

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C.(A). No. 533 of 2016

1. Anil Vaidya, aged about 52 years, S/o. Late Shri S.N. Vaidya, Occupation – Service, Working as Fire Officer, Municipal Corporation, Raigarh, R/o. Bajirao Nagar, Police Station City Kotwali, Raigarh, Tehsil – Raigarh, Civil and Revenue District – Raigarh (C.G.)

----Applicant

Versus

1. State of Chhattisgarh, Through : District Magistrate, District Raigarh (C.G.)

---- Respondent

For Applicant	: Mr. R.S. Marhas, Advocate
For Respondent/State	: Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

16/09/2016

1. Apprehending arrest in connection with Crime No.248/2016 registered at Police Station- City Kotwali, Raigarh, District – Raigarh (C.G.), for offence punishable under Section 420, 409/34 of I.P.C. & Section 13 (1) (d) of Prevention of Corruption Act, the applicant has preferred this application for grant of anticipatory bail.
2. The case of the prosecution, in brief is that the applicant, who was the fire officer working in the Municipal corporation along with other co-accused has not deducted 2% of VAT. It is further case of the prosecution 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 the District level papers i.e. Dainik Samvad and Samvad Shikhar. Thereby the offence has been committed.

3. Learned counsel for the applicant would submit that the applicant is only fire officer in the Municipal Corporation and part of the purchase committee and the allegation can not be stated to be criminal in nature. It is further submitted 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"), Commissioner was entitled to invite tender up to Rs.25 lakhs without sanction of the higher authorities and it is not a case that the publication of the tender was not followed. It is further submitted that similarly placed co-accused in this case has been enlarged on anticipatory bail by this Court vide order dated 19.08.2016 in M.Cr.C.(A) No.620/2016, therefore, the counsel prays that the applicant may also be extended the benefit of Section 438 of Cr.P.C.
4. Per contra, learned State counsel opposes the prayer for grant of anticipatory bail, however, he is not able to dispute the fact that similarly placed co-accused in this case has been enlarged on anticipatory bail.
5. I have heard learned counsel appearing for the parties.
6. Perusal of the enquiry report would show that primary allegation is made that applicant who is the part of purchase committee has not published the tender in news paper circulating in the State, but in fact it was published in district level newspaper. Perusal of the record and documents which are of the Municipal Corporation would also show that procedure of tender was followed and prima-

facie it appears that the Commissioner has followed the Rule 5 of the Rules 1998 wherein financial power up to Rs.25,00,000/- is granted to the Municipal Commissioner as per amendment made in 2011 of the Rules 1998 and the applicant was the employee working under the Commissioner.

7. Taking into consideration all the facts and circumstances of the case, nature of allegations leveled against the applicant, considering the case diary and the documents and further on due consideration in facts of case the principles laid down in case of **Bhadresh Bipinbhal Seth Vs. State of Gujrat & Another**, reported in (2016) 1 SCC 152, would be applicable taking into the job discharged by the applicant under Commissioner, Municipal Corporation wherein it has been held that if not essentially required custodial interrogation should be avoided and further taking into the fact that similarly placed co-accused in this case has been enlarged on anticipatory bail by this Court vide order dated 19.08.2016, in M.Cr.C.(A) No.620/2016, 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 executing a personal bond in 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 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) that 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