

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRCA No. 290 of 2017**

Vishram Baghel S/o Late Shri Rajau Baghel, Aged About 50 Years  
 Caste Gada, R/o Village Shikaripali, Police Station Tendukona, Tahsil  
 Bagbahra, District Mahasamund Chhattisgarh Present Address  
 Lecturer ( Suspended ) Government Higher Secondary School,  
 Bodridadar, Block Bagbahra, Tahsil Bagbahra, Distt. Mahasamund CG

---- Applicant

**Versus**

1. State Of Chhattisgarh Through Station House Officer Police Station  
Bagbahra, District Mahasamund CG
2. Firoj Khan, S/o Sikandar Khan, Occupation Advocate, R/o Ward No. 7  
Lalpur Road, Bagbahra, Police Station & Tahsil Bagbahra, District  
Mahasamund CG

.... Complainant

---- Respondent

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| For applicant               | Mr. Gurudev I. Saran, Adv.  |
| For Respondent No. 1 /State | Mr. Neeraj Jain, Govt. Adv. |
| For Respondent No. 2        | Mr. Suresh Tandan, Adv.     |

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Order On Board****15-9-2017**

1. Heard the matter finally.
2. Learned counsel for the applicant submits that the Judicial Magistrate First Class, Mahasamund has taken cognizance against the applicant under section 420, 409 of the Indian Penal Code, 1860 on the ground that being a public servant the applicant was entrusted with the disbursement of scholarship and he made embezzlement of Rs. 4,20,000/- by false entries regarding disbursement of said scholarship. When the matter reaches to the knowledge of the Collector, the applicant deposited the entire amount. On the basis of internal disciplinary proceeding, a departmental inquiry was initiated. The applicant in the said inquiry submitted his reply stating that the entire amount as alleged for irregularities has been deposited. The Directorate, Public Education vide letter dated 11-7-2017 gave recommendation for minor penalty to the applicant and sent a letter to

the Secretary, School Education Department, Government of Chhattisgarh, Mantralaya, Raipur. The applicant has been reinstated in the service after completion of departmental proceedings. He had not embezzled any amount. As the entire amount of disbursement of scholarship has been deposited hence there is no money outstanding with the applicant. It may be termed as irregularities of not disbursing the scholarship within time.

3. Learned counsel for the applicant next submitted that as the case has been registered on a complaint filed by a private complainant, the concerned Magistrate after taking cognizance issued summons to the applicant. With this, he is apprehending his arrest when he will appear before the concerned trial court in response to the summons issued against the applicant.
4. Learned counsel for the applicant further submits that for the sake of arguments suppose it may be held that any embezzlement even of temporary in nature has been committed, even then respondent No. 2/ complainant has no locus because the money is of the government department and respondent No. 2 has no connection in any way with the affairs of the State. As a private party, no one may be allowed to file complaint against anybody who is a government servant or which is a departmental matter. The applicant is aged about 50 years, permanent government servant, and permanent resident of Bagbahara, Distt. Mahasamund. He will not abscond and take part on the said complaint case. He intends to challenge the order of cognizance, registration of complaint against the complainant, also will cooperate in the trial. He may be given anticipatory bail.
5. Per contra, learned counsel for the respondent/State submits that as the matter arises from a private complaint hence State has nothing to submit in the matter.

6. Learned counsel for the respondent No. 2 opposes the arguments advanced on behalf of the applicant.
7. Perused the entire material.
8. The applicant is aged about 50 years, permanent government employee, permanent resident of Bagbahara, Distt. Mahasamund. There is no possibility of his absconding. In a private complaint, the concerned Judicial Magistrate has taken cognizance. Locus of the complainant i.e. respondent No. 2 is under a serious legal question to be examined as the complainant is a private complainant, in any way not involved in the affairs of the government. Prima facie no one authorizes the complainant to file a complaint for the State against the applicant. Also as per facts surfaced in the bail petition filed by the applicant No. 174/2017 decided by the Second Additional Sessions Judge, Mahasamund vide order dated 24-3-2017, learned Additional Sessions Judge appreciated that entire amount under question has been deposited by the applicant, also perused the communication of the Director, Public Education Directorate, Chhattisgarh in a letter dated 11-7-2017 addressed to the Secretary, School Education Department, Government of CG, Mantralaya, Raipur and this fact is corroborated that amount under question i.e. Rs. 4,96,600/- has been deposited, the Directorate recommended for minor penalty for the irregularities of the applicant. In the said inquiry conducted by the department, the applicant was not held guilty for embezzlement of permanent nature.
9. Considering the entire facts of the matter and as the serious question of law is involved in the matter, I am inclined to grant protective umbrella to the applicant so that he may defend himself in the trial Court along with other further legal proceedings he intends to initiate.
10. Consequently, instant MCRCA is hereby allowed. It is directed that in

the event of his arrest by the concerned Judicial Magistrate First Class, Mahasamund, the applicant be enlarged on bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one solvent surety of the like amount to the satisfaction of the concerned Magistrate. The applicant is further directed to cooperate with the trial, appear before the trial Court as and when directed till conclusion of the trial.

11. It is made clear that this order granting anticipatory bail to the applicant shall stand cancelled automatically without reference to the bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this court or the Hon'ble Apex Court intentionally, (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

12. The applicant may file copy of the order before the trial Court for compliance.

13. The Addl. Registrar (J), is also directed to send copy of the order to the concerned Court through usual and fax mode immediately for compliance.

14. CC as per rules.

**Sd/-**  
**(Chandra Bhushan Bajpai)**  
**Judge**