

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 980 of 2017**

Rupesh Jivnani S/o Santosh Jivnani Aged About 31 Years R/o Near Mini Bakery Hemunagar Torwa Bilaspur P. S. Torwa Bilaspur Tahsil And District Bilaspur Chhattisgarh.

---- Applicant**Versus**

1. State Of Chhattisgarh Through The District Magistrate Bilaspur District Bilaspur Chhattisgarh.
2. Sunder Das Rohra S/o Late Paras Ram Rohra Aged About 48 Years R/o Imlipara Infront Of Muslim Saray P. S. Civil Line Bilaspur Tahsil Bilaspur District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh.

---- Respondents

For the Applicant	:	Shri Praveen Kumar Tulsyan, Advocate.
For the Respondent/State	:	Shri Vivek Singhal, P.L.
For the Objector/respondent No.2	:	Shri Surfaraj Khan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****02.02.2018**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.
2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant who is apprehending arrest in connection with Criminal Complaint Case No. 57 of 2017 which is pending before the Court of Judicial Magistrate First Class, Bilaspur, District - Bilaspur, Chhattisgarh for the offence punishable under Section 420 of the Indian Penal Code.
3. Learned counsel for the applicant submits, that the applicant has been

falsely implicated in this case. It is further submitted that the actual case between the applicant and the complainant is the case of dishonour of cheque issued by the applicant, for which the prosecution under Section 138 of the Negotiable Instruments Act would have been proper remedy. However instead of proceeding in that manner, the complainant has chosen to file a complaint against the applicant in which the cognizance has been taken for the offence of cheating. The applicant is ready to repay the amount, which was borrowed, to the complainant, but the complainant is now making superfluous demand. Hence, it is prayed that the applicant be benefited with grant of anticipatory bail.

4. Learned State counsel and learned counsel for the complainant oppose the bail application and the submissions made in this respect. It is submitted that the applicant has committed fraudulent act. The cheque issued by him was firstly used to credit into the account of this applicant but thereafter with the help of bank officials the credited amount was again debited back to the account of this applicant. Hence, it is not simply a case of dishonour of banking cheque. It is further submitted that after taking cognizance in this case, the trial Court has issued process against the applicant for his appearance before the Court and subsequently the bailable warrant was issued. Lastly, the trial Court was compelled to issue non-bailable warrant against this applicant and the applicant is constantly avoiding to give appearance before the concerned Court, because of which, the applicant is not entitled for grant of anticipatory bail. Reliance has been placed in the case of **State of M.P. vs. Pradeep Sharma** reported in **2014(1) C.G.L.J. 166 (SC)**, in which it was held that when a person is declared as an absconder/ proclaimed offender in terms of Section 82 of the Code of

Criminal Procedure, he is not entitled to the relief of anticipatory bail. It is also submitted by counsel for the respondent/ complainant that the application under Section 438 of the Cr.P.C. is not maintainable as the apprehension of arrest of the applicant is because of issuance of non-bailable warrant by the concerned Court for which the appropriate remedy available to the applicant is filing an application for cancellation of warrant under Section 70 sub-section (2) of the Cr.P.C. Reliance has also been placed in the case of **Yogendra Singh vs. State of Madhya Pradesh** reported in **2000(1) MPHT 409**. Hence, under these circumstances, the applicant is not entitled for grant of anticipatory bail.

5. Heard counsel for both the parties and perused the case diary.

6. The case against the applicant in nutshell is this, that the applicant issued a cheque in favour of the complainant for Rs.1,74,000/- which was presented for encashment in the bank of the complainant. The said cheque was cleared but later on, the amount was debited back from the account of the complainant to the account of the applicant mentioning the reason, that the signature on the cheque has not tallied with the specimen signature of the applicant because of which, the complaint has been lodged. As the case is clearly of money transaction between the applicant and the complainant, and further the statement made by this applicant in the application filed before this Court that he is still willing to make good of the dues with respect to the complainant. it is, however, a ground in favour of this applicant. The ratio laid down in **Yogendra vs. State of Madhya Pradesh** (supra) is not applicable here, because in that case the applicant had an order of anticipatory bail in his favour and subsequent to that warrant of arrest issued

against him, because of which, the Court has directed the applicant to move an application for cancellation of warrant. Similarly, ratio laid down in the case of **State of M.P. vs. Pradeep Sharma** (supra) is also not applicable here because the applicant has not been declared as an absconder or a proclaimed offender by this Court. Hence, for these reasons, I am of the considered view that the present is a fit case where the applicant should be benefited with grant of anticipatory bail.

8. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the Officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions:

- '(i) that the applicant shall make himself available for interrogation before the 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 them 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/-
(Rajendra Chandra Singh Samant)
Judge