

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C (A) No. 1172 of 2015

K.P. Singh S/o. Late Shri Khilavan Singh, aged about 69 years, R/o. Professor Colony Durg, Thana Durg, Civil and Revenue District- Durg (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh Through Station House Officer,Durg, District Durg (C.G.)
2. Gaurisha Mishra, aged about 34 years, Wd/o. Late Chandrakant Mishra, R/o. House No. M.I.G 1/621, Amadi Nagar, Hudko, Bhilai Nagar,Tahsil and District Durg (C.G.)

---- Respondent

For Applicant	:-	Dr. Nirmal Shukla, Sr. Advocate along with Mr. Raghvendra Pradhan, Advocate.
For Respondent No.1	:-	Mr. Anupam Dubey, Dy. Govt. Advocate
For Respondent No.2	:-	Mr. Avinash K. Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

02/02/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No. 842/2015, registered at Police Station – Durg, District – Durg (C.G.) for offence punishable under Section 420,467,468,471,120(B) read with section 34 of Indian Penal Code.
2. Case of the prosecution, in brief, is that a report was made by the complainant Gaurisha Mishra, who has been arrayed as the Respondent No.2. The husband of the Respondent No. 2 died in the year 2012, after the

death of her husband one person who was very well known the complainant named as K. Dev Sahayam was requested to get the house vacate of the complainant as the tenants were occupying the house. Subsequently, the house was got vacated with the help of such K. Dev Sahayam. Thereafter, such K. Dev Sahayam asked to the complainant to execute the power of attorney, so as to manage the properties i.e. two houses. Therefore, the complainant believing K. Dev Sahayam, executed the power of attorney in favour of K. Dev Sahayam but actually it was executed in favour of K.P. Singh by playing fraud and agreement to sale was also executed. Thereby, the offence is committed and no sale consideration were actually paid.

3. Counsel for the applicant submits that the applicant has been falsely implicated in this case. He further submits that the sale agreements are of two houses were executed by the applicant and the entire sale consideration was paid. He further submits that two power of attorney were got executed which were registered with the sub registrar. Further, he referred the account and and contended that on 19.06.2013 Rs. 15 lakhs were paid to the bank, so as to release the property from mortgage and subsequently on 20.06.2013 a cheque of Rs. 20 lakhs was paid and another cheque of Rs. 4 lakhs were also paid on 20.07.2014. He further submits that when the sale deeds were not executed and two civil suits were filed for specific performance of suit wherein the reply has been filed. He further referred to the documents for which the reply was filed and also relied the copy of account. He further contended that taking into the fact that the agreement of power of attorney is registered one it would lead to show that no fraud has been played by the applicant and for the house, the suit was filed for specific performance which is pending to be adjudicated. He further relied the case law of **2011 CRI. L. J. (Supp) 693**, and would submit that the entire nature

of case is that of civil in nature and the report has been made only to pressurise the applicant. He further submits that the applicant has not committed any offence, therefore, the applicant may be given the benefit of anticipatory bail.

4. Per contra State counsel as well as the counsel for the objector opposes the prayer for grant of bail and submits that the applicant has deceived the complainant to get some documents executed the agreement of sale. He further submits that if power of attorney was executed there was no necessity for the agreement to sale. He further submits that the agreement to sale on which suit for specific performance has been filed is unregistered. Therefore, the said suit itself may fail as a whole and thereby the applicant has deceived the complainant by executing the forged document. He further submits that the complainant has not received any amount and the applicant cheated the complainant, therefore, the applicant should not be given the benefit of anticipatory bail.

5. Perused the case diary and the statement of the complainant made on 19.06.2013 the statement affirms an amount of Rs. 15 lakhs was deposited in the account of the complainant in the State Bank of India which finds support from the copy of account filed by the applicant on 20.06.2013 wherein withdrawal of Rs 15 lakhs is shown and further on 20.07.2013 the account shows that the amount of Rs. 20 lakhs was paid to Gaurisha Mishra. The statement further shows that K. Dev Sahayam while encashing the cheque has received certain amount from the bank and went away with bag and though the signature were obtained on the cheque. The agreement of sale and the general power of attorney which are the part of the case dairy and the general power of attorney is registered and with respect to agreement to sale it shows the suit was filed for specific performance which

is pending to be adjudicated by the Court. Taking the entire facts on record, prima-facie, it appears that the entire transactions is of civil in nature, this Court is of the opinion, that prima facie it is a fit case where the applicant can be extended the benefit of anticipatory bail.

6. 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 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 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 her by the said Court till disposal of the trial.

Sd/-
(Goutam Bhaduri)
JUDGE