

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1073 of 2016**

Shrirang Bobde S/o Champat Rao Bobde Aged About 54 Years R/o
Flat No. 403, Saptshringi Apartments, Old Bus Stand, Karbala Road,
Bilaspur, District Bilaspur Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh through Police Station, Civil Line, District
Bilaspur Chhattisgarh

---- Respondent

For applicant	Mr. Maneesh Sharma, Adv.
For Respondent/State	Mr. O.P. Sahu, Govt. Adv.
For objector Ramawtar Agrawal	Mr. Kishore Bhaduri, Adv.

MCRCA No. 358 of 2017

Shiv Kumar @ Jawahar Saraf S/o Shri Motilal Saraf, Aged About 55
Years Occupation Business, R/o Mahima Niwas, Behind Motilal Petrol
Pump, Link Road, Bilaspur, Police Station Tarbahar, Tehsil & District
Bilaspur, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh through District Magistrate, District Bilaspur, CG.

---- Respondent

For applicant	Mr. Ranbir Singh Marhas, Adv.
For Respondent/State	Mr. O.P. Sahu, Govt. Adv.
For objector Ramawtar Agrawal	Mr. Prafulla Bharat, Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14-7-2017**

1. As both the MCRCAs arise out of the same crime number and incident
hence both are being disposed of by the common order.
2. Heard the matter finally.
3. Learned counsel for the respective applicants submits that Crime No.
404/2015 has been registered against them in Police Station Civil
Lines, Bilaspur for offence under Section 420, 120-B and 34 of the
Indian Penal Code, 1860. After investigation, police has filed charge
sheet which is pending before the CJM, Bilaspur as Crime Case No.

1313/2017. The charge sheet is filed under the relevant provisions of Section 299 of the Code of Criminal Procedure, 1973 showing them absconding. The Court had issued non-bailable warrant of arrest.

4. Learned counsel for applicant Shrirang Bobde submits that on 5-8-2015, FIR has been lodged on the basis of a written report filed by the objector Ramawtar Agrawal. Police has registered the matter against both the applicants under Section 420, 120B and 34 of the IPC. As per facts, on 8-3-1990, the applicant had purchased the land from one Rafiq Ahmed. As per allegation against the present applicant, he sold the property knowing well that it is a wakf property. On 26-2-2007, the applicant sold the property through registered sale deed to Ramawtar Agrawal. As per contents in the said sale deed, the consideration amount was already paid to the applicant through Cheque dated 1-8-2005 prior to registration of sale deed. In the year 2008 said land was mutated in the name of Ramawtar Agrawal. On 25-8-1989 there is a notification issued to the effect that the land belongs to Vakf Board. In the year 201, Ramawtar Agrawal had filed a suit before the Vakf Board for adjudication. In the said civil suit, the present applicant was mentioned as witness to Ramawtar Agrawal. As per para 4 of the pleading, it is surfaced that the land is recorded in the name of Vakf Board hence, 22 points as required to sell and purchase the land cannot not be issued by the concerned revenue authorities. Said facts are brought to the notice of Ramawtar by applicant Shrirang Bobde. In the year 2011 for some activity of the National Highway Authority, the State acquired some land, not the land in question but adjoining to the said land including the land belonging to present applicant and for that the present applicant was duly compensated by the State. On 28-11-2015 in a suit filed by Rafiq Ahmed, the Vakf Board decided the matter in favour of said Rafiq Ahmed and held that the land in question and other land does not belong to Vakf property. Said order is

challenged and the same is stayed. Status quo is directed. The matter is pending hence the land belongs to Vakf Board is in dispute. The present applicant also filed civil suit which is pending. Ramawtar is till date enjoying the property and if the element of knowledge is presumed to the applicant, as per settled law, knowledge of said notification is also applicable to Ramawtar Agrawal and with this both are in the similarly situated position. The applicant made every effort and caution to see that the land belongs to Rafiq Ahmed and as on the basis of revenue paper earlier to the registration, Rafiq and his ancestors were named as the title holder, on being satisfied that Rafiq is the owner of the said land, the applicant purchased the land and subsequently sold to Ramawtar Agrawal. There is no specific allegation which attracts the provisions of Section 420, IPC or any other section for which the applicant may be prosecuted. Virtually it is the applicant who was cheated. He is not the accused rather he is a victim. Any of the ingredients as required under Section 420, IPC is not attracted in the matter hence under the relevant provisions of Section 438, Cr.P.C., anticipatory bail may be granted to the applicant.

5. Learned counsel for the applicant Shiv Kumar @ Jawahar Saraf submits that in addition to entire argument made by learned counsel for the applicant Shrirang Bobde, there is no allegation against the present applicant. Even in the FIR, vide registered sale deed dated 26-2-2007, applicant Shrirang Bobde had sold the property to Ramawtar Agrawal in the year 2005 itself through cheque. The consideration is paid for some or other reason. The complainant wants that the applicant may be kept in jail for any communication and consideration of 2005. The applicant had filed a Criminal complaint under Section 138 of the Negotiable Instruments Act which is pending before the concerned criminal court and the proceedings are stayed by Hon'ble Supreme Court. He submits that the FIR is false and

fabricated hence under the relevant provisions of Section 438, Cr.P.C., the present applicants may be granted anticipatory bail during trial.

6. Learned State counsel duly assisted by learned respective counsel for the complainant submits that on 21-10-2014 there was an agreement between the applicant Shiv Kumar @ Jawahar Saraf and Ramawtar Agrawal. As per said agreement, the present applicant Shiv Kumar gave cheque of Rs. 7.80 crore. It was mentioned in the said agreement that from 31-3-2015 possession of the disputed land in question will be with applicant Shiv Kumar. Said cheque of Rs. 7.80 crore is dishonored. During investigation, police recorded statement of 2 witnesses Ramkhilawan and Gorelal under Section 161 of the Cr.P.C. As per facts surfaced, to save the registration fee for registering the matter twice, the land in question was directly sold through a registered sale deed in the name of Ramawtar Agrawal and both witnesses also stated regarding the cheque by applicant Shivkumar to the complainant. As per statement of both the witnesses, the applicants were well known that the land belongs to Vakf Board but deliberately they have sold the said land and helped in the subsequent matter to Ramawtar Agrawal for the act. Learned counsel for the State submits that there is material against both the applicants. Hence both the matters may be dismissed.
7. Perused the entire matter.
8. On consideration of entire material collected and surfaced in the charge sheet, in the considered view of this Court, both the applicants are not entitled to be released on bail under the relevant provisions of Section 438 of the Cr.P.C.
9. Consequently both the MCRCAs are hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge