

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 9064 of 2018**

Vijay Kumar Shivdasani, S/o. Late A. K. Shivdasani, Aged About 42 Years,
R/o. Akashdeep, Dayalband, Bilaspur, District - Bilaspur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station
Punjipathra, Raigarh, District - Raigarh, Chhattisgarh.

---- Respondent

AND**M.CR.C.(A) No. 1579 of 2018**

1. Anil Kumar Shivdasani, S/o. Late Shri A.K. Shivdasani, Aged About 54 Years, R/o. Akashdeep, Dayalband, Tahsil and District- Bilaspur, Chhattisgarh.
2. Harish Kumar Shivdasani, S/o Late Shri A.K. Shivdasani, Aged About 47 Years, R/o. Akashdeep, Dayalband, Tahsil and District- Bilaspur, Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station-
Punjipathara, District- Raigarh, Chhattisgarh.

---- Respondent

For Applicants	: Mr. Sunil Otwani, Advocate
For Respondent/State	: Mr. Avinash K. Mishra, Panel Lawyer
For Objector	: Mr. Raja Ali & M.L. Sakat, Advocates on behalf of Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board**

12/12/2018

1. Since the above regular bail application and anticipatory bail application arise out of the same crime number, they are being heard and disposed of by this common order.
2. The bail application of applicant in M.Cr.C. No.9064 of 2018 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.128/2018, registered at Police-Punjipathra, District– Raigarh (C.G.) for the offence punishable under Sections 420, 406 and 120-B of the Indian Penal Code.
3. The applicants – in M.Cr.C.(A) No.1579 of 2018 have preferred this bail application under Section 438 of Cr.P.C. apprehending their arrest in connection with Crime No.128/2018 registered at Police Station-Punjipathra, Raigarh, District – Raigarh (C.G.), for the offence punishable under Sections 420, 406 & 120-B of the Indian Penal Code.
4. Learned counsel for the applicants submits, that applicants are innocent and have been falsely implicated in the crime in question. Applicants in both the cases are directors of Mahamaya Steel Pvt. Ltd and for the purpose of their industries, they have purchased raw materials from the various companies and have been unable to make payment on account of recession. Some of the companies have approached the National Company Law Tribunal and some other companies have approached Micro Small Medium Enterprises praying for order of payment of the purchase price in their favour. The disputes between complainants and the applicants are purely civil dispute and dispute related to commercial transaction, which can not be regarded

as offence under Section 406, 420 or 120-B of the Indian Penal Code. Hence, for this reason, it is prayed that they may be released on regular as well as on anticipatory bail respectively.

5. Learned counsel for the respondent/State opposes the applications and submissions made in this respect. It is submitted that according to the enquiry made, prima-facie offence is made out as the company was already going towards bankruptcy, even then, the purchase orders were issued to the complainant companies, which shows malicious intention on the part of the applicants as they never intended to pay the purchase price to the said companies, therefore, no case is made out for grant of anticipatory bail.
6. Counsel for the objector submits that the applicants are not entitled for grant of bail either anticipatory or regular because the applicants have not come before this Court with clean hands. The investigation is still pending and evidence is still required to be collected, hence, if the, applicants are released on bail, the purpose of investigation would itself get frustrated as the allegations are present against the applicant seeking anticipatory bail, there may be requirement of their custodial interrogation for discovery of facts or things, therefore, it is prayed that the application be rejected.
7. I have heard the learned counsel for both the parties and perused the case diary.
8. A complaint has been given by 11 industries stating that the directors of the Mahamaya Steels Pvt. Ltd have dishonestly and with malafide intention to cheat the complainants placed orders for purchase of 1431.870 tones M.S. irons worth Rs.5,09,21,888/-. After supply of the

goods, the complainant came to know that the industries of Mahamaya Steels Pvt. Ltd. has been closed down and the goods supplied has been sold elsewhere.

9. Considered on the entire material present in the case diary. The complainants have apprehension regarding the payment with respect to the goods purchased by Mahamaya Steels Pvt. Ltd. On perusal of the documents attached in M.Cr.C. No.9064 of 2018, it appears that some of the parties have approached the National Company Law Tribunal and some others have approached Micro Small Medium Enterprises and there is possibility that the complainant will get remedied. Criminality in this incident is question for consideration, but clearly there is scope of civil litigation as well, therefore, after considering on all the aspects of the case I am of this view that applicant- in M.Cr.C. No.9064 of 2018 deserve to be enlarged on regular bail and applicants in M.Cr.C.(A) No.1579 of 2018 also deserve to be enlarged on anticipatory bail.
10. Accordingly, the regular bail application filed under Section 439 of Cr.P.C. is allowed. It is directed that applicant- in M.Cr.C No.9064 of 2018 shall be released on bail on his furnishing a personal bond for a sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the trial Court concerned, for his appearance as and when directed.
11. Likewise the anticipatory bail application of applicants in M.Cr.C.(A) No.1579 of 2018 is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offences, they shall be released on bail by the officer arresting them on their executing a personal bond in the sum of Rs.25,000/- with one surety in the like

sum to the satisfaction of the concerned Investigating Officer. The applicants 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 him/her 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