

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5298 of 2016

1. Dinesh Jain . S/O Shantilal Jain Aged About 54 Years R/O Surana Complex, Station Road, Polsai Para, Durg, Tahsil & District - Durg Chhattisgarh
2. Babita Jain W/O Dinesh Jain Aged About 50 Years R/O Surana Complex, Station Road, Polsai Para, Durg, Tahsil & District Durg Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through The Station House Officer Police Station - Durg, District - Durg Chhattisgarh

---- Respondent

For Applicants : Dr (Shri) N.K. Shukla, Sr Advocate with
Shri Gautam Khetrapal, Advocate.

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

08-09-2016

1. This is a second 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 10-06-2016 in connection with Crime No. 434 of 2016, registered at Police Station Durg, District Durg (CG) for the offence punishable under Sections 406, 420, 120-B/34 of the IPC. Earlier first bail application was dismissed as withdrawn on 19-7-2016 with liberty to revive the same after filing of the charge-sheet.
2. Case of the prosecution, in brief, is that a report was made by the complainants Chetan Itiya, Satosh Jai, Sumit Sethiya and Vijay Kodwani that they have sold mobile phones worth Rs.71,50,000/- to Sahil Jain and Dinesh Jain, who is applicant No.1 for which Babita

Jain, who is applicant No.2, stood as a guarantor for repayment. Subsequently, when the cheques were given by the applicants to the complainants, they got dishonoured and thereby the complainants were deceived to part with the property and thereby the aforesaid offence was committed.

3. Learned counsel appearing for the applicants would submit that the the entire allegations would reveal that there is no entrustment of the property to the present applicants, therefore, a case under Section 406 of the IPC would not be made out against the applicants. Even if the allegations are accepted as it is, it will not make out a case under Section 420 of the IPC as the property has already passed namely the Mobile phones for which no fraud was played. It is further submitted that the case is completely a civil transaction of non-payment of amount for the goods delivered which cannot be treated to be a criminal act. He would further submit that charge-sheet has been filed in this case, the applicants are in jail since 10-6-2016 and no further investigation is required, therefore, they may be released 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 other documents
6. Perused the statements of the complainants. Considering the nature of allegations, *prima facie*, it appears that due to business transaction of non-payment of amount, a report was made against the applicants
7. Taking into consideration the facts and circumstances of the case, considering the nature of allegations which appear to be civil in

nature and further considering the fact that charge-sheet in this case has been filed and the applicants are in jail since 10-6-2016, this court is inclined to release the applicants on bail.

8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed and it is directed that the applicants shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court for their appearance as and when directed.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju