

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 168 of 2018

1. Kamal Tamboli S/o Late Shri Dhaniram Tamboli, aged about 67 years,
2. Pawan Tamboli S/o Late Shri Dhaniram Tamboli, aged about 65 years,

Both are R/o Ward Number 18 Kurmipara Mahasamund Thana & Tahsil- Mahasamund Civil & Revenue Distt.- Mahasamund (Chhattisgarh).

---- Applicant

Versus

- State of Chhattisgarh Through: Station House Officer Police Station- Mahasamund Civil & Revenue Distt.- Mahasamund (Chhattisgarh).

---- Non-applicant

For Applicant	:Mr. Sunil Sahu, Advocate.
For State	:Mr. Anil S. Pandey, Govt. Advocate.

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

03/05/2018

1. Heard.
2. Applicants have filed this bail application under Section 438 of the Cr.P.C. apprehending their arrest in connection with Crime No. 50/2018 Registered at Police Station- Mahasamund, District- Mahasamund (C.G.), for the offence punishable under Sections 420/34 of Indian Penal Code.
3. Learned counsel for applicants submits that applicant have been falsely implicated in this case in fact, the oral agreement had taken place between the applicants and the complainant- Sheikh Aarif Ahmad for sale of land under the ownership of these applicants.

4. The property belonging to the applicants were jointly owned with their sisters and the property, which was agreed for sale in the agreement, had fallen in the share of sisters which was separately sold out to Arjun Das Vaswani. Even after this sale the applicants are in possession and ownership of the remaining property which was fallen in their share and they are ready to perform their part in the earlier agreement for sale, hence no case is made out of cheating by these applicants with the complainant, hence looking to the apprehension of arrest, it is prayed that applicants be extended the benefit of Section 438 of the Code of Criminal Procedure.
5. On the other hand, learned State counsel opposes the bail application and submits that according to the complaint made by the complainant these applicants had agreed to sell the land in question to the complainant by presenting themselves to be the power of attorney holders of their sisters. Hence it is a clear case of criminal breach of contract, hence, they are not entitled for grant of anticipatory bail.
6. Heard both the parties and perused the case diary.
7. The case is briefly discussed according the submission made by both the parties. Firstly, it is a case of oral agreement and the condition of such earlier agreement are debatable secondly according to the statement made on behalf of the applicants, these applicants have not stepped back from the earlier agreement with the complainant so far and they are ready to perform their part, by making sale of the remaining land in their possession and ownership. This shows that this case has a glimpse of civil nature, hence, I am of this view that applicant should be extended the benefit of Section 438 of the Cr.P.C.
8. 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 him on executing a personal bond in sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the concerned trial Court. The applicant 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) that the applicants 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