

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4897 of 2018**

1. Ashish Jain, S/o late Rajendra Kumar Jain, aged about 40 years, R/o 22 Prem Pushp Vihar, Jalvihar Colony, Raipur (CG).
2. Vikas Jain, S/o late Rajendra Kumar Jain, aged about 45 years, R/o 22, Prem Pushp Vihar, Jalvihar Colony, Raipur (CG).

---- Applicants**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Telibandha, Raipur, District Raipur.

---- Non-applicant

For Applicants : Mr. Rajeev Shrivastava, Advocate

For Non-applicant : Mr. Dhiraj Wankhede, Government Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****17.07.2018**

1. This is third bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court. Their first bail application being MCRC No. 4693 of 2017 was dismissed by this Court on merits vide order dated 1.11.2017. Their second bail application being MCRC No.8156 of 2017 was also dismissed on merits by this Court vide order dated 9.2.2018.
2. Perused the copy of charge-sheet provided by the learned counsel for the applicants in connection with Crime No. 355/2016 registered in Police Station Telibandha, District Raipur for the offence punishable under Sections 420, 34 of the Indian Penal Code.
3. Case of the prosecution, in brief, is that the applicant No.1 Ashish Jain had sold a Flat No.102 to the applicant No.2 Vikash Jain on 18.01.2006. The applicant No.2 had taken the loan of Rs. 14,00,000/-

from the HDFC Bank. The applicant No.2 again sold the flat to the Complainant Smt. Kanan Girishchand Agrawal on 13.03.2006 for an amount of Rs. 16,20,000/-. Both the applicants have not brought the aforesaid facts to the said complainant that the said property is mortgaged with HDFC Bank and thus committed cheating with the complainant. The said flat is situated in Khushi Residency at Raipur. As per the copy of the Zerayam, there are 8 cases registered against the applicants.

4. Mr. Rajeev Shrivastava, learned counsel appearing for the applicants would submit that the applicants are in custody for last 18 months. Offences are triable by JMFC. The mother of applicants is an old lady and suffering from different diseases and son of Applicant No.1 has lost vision of one eye. In support of his case, he placed reliance upon the decision of the Hon'ble Supreme Court in the matter of **Nikesh Tarachand Shah Vs. Union of India and another**¹; and further in the matter of **R.D. Upadhyay Vs. State of A.P. and Others**². He would further submit that looking to these facts and circumstances, the present applicants may be enlarged on bail.

5. On the other hand, Mr. Dhiraj Wankhede, learned counsel for the State would raise this fact that 8 cases have been registered against the applicants, therefore, they are not entitled to be released on bail.

6. In the matter of **R.D. Upadhyay Vs. State of A.P. and Others** (supra), the observation was given to release on bail to the undertrial criminals which were languishing in Tihar Jail.

7. Further, in the matter of **Nikesh Tarachand Shah Vs. Union of India and another** (supra), it has been observed that grant of bail is the rule and refusal is an exception, and the judicial verdict regarding this depends upon the cumulative effect of various circumstances specific to

1 (2018) 11 SCC 1

2 (1996) 3 SCC 422

each case.

8. In the case in hand, the above mentioned circumstances, which have been highlighted by the learned counsel for the applicants are not itself sufficient to grant bail to the applicants. The applicants do not get any help from the aforesaid judicial precedent laid down by the Hon'ble Supreme Court regarding to grant bail to the applicants.

9. Looking to the facts and circumstances of the case and looking to the impact of granting bail to the applicants on society, this Court finds that the applicants do not get any help from the aforesaid order of the Hon'ble Supreme Court.

10. Consequently, the third bail application is dismissed.

11. Certified copy as per rules.

(Sharad Kumar Gupta)
JUDGE

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