

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 398 of 2018

- Shishir Ghosh S/o Late R.S. Ghosh, Aged About 56 Years, Occupation- B.S.P. Employee, R/o- Quarter No. 1/B, Street-77, Sector-6, Bhilai Nagar, Police Station- Bhilai, Tahsil and District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Station- Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Non-applicant

For Applicant – Shri Malay Shrivastava, Advocate.

For Non-applicant/State – Shri Ashish Shukla, Govt. Advocate.

Shri Prasoon Agrawal, Advocate for the Objector.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-08-2018

1. This is second bail application for grant of anticipatory bail filed by the applicant before this Court. His first anticipatory bail application, MCRCA No.721/20117 has been rejected on merits vide order dated 23-11-2017 by this Court. Apprehending arrest in connection with Crime No.222/2017, registered at Police Station – Durg, District- Durg, Chhattisgarh for offence punishable under Section 420 of the IPC, the applicant has preferred this application for grant of anticipatory bail.

2. It is submitted by learned counsel for the applicant that the applicant has been falsely implicated in this case. No case is made out against the applicant. In accordance with the provisions under 11 and 12 of transfer of Property Act, the applicant has a sale-deed in his favour, as no restriction created which is repugnant to the interest created therein, shall not have any effect on the right of the applicant. It is also submitted that the law of limitation also applies in this case because the incident is said to have taken place in the year 2004 and the FIR has been registered against the applicant in the year 2017, hence, under

the provisions of Section 468 of the Cr.P.C., the case against the applicant is barred by limitation. Apart from that, it is a case of civil nature, further, the complainant had option to bring a complaint under Section 138 of the Negotiable Instruments Act on account of the dishonour of the cheque given by the applicant. It is also submitted that the applicant has paid the consideration amount to the complainant in cash and hence under these circumstances without going into merits of the case which has already been considered in the previous bail application, the applicant is entitled for grant of anticipatory bail.

Reliance has been placed on the judgment delivered by this Court in the matter of **Smt. Pramila Goswami Vs. State of Chhattisgarh**, reported in 2015 SCC Online Chh 356. Reliance has also been placed on behalf of the applicant on the judgment delivered by Hon'ble the Supreme Court in the matter of **Dataram Singh Versus State of Uttar Pradesh and another**, reported in (2018) 3 SCC 22.

3. Learned counsel for the State/non-applicant opposes the application submitting that the earlier application for grant of anticipatory bail has been rejected on merits and subsequent to that, there is no change in circumstances in favour of the applicant, hence, the present application is not maintainable.

4. Learned counsel for the objector adopts the arguments advanced by the State and opposes the application, submitting that the second bail application for grant of anticipatory bail is not maintainable. Reliance has been on the Judgment delivered by Calcutta High Court in the matter of **Maya Rani Guin Versus State of West Bengal with Darshan D. Taunk Versus State of West Bengal**, reported in 2002 SCC Online Cal 451. On behalf of the objector further reliance has been placed on the judgment delivered by High Court of Calcutta in the matter of **Ekkari Ghosh alias Jitendra Vs. State**, reported in 1994 LawSuit(Cal) 127. Reliance has also been placed on the judgment delivered by Andhra Pradesh High Court in the matter of **Malla Rama Rao &**

another Vs. State, reported in ANDHRA PRADESH LAW JOURNAL 1991 (2) (HC). Hence, it is prayed that the application may be rejected.

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

6. The application for grant of anticipatory bail filed earlier, MCRCA No.721/2017 has been decided on merits on 23-11-2017. The submission made in the second application that the case is of civil nature is a defence which shall be available to the applicant to defend himself in the trial against him, the Court considering bail cannot give any such finding while deciding the bail application. Apart from that, a finding has been given in earlier order rejecting the bail application that a case is made out against the applicant for the offences registered against him, hence, after due consideration on all the material presented for this application, I am of this view that this application for grant of anticipatory bail is liable to be rejected and the same is rejected accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge