

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 419 of 2019

Rajesh Munat S/o Shri P.C. Munat Aged About 56 Years
R/o Maul Shree Vihar VIP Road, Raipur, District : Raipur,
Chhattisgarh --- **Petitioner**

Versus

State of Chhattisgarh through Station House Officer,
Police Station - Pandri, Raipur District : Raipur,
Chhattisgarh --- **Respondent**

For the applicant : Mr. Surendra Singh, Sr. Advocate with
Mr. Ramakant Mishra & Mr. Sharad
Mishra Advocates

For the State : Mr. Satish Chandra Verma, Addl.
Advocate General with Mr. Avinash
Mishra, Panel Lawyer

MCRCA No. 312 of 2019

Dr. Punit Gupta S/o Dr. G. B. Gupta Aged About 41 Years
R/o Rajendra Nagar, in front of Vijeta Complex Civil &
Revenue District Raipur Chhattisgarh. --- **Petitioner**

Versus

State of Chhattisgarh through the Station House Officer,
Police Station Pandari, Civil & Revenue District Raipur
Chhattisgarh. --- **Respondent**

For the applicant : Mr. Surendra Singh, Sr. Advocate with
Mr. Vivek Sharma, Advocate.

For the State : Mr. Satish Chandra Verma, Addl.
Advocate General with Mr. Avinash
Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

16.04.2019

1. Apprehending arrest in connection with Crime No. 39/2019 registered at Police Station Pandri, Distt. Raipur (C.G) for the offences punishable u/ss 406, 420, 120-B, 171E & 171F of IPC and sections 9 & 13 of the Prevention of Corruption Act, the applicants have filed the applications u/s 438 of the Code of Criminal Procedure.
2. Both the petitions are heard and decided together along-with another bail petition i.e., M.Cr.C(A) No.320/2019 as they are relating to same crime number.
3. The prosecution case is that a by-election for Antagarh Assembly Constituency was scheduled to be held in the year 2014. It is stated that accused Mantu Ram Pawar was selected candidate to contest for and on behalf of Indian National Congress Party and he had filed his nomination for the same vide Form-B. The last date of filing nomination was 27.08.2014 and last date for withdrawal of nomination was 30.08.2014. It is alleged that the present petitioners Rajesh Munat and Dr. Punit Gupta along-with others conspired with congress candidate Manturam Pawar and Manturam Pawar in lieu of huge money offered and accepted by Rajesh Munat and Dr. Punit Gupta along-with others, without any information to the Congress Party, withdrew his candidature of his own on 29.08.2014 thereby the applicant interfered with the election process and further criminal breach of trust along-with cheating and other offences under the Prevention of Corruption Act was

committed.

4. It is the case of prosecution that applicant Rajesh Munat who was the then Minister in the cabinet along-with son-in-law of former Chief Minister Dr.Punit Gupta and other accused have played active role to hatch conspiracy. The prosecution stated that they have recovered telephonic conversations of the accused and their voice recordings which prove the fact that huge money transaction took place among the accused and as a result of such conspiracy and in lieu of money paid, Manturam Pawar had all of a sudden withdrawn his candidature without prior intimation to the Congress party, thereby the offence u/s 171E, 171F 406, 420, 120-B of IPC and section 9 & 13 of Prevention of Corruption Act have been committed.
5. Mr. Surendra Singh, learned Senior Advocate assisted by Mr. Ramakant Mishra, Mr.Ashish Shukla, Mr.Vivek Sharma & Mr. Sharad Mishra would submit that even if the prosecution version is admitted as a whole, without prejudice, it would not fall beyond sections 171(C) & 171(E) of IPC wherein the punishment is provided for one year with fine thereby the offence of conspiracy under section 120-B would also be bailable. It is further submitted that the whole case of prosecution is based on transcripts of audio tape. It is contended that who recorded the tape; when the conversation took place; how the complainant came into possession of the said tape and how it was made available to police are not clear. He further submitted that at earlier point of time,

the tapes were sent to Chandigarh for forensic report but the same was opined to be doctored/ manufactured as the original tape was not available, therefore, reliance cannot be placed on the said tapes on the basis of which the entire case has been developed.

6. It is further submitted that after a period of 5 years, the statements of 2 to 3 witnesses have been recorded and one of the witnesses Firoz Siddique who came forward to record his evidence is a convict under section 302 of IPC and he was in jail and after a long period of time, his jail sentence was suspended for the reason of delay in final hearing of the appeal. It is stated that another statement of Amin Memon has been recorded and he along-with Firoz Siddique would appear to be part of conspiracy, therefore, both these witnesses are accomplice and the entire case of prosecution is based on statements of these accomplices. It is stated that if they are accomplice it would be dangerous to rely on their evidence in view of the laid down by the Supreme Court in *(1977) 3 SCC Page 68 – Dagdu vs. State of Maharashtra*. Therefore, in the instant cases, it would not be safe to give credence to the statement of accomplice.
7. With respect to sections 406 & 420 of IPC, it is submitted that no entrustment of property was made by the complainant to the aforesaid applicants and it is not the case of prosecution that Congress party gave money along-with goods and the applicants have converted to their own use to attract the aforesaid sections.

Likewise, it is submitted that in order to attract section 420 of IPC, deception played on the complainant has to be proved but the prosecution has not stated that complainant Kiranmayee Naik or congress party or the applicant either met Congress party or Kiranmayee Naik and no property was ever delivered, therefore, the ingredients of section 420 of IPC have not been made out to prove the guilt of applicants. Counsel relies on decision of the Supreme Court on ***AIR 2011 SC 20 (Para 142) Iridium India Telecom Ltd v. Motorola Incorporated.***

8. It is further contended that no offence is made out under the Prevention of Corruption Act and the entire case is based on audio recording and no evidence is available that after sealing and recording done how it was kept in the custody, therefore, the same cannot also be relied as the ratio of law is laid down in ***(2011) 4 SCC 143 – Nilesh Dinkar Paradkar v. State of Maharashtra.*** Without prejudice It is further submitted that even if it is assumed that the applicants in their private capacity bribed Manturam, the provisions of sections 9 & 13 of Prevention of Corruption Act would not be applicable as the applicants and the person to be influenced was not public servants. They have not taken any amount and in view of the amended Act of section 13(1)(d) of Prevention of Corruption Act and as per ratio laid down in ***(2000) 2 SCC 536, para 37 – Kolhapur Canesugar Works Ltd v. Union of India and others,*** no offence would be made out.

9. Learned counsel further refers to the case laws reported in ***(2011) 1 SCC 694 Siddharam Satlingappa Mhetre versus State of Maharashtra and (2016) 1 SCC 152*** and would submit that in the above circumstances, the arrest should have been the last option and accordingly the applicants who are ready to cooperate the investigation be enlarged on anticipatory bail.
10. Learned State Counsel Mr. Satish Chandra Verma on the other hand submits that the FIR was made on 03.02.2019 and the original tape of conversation is with Manturam Pawar which is to be recovered. It is stated that complainant Kiranmayee Nayak and witness Amin Memon have recorded their statements and the conversation is supported by the Certificate issued under Section 65-B of the Evidence Act and therefore after interrogation of Manturam Pawar, the recovery of original would disclose the persons who were involved in conspiracy. It is submitted that Firoz Siddique and Amin Memon were instructed by Manturam Pawar to record the statements of conversations of payment of money, which took place between Ajit Jogi and Manturam Pawar and was further followed by Amin Memon. It is further submitted that B-Form, was given to Manturam Pawar and by application of Section 30 IPC, B-Form would be a valuable security as legal right was created in favour of Manturam to contest the election by Congress Party. It is also submitted that on the basis of such candidature, Manturam put it to bargain, therefore,

offence under Sections 409 & 420 read with section 120-B is made out. It is submitted that prima facie tape recordings are existing on record and 3 persons have given the transcripts and Manturam has instructed two persons to record the statement. So, interrogation would be necessary.

11. It is submitted that after filing of the nomination, Manturam in conspiracy with others had received the money and withdrew his candidature which would show the conspiracy and after withdrawal, except BJP no other candidate had contested. Counsel further referred to conversation made between Ajit Jogi and Manturam; Firoj Siddiqui and Amit Jogi; Punit Gupta and Amit Jogi and Firoj Siddiqui and Amin Memon and would submit that all the transcripts are supported by certificate issued u/s 65 of the Evidence Act, therefore, would be relevant.
12. Learned State Counsel went through the statements of Shankerlal Netam, Bhojraj Nag, Vinod Kumar, Deonath, Anil Netam, Bhim Singh, Rajesh Tiwari and Girish Dewangan and would submit that the circumstances would show that other persons also pressurized thereby the conversation as has been recovered by the Police is corroborated. It is stated that illicit money was used to commit the crime and the allegations were attributed since very inception. It is further submitted that entrustment of B-Form was made to the Manturam and trust was broken by selling the legal sanctity of B-Form in lieu of money, as such, section 406 would be

attracted. Likewise, in respect of offence under section 409 of IPC, it is stated that sanctity of oath and trust of people was were lost/broken by cheating the general public and the fraud was played on the Constitution. It is further contended that section 420 of IPC would attract as the document of B-Form was given to Manturam and entrustment was made whereas the applicant entered into conspiracy under Section 120-B to withdraw and for the sake of money, the candidature was withdrawn. He submits that *mens-rea* factor was there, therefore, it needs to be investigated by custodial interrogation.

13. With respect to offence u/s 13 of prevention of Corruption Act, it is submitted that the accused Rajesh Munat was the then Minister, Amit Jogi was also an M.L.A., and Punit Gupta was a Public Servant as he was holding a public post and son-in-law of former Chief Minister Mr. Raman Singh and they influenced their position to cause withdrawal of the candidature of Manturam Pawar thereby section 13 would be attracted. With respect to section 65-B of the Evidence Act, it is stated that primary evidence is in possession of the accused and secondary evidence has been produced which would be evident from the statement of Amin Memon and Firoz Siddiqui that the original electronic device i.e., Mobile is in possession of Manturam.
14. Learned State counsel further refers to the case laws reported in ***2015 SCC OnLine Del 13647 Kundan Singh versus The State; 2016 SCC OnLine Bombay 3236 – Avadut Waman Kushe v. State of***

Maharashtra; 2016 SCC OnLine Mad 451 : 2016 CriLJ 1542 – K. Ramajayam @ Appu versus The Inspector of Police, T-4, Maduravoyal Police Station, Chennai and submits that the principles as have been laid down would demonstrate that at the time of investigation, even the certificate is not required and section 65-B would come into play when the evidence is required to be led. It is further submitted that Amit Jogi was convicted u/s 302 against which an SLP is pending and certain allegations were also levelled against Ajit Jogi that he was involved in purchasing MLAs while he was Chief Minister and Caste Certificate case is also pending.

15. In respect of Punit Gupta, State Counsel contends that he is son-in-law of Chief Minister and he arranged Rs. 7 to 10 crores which would show that he has influenced the person and in respect of Rajesh Munat it is contended that he was Ex-Minister who arranged the finance to frustrate the constitutional provisions and to play fraud on the public and whereby Manturam was influenced to withdraw his candidature. He further submits that after interrogation, the other persons who are involved in this crime are at large. He referred to the decision of the Supreme Court in *(2001) 4 SCC 638 – Muraleedharan versus State of Kerala* and *(2008) 1 SCC 213 State of Maharashtra v. Mohd. Sajid Hussain Mohd. S.Husain* and submits that the aforesaid accused are important persons who can influence thereby the benefit of anticipatory bail may not

be granted.

16. Heard learned counsel for the parties and perused the case diary.
17. The incident is of the year 2014 and the FIR has been made on 03.02.2019. During the hearing, the order passed in WP (Cr) No. 53 of 2017 is produced wherein it shows that the earlier petition was filed by Indian National Congress in the year 2017 with prayer to lodge FIR of same incident and to investigate the conspiracy which includes the present applicants too. It was filed on the basis of newspaper clipping(s). The said writ petition was dismissed by this Court by order dated 28.4.2017. This was subject of challenge in Writ Appeal before the Division Bench. The D.B., too had dismissed the appeal and the observations so made by the Single Judge were removed, however, maintained the ratio that the investigation and lodging of FIR in such manner as prayed cannot be ordered for. The order of Division Bench was passed on 28.06.2017. The matter then went up to the Supreme Court by way of SLP and by order dated 04.01.2019, the said SLP was withdrawn by Congress Party because of the subsequent development and submission was made that the petition has become infructuous. Hon'ble the Supreme Court further affirmed that the questions of law which are raised before the Court would be kept open for adjudication in appropriate case in future. Thereafter, with change of Government in State of Chhattisgarh, Special Investigation Team was formed and the FIR was lodged afresh on 03.02.2019.

The case diary would show that on 03.02.2019, the offence was registered. Therefore, prima facie offence appears to have been registered after 5 years. Initially this Court has dismissed the petition seeking investigation in the year 2017. After such order no individual complaint either by way of FIR or private criminal complaint was filed. It is after SIT was formed afresh, the FIR was registered and investigation started.

18. The formation of SIT was subject of challenge by Manturam Pawar, Dr. Punit Gupta and Rajesh Munat in WP(Cr) No.68 of 2019, WP(Cr) No.77 of 2019 and W.P(Cr) No.78 of 2019 wherein this Court by order dated 21.02.2019 has passed the following order :

“Be that as it may, perused the order of the Division Bench passed in WP (PIL) No. 10/2019 on 15.02.2019. The Division Bench of this Court has asked the State to satisfy the Court about the power to form an SIT. The Division Bench has also directed that till the formation of the SIT is decided, the SIT may not act in a manner which is prejudicial to anybody till its status is finally decided by the Court. The similar issue also finds for consideration at the very inception and the answer of the Division Bench would be binding to this Court too besides the judicial discipline. At this stage, any finding given by this Court will short circuit the issue for which the Division Bench is already in hold of the matter. Taking into the order passed by the Division Bench in WP (PIL) No.10/2019 and by the Coordinate Bench in WPC No. 447 of 2019, it is directed that till the issue of constitution of SIT is answered by the Division Bench, the SIT shall not act in a manner which is prejudicial to anybody till its status is finally decided by the Court.”

Therefore, virtually a positive order was passed by this Court in favour of the applicants whereby the very

investigation by SIT was under challenge and formation of SIT is still to be evaluated.

19. Perused the case diary which contains the transcripts of conversation between Ajit Jogi and Manturam Pawar and between Firoz Siddiqui and Amit Jogi; and between Firoj Siddiqui and Amit Memon. The said statements are evaluated qua the provisions of section 409 & 420 of IPC. The respective law laid down by the Courts as cited is also perused with reference to the transcript. It is not in dispute that accused Firoj Siddiqui whose statement has been relied was convicted for the offence u/s 302 of IPC for which the appeal is pending. The statement of Firoj Siddiqui is considered with reference to case law reported in *(1977) 3 SCC 68 – Dagdu v. State of Maharashtra (supra)*.
20. The time lapsed between the alleged incident and date of report would be of much significance to consider the necessity of custodial interrogation. The alleged “transcriptions” as of now are already with prosecution. Whether or not they constitute an offence, this Court at this juncture would not like to adjudicate upon it. On existing facts of the case, this Court would follow the principles as laid down by Hon'ble the Supreme Court in case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra 2011 (1) SCC 694 Para 112 (supra)* and *Bhadresh Bipinbhai Sheth vs. State of Gujarat 2016(1) SCC 152 Para 25.10* qua the role of applicant(s) for offence and for the purpose of anticipatory bail, I am inclined to hold it in favour of accused.

21. Accordingly, the applications are 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 each of them executing a personal bond in sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the officer arresting them or the concerned Investigating Officer. The applicants shall also abide by the following conditions :-

- (i) that they shall make themselves available for interrogation before the investigating officer as and when required;
- (ii) that they 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 any police officer;
- (iii) that they shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that they shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-
GOUTAM BHADURI
JUDGE