

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 3239 of 2017**

- Yashwant Deshpandey, S/o Shri Madhukar Rao Deshpandey, Aged About 51 Years, R/o Plot No. 116, Durga Nagar, Hudkeshwar Road, Police Station Hudkeshwar, District Nagpur, Maharashtra.

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Civil Line, Civil & Revenue District Raipur, Chhattisgarh.

---- Respondent

For Applicant : Shri Devershi Thakur, Advocate.

For Non-applicant/State : Shri Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****15.09.2017**

Heard the matter finally.

2. Learned counsel for the applicant would submit that the applicant has been arrested in connection with Crime No.124/16 on 16/12/2016, Police Station Civil Lines, Distt. Raipur, (C.G.) for the offence under Section 417, 467, 468, 471 & 34 of the Indian Penal Code and Section 67 ABC and other provisions of Information Technology Act, 2000.

3. Learned counsel for the applicant would submit that after investigation police had filed charge-sheet against the applicant and 2 other co-accused D.V. Chandrashekhar and Varsha Chandrashekhar showing them absconding under Section 299 of the Code of Criminal Procedure which is presently pending before the

Chief Judicial Magistrate, Raipur (C.G.) as Criminal Case No.2637/17. The absconded accused persons for their Anticipatory Bail went up to the Hon'ble Apex Court, vide filing special leave to appeal (Criminal Case No. 261/17). The Hon'ble Apex Court vide order dated 09/01/2017 has been granted a month's time to the co-accused so that they shall surrender before the Trial Court and filed an application to release them on bail after one day prior notice to prosecutor and the Trial Court shall decide the same on the basis of merits of case against those co-accused persons. Till date both the absconded accused not surrender before the Trial Court as per the order of the Hon'ble Apex Court, non-bailable warrant of arrest has been issued. The applicant is in custody since 9 months, he has been falsely implicated, he never used the e-mail ID of the complainant regarding the allegations under Section 67 of the Information Technology Act, 2000. No hardware has been seized from the applicant, the IP address used for the commission of alleged act was of Shashi Ranjan. The applicant already acquitted for the charges in Criminal Case No. 7388/2015 vide judgement dated 31/05/2016, he cannot be tried twice for the same offence again. Hence, the applicant may be enlarged on bail.

4. Per Contra, learned counsel for the respondent/State opposes the argument advanced on behalf of the applicant. On the basis of the entire material surfaced in the charge-sheet.

5. Perused the entire material.

6. As the applicant had not preferred any petition for quashment of registration of FIR and other further proceedings, if as per applicant, he is going to be tried twice for the same offence even

otherwise prime-facie. It cannot be held that applicant is being tried twice for the same offence. Whatever surfaced during the trial, on the basis of those additional facts for which the said trial was not commenced the matter after taking cognizance, FIR has been registered and charge-sheet has been filed, on consideration of entire matter surfaced in the charge-sheet without commenting anything on its merits and also as other co-accused are absconding despite opportunity given by the Hon'ble Apex Court to surrender before the Trial Court and till today they have not surrendered, on consideration of the entirety of the matter, I am not inclined to grant the bail.

7. Consequently, the instant MCRC is hereby dismissed.

Sd/-

(Chandra Bhushan Bajpai)
Judge