

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1525 of 2019

- Mahendra Kumar Gupta, S/o Shri Ramratan Gupta, Aged About 50 Years, R/o 404, Suraj Villa, P.S. New Palasiya Salekasa, District-Indore, Madhya Pradesh.

---- Applicant

Versus

- State of Chhattisgarh Through P.S.- Azad Chouck, District-Raipur, Chhattisgarh.

---- Respondent

MCRC No. 1528 of 2019

- Mahendra Gupta, S/o Shri Ramratan Gupta, Aged About 50 Years, R/o 404, Suraj Villa, P.S. New Palasiya Salekasa, District- Indore, Madhya Pradesh.

---- Applicant

Versus

- State of Chhattisgarh Through P.S.- Saraswati Nagar, District-Raipur, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Devershi Thakur, Advocate
For State/respondent	: Mr. Avinash Kumar. Mishra, Panel Lawyer.
For Objector	: Mr. Rahim Ubwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

15/07/2019

1. Above two bail applications are heard and decided together by this common order as they arise out of similar type of offence committed by the applicants.
2. These bail applications are the first bail applications filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with:-

(I) Crime No.334/2018 in MCRC No.1525/2019 registered at Police Station-Azad Chouck, District – Raipur(C.G.), for the offence punishable under Sections 420 of the Indian Penal Code.

(ii) Crime No.135/2012 in MCRC No.1528/2019 registered at Police Station-Saraswati Nagar, District – Raipur(C.G.), for the offence punishable under Sections 420 r/w Section 34 of the Indian Penal Code.

3. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in these cases. Applicant is in jail since 2.2.2019. Real facts of the case are these that applicant had entered into an agreement with complainant Lalit Kumar Agrawal on 3.8.2012 for sale of his properties in which the son of applicant Pankaj Agrawal is witness. One of the properties of this applicant was sold to one Manoj Agrawal, who is nephew of complainant, on 10.3.2015, in which again son of complainant Pankaj Agrawal is witness. In the said transaction the rolling mill owned by applicant was transferred to the complainant. As there had been some liabilities, therefore, for fulfillment of the same, some joint cheques were issued by this applicant and complainant Lalit Agrawal. As the cheques were

dishonored by the bank and there are cases pending under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') against this applicant and the complainant, therefore, to make an escape from this liability false FIR has been lodged against this applicant. On the basis of the arbitration clause present in the agreement, arbitration proceedings has been initiated between both the parties which is pending consideration. Further, a matter is also pending before NCLT. The complainant has deliberately made the applicant an scapegoat to find a rescue from the liabilities. Hence, no case is made out against this applicant in Crime No.334/2018. The other case registered against the applicant is clearly a matter of Section 138 of Negotiable Instruments Act and FIR has been erroneously registered under Section 420 of IPC. Hence, it is prayed that applicant be granted regular bail in both the cases.

4. On the other hand, learned counsel for the State opposes the bail applications and the submission made in this respect. It is submitted that according to the material present in the case diary of both the cases, the case of cheating and fraud is made out against this applicant and therefore applicant is not entitled for grant of regular bail.
5. Learned counsel for the Objector adopted the arguments advanced by the State counsel and added that as per contents of FIR itself, in the agreement executed between applicant and complainant there was a clear stipulation that the liability of the complainant shall be only 25%, to the extent of 15 crores and rest of the liability of the industry was of the applicant. The applicant very clearly and deliberately did not perform his part. He did not transfer all the properties as mentioned in

the agreement. As the applicant deliberately failed to fulfill his obligation, therefore, various cases have been filed against the applicant under Section 138 of the Act in which complainant has also been made a party only for the reason that he is one of the Directors of the company. Hence, it is prayed that the applicant is not entitled for grant of regular bail.

6. I have heard the learned counsel for both the parties and perused the case diary.
7. The case of prosecution in Crime No.334/2018 registered at P.S.-Azad Chowk, Raipur is this, that the applicant transferred his industry to Lalit Kumar Agrawal. In the agreement entered between the parties, the applicant agreed to sell out five of his properties towards discharge of his liabilities and the responsibilities was shared by the complainant with respect to liabilities of 25% i.e. about 15 crores, which was to be made from the sale of properties as agreed by the applicant. It is prayed that the applicant sold one of the properties to one Manoj Agrawal for Rs.88,65,000/- and the same consideration was received was not adjusted with liabilities and thereafter he has not executed sale for remaining properties, therefore, it is alleged that applicant has cheated the complainant.
8. The case of prosecution in Crime No.135/2012, is this that applicant gave a cheque to the complainant against some dues which was dishonored by the bank. When this fact was informed to the applicant he gave assurance but without making any payment and he absconded. Hence, this case.
9. After considering the entire material present in the case diary and

particularly for the reason that there are about 40 cases pending against the applicant, although most of the cases are under Section 138 of the Negotiable Instruments Act, I do not feel incline to allow applications in both the cases.

10. Accordingly, both the applications filed under Section 439 of the Cr.P.C. are rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha