

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1154 of 2016**

- Dinesh Kumar Sharma S/o Shri S.N. Sharma Aged About 55 Years Presently Working As Executive Engineer, Municipal Corporation, Raigarh, District Raigarh, Chhattisgarh.

---- **Petitioner****Versus**

- State Of Chhattisgarh Through S.H.O., Police Station City Kotwali, Raigarh, District Raigarh Chhattisgarh.

---- **Respondent**

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MCRCA No. 1186 of 2016

- Ku.Prabha Toppo D/o Shri Yakub Toppo, Aged About 26 Years Presently Working As Sub Engineer, Municipal Corporation Raigarh, District Raigarh, Chhattisgarh.

---- **Petitioner****Versus**

- State Of Chhattisgarh Through S.H.O., Police Station City Kotwali, Raigarh, District Raigarh, Chhattisgarh.

---- **Respondent**

 For Applicants : Mr. Sudeep Agrawal, Advocate.

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****06-01-2017**

1. Since both the aforesaid bail petitions arise out of same Crime No.248 of 2016, they are heard analogously and are being disposed of by this common order.
2. Apprehending arrest in connection with Crime No. 248 of 2016, registered at Police Station City Kotwali, Raigarh, District Raigarh (CG), for the offence punishable under Sections 420, 409/34 of the IPC and Section 13(2) & 13(1)(d) of the Prevention of Corruption Act., the

applicants have preferred these applications under Section 438 of the Cr.P.C, for grant of anticipatory bail.

3. As per case of the prosecution, the allegation leveled against the applicant Dinesh Kumar who was working as Executive Engineer and applicant Ku. Prabha Toppo, who was working as Sub Engineer that during their tenure tender was called without any verification or demand and spot was also not verified for the purchase of fencing pole and barbed wire which was made for Rs.15.85 lakhs. It is further alleged that instead of 2.438 kgs of barbed wire it was inflated ten times and 24.38 kgs of barbed wire was purchased. The tender was also made without approval of the Government or Mayor-in-council and the publication of the tender was not made in the newspapers circulated in the entire State, but the same were published in District level papers i.e., Dainik Samvad and Samvad Shikhar. It is also alleged that the applicants have not deducted 2% value added tax and thereby the aforesaid offence was committed.
4. Learned counsel appearing for the applicants would submit that according to Rule 5 of the Chhattisgarh Municipalities (The Conduct of Business of the Mayor-in-council/President-in-Council and the Powers and Functions of the Authorities) Rules 1998 (for short, "the Rules 1998"), the applicants being Executive Engineer and Sub Engineer working under Municipal Commissioner were entitled to invite tender upto Rs.25 lakhs without sanction of the higher authorities and it is not a case that the publication of tender was not followed. He would further submit that no criminality has been committed by the applicants and only false allegations have been attributed to the applicants. He would further submit that the case of the present applicants is similar to that of other

co-accused namely Pramod Shukla, Municipal Commissioner, who has been granted anticipatory bail vide order dated 19-8-2016 passed by this Court in M.Cr.C.A.No. 620 of 2016, therefore, present applicants may be extended the same benefit on the ground of parity.

5. Per contra, learned State counsel opposes the prayer for grant of anticipatory bail, however, he does not dispute the fact that similarly placed other co-accused has already been granted anticipatory bail by this Court .
6. I have heard learned counsel for the parties and also perused the case diary and documents and enquiry report.
7. Primary allegation against the applicants would show that tender was not published in newspaper circulating in the entire State, but in fact it was published in district level newspaper. Perusal of the record and documents which are of Municipal Corporation would also show that procedure of tender was followed and prima facie it appears that the applicants being Executive Engineer and Sub Engineer have forwarded the file to the Commissioner and the Commissioner has exercised his power under Rule 5 of the Rules 1998 and he has already been granted anticipatory bail by this Court.
8. Taking into consideration all the facts and circumstances of the case, nature of allegations leveled against the applicant, considering the case diary and documents and further on due consideration in facts of case the principles laid down in case of **Bhadresh Bipinbhai Seth vs. State of Gujarat & another, reported in (2016) 1 SCC 152**, would be applicable taking into the job discharged by the applicants as employees of Municipal Corporation wherein it has been held that if not essentially required custodial interrogation should be avoided and also the fact that

similarly placed other co-accused has been granted anticipatory bail, I am of the considered opinion prima facie that it is a fit case where the benefit of anticipatory can be extended to the applicants.

9. Accordingly, the anticipatory bail applications are allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on each of them executing a personal bond in the sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicants shall also abide by the following conditions:
- (i) that the applicants shall make themselves available for interrogation before the Investigating Officer as and when required.
 - (ii) that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer;
 - (iii) that the applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju