

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.697 of 2017

- Umesh Kumar Gupta S/o Late Shri Shankar Lal Gupta, Aged About 51 Years, Occupation - Senior Manager (Mining), South Eastern Coalfields Limited, Kusmunda Project, Korba, District Korba, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh through Police Station CBI, ACB Branch, Raipur, District Raipur Chhattisgarh.

---- Non-applicant

And

MCRCA No. 732 of 2017

- Vijendra Singh Yadav, S/o Late Atiraj Singh Yadav, aged about 63 years, R/o 2/402, Beverly Park, Sector - 22, Dwarka, New Delhi- 110077

---- Applicant

Versus

- State Of Chhattisgarh Through Central Bureau of Investigation /A.C.B. Branch Raipur, District Raipur Chhattisgarh.

---- Non-applicant

MCRC No.5376 of 2017

- Ashish S. Adhikari, S/o Dr. S.C. Adhikari, Aged About 59 Years, R/o Flat No.16/ AB Tapovan Complex, Wardha Road, Nagpur (M.H.)

---- Applicant

Versus

- State Of Chhattisgarh through SPE CBI Anti Corruption Beauru, Bhilai, Chhattisgarh.

---- Non-applicant

And

MCRC No. 5382 of 2017

- Anil Kumar, S/o Late Y.P. Ambastha, aged about 61 years, R/o Flat No.502, Rameshwaram Complex, Ved Nagar, Patna (Bihar)

---- Applicant

Versus

- State Of Chhattisgarh through SPE CBI Anti Corruption Beauru, Bhilai, Chhattisgarh. .

---- Non-applicant

For Applicant – Shri Awadh Tripathi, Advocate (in MCRCA No.697/2017)
Shri S.C.Verma, Advocate (in MCRCA No.732/2017)
Shri Rajeev Shrivastava, Advocate (in MCRC No.5376/2017 and MCRC No.5382/2017)

For Non-applicant/CBI – Shri Kishore Bhaduri and Shri Pawan Kesharwani,
Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

24-10-2017

1. All these matters arise out of the same criminal case Special Sessions Trial No.195/17 pending before the Court of Special Judge for trial of CBI cases Raipur.
2. Heard on MCRC No.5376/2017 and MCRC No.5382/2017 filed under Section 439 of the Cr.P.C. by applicant Ashish S. Adhikari and applicant Anil Kumar and also heard on MCRCA No.697/2017 and MCRCA No.732/2017 filed under Section 438 of the Cr.P.C. by applicant Umesh Kumar Gupta and applicant Vijendra Singh Yadav for grant of anticipatory bail.
3. It is submitted by learned counsel for applicant Ashish S. Adhikari and applicant Anil Kumar that they are employed as Area Personnel Manager in SECL Korba, whereas applicant Umesh Kumar Gupta is employed as Senior Manager(Mining), SECL, Kusmunda Project, Korba who has been authorized to look after the job of security department in addition to his normal duty. Applicant Vijendra Singh Yadav is the Head Office Bearer of the security agency styled as Dhruv Guards Pvt. Ltd.
4. It is submitted by the counsel for the applicants that an agreement was entered between the SECL Korba and Dhruv Guards Pvt. Ltd. As per the clause of said agreement, if the agency provides services of employees 90% of personnel from ex-serviceman and the civilian guards not exceeding 10%, then there shall be entitlement for payment fee for services including 14% of service charge along with an allowance of 24%. If recruitment of ex-serviceman is below 90% but not less than 70%, then entitlement of receiving of service charge is 12% with lesser allowance and where the recruitment of ex-serviceman shall below 70%, then entitlement of receiving service charges shall be 6% only.

5. It is submitted by counsel for the applicants in MCRC No.5376/2017 and MCRC No.5382/2017 that these applicants had no role to play in the payment of fee made to the Druv Guards Pvt. Ltd., they had been functioning as Area Personnel Manager not being concerned with payment process in any manner. Hence, no criminality can be attached with their performance. Therefore, it is prayed that applicants Ashish S. Adhikari and Anil Kumar in MCRC No.5376/2017 and MCRC No.5382/2017 may be enlarged on regular bail.

6. Learned counsel for applicant Umesh Kumar Gupta has submitted, that the applicant had been functioning as Senior Manager (Mining), subsequent to retirement of the Security Official on 31-05-2011 he was authorized with additional duty to look after the security. The applicant made a representation to the General Manager to relieve him from this job as he was unable to look after the security concerned in addition to duty that he was already performing. It is also submitted that the allegation against him is that he has certified the bills raised by Druv Guards Pvt. Ltd. that 90% of the guards engaged were ex-serviceman which entitled the Druv Guards Pvt. Ltd. to receive the commission and service charge at the higher rate. The applicant had no role in verifying the persons deputed for security of the mining area in personal capacity. The verification was received from the concerned officials of the mining area which has been simply approved by the applicant. Hence, for these reasons, it is prayed that applicant Umesh Kumar Gupta in MCRC No.697/2017 may be benefited with grant of anticipatory bail.

7. Learned counsel for applicant Vijendra Singh Yadav in MCRC No.732/2017 submits that the case against the applicant and other is simply this that excess payment has been made to the Dhruv Guards Pvt. Ltd. which can be recovered by SECL. It is submitted that although the clause in the contract provided that the security agency was required to ensure minimum of 90% ex-serviceman, but in case of the percentage was not achieved, then the contract itself provided for payment of service charges and allowances at

lesser rate. The applicant has been made accused in this case only on the basis of memorandum of one of the co-accused and there is no other incriminating evidence on record, hence, the applicant has been falsely implicated. Therefore, it is prayed that he may be benefited with grant of anticipatory bail.

8. Learned counsel for non-applicant/CBI submitted that the applicants in all the cases have been chargesheeted for the offence under Section 109, 420, 467, 468, 471, 477(A), 120(B) of the IPC along with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. It is submitted that this is a case of white-collared corruption going on since long in the concerned area of SECL and the prosecution of officers of SECL has been sanctioned by the respective authority. As per the investigation conducted, in accordance with clause of the contract the security agency was required to maintain 90%, 10% ratio of ex-serviceman and civilian security guards out of total strength of the security guards applied. As per the investigation, it was found that the ratio was never maintained by the security agency, even than in connivance with the official of the SECL the bills were raised showing deployment of 90% ex-serviceman claiming coalfield allowances at the rate of 24% and service charges at the rate of 14%, thereby the security agency was able to succeed in securing the excess payment to the tune of Rs.31,36,099/-. Applicant Vijendra Singh Yadav in MCRC No.732/2017 and applicant Umesh Kumar Gupta in MCRC No.697/2017 were signatories of the agreement and applicant Ashish S. Adhikari in MCRC No.5376/2017 and applicant Anil Kumar in MCRC No.5382/2017 were responsible to certify the deployment of security guards in their respective areas. The commission of offence of conspiracy and irregularity revealed, when constant billing was done by Druv Gurads agency claiming deployment of 90% ex-serviceman, which is not possible for practical reasons. Hence, the matter was enquired into by the SECL and then was handed over to CBI for investigation. It is submitted that there is sufficient

material for prosecution against the applicants before the trial Court, hence, they are not entitled for grant of bail regular or anticipatory. Therefore, all the applications may be dismissed.

9. Heard learned counsel for the parties and perused the case diary.

10. Considering all the material of the case diary and the material on record of the bail matters, I am of the considered view that applicants Ashish S. Adhikari and Anil Kumar in MCRC No.5376/2017 and MCRC No.5382/2017 may be enlarged on bail, as no purpose would be served if they are kept detained till conclusion of the trial. On the other hand, after consideration upon the applications of applicants Umesh Kumar Gupta and Vijendra Singh Yadav (MCRCA No.697/2017 and MCRCA No.732/2017), it is found that no extraordinary case is made out in favour of these accused persons for grant of anticipatory bail, on the basis of material on record of the case against them, hence, both these applications do not deserve to be allowed.

11. Consequently, MCRCA No.697/2017 and MCRCA No.732/2017 filed under Section 438 of the Cr.P.C. by applicants Umesh Kumar Gupta and Vijendra Singh Yadav are hereby dismissed.

12. MCRC No.5376/2017 and MCRC No.5382/2017 filed under Section 439 of the Cr.P.C. are hereby allowed. It is directed that the applicants Ashish S. Adhikari and Anil Kumar shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.

13. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge