

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRCA No. 105 of 2018

Anand Nirmalkar S/o Badri Prasad Nirmalkar, aged about 37 years,
R/o Kalyanpur, P.S. Akaltara, District Janjgir-Champa (C.G.).

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station
Takhatpur, District Bilaspur (C.G.).

---- Respondent

For Applicant	:	Shri Awadh Tripathi, Advocate
For Respondent/State	:	Shri Sangharsh Pandey, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/04/2018

1. The present is an application filed under Section 438 of Cr.P.C. seeking for anticipatory bail to the applicant apprehending his arrest in connection with Crime No. 44/2017 registered at Police Station Takhatpur, District Bilaspur (C.G.) for the offence punishable under Sections 420, 467, 471, 34 of IPC and Sections 4 & 6 of the Chhattisgarh Ke Nichhepko Ke Hito Ka Sanrankshan Adhiniyam, 2005.
2. At the outset, the counsel for the applicant submits that, the applicant in the instant case was arrested in an identically similar charge in Crime No.83/2017, registered at Police Station, Tarbahar, Bilaspur (C.G.). In the said case, the applicant has remained in custody for a period of about 6 months before he was granted bail by this Court in MCRC No. 4936/2017 dated 06/11/2017. According to the counsel for the applicant, the allegation against the present applicant is identical to what was levelled against him in the other complaint i.e. in Crime No.83/2017. According to him, the only difference is that in the said case, the applicant has been shown as an agent of B.N. Gold Real Estate & Elite Limited whereas in the present complaint he has been shown as the Branch Manger of the said firm. Thus, the status of the applicant itself is been conflicted in

the two complaints filed by two separate complainants. He further submits that the applicant is being implicated in a similar case without there being any basis whatsoever. He further submits that the present applicant has already remained in custody for a period of about 6 months and if the police authorities wanted to interrogate the applicant, they could have done so while the applicant was in custody. Having not done so it proves that the prosecution did not have much for interrogation. The counsel for the applicant further also raised a doubt in respect of the identity of the present applicant in as much as, as per the applicant, there was another person by the same name, but whose father's name and address is different who perhaps is based at Delhi and the present applicant is being confused for the said person and his being getting falsely implicated and the other person with the same name has not even be made an accused person in the instant case and therefore the possibility of the applicant getting falsely implicated in the case cannot be ruled out and thus for all these reasons, he prayed for granting the benefit of anticipatory bail to the applicant.

3. The State counsel however opposing the bail application submits that perusal of statement of the victim and also the statements recorded during the course of investigation of other persons what reflect is that all the witnesses have stated the status of the applicant to be that of a Branch Manager. According to him, the contention of the witnesses also reveal that it was the present applicant to have received the entire amount collected from each of the customers and from all these facts the applicant's involvement in the case stands established and thus prayed for rejection of the bail application.
4. Having heard the contentions put forth on either side and on perusal of record what clearly reflect is that the applicant was earlier involved in an offence in crime No.83/2017 wherein the applicant has already remained in custody for a period of about 6 months. The allegation levelled also appears to be similar in nature. Further there is a doubt created in the mind of the Court as to whether it is the same Nirmalkar who has been involved in the case? Moreover, the prosecution has not been able to establish as to the need of any further custodial interrogation of the applicant as during 6 months

period while he was in custody, he has never been interrogated. Further perusal of record would reveal that the applicant in the capacity of the Branch Manager or an agent has deposited the entire amount collected in the account of company for whom he was working. There is also no allegation against the applicant of having misused or retained the company money with him for personal use/gain.

5. In view of the aforesaid circumstances, this Court is of the opinion that prima-facie a strong case for grant of Anticipatory Bail has been made out.
6. Accordingly, the application under Section 438 of Cr.P.C. is allowed. It is directed that in the event of arrest of the present Applicant in connection with the aforesaid offence, he shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the concerned arresting/investigating officer or the Court concerned, as the case may be, with the following terms and conditions:
 - (i) that the applicant shall make himself available for interrogation before the concerned Investigating Officer as and when required;
 - (ii) that the applicant 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 applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(P. Sam Koshy)
Judge