

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 217 of 2019**

1. Lavkumar Patel S/o Ramlal Patel Aged About 51 Years (Wrongly Mentioned As 45 In The Order Sheet) Years, Caste Marar, R/o Village Kamthi, Police Station Kukdur, Tahsil Pandariya, District Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
2. Firat S/o Budhsingh Aged About 40 Years Caste Gond, R/o Daihantoal, Police Station Kukdur, Tahsil Pandariya, District Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Applicants**Versus**

State Of Chhattisgarh Through District Magistrate Kabirdham, District Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh.

---- Respondent

For the Applicants : Shri Dharmesh Shrivastava, Advocate.
 For the Respondent/State : Shri I. Lakra, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****05.03.2019**

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 applicants who are apprehending arrest in connection with Crime No. 93 of 2015, registered at Police Station – Kukdur, District Kabirdham, Chhattisgarh for the offence punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code.

3. It is submitted by counsel for the applicants that they have been falsely implicated in this case. No case is made out against the applicants on the basis of the material placed before the Court by the prosecution. Applicant No.1 – Lavkumar Patel was Sarpanch and applicant No.2 – Firat was Secretary of the Village Panchayat Teliyapani, Ledra for the term 2004 to 2009 and 2009 to 2014. The allegation that these applicants have embezzled the funds allotted for the Baiga Awas Yojna is totally false as the same was allotted to Janpad Panchayat and the amount was disbursed directly to the beneficiaries in their bank accounts. The financial irregularities, if any, have been committed by the employees of the Janpad Panchayat. In the enquiry conducted against applicant No.2 – Firat, he has been given clean chit and reinstated to the post of Secretary. The case has been registered against the applicants because of political rivalry. The beneficiaries have also filed an affidavit in support of the applicants making statement that they have received benefits. Hence, it is prayed that the applicants 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 both the applicants were directly responsible for providing benefit to the beneficiaries by making use of the funds, allotted for the same, however, the funds have been withdrawn by these applicants and misappropriated as it was found in physical verification that none of the Baiga Awas was complete. Hence, no case is made out for grant of anticipatory bail to the applicants.

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

6. A written complaint was given by Ajeet Tirkey the complainant, a coordinator of Janpad Panchayat, Pandariya, that on receiving complaints an enquiry was made and it was found that between the years 2010-2011 to 2014-2015 the applicants had made fake withdrawal of the funds of Baiga Awas Yojna residence allotted by the State, in the name of 22 persons of Baiga Community. Neither of the said members of the Baiga Community received the money in their accounts nor any house was constructed for their benefit and in this way a total amount of Rs.13,55,000/- was embezzled.

7. On perusal of the case-diary, it appears that there is some evidence present regarding commission of financial irregularities by the applicants but the development that is taken place is that applicant No.2 who was suspended from his service, has been reinstated on the basis of the enquiry completed against him. The evidence on record has been contradicted by the affidavits filed by the concerned beneficiaries and also for the reason that the incident is of more than 5 years old, hence, in such a case, I feel inclined to grant anticipatory bail to the applicants.

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 executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. They 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 them 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