

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.960 of 2016**

- Khemendra Joshi S/o J.P. Joshi Aged About 30 Years R/o Brijraj Nagar, Police Station Parpa Jagadapur, Revenue & Civil District Bastar, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Kondagaon, District Kondagaon, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Varun Sharma, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****21/11/2016**

Heard.

2. The applicant has preferred this application under Section 438 of Cr.P.C., apprehending his arrest in connection with Crime No.329/2014, registered at Police Station–Kondagaon, District Kondagaon for alleged commission of offence under Section 420, 409, 120-B, 467, 468, 471, 34 of IPC.

3. Case of the prosecution is that the applicant is the President of NGO, to whom, alleged total amount of Rs.1,21,30,000/- was given for carrying out work of plantation and construction of small pond. It is alleged that huge amount of public fund has been embezzled and not duly utilized the purpose, for which, it was given.

4. Learned counsel for the applicant submits that earlier bail application was dismissed as withdrawn with liberty to cooperate and surrender and thereafter apply for grant of regular bail before the Court below. It is submitted that later on, the the Collector has been granted anticipatory bail and other two accused i.e. the Secretary of NGO and Project Officer have also been granted regular bail by this Court. It is lastly submitted that the presence of the applicant is not required for

custodial interrogation, hence, the application for grant of anticipatory bail has been repeated. Learned counsel for the applicant placed reliance on a decision of the Supreme Court in the case of ***Siddharam Satlingappa Mhetre versus State of Maharashtra and others***¹ and submitted that the arrest of a person is the last resort and unless his custodial interrogation is necessary, arrest may be avoided and anticipatory bail may be granted by imposing appropriate conditions.

5. On the other hand, learned State counsel opposed the prayer for grant of bail and submits that the present case involves embezzlement of huge amount of public fund in the name of plantation and construction of small pond. It is submitted that the applicant is the President of the NGO/Society, therefore, he cannot seek parity with the case of the Collector, because the Collector only allotted the fund and given to the applicant and his society.

6. Earlier the applicant had moved application for grant of anticipatory bail before this Court, but as the Court was not inclined to grant bail, the application was dismissed as withdrawn with liberty to apply for grant of regular bail. However, the applicant did not surrender and after 1 & ½ year, he has now repeated the application for grant of anticipatory bail on the ground that the Collector has been granted anticipatory bail as also two other accused have been granted regular bail.

7. The amount involved in the present case is not small, but huge one. The present is a case of embezzlement of huge public fund allotted to a NGO, of which the applicant is the President, therefore, at this stage, looking to the aforesaid circumstances, particularly when, earlier this Court was not inclined to grant anticipatory bail, the bail application is rejected.

8. However, considering that two co-accused i.e. Secretary and Project Officer have been granted regular bail, it is directed that in case, the applicant surrenders and apply for grant of regular bail before the Court below, the Court below shall consider and decide the bail application on the same day, if possible.

Sd/-
(Manindra Mohan Shrivastava)
Judge