

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1164 of 2017**

1. Smt. Sunita Patel w/o Shri Divyanand Patel, aged about 49 years,
2. Divyanand Patel, S/o late Mevalal Patel, aged about 53 years,
Both R/o Main Road, Telipara, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

---- Applicants**Versus**

Shyam Kashyap, S/o late Shambhu Prasad, aged about 53 years, R/o Chhattisgarh Complex, Near Purana Bus Stand, Police Station Civil Line, District Bilaspur, Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Sunil Otwani, Advocate.
For the Respondent	:	Shri Durgesh Goyal, Advocate.
For the State	:	Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****13.04.2018**

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 applicants who are apprehending arrest in connection with Criminal Complaint No.21 of 2017, registered at Police Station – City Kotwali, District – Bilaspur, Chhattisgarh for the offences punishable under Section 420, 467, 468, 471 and 120B of the Indian Penal Code.
3. It is submitted by counsel for the applicants that the applicants have been falsely implicated in this case. The applicants were the purchaser of

the land in question in the year 1994 by a registered sale deed by the vendor Bagwantin Bai, who was a member of Scheduled Tribe. Later on, in the year 2008, the same land was sold out to Kamlesh Bai and Subhashram Paikra showing the applicants as vendors and some other persons impersonated in the execution of the sale deed. The purchasers of the sale deed of the year 2008 have not come forward with any grievance, whereas the complainant in this case without having any cause in his favour has preferred this complaint against these applicants. No case of cheating, fraud and forgery etc is made out. Hence, it is prayed that the applicants be benefited with grant of anticipatory bail.

4. Learned counsel for the respondent opposes the bail application and the submissions made in this respect. It is submitted that the applicants were not competent to make purchase of the land belonging to member of Scheduled Tribe unless they had obtained previous permission from the Collector of the District as per the requirement under Chhattisgarh Land Revenue Code. However, the sale that was made in the year 2008 in favour of Kamlesh Bai and Subhashram Paikra that has also been made through forgery, and fraud, because the vendors represented themselves belonging Scheduled Tribe and the photos that were affixed of the vendors actually belonged to Nirmala Lodhi and Pappu Lodhi. Hence, the applicants had been instrumental in the commission of offence of forgery and no case is made out for grant of anticipatory bail to the applicants.

5. The State is a formal party in this case.

6. Heard counsel for both the parties and perused the documents produced alongwith the record.

7. Complaint has been filed by the respondent alleging that the land situated in Gram Basajhal, Tehsil Kota originally belonged to one tribal woman Bhagwantin Bai. It is alleged that these applicants representing themselves as tribal land owners and thereafter, impersonating as tribals have transferred the land in favour of Kamlesh Bai and Subhashram Paikra in the year 2008. In the sale deed executed in the year 2008, the photographs of the applicants were not attached and instead the photos of Nirmala Lodhi and Pappu Lodhi have been attached. Cognizance has been taken by the trial Court and the trial is to commence after the appearance of the applicants/ accused in this case.

8. None of the sale deeds have been produced by the respondent for perusal of this Court. Hence, it appears that the offence has been committed by the applicants by impersonating themselves as members of Scheduled Tribe is based only on the oral statement of the witnesses. Further, the *locus standi* of this respondent is also a question, which shall be determined by the concerned Court, as the person in whose favour the land has been transferred in the year 2008, has not come forward as an aggrieved person. Hence, for these reasons, I feel inclined to grant anticipatory bail to the applicants.

9. Accordingly, the anticipatory bail application is 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 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. They 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 them 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) that 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.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge