NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC (A) No. 274 of 2017

Krushna Chandra Swain S/o Kapila Swain, aged about 41 years, R/o A-1, Gendamali, Post Balrampur, PS Balanga, Distt. Puri (Orissa) At present S3/45, BDA Commercial Complex, Baramuda, Bhuvneshwar (Orissa).

-----Applicant

Versus

State of Chhattisgarh Through Station House Officer, Out Post Vaisali Nagar PS Supela, Distt. Durg (CG).

---- Respondent

For Applicant	:	Shri Awadh Tripathi, Advocate.
For Respondent	:	Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/05/2017

1. The applicant has filed this application for grant of anticipatory bail as he is apprehending his arrest in connection with Crime No.679 of 2016 registered at Police Station Out Post-Vaisali Nagar, Supela Distt. Durg, for the offence punishable under Sections 406,409,420,466,467,468 and 120-B/34 IPC.
2. The applicant is power of attorney holder of one Prashant Joshi, who, in turn, was assigned the work by one G.S. Rao, who was the proprietor of Security Service of India. The said firm has got a contract of providing Watch and Guard at Orissa Hydro Power Corporation, Burla, Distt. Sambalpur. The allegation against the applicant is that the applicant in connivance with other co-accused persons have submitted false documents with the EPF authorities in respect of challan of provident

fund being paid. It is also alleged that the workers of the firm were deprived of the provident fund contribution and when asked for the compliance of the provisions of Provident Fund, they were provided copies of challan of State Bank which was later on found to be forged.

3. The contention of learned counsel appearing for the applicant is that the applicant was not responsible in any manner for the contribution of the payment of provident fund dues is concerned. The entire responsibility of payment of provident fund was either with the the proprietor G.S. Rao or with the person who was assigned the job by G.S. Rao i.e. Prashant Joshi. It is informed by the counsel for the applicant that the applicant has been regularly making the deposits of the provident fund in respect of workers engaged by the firm. It is also the contention of the applicant that the act on the part of prosecution in initiating criminal case straightway is contrary to the provisions of EPF Act. It is also submitted that, the moment it was found that there is default in making/depositing contribution, the EPF authorities ought to have initiated recovery proceeding against the firm and should thereafter have initiated attachment proceeding and only after failure of all these, the case ought to have been lodged by the department against the applicant. Thus, there is clear violation of provisions of EPF Act.

4. He further submits that so far as allegation against the applicant is concerned, there is no any single document in the entire records showing that it is the present applicant who has prepared the forged document depicting compliance of the EPF provisions. Neither has the present applicant being instrument in the making of any document to show that payment have been made at the Raipur office of EPF. Thus,

prayed for granting anticipatory bail to the applicant.

5. The State counsel opposing the application submits that it is a case where the present applicant along with other co accused persons have siphoned the amount of EPF contribution of the workers engaged in the said firm of which the applicant was the main officer who was supervising the execution of work. It is a case where the charge sheet has already been filed and the two other accused persons namely G.S. Rao and Prashant Joshi both had been taken in custody and subsequently have also been released on bail under Section 439 CrPC. He further submits that only because there is no signature of the applicant in any of the document by itself cannot be considered that the applicant has not played any significant role in the commission of offence. There are also statements of the employees working in the said firm where they have categorically named the present applicant also to have active participation in the fraudulent transaction.

6. Having considered the rival contentions put forth on either side and on perusal of records what prima facie to be looked into by this court is whether there is prima facie strong material available in the records against the present applicant. On perusal of records, this court find that there are ample number of employees who have made statement specifically naming the applicant of having played an active participation in the entire transaction. In addition, there is also statement of employees who said that it was the present applicant who was taking care of the supervision of the work and that it was the present applicant who showed them the said document showing compliance of EPF contributions.

7. Considering all these facts and circumstances of the case and taking note of the fact that charge sheet has already been filed and the other co-accused have also been granted bail under Section 439 CrPC, this court is of the opinion that no strong case is made out for granting anticipatory bail to the applicant. Accordingly, the bail application is rejected.

Sd/-
(P. Sam Koshy)
Judge

inder