

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 348 of 2014

1. Ashwani Kumar Verma S/o Late Chinta Ram Verma, aged about 53 years, R/o House No. 152, Padum Nagar, PS Bhilai - 3, District Durg C.G.....(Accused)

---- Petitioner

Versus

1. Bhagbali S/o Late Darshan Ratre, aged about 70 years, R/o Village Chicha, Tahsil & PS Patan, District Durg C.G.

---- Respondent

For Petitioner – Shri Ashish Surana, Advocate.
For Respondent – None, though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

13/04/2016

1. Heard the matter finally at the motion stage itself.
2. Facts in brief for disposal of the instant Cr.M.P. are that Complaint Case No.1040/2013 [Bhagbali Vs. Jhumuklal (since deceased) and another] is pending before the Judicial Magistrate First Class, Durg, C.G. for the offence under Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 (in short 'the IPC'). On 20-12-2013 the present petitioner was absent during hearing before the trial Court. An application under Section 70(2) of the Code of Criminal Procedure, 1973 (in short 'the Code') was filed for condonation of non-appearance of the present petitioner. He was Government servant and busy in discharging his official duties, hence, was unable to appear in person before the trial Court. The trial Court dismissed the said application and issued the warrant of arrest. Thereafter, the petitioner had filed an application for anticipatory bail apprehending his arrest. The same was registered before the Additional Sessions Judge, Durg, C.G. as Case No.314/14. The learned Additional Sessions Judge vide order dated 21-03-2014 held that after registration of the aforementioned penal offences the bail was granted to the petitioner vide order

dated 04-02-2005 and thereafter, as the petitioner failed to appear before the trial Court, the trial Court issued a warrant of arrest. Also the complainant himself made no objection for grant of anticipatory bail to the petitioner by filing his affidavit. As the petitioner was once arrested and released on bail, thereafter application for anticipatory bail is not maintainable till no specific circumstances exists. The learned Additional Sessions Judge further held that with the above circumstances, scope of Section 438 of the Code is not attracted, hence, dismissed the application for anticipatory bail. Thereafter, the present petitioner filed the instant Cr.M.P. invoking the inherent jurisdiction of this Court under Sections 482 and 483 of the Code and prayed that impugned order passed by the trial Court dated 01-04-2014 and the warrant of arrest issued against the petitioner dated 20-12-2013 be quashed and further consequential relief be granted.

3. Learned counsel for the petitioner supported the grounds taken in the instant Cr.M.P. and prayed that the petitioner be granted relief as prayed for.

4. From perusal of the order dated 21-03-2014 in bail petition No.314/14 and the order passed by the trial Court dated 01-04-2014 and other connected order sheets, it appears that on 20-12-2013 the petitioner not gave his personal appearance before the trial Court, he was earlier granted bail vide order dated 04-02-2005 and thereafter he was continuously taking part in the matter either in person or through his counsel. On 20-12-2013, as submitted, he was busy in discharging official duties, hence he was not present before the trial Court in the hearing and the application under Section 70(2) of the Code was subsequently filed for cancellation of the warrant of arrest against him. Also the learned Additional Sessions Judge has not appreciated the application made on behalf of the petitioner under Section 438 of the Code for bail apprehending his arrest coupled with the fact that the complainant himself had filed an affidavit stating no objection for the anticipatory bail as prayed. The learned Additional Sessions Judge held that provision of Section 438 of the Code is not attracted as earlier

the applicant/petitioner was taken into custody and granted bail and thereafter if warrant of arrest is issued, the provision of Section 438 of the Code is not attracted.

5. Though the applicant/petitioner was granted bail on 04-02-2005 and he was continuously taking part in the hearing of the said complaint case and only failed to appear in person on 20-12-2013 and thereafter the trial Court issued the warrant of arrest and the petitioner had filed application under the provision of Section 438 of the Code, as per settled law, if any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may pray before Court of Session/High Court for bail under Section 438 of the Code. Though the applicant was granted bail earlier, but as a warrant of arrest has been issued he had every reason to apprehend that he be arrested in connection with the warrant of arrest issued against him, and if he is having some cause for his non-appearance, as per provision of Section 438 of the Code, the Sessions Judge was required to dispose of the said application filed under Section 438 of the Code on its merit. Also looking to the facts that the complainant himself pleaded no objection for his release, the petitioner is a Government servant, as stated, he was busy and discharging his official duties on 20-12-2013, i.e. the date of his non-appearance before the trial Court, in the considered view of this Court, the learned Additional Sessions Judge committed a grave mistake of law by not deciding the application filed under Section 438 of the Code on its merit whether with these circumstances he may be granted anticipatory bail or not after issuance of warrant of arrest. The order dated 21-03-2014 is an order passed in a haste and also improper and illegal, therefore, the same requires interference, and also by invoking inherent jurisdiction of this Court under Section 482 of the Code, the petitioner be given a reasonable time as a protective umbrella so that the said bail petition be disposed of on its merit afresh.

6. Consequently, the instant Cr.M.P. is disposed of. Order passed by the

Additional Sessions Judge in Case No.314/14 dated 21-03-2014 is hereby quashed. The said Case No.314/14 is restored to its original number. The concerned Sessions Judge is directed to hear the matter and dispose of the same on its merit without being influenced with the earlier order dated 21-03-2014. The trial Court and the concerned authorities are directed to not to arrest the petitioner till **13th of June, 2016**. The petitioner is directed to appear before the concerned Additional Sessions Judge/Sessions Judge as per availability of the court and jurisdiction either in person or through his counsel **in the week commencing from 25th of April, 2016**. After his representation, the concerned Sessions Judge is directed to hear the matter after affording opportunity to the parties and to dispose of the matter as early as possible preferably till **6th of May, 2016**.

7. The petitioner may file copy of this order before the trial Court as well as before the concerned Sessions Judge for further compliance and proceedings.

8. Registrar (Judicial) is also directed to send copy of the order to the trial Court also to the concerned Sessions Judge for further compliance and proceedings through usual mode and fax mode immediately.

9. The petition allowed.

10. Certified copy today.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE