In the intervening period the partners also resigned and the present applicants Muralidhar Agrawal and Anand Agrawal attained majority and the partnership deed was executed on 1-4-1983 wherein it was categoriclaly recorded that in any case Gajanand Agrawal would be the sole proprietor to

use Thota Chhaap Gudakhu. Thereafter, Gajanand Agrawal died on 30-3-1986 and the applicants Muralidhar Agrawal and Anand Agrawal in order to grab the entire property of Hindu Undivided Family, a partnership deed was executed on 5-4-1986 and the contents of that document which was not disclosed to anyone and thereby earlier partnership deed which was executed on 5-11-1983 which gave entire sole power to Gajanand to use Thota Chhap Gudakhu are being used by the applicants on the basis of a forged relinquishment deed. By virtue of it, the entire share of Gajanand Agrawal is usurped by the present applicants. First information report purports that mother could not understand the documents as such after death of Gajanand Agrawal she along with Ashok Agrawal signed the documents without going through the contents of the documents, therefore, the applicants on the basis of forged relinquishment deed have taken away the entire property and thereby the offence was committed.

4. Learned counsel appearing for the applicants would submit that the entire nature of allegations are family dispute *inter se* between the parties and if the complainants were aggrieved by the act of the applicants, then in such a case they should have approached the court of jurisdiction which is having jurisdiction to decide the case of trade mark. It is further submit that the alleged nature of offence is said to have been committed in the year 1986 for which a report is made in the year 2016. Gajanand Agrawal and his wife had Draupadi Devi Agrawal had three sons

namely Muralidar Agrawal, Anand Agrawal and Ashok Agrawal and two daughters namely Sarita and Dimple. In the year 1961 Gudakhu factory was opened in the name and style of Agrawal Gudakhu Factory, subsequently one Ganpat Agrawal was inducted in the year 1965, thereafter he continued, brothers were also inducted in the year 1965. In the year 1962 Gajanand Agrawal applied for trade mark and trade mark was given as Thota Chhaap Gudakhu. Referring to the documents alongwith the bail petitions, it is contended that on 4-11-1983 retirement agreement was drawn which is allegedly got signed by the complainants would show that knowledge of documents though admitted but the contents of such documents are disowned, which is completely wrong. It is further submitted that after death of Gajanand Agrawal i.e., on 30-3-1986, co-owners continued the partnership firm Agrawal Gudakhu factory, but another partnership deed was executed by mother and Ashok Kumar Agrawal in which they relinquished their right and the entire dispute arose when the petitioner asked about over a loss caused in a hotel to Ashok Kumar Agrawal and accountability was also asked for and thereafter they immediately reported the matter. Learned counsel for the applicants would further submit that the alleged nature of offence is said to have been committed in the year 1986 for which report is made in the year 2016 which is more than 30 years and all the allegations are in civil nature. Therefore, no criminality can be attached to the applicants and they may be enlarged on bail.

5. *Per contra*, learned counsel for the State as well as the objectors would submit that the applicants have cheated their own brother and mother and initially first information was lodged, but no offence was registered. Subsequently, Cr.M.P. No. 495 of 2016 was filed i.e., Draupadi Devi Agrawal & another Vs. State of Chhattisgarh and others wherein notices were issued by this Court and thereafter, a case was registered and the applicants have purposefully concealed the fact that they were not owners of the trade mark of Thota Chhap Gudakhau as per partnership deed dated 5-11-1983 and when new deed was executed on 5-4-1986 after death of Gajanand Agrawal, on the basis of forged document got the trade mark to their shares and even the sisters were also deprived of the property. Subsequently, it is stated that the applicants have sold many properties without consent of the present objectors though the property was in the name of Gajanand Agrawal. Therefore, considering the facts and circumstances of the case, the applicants are not entitled to be extended the benefit of anticipatory bail.
6. I have heard learned counsel for the parties, perused the case diary and documents.
7. Perused the first information report. The first information report is registered on 6-5-2016 and the alleged incident is said to have taken place on 5-4-1986. Primarily first information report purports to partnership deed including the registration of Thota Chhaap Gudakhu as trade mark. First information report speaks about the partnership deed dated 05-04-1986 that without

any legal right, keeping the brother and sisters in dark, partnership deed was executed whereas as per partnership deed dated 5-11-1983 the applicants do not have any right over Thota Chhaap Gudakhu and it also states that one affidavit was executed and the applicants without disclosing the contents of the affidavit got the signatures of the complainants on the ground that after death of Gajanand Agrawal revenue records are to be rectified. However, on the basis of such affidavit and subsequent partnership deed, the applicants started using Thota Chhaap brand as their trade mark for Gudakhu. Perusal of the first information report, case diary and documents along with documents filed by the objectors would show that dispute arose in between the parties over a trade mark. Copy of the partnership deed dated 5-11-1983 is a part of the record which bears the signatures of Gajanand Agrawal and also the applicants. Subsequently, all the documents would show that Gajanand Agrawal died on 30-3-1986 and thereby another partnership deed came into existence as one of the partners i.e., Gajanand Agrawal died. The case diary also contains copy of Cr.M.P., and the order is filed by the objector which shows that notices were issued for the reason that the Police have not registered the first information report. Perusal of statement of Ashok Kumar Agrawal which is a part of the case diary and the report, *prima facie* indicates that the applicants and the complainants are related to each other who are mother and brothers and the right is claimed over trade mark. The partnership deed, which is alleged to be fraud, based on outcome of the

fraud is of the year 1986. The complainants in the first information report have not denied the fact about execution of the affidavit whereby right was relinquished. It is stated that the alleged relinquishment deed i.e., affidavit was not explained. Copy of the affidavit which is placed on record purports that the complainant did not object for continuing the trade mark in the name of the applicants as existing partners, therefore, perusal of the case diary and documents placed by the objector as also the applicants would show that the nature of dispute appears to be primarily of civil nature and the alleged incident took place in the year 1986 when the fresh partnership deed was executed.

8. Their Lordships in case of Bhadresh Bipinbhai Seth (supra) has laid down the following principles:

“25.3. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

25.4. There is no justification for reading into Section 438 Cr.P.C the limitations mentioned in Section 437 Cr.P.C. The plenitude of Section 438 must be given its fully play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Cr.P.C to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is mwilling to submit to restraints and condiditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail”.

- 9 Considering all the facts and circumstances of the case, after evaluating the averments available on record and also considering the time lapse of 30 years from arising out of the dispute and the nature of dispute which primarily appears to be of civil nature and after applying the aforesaid principles of law enunciated by Hon'ble the Supreme Court in **Bhadresh Bipinbhai Sheth** (supra), I am of the considered opinion that these are the fit cases where the benefit of Section 438 of Cr.P.C. can be extended to the applicants.
- 10 Accordingy, the bail applications filed under Section 438 of the Cr.P.C., are allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on each of them 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 applicants shall also abide by the following conditions:

(i)	that the applicants shall make themselves available for interrogation before the Investigating Officer as and when required.
(ii)	that the applicants 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 applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
(iv)	the applicants 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