

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 40 /2016

Sharad Sharma, S/o. Shri Awadh Sharma, Aged About 45 Years, Office Adds. - Kusum Riyal Bild Pvt. Limited, Kavita Complex, Kamla College Road Rajnandgaon, Tahsil & Distt. Rajnandgaon, Chhattisgarh. Permanent Adds Ward No. 39, Vaishali Nagar, Rajnandgaon, P.S. City Kotwali, Civil & Revenue Distt. Rajnandgaon, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station- City Kotwali, Civil & Revenue Distt. Rajnandgaon, Chhattisgarh

---- Respondent

For Applicant : Mr. Samir Singh, Advocate.

For Respondent : Mr. Sangharsh Pandey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10/02/2016

1. Apprehending arrest in connection with Crime No.972/2015 registered at Police Station- City Kotwali, Rajnandgaon (C.G.) for the offence punishable under Section 420 of IPC, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. As per the prosecution story, in brief, the applicant who is colonizer obtained colonizer licence and three plots were mortgaged as per Rule 7 of the Chhattisgarh Nagar Palika (Registration of Coloniser, Terms & Conditions) Rules, 1998 bearing No.2, 10 & 21 to the Municipality for the internal development of the colony. Subsequently, it was found that the development of the colony was not taken out and the mortgaged plots were advertised for sale and

it was found that one of the plot bearing No.2 was sold to Dinesh Awasthy and another plot bearing No.10 was sold to Vinita.

3. Learned counsel for the applicant would submit that the applicant who is colonizer has admitted the fact that by advertisement two plots were sold and he in turn has ready to mortgage his other plots. He relied on the communication dated 17.12.2015 which was sent to the Commissioner, Municipal Corporation, Rajnandgaon and submits that the applicant is still ready to mortgage two plots as per the choice of the Municipality to complete the internal development. He therefore submits that the applicant may be given the benefit of anticipatory bail.
4. Per contra, the learned State counsel opposes the prayer for grant of anticipatory bail, however, on a specific query raised, the State counsel is not able to point out whether there is any specific bar was created to sale of the mortgaged plot.
5. Perused the case diary, the statement and the letter of the applicant dated 17.12.2015 wherein the applicant has offered for mortgage of the separate plot. The applicant submits that he is still ready to comply with the undertaking dated 17.12.2015 and ready to mortgage any plot according to the choice of the Municipality which is existing there. Considering such submission and the nature of dispute, as the applicant has already offered for mortgage of two plots to the choice of the Municipality, it would be open for the Municipality to accept to create mortgage of two plots which is stated to be sold by inadvertence. Considering the documents and the statements made by the applicant and further taking into the background of the case, it appears that the *means rea* prima facie as appears to be absent, therefore, I find it to be a fit case to extend the benefit of Section 438 of Cr.P.C to the applicant.

6. Accordingly, the anticipatory bail application is allowed.
7. 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 furnishing a personal bond to a sum of Rs.25,000/- with one 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) that 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.
8. It is further made clear that the applicant shall stand by its offer dated 17.12.2015 wherein the offer has been made for creation of mortgage of the other two plots in the colony. In the event of the applicant going back from his promise, the effect of the order shall stand diluted and the prosecution shall be free to proceed further.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge