

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 620 of 2016**

- Pramod Shukla S/O Shri Hetram Shukla Aged About 58 Years R/O Village Saliyapara, Post - Tahsil Police Station - Pali, District Korba Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through S.H.O., Police Station City Kotwali, Raigarh, District Raigarh Chhattisgarh.

---- Respondent

For Applicant : Mr. Sudeep Agrawal, Advocate

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****19-08-2016**

1. This application under Section 438 of Cr.P.C has been filed by the applicant apprehending his arrest in connection with Crime No. 248 of 2016 registered at Police Station City Kotwali, Raigarh, District Raigarh (CG) for offence punishable under Sections 420, 409/34, 120-B of the IPC and Sections 13(2) & 13(1)(d) of Prevention of Corruption Act.
2. As per case of the prosecution, the allegation leveled against the applicant is that tender was called for the purchase of fencing pole and barbed wire which was Rs.15.85 lakhs. Tender was made without approval of the Government or Mayor-in-council and the publication of the tender was not made in the newspapers circulated in the entire State, but the same were published in District level papers i.e., Dainik Samvad and Samvad Shikhar. It is also alleged that the applicant has not deducted 2% value added tax and thereby the aforesaid offence was committed.

3. Learned counsel appearing for the applicant would submit that according to Rule 5 of the Chhattisgarh Municipalities (The Conduct of Business of the Mayor-in-council/President-in-Council and the Powers and Functions of the Authorities) Rules 1998 (for short, "the Rules 1998"), the applicant being Municipal Commissioner was entitled to invite tender upto Rs.25 lakhs without sanction of the higher authorities and it is not a case that the publication of tender was not followed. He would further submit that no criminality has been committed by the applicant and only false allegations have been attributed to the applicant. It is further submitted that the applicant being Municipal Commissioner may be extended the benefit of anticipatory bail.
4. Per contra, learned State counsel opposing the prayer for grant of anticipatory bail would submit that publication of tender was not made in State level newspapers and there has been default of Rule 4.33 of Chhattisgarh Bhandar Adhiniyam, 2002 as the publication should have been made in the newspaper circulating in the entire State, therefore, the applicant has not followed the procedure laid down in the said Adhiniyam. He would further submit that initially enquiry was conducted by the Joint Collector wherein it was found that 2% value added tax was not deducted and thereby the applicant has committed the aforesaid offence.
5. I have heard learned counsel for the parties and also perused the case diary and documents.
6. Perusal of the enquiry report would show that primary allegation made against the applicant is that the applicant has not published the tender in the newspaper circulating in the State, but in fact it was published in district level newspaper. Perusal of the record and

documents which are of Municipal Corporation would also show that procedure of tender was followed and *prima facie* it appears that the applicant being Commissioner has followed the Rule 5 of the Rules 1998 wherein financial power upto Rs.25,00,000/- is granted to the Municipal Commissioner as per amendment made in 2011 of the Rules 1998.

7. Taking into consideration all the facts and circumstances of the case, nature of allegations leveled against the applicant, considering the case diary and documents and further on due consideration in facts of case the principles laid down in case of **Bhadresh Bipinbhai Seth vs. State of Gujarat & another**, reported in (2016) 1 SCC 152, would be applicable taking into the job discharged by the applicant as Commissioner, Municipal Corporation wherein it has been held that if not essentially required custodial interrogation should be avoided, I am of the considered opinion *prima facie* that it is a fit case where the benefit of anticipatory can be extended to the applicant.
8. 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 his executing a personal bond in the 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 him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju