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HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C (A) No. 17 of 2016

Smt. Sandhya Singh W/o. Santosh Singh, aged about 45 years, R/o. L.I.C. Colony Dharampura Raod, Jagdalpur, P.S. Kotwali, Revenue and Civil District Bastar (C.G.)

---- Applicants

Versus

1. State of Chhattisgarh Through the District Magistrate Bastar place Jagdalpur District Bastar (C.G.)
2. Surendra Kumar Sahu S/o. Late Nawal Kishore Sahu, aged about 43 years, R/o. Bhagat Singh Ward Patharaguda Near Shiv Mandir Jagdalpur, P.S. Kotwali, District Bastar (C.G.)

---- Respondents

For Applicant	:-	Mr. P.K. Tulsyan, Advocate.
For Respondent/ State	:-	Mr. Sangharsh Pandey Dy. Govt. Advocate
For Respondent No.2	:-	Mr. Deepak Kumar Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

09/02/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending her arrest in connection with Criminal Case No. 436/2010, pending before Judicial Magistrate First Class, Jagdalpur District Bastar (C.G.) for offence punishable under Section 420,467,471 of Indian Penal Code.
2. Counsel for the applicant would submit that the applicant and the respondent No. 2 are the brother and sister. As per the documents late

Nawal Kishore Sahu, the father of the applicant and the complainant executed initially a will on 03.09.1996 in favour of complainant Surendra Kumar Sahu, subsequently, another will was executed on 08.09.1996 in favour of the present applicant. Both the will are un-registered will. Subsequently, the mutation proceeding were drawn on the basis of will and the name of complainant was recorded. The applicant having objected to such mutation exerting her right on the basis of will gave rise to the dispute and the complainant thereafter, after obtaining opinion of hand writing expert by sending both the will filed a complaint wherein the case under section 420 of IPC was registered against the applicant. It is stated in such complaint the applicant was granted regular bail on 03.04.2010 and thereafter, she was attending the court regularly. Subsequently, the revision was filed against such grant of bail and registration of crime under section 420 of IPC before the Sessions Court. The Sessions Court on 21.04.2010 allowed the revision and directed the trial Court to reconsider the case. On that basis the trial Court further registered the offence on 16.04.2015 for the offence punishable under section 467 and 471 of IPC. He further submits that the case arises out of the complaint and the applicant was regularly appearing before the Court where the case which was earlier registered under section 420 of IPC and the applicant did not misuse the liberty and subsequently with such registration of charge under section 467 and 471 of IPC the applicant may be given the benefit of anticipatory bail.

3. Per contra State counsel as well as the counsel for the respondent No. 2 opposes the prayer for grant of bail and submits that on the basis of will on 03.09.1996, the mutation were carried out, subsequently, on the basis of opinion of expert when will was opined to be forged the trial Court has registered the offence and further the way of offence has been committed by the applicant she may not be given the benefit of anticipatory

bail.

5. Perused the document filed along-with this application and the copy of complaint is also placed on record. It appears, that on the basis of will the parties are litigating the entire case and the opinion of the hand writing expert the offence is registered. The Court can not ignore the provision of section 68 of the Evidence Act, which provides the mode of proving of will instead of following of such procedure. The Court below as appears to have diverted it's opinion for registration and has based, the entire case on the opinion of the hand writing expert. Therefore, taking into the totality of fact, that the applicant was enlarged on bail under section 420 of IPC on earlier occasion and she was regularly appearing before the Court below and subsequently, the offence has been added under section 467 and 471 of IPC. Considering the fact, that the applicant did not misuse the liberty as granted by the Court, therefore, this Court is of the opinion, that it is a fit case where the applicant can be extended the benefit of anticipatory bail.

6. 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 executing a personal bond in 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 her by the said Court till disposal of the trial.

Sd/-
(Goutam Bhaduri)
JUDGE

Santosh