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HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No.623 of 2018

Smt. Suman Sharma, aged about 56 years, W/o Subhash Sharma, wrongly typed in impugned order cause title R/o as HICC 109A, Shailendra Nagar, Raipur, P.S. City Kowatwali correct address is H.I.G.C. 109A, Shailendra Nagar, Raipur, Police Station City Kotwali Raipur, Revenue District Raipur, Civil District Raipur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Civil Lines, Raipur, Revenue District Raipur, Civil District Raipur, Chhattisgarh

---- Respondent

For Applicant	:	Shri Amiyakant Tiwari, Advocate
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.7.2018

1. The Applicant is apprehending her arrest in connection with Crime No.272 of 2018 registered at Police Station Civil Lines, Raipur for the offence punishable under Sections 420, 34 of the Indian Penal Code.

2. Facts of the case, in brief, are that on the basis of a written complaint lodged by Arun Kumar Rai, Deputy Vice-President of Axis Bank, police has registered Crime No.272 of 2018 for the offence punishable under Sections 420, 34 of the Indian Penal Code. It is alleged that on 25.9.2014, the Applicant along with her husband Subhash Sharma obtained a loan of Rupees Ten Crores from Axis Bank for carrying on the business of one hotel, namely, Sapphire Inn owned by them and an overdraft facility amounting to Rupees Two Crores was also obtained from the Bank. At the time of obtaining the loan, in the agreement executed between the Bank and the borrowers, which was signed by both the husband of the Applicant and the Applicant herself, it was recorded that the possession of the said hotel was with the borrowers, i.e., the husband of the Applicant and the Applicant herself. On the basis of the said agreement, the loan was sanctioned in their favour. It is alleged that when they did not repay the loan, Axis Bank, for recovery of the loan, submitted an application under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002) before the competent authority in reply to which it was stated by the borrowers that the mortgaged property had been given by them to one Dharmendra Kumar on lease on 10.7.2014, i.e., prior to obtaining of the loan from the Bank.

3. Learned Counsel appearing for the Applicant submits that the Applicant is innocent. She has been falsely implicated in the case. The hotel, which was mortgaged, was in the name of her husband only. The loan was also sanctioned in favour of her husband only. She had signed the loan papers as a guarantor only. Therefore, no offence is made out against her.

4. Learned Counsel appearing for the State opposes the bail application and submits that during execution of the loan agreement with Axis Bank, the Applicant was present with her husband in the Bank and she was aware of the fact that the mortgaged property had already been given to Dharmendra Kumar on lease on 10.7.2014, i.e., prior to obtaining of the loan, but this fact was not disclosed by her while signing the loan agreement. Therefore, she does not deserve to be extended the benefit of anticipatory bail.

5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.

6. Taking into consideration the totality of the facts and circumstances of the case, the evidence available and also considering that the said hotel was in the name of the husband of the Applicant, the loan was also obtained by her husband and she signed the loan papers as a guarantor only, I am inclined to grant her anticipatory bail.

7. Accordingly, the bail application is allowed.

8. It is directed that in the event of arrest of the Applicant in connection with the aforesaid crime, she shall be released on anticipatory bail on her furnishing a personal bond in the sum of Rs.25,000/- with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. She shall also abide by all the following terms and conditions:

(i) She 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 fact to the Court,

(ii) She shall not act in any manner which will be prejudicial to fair and expeditious trial, and

(iii) She shall appear before the Trial Court on each and every date given to her by the said Court till disposal of the trial.

Sd/-
(Arvind Singh Chandel)
JUDGE

Gopal