

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.A. No. 482 of 2018**

Bhupendra Patel S/o Chandrabhushan Patel Aged About 38 Years R/o Village Marghatti Tahsil Malkharouda Thana Hasoud, Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through The Station House Officer, Police Station Hasoud, Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Non-applicant

For Applicant:	Shri Surfaraj Khan, Advocate.
For State/Non-applicant:	Shri Anant Bajpai, PL.
For Objector:	Shri Yogesh Chandra, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****28.08.2018**

1. The applicant has filed this bail application under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') for grant of anticipatory bail as he apprehends his arrest in connection with the crime No. 70/2018 registered in Police Station Hasoud, District-Janjgir Champa for the offence punishable under Section 420 of IPC.
2. Case of the prosecution is that a written complaint has been lodged by the complainant-Roopnarayn Chandra alleging therein that the applicant-Bhupendra Patel has executed an agreement to sell in his favour on 06.06.2016 with respect to his land bearing Khasra No. 403 admeasuring 0.90 acres for a sale consideration on Rs. 13,50,000/- upon receiving the earnest amount of Rs. 10,10,500/-, from him. It is alleged further that instead of executing the registered deed of sale in his favour, the same has been sold to one M/s. B. P. Warehouse through its proprietor Smt. Phoolkumari Patel, who is his wife, and

as such the applicant has committed the offence punishable under the aforesaid provision.

3. Shri Surfaraj Khan, learned counsel for the applicant submits that a bare perusal of the alleged agreement to sell executed on 06.06.2016 would show very specifically that in case of alienating the property in question to someone else, the complainant would have a right to approach the competent Court for specific performance of the contract as stipulated in the alleged agreement to sell. He submits further that as per the terms and conditions stipulated in the alleged agreement the applicant has delivered the possession of it to the complainant upon receiving the earnest amount of Rs. 10,10,500/- from him. According to him, the entire dispute is of civil nature, therefore, the applicant is entitled to get the benefit of anticipatory bail.

4. On the other hand, Shri Anant Bajpai, learned counsel for the State and Shri Yogesh Chandra, learned counsel for the Objector have opposed the bail application and stated that inspite of execution of alleged agreement to sell, the part of the property in question, i.e. 0.50 acres of land was sold by him on 27.09.2016 to M/s B. P. Ware House through its proprietor-Smt. Phoolkumari Patel, who is his wife. They submit further that the cheque of Rs. 26,77,000/- purported to have been issued by Smt. Phoolkumari Patel was in her personal capacity and not in the name of the proprietor of said M/s B. P. Ware House. It is, therefore, evident that the applicant has intentionally cheated the complainant, and as such, he is not entitled to be released on bail.

5. I have heard learned counsel for the parties and perused the entire case diary carefully.

6. Having considered the facts and circumstances of the case and that by considering the terms and conditions as stipulated in the alleged agreement to

sell, it appears prima-facie that it is a case of civil nature. The applicant is, therefore, entitled to get the benefit of anticipatory bail. The bail application is accordingly allowed.

7. It is directed that in the event of the arrest of the applicant in connection with the aforesaid crime, he shall be released on bail on furnishing a personal bond for a sum of Rs.1,00,000/- with one local surety in the like sum to the satisfaction of the arresting officer on 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 him from disclosing such facts to the Court or to any police officer and shall cooperate with the investigation as and when he is called.

Certified copy as per rules.

Sd/-

(Sanjay Agrawal)
JUDGE