

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 78 of 2019

1. Sanjay Kumar, S/o Shri Chandra Bhushan Prasad Aged About 50 Years R/o B-401, Kohinoor Vidhansabha Road, Ashoka Ratan Shankar Nagar Mowa Thana, Tehsil & District-Raipur Chhattisgarh.
2. A.N. Reddy S/o Shri A.D. Reddy, Aged About 45 Years R/o B Block, Merlin Jaishree Vihar, near Mandi Gate, Pandri, Tahsil & District-Raipur Chhattisgarh.

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer, police-Station Dharsiwa, District Raipur Chhattisgarh.

---- Respondent

For Applicants	:	Mr. Sharad Mishra, Advocate.
For Respondent/State	:	Mr. I. Lakda, Dy. Govt. Advocate.
For Objector	:	Mr. Rahim Ubwani and Mr. Navin Shukla , Advocates.

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

26/03/2019

1. The applicants have preferred this bail application under Section 438 of Cr.P.C. apprehending their arrest in connection with Crime No.536/2018 registered at Police Station-Dharsiwa, District–Raipur (C.G.), for the offence punishable under Sections 420 & 34 of the Indian Penal Code.
2. Learned counsel for applicants submits that applicants are innocent and have been falsely implicated in this case. It is submitted that both

the applicants are partners of M/s Ratna Engineering Works. Complainant Anil Singh Baghel was also inducted as a partner in the said firm. It was proposed that complainant shall take over the responsibilities and affairs of the said firm on the ground of his becoming 99% shareholder and accordingly a partnership-deed was executed. The complainant himself fraudulently made a transfer of Rs.25 lacs from the account of said firm to his own account, therefore, partnership deed was canceled by these applicants and a legal notice dated 1.1.2018 was sent to the complainant. The complainant has even not returned car of the company regarding which a complaint was made to the police. A complaint regarding fraud committed by the complainant was also made to the police. Subsequent to all these, the complainant lodged a false FIR on 18.12.2018. Applicants have also filed a civil suit against the complainant which is pending before the Court. Later on, an application has been filed under Section 156 (3) of CrPC by applicant No.2 against the complainant. Thus, there is no *malafide* act on the part of these applicants and they have not committed any offence of cheating against the complainant. Hence, it is prayed that applicants be granted anticipatory bail.

3. Learned State Counsel opposes the bail application and the submissions made in this respect. It is submitted that as per allegation made, the applicants have fraudulently canceled the partnership-deed with a view to create a new partnership firm in a fraudulent manner. Therefore, both the applicants are not entitled for grant of anticipatory bail.
4. Learned counsel for the Objector after adopting the arguments advanced by State counsel submitted that after induction of objector as

partner in the firm, the applicants have manipulated and misappropriated funds of the firm and applicant No.1 had taken retirement after constitution of new partnership firm. The applicants are responsible for all the misappropriation of assets and funds of the firm. Therefore, they are not entitled for grant of anticipatory bail.

5. Heard both the parties and perused the case diary.
6. Complainant has lodged FIR that as firm Ratna Engineering Works was running in loss, therefore, applicants approached the complainant with a proposal of handing over of the firm to him, which was accepted by him, and therefore, he was made partner in the firm and given 99% share. In the management of complainant, the firm fared well and the business improved. It is alleged that the complainant was fraudulently removed from the partnership firm and a new deed of partnership was executed in which applicant No.2 was shown as a partner of 51% and one Gautam was shown to be partner of 49%. It is alleged in the FIR that both applicants were engaged in defalcation of funds and assets of the partnership firm. Hence, this case.
7. After considering on the entire material present in the case diary, I am of this opinion that not only an alternate efficacious remedy of filing civil suit is available to the complainant but it is also a case of dispute relating to partnership business. There are other aspects also of this case which needs detail investigation. Hence, after due consideration, I feel inclined to allow this application.
8. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on their executing a personal bond in the sum of

Rs.25,000/- each 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