

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MCRC No. 2580 of 2018**

Shivkumar Tiwari S/o Late Ramapati Tiwari Aged About 48 Years R/o.
Ward No.8, Pithaura, Thana And Tahsil- Pithaura, District- Mahasamund,
Chhattisgarh

---- Applicant**Versus**

State Of Chhattisgarh Through- Station House Officer, Police Station
Pithaura, District- Mahasamund, Chhattisgarh

----Non-applicant

For Applicant	:	Mr. N.K. Malviya, Advocate
For State	:	Mr. Sangharsh Pandey, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/04/2018**

1. This is a repeat bail application filed under Section 439 Cr.P.C. for grant of bail to the applicant, who has been arrested in connection with Crime No. 65/2017 registered at Police Station Pithaura, District Mahasamund, Chhattisgarh for the offence punishable under Sections 420, 467, 468, 471 of Indian Penal Code. The earlier bail application was rejected by this Court recently on 17.03.2018.
2. The counsel for the applicant submits that while earlier bail application was rejected, certain material facts were not disclosed to this Court, though they were available in the case diary, and which has led to the rejection of the bail application.
3. The counsel for the applicant submits that in all there are five accused persons. Out of the five accused persons, except for the

present applicant, all the accused persons have been released on bail. He further submits that the present applicant also has remained in custody for a period of about 8 months and the period of custody may also be considered for grant of bail. He further submits that the perusal of the case diary would itself reveals that the present applicant has been falsely implicated in the instant case. He submits that the basic allegation against the present applicant is that the present applicant has got a bank account opened in the name of Khemin Bai and has got certain properties also registered in the name of Khemin Bai and subsequently the said property was acquired by the State Government against which the compensation for acquisition was received and the same was deposited in the said bank account of Khemin Bai and subsequently the said amount deposited in the account of Khemin Bai has been withdrawn by the present applicant without the knowledge and consent of the complainant Khemin Bai.

4. The counsel for the applicant refers to the statements of two of the bank officials who have been examined in the instant case namely Firoze Khan, the Branch Manager of the Punjab National Bank, where the alleged transaction took place on the relevant date, so also the statement of one Bindu Sagar Pradhan, who was working as a Cashier in the said Bank on the relevant date. On the statements of these two witnesses, the counsel for the applicant submits that it is evidently clear that the payment in fact has been released to the Khemin Bai and that she was present in the Bank on the date of the payment was made and that the payment were also made to Khemin Bai after identification of the photo which was

available in the records of the Bank and matching it with the face of Khemin Bai, present in the branch.

5. Lastly, it was contended by the applicant that though the release of payment by the Bank to the Khemin Bai was made on 10.10.2014, the written complaint for the first time was lodged after about two years i.e. on 22.07.2016 and thus there is an inordinate delay in lodging of the F.I.R., which also makes the case of the prosecution doubtful and for all these, the counsel for the applicant prays for the applicant to be released on bail.
6. The State counsel, per contra, opposing the bail application drew the attention of the written complaint lodged by the complainant and also other statements recorded and submitted that it is a case where the present applicant was involved in the act of getting the land belonging to the State Government registered in the name of Khemin Bai and thereafter obtained the compensation for the said land on it being acquired by the state authorities and thus there is a clear case of cheating and fraud played by the present applicant.
7. In addition, the State Counsel also submits that the withdrawal further made from the Bank was by the present applicant without the knowledge and consent of the complainant Khemin Bai, as according to Khemin Bai, the present applicant is said to have obtained certain thumb impressions on the forms of the Bank with which the present applicant is said to have withdrawn the amount lying in the account of Khemin Bai and for all these transactions, the counsel for the State prays for rejection of the bail application.

8. Having heard the contentions put forth on either side and on perusal of record, particularly taking note of the statements of the officials of the Bank i.e. Firoze Khan and Bindu Sagar Pradhan, who have both categorically made a statement before the police authorities that Khemin Bai was present in the Bank along with the present applicant and that the payment has in fact been made to Khemin Bai goes to prima facie give an impression that the Khemin Bai was also present in the Bank on the date of payment being released and therefore prima facie it cannot be a case where the withdrawal of payment has been made without the knowledge and consent of Khemin Bai.
9. This aspect further stands corroborated from the statement of Khemin Bai herself, who said that she had accompanied the present applicant to the Bank, where he had a black bag with him at the time of withdrawal of amount. Subsequently, the complaint for the first time has been lodged after more than two years. Thus, there is a great element of doubt created as to why the complaint Khemin Bai did not lodge a complaint in between these two years.
10. Another aspect, which cannot be lost sight of is the fact that out of the total accused persons in the present crime barring the present applicant all have already been granted bail and the present applicant has also undergone custody for a period of about 8 months.
11. Taking note of all the facts and circumstances of the case, this Court is of the opinion that prima facie a strong case has been made out for grant of bail to the applicant. Accordingly, the present application for grant of bail is allowed.

12. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court for his appearance before the said Court as and when directed.

Sd/-
(P. Sam Koshy)
Judge

Ved