

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 868 of 2016

- Shivnarayan Kushwaha S/o Ramdayal Kushwaha Aged About 40 Years Occupation Advocate, R/o Village Amhar, P.S. Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh
--- Applicant

Versus

- State of Chhattisgarh through Station House Officer, Police Station Baikunthpur, District Koriya Chhattisgarh
-- Respondent

For the applicants : Mr. Ashok Shukla, Advocate.
For the State : Mr. Neeraj Sharma, Dy. Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

23.09.2016

1. Apprehending arrest in connection with Crime No. 66 of 2016 registered at Police Station Baikunthpur, Distt. Koriya (C.G) for the offences punishable u/ss 420, 467, 468, 471 read with Section 34 of IPC, the applicant has filed this application u/s 438 of the Code of Criminal Procedure.
2. As per the prosecution case, a report was made by Naval Ram that his father Mohan Ram had possessed some land at village Harra, Baikunthpur (Korea) and after his death he was advised that the names of legal heirs have to be mutated, therefore, proceedings were carried out and at that juncture the applicant who is a practicing lawyer at Baikunthpur with the connivance of other co-accused prepared a forged will and got the name mutated in favour of beneficiary Bal Ram and therefore on the basis of forged document, the mutation was

carried out, thereby the offence is committed.

3. Learned counsel for the applicant would submit that both Naval Ram and Kamal Ram are sons of late Mohan Ram and they have filed a civil suit wherein the present applicant was also made a party though he is an advocate. He further submits that the mutation proceedings would show that the present applicant being a lawyer had not appeared or pleaded on behalf of the beneficiary. It is further submitted that even if it is alleged that the will is forged, it has to be tested on the floor of trial Court and by mere allegations, the will cannot be side-lined. He further submits that against the FIR, Smt. Bhuri Bai filed a petition bearing Cr.M.P. No.613/2016 u/s 482 Cr.P.C., wherein the State has categorically come out with reply that the entire allegations are of civil nature, therefore, no criminality can be attached to the applicant, therefore, the applicant may be enlarged on bail.
4. Per contra, learned State Counsel opposes the prayer.
5. Perused the case diary documents. It appears that initiation of the case started on the report of Naval Ram and a perusal of Annexure A-2 filed alongwith bail application would go to show that a civil suit was filed by Naval Ram and Kamal Ram who are sons of late Mohan Ram alleging that forged will is existing. It appears that since the authenticity of the will is already in question, prima facie, criminality cannot be attributed to this applicant who is a practicing advocate and thus considering the totality of facts and circumstances of the case, I am inclined to admit the applicant to anticipatory

bail.

6. Accordingly, the 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 his executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the officer arresting him or the concerned Investigating Officer. The applicant shall also abide by the following conditions :-

- (i) that he shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that he 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 any police officer;
- (iii) that he shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-
GOUTAM BHADURI
JUDGE