

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 773 of 2018**

1. Pawan Kumar Modi S/o Late Puranmal Modi Aged About 61 Years R/o- Village Naya Baradwar, P.S. And Tahsil Baradwar, Civil And Revenue District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Anand Kumar Modi S/o Pawan Kumar Modi Aged About 32 Years R/o- Village Naya Baradwar, P.S. And Tahsil Baradwar, Civil And Revenue District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh.

---- Applicants**Versus**

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

---- Respondent

For the Applicants	:	Shri A.M. Ansari, Senior Advocate with Ms. Meera Ansari and Shri Vinod Tekam, Advocates.
For the Respondent/State	:	Shri Anupam Dubey, Dy. G.A.
For the Objector	:	Shri Sunil Otmani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****14.08.2018**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.
2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicants who are apprehending arrest in connection with Crime No. 252 of 2018, registered at Police Station – Sakti, District – Janjgir-Champa, Chhattisgarh for the offence punishable under Section 420/ 34 of the Indian Penal Code.

3. It is submitted by counsel for the applicants that regarding the disputed land in this case, bearing Khasra No. 675/1, a family settlement has been taken place in which authority over that land has been handed over to the applicants by the complainant and the members of the same family including Bhagwati Devi, by an agreement dated 15.3.1993. Subsequent to that, one power of attorney was also executed by the complainant and others in favour of the applicants with respect to the same disputed land. In another consent letter that was executed by the complainant's side dated 10.12.2001 the existence of power of attorney dated 19.11.1996 is clearly mentioned. It is on that basis, the part of Khasra No. 675/1 has been sold on 24.3.2006 by applicant No.1 in favour of applicant No.2, hence, it is totally a civil dispute and there is no criminality on the part of the applicants. Hence, it is prayed that the applicants be benefited with grant of anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the power of attorney dated 19.11.1996 was executed by the complainant and others in which Bhagwati Devi was also a party. Bhagwati Devi expired in the year 1999 and the power of attorney on her part had extinguished consequent to her death. Even then, suppressing this fact, applicant No.1 had made use of the same power of attorney to execute the sale deed on 24.3.2006. Hence, the applicants are not entitled for grant of anticipatory bail.

5. Learned counsel for the Objector has adopted the arguments submitted by the State counsel. It is submitted that applicant No.1 has again entered into an agreement for sale with one Radha Mohan Roy on 25.9.2004 and on the basis of this agreement only the land has been mutated in favour

of the intended purchaser. Apart from that, numerous cases have registered against applicant No.2 for various offences under IPC and proceedings under Cr.P.C. It is further submitted that there shall be requirement of the applicants for custodial interrogation by the police. Hence, the applicants are not entitled for grant of anticipatory bail.

6. Heard counsel for both the parties and perused the case diary.

7. The case against the applicants has been briefly discussed herein-above. According to which, applicant No.1 has deliberately misused the power of attorney dated 19.11.1996 for making sale of the disputed property on which the complainant has claim, by suppressing the fact of death of Bhagwati Devi who is one of the power of attorney giver. The complainant in this case was also one of the power of attorney holder who has not proceeded to revoke the said power of attorney. The dispute has a glimpse of civil nature, even though there are elements of criminal case as well. For the present, I am of the opinion that the present is a fit case where the applicants are entitled to be released on anticipatory bail.

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 them on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. They 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 them 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 them by the said Court till disposal of the trial.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge