

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4628 of 2017**

- Dilip Gupta S/o Shri Panna Lal Gupta, Aged About 42 Years R/o Shankar Nagar, Police Station Mohan Nagar, Durg, Tahsil And District- Durg, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate Durg, Chhattisgarh.

---- Respondent

For Applicant	: Shri PKC Tiwari, Sr. Advocate with Shri Kripesh G Keal, Advocate
For Respondent/State	: Shri Neeraj Jain,

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17.8.2017**

Heard the matter finally.

2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.120/2017 registered in Police Station City Kotwarli, Distt. Durg (CG) for the offence punishable under Sections 420, 406 & 409 of the Indian Penal Code.

3. Learned counsel for the applicant submits the applicant has been arrested on 21.02.2017, after investigation, police has filed charge sheet which is pending before Judicial Magistrate First Class, Durg as Criminal Case No.3567/17. Learned counsel for the applicant would submit that present matter is at the most may be a civil dispute travelled from 12.11.2014 to 23.3.2017 for years. The firm is a partnership firm, there are three partners, but the

applicant is the main accused and complaint is made only against present applicant. On perusal of the agreement of business deed, it appears that though there were other partners in the said partnership firm, they were not prosecuted. Though there is no breach of trust, for the sake of argument the matter may fall under the ambit of Section 406 IPC. The trial may take some time for its conclusion, the applicant is in detention since last five months, the detention is pre punishment trial which is not appropriate as per the settled law. The applicant will not abscond, the matter is triable by Judicial Magistrate First Class, in the present matter the applicant may not be convicted for life imprisonment as JMFC has no authority to convict any accused for life imprisonment. As per **1995 CRLJ 1517 Surendra Kumar Vs. State of MP**, the Hon'ble Apex Court reiterated the law in relation with punishment below seven years as mentioned in the said case to keep a person inside the jail where the offence is punishable only up to 7 years may be an injustice to law. Also merits of the entire matter is not to be seen, other partners were also looking the business of the partnership firm, the applicant will abide all the terms and conditions as directed by this Court, as the trial may take some time for its conclusion, the applicant may be enlarged on bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that as per the deed of the agreement, it has been executed between the present applicant and the complainant. Partners in the said firm also stated in their statement recorded under Section

161 Cr.P.C that it is Dileep Gupta who was looking the entire business. The servant of the applicant also in his statement recorded under Section 161 Cr.P.C. stated that the firm was being looked after by the applicant. The applicant neither returned the articles worth Rs.85 lakh nor he paid the said amount to the complainant. Looking to the entire facts, instant bail application may be dismissed.

5. Perused the entire material.

6. Looking to the material surfaced in the charge sheet regarding the articles worth Rs.85 lakh, without commenting anything on its merits, I am not inclined to grant bail to the applicant.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is hereby dismissed.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE