NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 215 of 2017

- Sandip Pandey S/o Vinod Pandey, Aged About 36 Years, Partner M/s Shivam Builders & Developers, R/o L-4, Vinoba Nagar Bilspur Police Station Tarbahar Bilaspur, Tahsil & District Bilaspur Chhattisgarh , Chhattisgarh

---- Applicant

Versus

1. M/s Shivam Builders & Developers, Through Partner Dr. I.D. Kalwani Aged About 67 Years S/o Late M.M. Kalwani R/o Saket Apartment Agrasen Chowk Bilaspur Police Station Civil Line District Bilaspur Chhattisgarh , Chhattisgarh
2. State Of Chhattisgarh, through Station House Officer, Police Station City Kotwali Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh

---- Respondents/ Non-applicants

For Applicant – Shri Y.C.Sharma, Advocate.
For Respondent No.1 – Shri Sunil Otwani, Advocate.
For Respondent No.2/State – Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23-03-2018

1. Heard.

2. It is submitted by the learned counsel for the applicant that the applicant is apprehending arrest in complaint case No.6263/2016 pending before the Court of JMFC Bilaspur presided by Shri H.K. Ratre. It is further submitted that this applicant has been falsely implicated. The applicant and respondent No.1 both were partners in Shivam Builders and Developers. The partnership deed was executed between both of them, according to which, the applicant had a partnership of 40%, whereas respondent No.1 had partnership of 60%. A joint account was opened in the said bank. It is submitted that this applicant was authorized by respondent No.1 to operate the said joint account. But, subsequently, after completion of project, a private complaint has been filed by respondent No.1 making false allegation, that the applicant has by fraud and forgery changed the mode of operation of the bank account from joint to solo

and has misused the same for misappropriating the amount to the tune of Rs.2 crores 64 lacs. It is submitted that the statement recorded before the concerned trial Court itself demonstrates why respondent No.1 has stated against this applicant, whereas, his son has given statement that his father, respondent No.1 had signed the option form for the mode of payment though alleged that his signature was obtained by fraud and misrepresentation. Hence, it shows that there is no case of forgery of any document.

It is submitted that respondent No.1 also filed a civil suit against this applicant which was dismissed in default. It is further submitted that the applicant had challenged the order taking cognizance on the complaint passed by the concerned Magistrate. The revision has been dismissed by the concerned Sessions Court, but the petition under Section 482 of the Cr.P.C. is still pending before this High Court. Hence, under these circumstances it is prayed that the applicant may be benefited with grant of anticipatory bail.

3. Learned counsel for the respondent No.1 opposes the application and submits that no case is made out for grant of anticipatory bail. It is further submitted that the option form for change of mode of payment from the concerned bank account is a forged document, it has been verified by a competent hand-writing expert and the said report of hand-writing expert has also been taken into consideration by the Sessions Court, which is mentioned in the revision order passed by the concerned Sessions Court. Apart from that, even from bare perusal of the concerned option form, it can easily be made out that the signature purported to be that of respondent No.1 has not been authored by him. Hence, it is clear cut case of forgery. It is also submitted that on call of the applicant, respondent No.1 had responded on a proposal of compromise and respondent No.1 accepted a cheque of Rs.25,00,000/- from the applicant, but that cheque was dishonoured by the bank. Even after sending of notice about dishonour of the cheque, the applicant has not come

forward to make good the payment. This shows the intention of the applicant to cheat respondent No.1. Hence, no case is made out for grant of anticipatory bail.

4. In reply, learned counsel for the applicant submits that the cheque of Rs.25,00,000/- was handed over to the son of respondent No.1 on condition that if the applicant is unable to make the payment, then only on request made by this applicant the cheque should be presented before the concerned bank, but the cheque was presented for payment without any information to this applicant, and he could not make arrangement for funds to honour the cheque.

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

6. The case against this applicant is briefly discussed hereinabove.

7. Considered on the submissions made and contents of the case diary.

8. The main allegation against this applicant is this, that he in capacity of partner of M/s. Shivam Builders & Developers by use of forged document has changed the option of operating the account and misused the same and misappropriated the amount that were deposited in the said account which is a joint account.

9. After considering on the material which is present in this case, I am of this view that prima facie case is made out against this applicant at present. Hence, no extra ordinary case is made out for grant of anticipatory bail to this applicant. Consequently, this application filed by the applicant under Section 438 of the Cr.P.C. for grant of anticipatory bail is hereby dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil