

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 450 /2016

Dilraj Prabhakar, S/o. Pooranmal Prabhakar, Aged About 37 Years, The Then Sub-Divisional Forest Officer, Presently Posted as Divisional Forest Officer, Khairagarh, District – Rajnandgaon, Chhattisgarh, R/o. Office Divisional Forest Officer (I.F.S.) Officer Civil Line, Khairagarh.

---- Applicant

Versus

1. State Of Chhattisgarh, Collector & District Magistrate, District-Kondagaon, Chhattisgarh.
2. Ashutosh Pandey, S/o. Kanhaiya Lal Pandey, Aged About 33 Years, Cast – Brahmin, R/o. Ashpatal Ward Kondagaon District – Kondagaon, Chhattisgarh.

---- Respondents

M.Cr.C.(A) No. 462 /2016

K.K. Khelwar, S/o. Late Shri H.R. Khelwar, Aged About 59 Years, The Then Divisional Forest Officer, Presently Posted as Conservator Of Forest Working Plan Raipur, R/o. Pandri Forest Colony Raipur, District Raipur, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh, Through Collector & District Magistrate, District Kondagaon, Chhattisgarh.
2. Ashutosh Pandey, S/o. Kanhaiya Lal Pandey, Aged About 33 Years, Caste Brahmin, R/o. Ashpatal Ward Kondagaon, District – Kondagaon, Chhattisgarh.

---- Respondents

M.Cr.C.(A) No. 479 /2016

Vishnu Nath Nag (V.N.Nag), S/o. Dhirnath Nag, Aged About 48 Years, R/o. Gurugovind Singh Ward Jagdalpur, P.S. Kotwali, Revenue & Civil District Bastar, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh, Through The District Magistrate Kondagaon, District Kondagaon, Chhattisgarh.
2. Ashutosh Pandey, S/o. Kanhaiya Lal Pandey, Aged About 33 Years, R/o. Hospital Ward Kondagaon, P.S. Kondagaon, District Kondagaon, Chhattisgarh.

---- Respondents

&

M.Cr.C.(A) No. 499 /2016

Pardeshi Ram Verma, S/o. Mangal Prasad Verma, Aged About 63 Years, R/o. Kumharpara Kondagaon, P.S. Kondagaon, Revenue & Civil District Kondagaon, Chhattisgarh. (Retired Government Employee).

---- Applicant

Versus

1. State Of Chhattisgarh, Through The District Magistrate Kondagaon, District Kondagaon, Chhattisgarh.
2. Ashutosh Pandey, S/o. Kanhaiya Lal Pandey, Aged About 33 Years, R/o. Hospital Ward Kondagaon, P.S. Kondagaon, District Kondagaon, Chhattisgarh.

---- Respondents

For Applicants	:	Mr. Abhishek Sinha & Mr. P.K.Tulsiyan, Advocates.
For Respondents/State	:	Ms. Shobha Kashyap, Govt. Advocate with Mr. Anant Bajpai, Panel Lawyer.
For Complainant/Objector	:	Ms. Madhunisha Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15/07/2016

1. All the cases are being heard and decided together by this common order as they are arising out of the same complaint case number.
2. Apprehending arrest in connection with Complaint Case No.14/2016 pending before the Court of Chief Judicial Magistrate Kondagaon, District Kondagaon (C.G.) for the offence punishable under Sections 409, 420, 468, 471 & 34 of Indian Penal Code, the applicants have preferred these applications under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
3. Case of the prosecution is that, according to the complaint filed by Ashutosh Pandey, Editor of Vinay Varta weekly Newspaper at Kondagaon, the applicants who are the officers of the Forest Department proposed to construct fiber hut at Dongriguda Paryavaran Vatika for which the quotations were invited and accordingly the quotation was given to Jaina Safety Glass

Industries Bharatpur, Rajasthan. The proposal was to construct fiber glass hut and the proposal for one fiber hut quoted to Rs.1,62,937/-. Subsequently, the said work was not carried out through Jaina Safety Glass Industries instead no construction was made and Rs.1,62,937/- was withdrawn. Subsequently, when the report was made to the Police Station Kondagaon no proceedings were carried out, thereafter, the report was made to the Superintendent of Police and eventually a complaint was filed and after filing of the complaint the Judicial Magistrate send it for enquiry under Section 156(3) of Cr.P.C. and thereafter after submission of the police report, the Court of Judicial Magistrate has registered the offence.

4. Learned counsel for the applicants would submit that initially the quotation was invited from Jaina Safety Glass Industries and the quotations were received but subsequently Jaina Safety Glass Industries backed out as it was not feasible for them to comply and supply a single hut at that rate. Consequently, the department resolved within their financial power and instead of erecting fiber glass hut, concrete RCC construction was made. Learned counsel for the applicants would refer to the communication made to the Chief Judicial Magistrate, Kondagaon by the Police over the enquiry and would submit that this fact has been established that instead of fiber glass permanent structure has been erected. It is contended that no offence is made out, as it was within their financial power to divert the necessary fund for construction otherwise than proposed as otherwise the amount would have lapsed. It is stated that under the guide of Forest Financial Rules as the DFO was entitled to change the mode of expenses to the extent of Rs.3 Lakhs. It is further submitted that there is no misappropriation of the amount, neither it has been paid on the fake

vouchers instead the construction has been raised which would not amount to any criminality. Learned counsel further placed his reliance in case of *Bhadresh Bipinbhai Sheth v. State of Gujarat & Another*¹ and would submit that the Hon'ble Supreme Court in the like nature of case has laid down the guideline and the case in hand fall in the four corners of the guideline which has been set into force. Therefore, the applicants who were the senior officers of the Forest Department may be enlarged on bail otherwise it would amount to an arm twisting method for the reason best known to the complainant.

5. Per contra, learned State counsel relied on the police statement which was communicated after the enquiry made as ordered for.
6. Learned counsel for the objector vehemently opposes the bail application and would submit that initially a report was made on 24.03.2013 at Kondagaon but nothing transpired. Subsequently, a written report was made to the Superintendent of Police on 02.05.2014 on which an enquiry was conducted and it was found that the irregularities have been committed and further submits that the bill vouchers do not contain the signature of Jaina Safety Glass Industries and subsequently when nothing transpired a complaint was filed and it was registered after an enquiry, therefore, the offence is made out.
7. Perused the documents filed by the complainant as also the objector. One document i.e. communication dated 07.08.2014 is on record, which is a communication made by the Police of Kotwali, Kondagaon to the Chief Judicial Magistrate wherein it purports that after enquiry it was found that instead of fiber glass hut permanent superstructure has been made of cement and concrete and it was done through the Forest Society and the payment was made to the

1 (2016) 1 SCC 152

labours. It also purports that on inspection, it was found since the construction has been made no illegal act was committed. Further perusal of the note sheet file of the Forest would show that instead of fiber glass hut the department thought it better to divert it to construct a permanent superstructure of concrete and the Forest Financial Rules would show that the SDO Forest was entitled to make expenditure and divert the hut to the extent to the financial limit of Rs. 2 Lakhs and here the amount has been stated to Rs.1,62,937/- which was for construction of fiber glass by Jaina Safety Glass Industries. Therefore, taking into the facts cumulatively it would go to show that the construction has been made of concrete instead of fiber glass.

8. Their Lordship in case of *Bhadresh Bipinbhai Seth* (supra) has laid down the following principles :

“25.3. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

25.4. There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plenitude of Section 438 must be given its fully play. There is no requirement that the accused must make out a “special case” for

the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

9. Therefore, by application of the aforesaid principles and after going through the record, I am of the opinion that it is a fit case in which the benefit of Section 438 of Cr.P.C. can be extended to the applicants.
10. 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 furnishing a personal bond to a sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned Trial Court. 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) that 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