

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2033 of 2017**

Roshan Lal Yadav S/o Shri Jula Ram Yadav, Aged About 43 Years R/o Village Dhekuna, Police Station Simaga, District- Baloda Bazar- Bhatapara, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through : The Police Station House Officer, Simaga, District Baloda Bazar- Bhatapara Chhattisgarh

---- Respondent

For applicant	Mr. M.D. Sharma, Adv.
For Respondent/State	Mr. O.P. Sahu, Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****19-7-2017**

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he is arrested on 23-11-2016 in connection with Crime No. 218/2016 registered in PS Simga, distt. Baloda Bazar Bhatapara for offence punishable under Section 406, 409, 201 of IPC.
3. Learned counsel for the applicant submits that after investigation charge sheet has been filed and the same is pending before the JMFC Simga as Criminal Case No. 46/2017 (48/2017, as submitted by the State counsel). He submits that criminal proceedings had been initiated against the applicant who was in-charge of Vishrampur Society since 2004 upto December, 2015. As per inquiry report prepared, as alleged, the applicant had misappropriated and made embezzlement for Rs. 55,75,833 and 15 paise. Said inquiry is not under the provisions of law. As per Section 59 of the Cooperative Societies Act, 1960, Registrar has

to conduct inquiry, as per Section 58 of the Act of 1916, audit has to be done by the Registrar. Sole basis of said inquiry report is defective, erroneous and without the authority of law. Section 74 of the Act of 1960 deals with offence under the Act of 1960. As per submission, the case of the applicant comes under the ambit of Section 74(a) for which as per provisions of Section 76, the previous sanction is necessary in writing of the Registrar and before taking cognizance of offence under the said Act and as there is no previous sanction of the Registrar, the cognizance taken by the concerned court is illegal and without authority. Provision of Indian Penal Code is not initially attracted as the case clearly comes under the ambit of Section 74(a) of the Act of 1960. Learned counsel further submits that in the present matter, the trial Court framed charges under Section 409 of the IPC but in the present matter as the applicant is neither a public servant nor a banker, Section 409, IPC is not applicable, instead at the worst, Section 408, IPC is attracted. Detention of the applicant is illegal in the light of the judgment in the matter of Arnesh Kumar V. State of Bihar and another reported in 2014 Cri.L.J. 3707 as the concerned court and the investigating agency has not complied with the provisions as attracted in the matter for section 41 of the Cr.P.C. Learned counsel for the applicant draws attention of this Court in para 13 and 14 of the judgment which for relevance is reproduced below:-

“13. We are of the opinion that if the provisions of Section 41, Cr.P.C. which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers

intentionally or unwillingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasize that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41, Cr.P.C. for effecting arrest be discouraged and discontinued.

14. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C. ;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1) (b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding /producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the

Superintendent of Police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.

(8) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

4. Learned counsel for applicant submits that the applicant is permanent resident of distt. Baloda Bazar Bhatapa. He will not abscond. He is having property and family members in District Baloda Bazar Bhatapara. Hence under Article 21 of the Constitution of India and other provisions, he may be granted bail. The applicant had preferred a petition for quashment of the FIR which is pending before this Court.
5. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant.
6. Perused the entire matter.
7. From perusal of the facts and evidence collected during investigation, prima facie it appears that the applicant embezzled and misappropriated Rs. 55,75,833 and 15 paisa. Looking to the

entire facts, the case law cited by learned counsel for the applicant is not applicable in the present case.

8. On due consideration of the entire matter, I am not inclined to grant bail to the applicant.
9. Consequently, instant MCRC is dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge

