

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3859 of 2016

1. Prem Lal Dewangan S/O - Shankar Lal Dewangan Aged About 42 Years R/O - House No. 82, Riddhi - Siddhi Colony, Dongargaon Road, Rajnandgaon, Police Station - Basantpur, Tahsil & District - Rajnandgaon Chhattisgarh
2. Mamta Kiran Dewangan W/O.- Prem Lal Dewangan Aged About 39 Years R/O.- House No. 82, Riddhi - Siddhi Colony, Dongargaon Road, Rajnandgaon, Police Station- Basantpur, Tahsil & District - Rajnandgaon Chhattisgarh

---- Applicants

Versus

- The State Of Chhattisgarh Through - Police Station - Basantpur, District - Rajnandgaon Chhattisgarh

---- Respondent

For Applicants : Mr. D.K. Gwalre, Advocate

For Respondent/State : Mr. Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

02-09-2016

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicants who have been arrested on 16-5-2016 in connection with Crime No. 396 of 2015, registered at Police Station Basantpur, District Rajnandgaon (CG) for the offence punishable under Section 420/34 of the IPC and Sections 6(1)(2)(3)(4) & (5) of the CG Nixshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2005 (for short, the "Act, 2005").
2. Case of the prosecution, in brief, is that the applicants, who were Directors of YALSCO Real Estate and Agro Farming Limited started the company and received the amount from different depositors with an assurance to repay the same with high interest. Subsequently, when the amount was not returned to them, certain

complaints were made by few of the depositors. The matter was investigated in which it was found that the applicants' company was not authorized by Securities and Exchange Board of India (SEBI) & Reserve Bank of India to collect the amount from people and return the same with high interest and therefore, the aforesaid offence was committed.

3. Learned counsel appearing for the applicants would submit that as per provisions of Section 2 (i) of the Act, 2005 no deceitful default can be attributed to the applicants since the complainant has entered into joint venture agreement with the company in the year 2011 which was to be made matured in the year 2017 and according to Clause 43 of the agreement, it contains arbitration clause that in case the amount is not paid, the said clause has to be invoked. It is submitted that Section 10 of the Act 2005 is with regard to deceitful non-refund as maturity time never came which was in the year 2017. It is further contended that the State has also made a wrong statement on the affidavit that both cases have been pending against the applicants and Crime No. 304/2015 was never registered against the applicants which was revealed from Right to Information Act. It is further submitted that the applicants were dealing in Real Estate and was non-banking company, therefore, no offence is, in fact, made out against the applicants. He has placed reliance in **Sanjay Chandra Vs. CBI, reported in (2012) 1 SCC 40** and in **C.R. Patil Vs.**

State of Gujarat, reported in (2005) 11 SCC 119 and would submit that the petitioners have made an application for grant of interim bail to negotiate for sale of property to settle the dues and no useful purpose would be served in detaining the applicants in jail. He would further submit that the charge-sheet has been filed in this case and the applicants are in jail since 16-5-2016, therefore, they may be enlarged on bail.

4. Per contra, learned State counsel opposes the prayer for grant of bail.
5. I have heard learned counsel for the parties, perused the case diary and documents.
6. Perused the explanation on the affidavit filed by the State wherein on earlier occasion it was stated that the case under Section 304 of 2015 was pending against the present applicants. In the explanation on the affidavit the Station House Officer has stated that in the objection memo inadvertently because of cut and paste, the same was mentioned. Accordingly, offence is registered in FIR No. 192 of 2015 at Police Station Dalli Rajhira, District Balod and FIR No. 92 of 2015 at PS Basantpur, District Rajnandgaon and it is stated that FIR No. 18 of 2016 is registered at Police Station Chhuriya Outpost Chichola, District Rajnandgaon. Considering the explanation offered by the Station House Officer, the same is accepted and apology is also accepted.
7. Perusal of the case diary would show that without permission of the RBI and SEBI the applicants were directors of the

company and in the helm of affairs they have collected different amounts i.e., about Rs.21 crores from down-trodden people, the number which has been appeared in the objection to be 9816 persons.

8. Perused the statements of different depositors and joint venture certificates which is part of the record. Perusal of the entire documents go to show that the amount was collected from different depositors with a promise to invest the same in Real Estate and return with high value. No permission is on record to show that the applicants' company was authorized to collect the same from RBI or SEBI. Therefore, *prima facie*, it appears that the money was collected from large number of depositors who were poor down-trodden on the pretext and allurements to return the same with high value.
9. Therefore, evaluating the gravity of accusations and considering the stakes of the small depositors as against the company people, reasonable apprehension of witnesses being influenced cannot be ruled out. Further, evaluating the position and standing of the accused as against the depositors witnesses, it cannot be equated, especially taking into fact that eight persons who lodged the report, their money was returned back, therefore, the position of the depositors cannot be equated with the present applicants who were in helm of affairs as Directors which raises presumption of tampering of the witnesses.

10. Considering the nature and gravity of the offence, the way the organized offence has been committed and different amounts have been collected from the down-trodden people, I am not inclined to release the applicants on bail.
11. Accordingly, the application filed under Section 439 of the Cr.P.C., for grant of bail is liable to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Raju