

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4045 of 2016

Mukesh Kesharwani, S/o Shri Tulsidas Kesharwani, Aged About 40 Years, R/o Keshri Niwas, Sanjay Nagar, Tikrapara, Police Station Tikrapara, District Raipur Chhattisgarh Civil & Revenue District Raipur Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh, Through The Police Station Pandri Mova, District Raipur Chhattisgarh

---- Respondent

For applicant – Shri B.P. Sharma, Advocate.

For Respondent/State – Shri Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

23/08/2016

1. This is the second bail application under Section 439 of Cr.P.C. The earlier bail application was dismissed on 28/01/2016.
2. The applicant has preferred this application for grant of bail as he is arrested in connection with Crime No.411/2013 registered in Police Station Pandri Mova, Dist. Raipur for offence punishable under sections 420, 409, 120B IPC & 3, 4, 5, 6 of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978.
3. 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.

4. Learned counsel for the applicant submits that according to Section 9 of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978 the offence is to be triable by the CJM and the order sheet in this case would show that the case was presented before the court of ACJM who is not authorized. It is further submitted that order sheet further would show that two of the accused are lodged in Gujrat jail and the applicant is lodged in Raipur jail, since two of the other accused could not be produced despite the production warrant was issued, charge could not be framed and the applicant has been lodged in jail. It is further stated that on 27/04/2016 case was transferred to JMFC who was not authorized under the statute to initiate proceeding to try offence. It is therefore submitted that applicant's trial has not begun and as such the initiation of the trial itself by the ACJM is bad and

further 129 witnesses have been enlisted, therefore it will take considerable time, no further investigation is necessary. therefore the applicant may be released on bail.

5. Learned State counsel opposes the prayer for grant of bail and it is submitted that presently as per the information received, case has been transferred back to the court of CJM. It is further submitted that according to Section 461 (L) of the Cr.P.C. if Magistrate is not empowered by the law, who tries an offender, it will not vitiate the trial. It is submitted that trial has not commenced as the charge has not been framed, therefore there is no change of circumstances appears to reconsider the second bail application and the bail application may be dismissed.

6. Perused the order sheet and the documents. During the course of argument, it was subsequently contended by learned counsel for the applicant that presently case has been transferred back to the court of CJM for trial. In view of this, by application of Section 9 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 that objection now stands diluted. Further more, reading the case diary would show that the applicant in connivance with the other co-accused have siphoned huge amount of money from the down trodden people with an assurance to double the same within a short period of time and similar nature of offence has been committed by the co-accused in other State also. Considering the facts and gravity of the offence and the offence committed with the public at large, first bail application was dismissed. Perusal of the order sheet would show that production warrant was issued for the other co-accused for their appearance before the court for framing of the charge. It would be within the domain

of the trial court to procure attendance of the other co-accused for framing of the charge or may adopt procedure available within the frame work of law. Evaluating gravity of the offence and period of detention do not point out that the applicant has been in custody for very long period. Trial is yet to commence, therefore I do not find any change of circumstances to reconsider the second bail application again.

7. Accordingly, the second bail application is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE