<u>HIGH COURT OF CHHATTISGARH, BILASPUR</u>

<u>MCRCA No. 927 of 2016</u>

- Alok Kumar Agrawal S/o Shri Radheshyam Agrawal Aged About 46 Years R/o Parijat Extension, Opp. Tejasvini Girls Hostel, Nehru Nagar, Police Station- Civil Line, Bilaspur, District- Bilaspur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through The Police Station E.O.W. Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Sumesh Bajaj, Advocate
For Respondent/State	:	Mr. R.K. Gupta, Dy.G.A.

<u>Hon'ble Shri Justice Goutam Bhaduri</u>

<u>Order on Board</u>

<u>02-12-2016</u>

1. This application under Section 438 of Cr.P.C has been filed by the applicant apprehending his arrest in connection with Crime No. 56 of 2014 registered at Police Station Economic Offences Investigation, Bureau, Raipur, Camp Bilaspur, Criiminal District Bilaspur (CG) for offence punishable under Sections 420, 467, 468, 471, 120-B of the IPC ad Sections 13(1) (d), 13(1) (e), 13(2) of the Prevention of Corruption Act.

2. Case of the prosecution, in brief, is that an first information report was registered for the offence committed in between 2010 – 2013 on the basis of a report made by M/s. Vineet Singh Construction Company on 28-9-2012 that in between period of 2010 - 2011 the applicant while working as an Executive

Engineer, Water Resources Division, Bilaspur, eliminated the complainant from the contract for construction of different Anicuts on the basis of forged documents for value of Rs. 60 crores. It is further alleged that the applicant using his power in the position of office favoured different choice of contractors and awarded contract to them and sub-standard work was carried out by the said allottees of contract with consent of the applicant and the applicant had earned huge amount in connivance with other accused and eliminated the eligible persons. It is further case of prosecution that in order to channelize his money earned through different contracts forged income tax returns were shown about investment and receipt of amount so as to justify the amount which was further channelized in the name of family members of the applicant. Subsequently, when the raid was conducted, it was found that the money earned was further routed through family members i.e., brother, father, mother, wife etc., and a case was registered against them and separate first information report was registered wherein present applicant along with other co-accused were arrested. It is further alleged that for the work conduct of the applicant, the State suffered huge loss and thereby the aforesaid offence has been committed.

3. Learned counsel appearing for the applicant would submit that the alleged tenders were rejected in the year 2010. The complainant M/s Vineet Sinh Construction Company had lodged report in the year 2012 and on that basis first information report

was registered after two year on 29-12-2014. i.e., FIR bearing No.56 of 2014. It is further contended that when the raid was conducted the alleged amount and entire documents were seized and another first information report bearing No.5/2015 was registered on 19-1-2015 against the applicant and his family members including his friend wherein they were arrested. Referring to the order dated 16-1-2015, it is submitted that the instant case is an arm twisting method with an idea to exonerate the other three officers of the applicant so as to compel them to make statement against the present applicant despite the fact that in the subsequent FIR bearing No. 56 of 2015 a case was also registered against the family members of the applicant and it was deliberately bifurcated and arrest was not made in the FIR bearing No. 5 of 2015. He would further submit that in the instant criminal case deliberately arrests are not made despite the fact that the applicant is in custody of Police. The instant FIR was lodged with an idea that if the applicant is enlarged on bail in FIR No. 5 of 2015, he would be again arrested. He would further submit that the applicant has co-operated with the investigation and the applicant is already in custody in connection with some other case and the investigation is still being carried out though the complaint is of 2012, therefore, the applicant may be granted benefit of anticipatory bail. He has placed reliance on the decision of Supreme Court in the matter of **Dalip Babulal Tapadia Vs. State of Maharashtra, reported in (2009) 16 SCC 714** and would submit that if there is no allegation regarding noncooperation of investigation, in such case the applicant may be enlarged on bail. He has further placed reliance on the decision of Supreme Court in the matter of **State of Andhra Pradesh vs. P.V. Pavithran, reported in AIR 1990 SC 1266** and would submit that the accused has right for a speedy investigation and trial in a criminal case in the light of Article 21 of the Constitution of India and if investigation is still being prolonged, the applicant cannot be placed under emotional and mental stress and strain under fear psychosis. Further, he has placed reliance on the decision of Supreme Court in the matter of **Bhadresh Bipinbhai Sheth Vs. State of Gujarat & another, reported in AIR 2015 SC 3090** and would submit that in case the applicant joined the investigation and and he is already in custody, the applicant may be enlarged on bail.

4. *Per contra,* learned Deputy Advocate General appearing for the State opposes the bail application and would submit that the instant FIR bearing No. 56/14 was registered on 29-12-2014 on the basis of a report made by M/s. Vineet Singh Construction Company wherein he was eliminated on the ground of fabricated and forged documents. When the inquiry was started and raid was conducted , it was found that the applicant has earned huge property through corrupt means by awarding contract to his choice of contractors including his child-hood friend whereby his brother and family members were benefited, therefore, forged documents were also filed. He would further submit that when the

raid was conducted, it was found that the money earned by the applicant was channelized through his family members by showing forged income tax returns. The applicant and his family members were arrested in that case and in the instant case, the applicant has not co-operated in the investigation, therefore, benefit of Section 438 of Cr.P.C., may not be extended in the given set of facts of the case as the bail application in FIR No. 5 of 2015 has already been rejected thrice by this High Court and that of co-accused namely Pawan Agrawal twice by the Supreme Court.

5. Perused the case diary and other documents including the rejection bail orders of Supreme Court and High Court.

6. It is alleged in this case that the applicant in order to eliminate the lawful bidders on the basis of forged documents has eliminated the eligible persons from the bidding process and awarded the contract to choice of his own. According to the prosecution, property of wealth approximately about Rs.30 crores was found in different forms including cash.

7. Perused the bail rejection order of the applicant in M.Cr.C.No.1666 of 2015 on 11-5-2015 passed by co-ordinate Bench of this Court. While rejecting the bail application, co-ordinate Bench of this Court has observed that taking into consideration the position of influence which the applicant is occupying and considering the submission of learned State counsel that the applicant is avoiding to divulge relevant

information and providing only selective information, the bail was rejected. Subsequently, second bail application was moved by the applicant on medical ground which was also dismissed on 4-3-2016 by co-ordinate Bench of this Court and while rejecting the bail application, the Court has observed that the applicant has not cooperated with the investigation and is giving selective information which still holds the field.

8. Hon'ble the Supreme Court in the matter of **Nimmagadda Prasad vs. Central Bureau of Investigation, reported in (2013)7 SCC 466** has observed as under:

> "23) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-
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> > "5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest…."
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> 25) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.

The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

9. Like-wise, Hon'ble the Supreme Court in the matter of **Krisha Moorthy vs. Shiva Kumar and others, reported in (2015) 3 SCC 467** has observed as under:

"36. Criminalisation of politics is absolutely unacceptable. Corruption in public life is indubitably deprecable. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate. Commenting on corruption, the court in Niranjan Hemchandra Sashittal V. State of Maharashtra, was constrained to say thus:

"26 it can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

37. The Constitution Bench in Subramanian Swamy V. CBI, while striking down Section 6-A of the Delhi Special Police Establishment Act, 1946, observed thus:

"60 Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative

> measure that corrupt public servants have to face very serious consequences."
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> And thereafter:
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> 72"Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation"

10. Taking into totality of the facts, nature and gravity of the offence, considering the seriousness of the allegations leveled against the applicant and further considering the fact that due to work conduct of the applicant, huge loss was caused to State and considering its impact on the economy of the country and in view of the law laid down in Nimmagadda Prasad and Krishnamoorthy (supra), I am of the considered opinion that *prima facie*, it is not a fit case where the benefit of Section 438 of the Cr.P.C., can be extended to the applicant.

11. Accordingly, the application filed under Section 438 of the Cr.P.C., by the applicant is liable to be and is hereby dismissed.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju