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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1029 of 2017

- Prakash Upadhayay @ Chandraprakash S/o Parmanand Upadhayay, Aged About 35 Years, Present Address R/o Farishta Complex Near Medical College, Raipur, Permanent R/o Shanti Dweep Colony, Kawardha, District Kawardha Chhattisgarh., Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Superintendent Of Police Anti Corruption Bureau, Raipur, District Raipur Chhattisgarh., Chhattisgarh

---- Non-applicant

MCRCA No. 25 of 2018

- Nurul Hak S/o Haji Abdul Hak, Aged About 40 Years, R/o Kharsiya Naka, Ambikapur, District Surguja, Chhattisgarh., Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Superintendent Of Police, Anti Corruption Bureau, Raipur, District Raipur, Chhattisgarh., Chhattisgarh

---- Non-applicant

MCRCA No. 109 of 2018

- Arunendra Pratap Singh S/o Shri Rajesh Pratap Singh, Aged About 30 Years, R/o Gudri Bajar, Ambikapur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Superintendent Of Police, Anti Corruption Bureau, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

----- Non-applicant

MCRCA No. 132 of 2018

- Shailesh Kumar Gupta S/o Shri Ramadhar Gupta, Aged About 46 Years, R/o M/s Baba Bachchraj Kunwar Construction, Namnakala, P.S. City Kotwali, Ambikapur District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Applicant

Versus

- The State Of Chhattisgarh Through Police Station State Economic Offences Investigation Wing (E.O.W) District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Non-applicant

MCRCA No. 1091 of 2017

- Nityanand Singh S/o Late Banwari Singh, Aged About 56 Years, R/o

Mayapur Ambikapur, Presently Residing At Nityanand Singh, A - Grade Contractor, R/o Mayapur Ambikapur, District Surguja Chhattisgarh., Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Anti Corruption Bureau / EOW, Raipur Chhattisgarh., Chhattisgarh

---- Non-applicant

For Applicant – Shri Manoj Paranjpe, Advocate (in MCRCA No.1029/2017, MCRCA No.109/2018),
Shri C.Jayant K. Rao, Advocate (in MCRCA No.1091/2017),
Shri Pawan Kesharwani, Advocate (in MCRCA No.25/2018),
Shri D.K.Gwalre, Advocate (in MCRCA No.132/2018).
For Non-applicant/State – Shri Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

23-02-2018

1. As all these five matters arise out of the same crime number, i.e., Crime Number No.14/2016 registered at Police Station - Anti Corruption Bureau, Raipur, District Raipur, Chhattisgarh, they are being decided by this common order.
2. Apprehending their arrest in connection with aforesaid crime number for the offence punishable under Section 420, 120B, 467, 468, 469, 471, 201 of the IPC and Section 13(2), 13(1)(d), 15 of Prevention of Corruption Act, 1988, the applicants have preferred these applications for grant of anticipatory bail.
3. It is submitted on behalf of the applicants, that all the applicants have been falsely implicated in this case and no case is made out against them on the basis of material found in the investigation. It is submitted that Department of Irrigation, District Ambikapur, invited bids of proposal for 10 projects, out of them due to allegations of irregularity in the procedure of tender, 8 tenders were cancelled. The tender No.4205 and 4243 were finalized by the Chief Engineer under his authority and work order was granted in favour of the concerned, which was also cancelled by the said department. But later on, on the basis of the order passed by this Court in W.P. No.874/2016 the tender

work in system No.4205 has been completed by applicant Arunendra Pratap Singh (in MCRCA No.109/2018) regarding which certificate of completion has been given by the department itself. The charge sheet has been filed showing the applicants absconding. On the basis of material present in the charge sheet no case is made out regarding wrongful gain or wrongful loss to any of the parties concerned.

4. On behalf of applicant Prakash Upadhyay @ Chandraprakash (in MCRCA No.1029/2017) it is submitted that he had failed in technical and financial bid, hence, no tender was awarded to him. Hence, no case is made out against him.

5. On behalf of applicant Arunendra Pratap Singh (in MCRCA No.109/2018) it is submitted that the tender that was allotted to him under the authority of the Chief Engineer has already been completed and there is no dispute regarding work and payment. Hence, no case is made out against him.

6. On behalf of applicant Shailesh Kumar Gupta (in MCRCA No.132/2018) it is submitted that no case is made out against this applicant as this applicant was not benefited with any work order or in the tender process and the application under Section 438 of the Cr.P.C. is maintainable subsequent to filing of the charge sheet in view of the judgment passed by Hon'ble the Supreme Court in the matter of **Bharat Chaudhary and another Versus State of Bihar and another**, reported in (2003) 8 SCC 77 and in **Criminal Appeal No.227/2018 (Dataram Singh Versus State of Uttar Pradesh & Anr.)** before Hon'ble the Supreme Court decided on 06-02-2018.

7. On behalf of applicant Nityanand Singh (in MCRCA No.1091/2017) and applicant Nurul Hak (in MCRCA No.25/2018) it is submitted that these applicants did not qualify in tender process and they were not at all benefited in any manner, because of which, no case is made out against them.

Therefore, it is prayed that all the applicants deserve to be benefited with grant of anticipatory bail.

8. Learned counsel for the State/non-applicant opposing the applications filed by the applicants, has submitted that all the applicants conspired with the officials of the irrigation department to obtain work order in the tender process by shutting out the competition and keeping away other bidders from the tender process, in which, the department of irrigation have also collaborated to give effect to the design under conspiracy. These applicants had been instrumental in filing false documents and false affidavit so as to disqualify the other bidders and keep them out of the tender process. Charge sheet has been filed after completion of the investigation showing these applicants absconding. Hence, for this reason alone, the applicants are not entitled to be benefited with grant of anticipatory bail and therefore, all the applications may be rejected.

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

10. The facts of the case are these, that notice inviting tender for about 10 systems/irrigation projects was floated inviting on-line bids. After the submission of bids by various interested contractors, builders and others, a complaint was received by the department that some officers of the department with intent to facilitate finalization of the work order in favour of the selected contractors have conspired and by committing offence of forgery in the documents etc. have disqualified a number of contractors and others who would have been otherwise found qualified to participate in the bid. After a preliminary enquiry, the tender process for 8 projects which was to be finalized under the authority of Engineer-in-Chief was cancelled. Remaining two tenders were finalized under the authority of Chief Engineer of the region. In the investigation it was found that a number of contractors and others were deliberately disqualified so that these applicants should succeed in the bid to

obtain work order in which some of the lowest bidders were also disqualified. After lodging of the FIR, the State Economic Offences Wing has investigated the case and filed the charge sheet against these applicants and other co-accused.

11. In view of the order passed by Hon'ble the Supreme Court in the matter of **Ravindra Saxena Versus State of Rajasthan**, reported in (2010) 1 SCC 684 and the judgment passed by Hon'ble the Supreme Court in the matter of **Bharat Chaudhary and another Versus State of Bihar and another** (supra), it appears that the applicants have apprehension of arrest on account of the process issued by the court concerned, hence, application under Section 438 of the Cr.P.C. is maintainable.

12. Considered on the submissions made and contents of the case diary.

13. After considering on the facts and circumstances of this case, the only reason for implicating these applicants appears to be this that a number of contractors and others who had submitted their bid for the said contract work have been disqualified, the reasons for disqualifying of other contractors, may be right or may be wrong, is subject to examination by the trial court. Apart from that the authority to accept or reject the bid was with the officers of the concerned irrigation department. The prosecution is responsible to show in the trial, that the applicants and the officers of the irrigation department had a nexus to give effect to a desired result. It is also to be noted that out of 10 tender process 8 tender process were cancelled and regarding remaining two tender process, they could succeed only with the interference by the order passed by this Court. Hence, taking into consideration the totality of case against these applicants, I am of this view that all these applicants deserve to be benefited with grant of anticipatory bail.

14. Accordingly, all these applications are hereby allowed. 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 sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned Investigating Officer. The applicants shall also abide by the following conditions :

- (i) that they shall make themselves available for interrogation before the investigating officer as and when required;
- (ii) that they 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 they shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that they shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

15. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge