

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 321 of 2017**

- Neeraj Khemchand Jaswani S/o Late Shri Khemchand Jaswani, Aged About 37 Years R/o Plot No. 38, Flat No. 7, 3rd Floor, Baba Judiyaram Apartment, Samadha Compound, Jalgaon, District Jalgaon, Maharashtra.

---- Applicant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Jamul, Tehsil & District Durg, Chhattisgarh.

---- Non-applicant

For Applicant:	Mr. Sunil Otwani, Advocate
For State:	Mr. N.K. Mehta, Panel Lawyer
For Objector:	Mr. Goutam Khetrapal, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****17.05.2017**

1. Apprehending arrest in connection with Crime No. 399/2013 registered at Police Station- Jamul, District - Durg (C.G.), for offence punishable under Sections 409 and 420 of the Indian Penal Code, the applicant has preferred this application for grant of anticipatory bail.
2. The Complainant Sandeep Agrawal has lodged a report at the Police Station alleging that the present Applicant is said to have entered into commercial transaction with the complainant seeking for purchase of 32.63 MT of wires on the basis of an oral agreement. On account of which the Complainant has sent two consignments on 05.09.2012 and 13.09.2012 to different firms at Aurangabad namely Mamta Enterprises and Raj Enterprises respectively. Subsequently, the sale consideration for the said

quantity of the wires were not paid by the present Applicant, the Complainant immediately lodged the FIR in the year 2013.

3. The case of the prosecution is that the present Applicant is said to have played fraud with the Complainant in as much as not disclosing actual facts that he was neither owner nor proprietor of the companies Mamta Enterprises and Raj Enterprises. Thus, the case under Section 420 and 409 of the Indian Penal Code has been registered.
4. Learned Counsel for the Applicant submits that it is a case where the complainant has falsely implicated the present Applicant. He further submits that the nature of the complaint also would show that it appears to be a civil-commercial dispute where the Complainant ought to have initiated recovery proceedings against the present Applicant if at all there was a commercial transaction for breach of any agreement or for recovery of the sale consideration. It is further submitted that so far as the allegation is concerned there is no document with the prosecution to show that the present Applicant had infact entered into any agreement with the complainant on the basis of which the complainant is said to have sent the consignments to Mamta Enterprises and Raj Enterprises at Aurangabad.
5. Learned Counsel for the State as well as learned Counsel for the Objector submit that it is a case where the present Applicant is said to have played fraud with the complainant to the extent of not disclosing the fact that he is not the owner or proprietor of M/s Mamta Enterprises and Raj Enterprises and on the false pretext of being in the business of wires he is said to have taken 32.63 MT of wires from the Complainant, thereby causing loss of Rs. 14.37 lakhs to the Complainant.

6. On hearing the learned Counsel for the parties and on perusal of the record particularly the nature of the transaction entered into between the present Applicant and the complainant, prima facie there does not appear to have any document to substantiate the complaint lodged against the present Applicant. Further, the allegations that the present complaint seems to have been made is in respect of only an oral agreement which is said to have entered into between the Applicant and the complainant, there is no document to substantiate the contentions of the Complainant.
7. Taking into consideration the factual matrix of the case, this Court is of the opinion that prima facie a strong case has been made for grant of anticipatory bail.
8. Accordingly, the MCRCA is allowed.
9. 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 executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :
 - (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
 - (ii) that the applicant 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 to any police officer;
 - (iii) that the applicant shall not act, in any manner,

which will be prejudicial to fair and expeditious trial;
and

(iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-

(P. Sam Koshy)
JUDGE