

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No.9012 of 2018**

Kishore Virani, S/o Thawardas Virani, aged about 37 years, R/o Raheja Residency, Avanti Vihar, Telibandha, Raipur, District Raipur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Police Station Azad Chowk, Raipur, District Raipur, Chhattisgarh

---- Respondent

For Applicant	:	Shri Manoj Paranjpe, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****6.12.2018**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the Applicant who has been arrested in connection with Crime No.272 of 2018 registered at Police Station Azad Chowk, Raipur, District Raipur for offence punishable under Sections 408 and 420 of the Indian Penal Code.
2. Case of the prosecution, in brief, is that on 21.10.2018, a report was made by one Khushiram Kundhani, a Director of R.S. Dream Land Private Limited, Raipur. First Information Report was registered *inter alia* on the allegations that the present Applicant was a Manager of R.S. Dream Land Private Limited, Raipur. It was alleged that during his service tenure, he misappropriated an amount of Rs.32,25,000/-. It was further alleged that one

Girdharilal Panjwani had booked E-2 Project Flats bearing No.B-609 and B-610 and after cancellation of the said deal, on being asked by Girdharilal Panjwani, Complainant Khushiram Kundnani had refunded and given the said amount of Rs.32,25,000/- to the present Applicant. The present Applicant is a relative of Girdharilal Panjwani. Allegedly, instead of handing over the said amount of Rs.32,25,000/- to Girdharilal Panjwani, the Applicant misappropriated the amount. Subsequently, a legal notice was sent by Girdharilal Panjwani to the company of Complainant Khushiram Kundnani for handing over possession of the two flats. After receiving the said legal notice, Complainant Khushiram Kundnani came to know that the said amount of Rs.32,25,000/- has been misappropriated by the present Applicant. On the basis of the complaint of Khushiram Kundnani, the aforesaid offence under Sections 408 and 420 of the Indian Penal Code has been registered against the present Applicant.

3. Shri Manoj Paranjpe, Learned Counsel appearing for the Applicant submits that the Applicant has been falsely implicated in the case. He is innocent. He further submits that Complainant Khushiram Kundnani is running a business of real estate in different names. R.S. Carworld Private Limited is also being run by him in which the present Applicant is one of the Directors. E. Grace Infraventures is also run by Complainant Khushiram Kundnani in which the Applicant is one of the partners. In 2016, the Applicant also started his own business of real estate and formed a partnership firm. Due to business rivalry, the Applicant was not interested to continue business with Complainant Khushiram Kundnani and, therefore, their relations became strained and ultimately, in May,

2016, the Applicant left the post of Director of the company of Complainant Khushiram Kundnani. Girdharilal Panjwani, who is brother-in-law of the present Applicant, had booked two flats in the project of Complainant Khushiram Kundnani and had paid Rs.32,29,600/- through Bank finance and cash. Despite repeated requests, neither construction of the flats has been completed nor possession of the flats, as promised, has been handed over to Girdharilal Panjwani. A legal notice was issued by Girdharilal Panjwani, which was replied by Complainant Khushiram Kundnani. In the reply, it was stated by Complainant Khushiram Kundnani that the entire amount has been refunded and handed over to the present Applicant and thereby for the first time a new story has been cooked by Complainant Khushiram Kundnani. A perusal of the statement of Girdharilal Panjwani recorded under Section 161 of the Code of Criminal Procedure shows that neither he asked for cancellation of his booking of flats nor did he ask for refund and giving of his money to the present Applicant. Both the booked flats were got financed by Girdharilal Panjwani through Canara Bank. A tri-party agreement was also entered into in this regard. According to the terms and conditions of the said agreement, Complainant Khushiram Kundnani cannot be able to refund the amount to Girdharilal Panjwani without a written consent of the Bank. In this case, no such written consent of the Bank has been obtained. Therefore, Complainant Khushiram Kundnani would have given the amount to the present Applicant against the terms and conditions of the agreement and without authorisation of borrower Girdharilal Panjwani is *prima facie* not established. It is further submitted by Learned Counsel Shri

Paranjpe that when Girdharilal Panjwani was not handed over possession of the flats by Complainant Khushiram Kundnani, Girdharilal Panjwani made a complaint against Khushiram Kundnani in Real Estate Regulatory Authority (RERA) which is pending consideration. Thereafter, the present complaint has been lodged by Complainant Khushiram Kundnani against the present Applicant to pressurise Girdharilal Panjwani because the present Applicant is brother-in-law of Girdharilal Panjwani. The pressure is for making Girdharilal Panjwani ready for compromising with Complainant Khushiram Kundnani in the complaint case pending before the RERA. Shri Paranjpe further submits that from the evidence adduced by the prosecution, no offence under Sections 408 and 420 of the Indian Penal Code is *prima facie* made out against the present Applicant. He is in custody since 21.10.2018. Therefore, he may be released on bail.

4. Learned Counsel appearing for the State opposes the prayer for bail.
5. I have heard Learned Counsel appearing for the parties and perused the entire case diary with due care.
6. Considering the facts and circumstances of the case, the submissions put-forth on behalf of the parties and the evidence collected by the prosecution, without further commenting on merits of the case, I am inclined to enlarge the Applicant on regular bail.
7. Accordingly, the bail application is allowed.
8. It is directed that the Applicant shall be released on bail on furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees

One Lakh) with one solvent surety of the like sum to the satisfaction of the concerned Trial Court for his appearance before the said Court as and when directed.

Sd/-

(Arvind Singh Chandel)
JUDGE