

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC (A) No. 291 of 2016

1. Ashok Sinha S/o Late Nagendra Sinha Aged About 56 Years.
 2. Smt. Shakuntala Sinha W/o Shri Ashok Sinha Aged About 51 Years.
 3. Manish Kumar Sinha S/o Shri Ashok Sinha Aged About 32 Years.
- All residents of Akash Nagar, Police Station Bodhghat, Jagdalpur,
District Bastar (C.G.) Civil & Revenue District Bastar.

---- Applicants

Versus

State Of Chhattisgarh Through The Station House In-Charge,
Police Station City Kotwali, Jagdalpur, District Bastar Chhattisgarh

---- Respondent

For applicants – Shri B.P. Sharma, Advocate.
For Respondent/State –Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

22/03/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicants apprehending their arrest in connection with Crime No.64/16 (wrongly mentioned as 471/34 in the bail rejection order) registered at Police Station City Kotwali, Jagdalpur for offence punishable under 420, 467, 468, 471/34 of Indian Penal Code.
2. As per the prosecution case a report was lodged by partner of the M/s Natural Estate that they received an information that on 20/07/2015 two cheques bearing number 605594 and 605595 of Rs.1,90,00,000/- and Rs.1,80,00,000/- have been dishonoured and on receipt of the information that cheques have been dishonoured, they enquired it from the bank. On enquiry, it was found that said cheques which were of the year 2006-2007 was given to one D.P. Gandhi he was the then partner of the Natural Estate in order to make refund to the purchasers as the company was engaged in sale and development of plots and it is alleged that the

applicants who were working as Estate agents to sell plots and in connivance with such D.P. Gandhi has misused the said cheques and have interpolated the same and got it bounced. The report was made on 29/08/2015.

3. Learned counsel for the applicants submits that the applicants were working as Estate agents on behalf of Natural Estate to sell plots and in lieu thereof certain commission was fixed. Ultimately, cheques were given as full and final settlement to the applicants in the year 2015 which on deposit were bounced and Rs.1,90,00,000/- and Rs.1,80,00,000/- cheques have been bounced. As such, the applicants served the complainant with the notice on 27/08/2015 which was replied on 11/09/2015. Thereafter, complaint under Section 138 of Negotiable Instruments Act was preferred by the applicants against this complainant which is pending before Judicial Magistrate, Jagdalpur. He therefore submits that under the circumstances in order to avoid such liability complainant have raised this false allegation and defence may be taken before the court below. Learned counsel therefore submits that the applicants may be granted benefit of anticipatory bail.

4. Learned State counsel opposes the prayer for grant of bail and would submit that M/s Natural Estate initially was containing four partners Prem Raj Jain, Goutam Chand Jain, Harsh Jain and D.P. Gandhi. It is contended that D.P. Gandhi retired in the year 2012 for which necessary publication was also made and the main cheque contains signature of D.P. Gandhi along with Harsh Jain and therefore it would amount to apparent fraud committed by the applicants. He submits that all the due payment were made to the applicants and therefore by forged signature the cheque has been interpolated and the expert report confirms the fact

that the letter accompanying the cheque was forged.

5. I have perused the case diary and the voluminous documents. It is not disputed that cheque bears signature of Harsh Jain, therefore necessarily when the complaint under Section 138 of Negotiable Instruments Act is preferred at the threshold it cannot be stated that said cheques were forged as it would amount to adjudicating the complaint at the stage of bail. It is open to the complainant to raise such defence before the competent court wherein complaint has been filed. Prima facie since signature over the cheque has not been disputed that are the complainant in this case of Harsh Jain, the presumption under Section 139 of Negotiable Instruments Act would follow. Taking into documents and the dispute projected, I am inclined to extend benefit of anticipatory bail to the applicants.

6. Accordingly, the anticipatory bail application is 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 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 them by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
JUDGE

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