HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 400 /2016

Smt. Nutan Pannalal, W/o. Prakash Pannalal, Aged About 60 Years, R/o. B-120, V.I.P. Estate, Vidhan Sabha Road, Khamhardih, Police Station Pandri, Mova, Tahsil & Distt. Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station - Urla, Distt. Raipur, Chhattisgarh

---- Respondent

For Applicant : Mrs. Fouzia Mirza, Advocate.

For Respondent : Mr. Sangharsh Pandey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/04/2016

1. Apprehending arrest in connection with Crime No.164/2015 registered at Police Station- Urla, District Raipur (C.G.) for the offence punishable under Section 406 & 420 of Indian Penal Code, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.

2. As per the prosecution case, the applicant stood a guarantor for a loan advance to one Phinix Board formerly known as Economic Panel in the year 2000 for a loan of Rs.24,50,000/- and in lieu of such loan, certain properties were mortgaged by the borrower, the husband of the applicant, Prakash Pannalal. The loan was further enhanced in the year 2006 to Rs.49,76,000/- and subsequently it enhanced to Rs.74,26,000/-. It is the allegation that the applicant being a guarantor has mortgaged the property which was sold; thereby the offence has been committed.

3. Learned counsel for the applicant would submit that the loan was availed by the husband of the applicant and this applicant stood as a guarantor and the husband being the principal borrower could not repay the loan. Thereafter, certain properties were sold and when the notices were served under Section 13(2) of SARFAESI Act, the issue went up to D.R.T. wherein a compromise decree was passed for payment of Rs.69,46,164/- in lieu of the claim of Rs.85,28,937.55. It is submitted that repayment of loan could not be made, therefore, the applicant being a guarantor has been inculpated, but no criminality can be attached to the guarantor.

4. Per contra, the learned State counsel opposes the prayer for grant of anticipatory bail and would submit that initially when the repayment of loan could not be made then in the month of September, 2009 a notice was served to the borrower and guarantor and immediately thereafter the sale was executed on 10.11.2009 in respect of Khasra No. 498/1, 508/2 & 510/1 and 508/2, which was subject of mortgage and therefore the applicant being the guarantor cannot be absolved of his liability.

5. Perused the case diary and the documents. Perusal of the documents prima facie revealed that the applicant stood as a guarantor for the loan availed by the husband of the applicant namely Prakash Pannalal. The voluminous loan documents are on record and the order dated 21.02.2011 which is passed by the D.R.T. to the consent decree of Rs.69,46,164/- is also on record. The order passed by the District Magistrate Raipur dated 22.07.2013 is also placed along with the bail application wherein the subject of sale land has been ordered to be attached in execution of recovery. Considering the monetary transaction of the parties and the fact that the applicant was a guarantor in the loan

transaction and further considering the medical report, this Court is inclined to extend the benefit of anticipatory bail to the applicant.

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, she shall be released on bail by the officer arresting her on furnishing a personal bond to a sum of Rs.25,000/- with one 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 herself 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) that 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.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Ashok