

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 139 of 2017**

Avinash Mishra, s/o Late Shri R.S. Mishra, aged 50 years, R/o Pachmedi Naka, P.S. Tikrapara, Tahsil and District Raipur, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station Civil Lines, District Raipur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Sumesh Bajaj, Advocate.
For the Respondent/State	:	Shri Anant Bajpai, P.L.
For the Objector	:	Shri Anup Majumdar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****25.01.2018**

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 applicant who is apprehending arrest in connection with Crime No. 80 of 2017 registered at Police Station – Civil Lines, District – Raipur, Chhattisgarh for the offences punishable under Sections 420 of the Indian Penal Code.
3. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. The owner of the land in question, Shamsheer Singh and 17 others had an agreement dated 14.2.1995 with Gurubhej Singh, authorizing this applicant to develop and sell out the land in question.

Apart from that, the original land owners had also given power of attorney in favour of this applicant alongwith his brother Yogesh Mishra (now deceased) dated 22.3.1996. The applicant by virtue of the agreement and power of attorney sold out the land in question and deposited the amount with the original power of attorney holder Gurubhej Singh on various dates which is indicated from various receipts which are produced on record. Hence, all the acts have been done by this applicant under the authority of the original land owners and as such, no case is made out against him. Therefore, it is prayed that the applicant deserves to 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 in favour of the applicant is forged and fabricated. The power of attorney giver Shamsheer Singh died in the year 2000 hence, after his expiry the same could not have been used for any transfer of the property. The sale deed in question shows the sale negotiation dated 14.2.2007 and the same was registered on 31.10.2009. Further, in this sale deed, the applicant himself in capacity of power of attorney holder of the land owners has represented him as seller of the land in question and he himself is also the purchaser of the said land. This by itself is sufficient evidence for commission of offence of cheating, fraud and forgery etc, hence, it is prayed that the applicant is not entitled for grant of anticipatory bail.

5. Learned counsel for the Objector submits that the documents filed with this application cannot be referred to, as they are not the part of the charge-

sheet. Adopting the arguments advanced by the State counsel, it is submitted that the various receipts produced showing that the applicant had deposited the amount with the original power of attorney Gurubhej Singh on authorized dates, are fake. Hence, no case is made out for grant of anticipatory bail to the applicant.

6. In reply, learned counsel for the applicant submits that out of the 18 power of attorney givers, Shamsher Singh is now deceased and the rest of them have not come forward to make any complaint against this applicant. Previously, police station Civil Lines had given a report under Section 155 of the Cr.P.C. stating that no offence has made out against this applicant on the basis of the complaint made and after that complainant – Guruminder Singh has come forward as power of attorney holder of the land owners and lodged a false FIR against this applicant. Hence, the arguments advanced by the State and the Objector are totally without any substance.

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

8. The FIR has been lodged by complainant – Guruminder Singh in which it is stated that the legal representatives of Shamsher Singh and the other land owners have never executed any power of attorney in favour of this applicant, even then the applicant has fraudulently sold out the land belonging to Shamsher Singh and others to various persons. The power of attorney used for sale is forged which could not have been made use for any transaction of the land in question.

9. Considering the submissions and the contents of the case-diary, as the investigation is still pending and the allegation made against this applicant are of very serious nature, the documents on which the reliance is being placed are not part of the charge-sheet, no case is made out for grant of anticipatory bail.

10. Accordingly, the anticipatory bail application is rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge