NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C. No. 5668 of 2015

1. Mukesh Kesharwani, S/o. Tulsi Das Kesharwani, aged about 40 years, R/o. Keshri Nivas, Sanjay Nagar, Tikrapara, P.S. - Tikrapara, Raipur (C.G.)

----Applicant

Versus

1. State of Chhattisgarh, Through : the Station House Officer, Police Station – Pandri Mova, District – Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. B.D. Guru, Advocate
For Respondent/State	:	Mr. Ramakant Mishra, Dy. A.G

Hon'ble Shri Justice Goutam Bhaduri

C A V Order

28/01/2016

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.411/2013, registered at Police Station – Pandri Mova, Raipur (C.G.) for the offence punishable under Section 420, 409 & 120-B of the Indian Penal Code and Section 3, 4, 5 & 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

2. Case of the prosecution, in brief, is that a report was lodged by some of the depositors against Santosh Sapkaade, Managing Director, Astha Goat Farming Indian Pvt. Ltd and Astha International Ltd., Chandra Singh Shivaji Chouhan, Director, Astha Goat Farming Indian Pvt. Ltd. and Astha International Ltd., Sunil Joshi, Officer In-charge and Mukesh Kesharwani, Branch Manager

Raipur and its Agents, claiming allegations that company allured different depositors to deposit different amount in different scheme of the company with an assurance it would be returned back with the double of amount in the short span of time. Thereby collected huge amount in crores from different down trodden and middle class people. Accordingly as per the scheme so floated, different persons deposited more than Rs.20.00 crores in the company in the Chhattisgarh division and 10000 investors were allured to pay and they accordingly deposited the amounts. However all of sudden the entire office were closed by putting the shutter down and all the employee absconded. Consequently, the offence under Section 420, 409 & 120-B of the Indian Penal Code and Section 3, 4, 5 & 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 is committed.

3. Learned counsel for the applicant would submit that the present applicant was only Manager/Agent and according to the charge-sheet filed, the main director/owner of the company were some other person namely Santosh Sapkaade and the role of this applicant was that he was only employee/agent, who had deposited the entire amount in the company by collecting the same from the depositors as per the scheme of the company. Therefore, the role of the applicant is limited, which can not be at par with the people who are at helm of the company. He would further submit that all the documents have been seized and no further evidence is required and the applicant is in jail since 28.08.2015, therefore, the counsel prays that the applicant may be enlarged on bail.

4. On the other hand, learned counsel for the State opposes the bail application and would submit that the applicant was in complete charge of the Chhattisgarh Division to manage the office of company. He would further submit that at the instance of the applicant, different seminars were organized and the people were invited to invest the money by projecting the scheme of the company and the role of the applicant was not that of agent but was solely manage the affairs of the company in the Chhattisgarh State through its different agents. It is further submitted that the applicant allured the customers and the crores of rupees was transferred to the bank account of the company from the account of this applicant, therefore, the role of this applicant can not be limited to the extent to that of only agent/employee and on these grounds, the State counsel prays that the applicant may not be released on bail.

5. I have heard learned counsel appearing for the parties and perused the case diary.

6. Perused the documents and the charge-sheet. Perusal of the document prima-facie shows that the applicant was over all in-charge in the State of Chhattisgarh offices. After reading the documents would show that the applicant was managing the entire affairs in Chhattisgarh State and is fully literate and money were collected through different local agents. The document also shows that the applicant had received commission of Rs.10,00,000/- and more apart from the Alto Car and Tata Safari Car was also given to the applicant by the company. The documents would also show that the applicant being local person, allured the different depositors by

holding seminars and programmes and convinced them, whereby the people believed in such statement thereby the money was collected. The charge-sheet enclosed letter of the Reserve Bank of India, wherein it is stated that company was not authorized to receive such amount for money circulation. Taking the statement of the witnesses and the documents, the role of the applicant can not be stated to be only that of the employee/agent as prima-facie it appears that he was actively involved in the affairs of the company so as to collect the amount and received also huge amount and commission. The role of this applicant being literate person and head of the company can not be ignored. Therefore, considering the plight and position of the depositors as against this applicant, if the applicant is released on bail, tampering of evidence can not be ruled out. Considering the documents collected and the evidence and the statement of Ishwar Das Tandan, Chandra Prakash Sinha, Deepak Sihani, Smt. Surendra Kaur and Navneet Singh Chawla etc., serious allegations have been attributed to this applicant which goes beyond the fact that role of the applicant was limited to that of employee only. Consequently in the facts of the case, the way the organized offence has been committed, this Court is not inclined to release the applicant on bail.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Balram