

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 333 of 2019

- Jhaman Das Nihachalani S/o Late Ramchand Nihachalani, Aged About 61 Years, R/o House No.51 Aishwarya Residency, G.E. Road, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through the Station House Officer Police Station- Gol Bazar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

For Applicant – Ms. Sharmila Singhai, Advocate.

For Non-applicant/State – Mr. I. Lakra, Deputy Govt. Advocate.

Mr. Neeraj Kumar Mehta, Advocate for the objector.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

12-04-2019

1. Apprehending arrest in connection with Crime No.192/2011, registered at Police Station – Gol Bazar, District- Raipur, Chhattisgarh for offence punishable under Section 419, 420, 467, 468, 471, 120-B of the IPC, the applicant has preferred this application for grant of anticipatory bail.
2. It is submitted that in the prosecution case filed this applicant was not arrayed as accused at the initial stage, neither the prosecution nor the complainant has filed application for arraying this applicant as accused in this case. Co-accused A. K. Hameedi has filed an application under Section 319 of the Cr.P.C. which has been allowed by the Court below, therefore, this applicant is apprehending arrest in this case.
3. Learned counsel for the applicant submits that complainant Kapil Dhimar has made allegation that he has not sold the land in question Khasra No.781/3 to this applicant, even then description of this land has been added in the sale deed dated 27-04-2004 without his knowledge and approval. This applicant had filed a civil suit in which the complainant was also a party. The applicant and the complaint both have compromised and on that basis the trial

has terminated in that case. Therefore, the complainant in this case has no cause of action against this applicant. The application under Section 319 of the Cr.P.C. brought against this applicant should not have been entertained and allowed by the Court below. Hence, because of apprehension against the applicant, it is prayed that he may be granted anticipatory bail.

4. Learned counsel for the State/non-applicant opposes the application and submits that named FIR was lodged against this applicant, but while filing the charge sheet the prosecution has omitted to reflect his name in the charge sheet, therefore, prima faice a case is made out against this applicant for being arrayed as an accused in that case and for this reason the applicant is not entitled for grant of anticipatory bail.

5. Learned counsel for the objector after adopting the argument advanced by the State counsel submits that the real allegation of fraud is against this applicant. In the deposition of the complainant before the Court below clear statement has been made against this applicant that he was the person behind execution of fraudulent sale deed, therefore, for the reason that this applicant has earlier managed to avoid prosecution and looking to his influences he should not be granted anticipatory bail.

6. In reply it is argued that by the learned counsel for the applicant that the dispute between the applicant and the complainant has been compromised, therefore, for this reason the applicant is entitled for grant of anticipatory bail.

7. Heard learned counsel for the parties and perused the case diary.

8. In the FIR lodged it was alleged that complainant Kapil Dhimar executed a sale deed in the year 2011 in favour of this applicant for sale of only Khasra No.39, however, another land bearing Khasra No.781/3 was also added as subject matter of the sale, for which no consideration was paid to the complainant. After investigating the case name of this applicant was omitted for prosecution, mentioning that this applicant has not committed any offence.

However, after filing of application under Section 319 of the Cr.P.C. by the co-accused person, the application was though rejected by the trial Court, but it has been allowed by the revisional Court. Hence, for this reason this applicant is now required to face the trial.

9. The peculiar circumstances in which this applicant has been made an accused in this case are taken into consideration and on this basis I am of this opinion that this applicant should be granted anticipatory bail.

10. Accordingly, the anticipatory bail application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him 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. The applicant shall also abide by the following conditions :

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

11. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge