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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 696 of 2019

- Vikas Jain S/o R.K. Jain, Aged About 46 Years, R/o House No. 22, "Prem Pushp", Jal Vihar Colony, Police Station Telibandha, Raipur, Tahsil and District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, through Station House Officer, Police Station Amanaka, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

For Applicant – Mr. Rajeev Shrivastava and Mr. Malay Shrivastava, Advocates.

For Non-applicant/State – Ms. Madhunisha Singh, Panel Lawyer.
Mr. Ankur Agrawal, Advocate for the objector.

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

17-05-2019

1. Apprehending arrest in connection with Crime No.366/2018, registered at Police Station –Amanaka, Raipur, District Raipur, Chhattisgarh for offence punishable under Section 420, 34 of the IPC, the applicant has preferred this application for grant of anticipatory bail.

2. It is submitted by learned counsel for the applicant that the applicant has been falsely implicated in this case. In fact, it is a case of failure in commitment by the applicant and not a case of cheating. The applicant had agreed to sale five shops to the complainant on 27-06-2014, regarding which an agreement was also executed. As the applicant has failed in business, therefore, criminal cases were registered against him and he was in jail since 08-11-2016 to 23-03-2019. The FIR lodged in this case is dated 28-12-2018, therefore, he was not in a position to act or omit to do anything during that period and on the date the FIR was lodged. This applicant has been granted bail in all other cases. Therefore, it is prayed that he may be granted anticipatory bail in this case as well.

3. Learned counsel for the State/non-applicant opposes the application

submitting that one of the shop that was agreed to be sold, i.e., shop No.204 was already sold by the applicant, therefore, element of cheating is found in this agreement. Therefore, the applicant is not entitled for grant of anticipatory bail.

4. Learned counsel for the objector adopts the argument advanced by the State counsel and submits that one of the shop, i.e., shop No.204 was already sold to one Gopi Chand Kirshnani. Therefore, concealing the fact of earlier sale, the execution of agreement by the applicant is clearly a case of cheating. Further, the applicant had also concealed that the property was mortgaged with bank and because of non-payment of loan the bank had proceeded to take possession of the property mortgaged in the year 2013. Therefore, there is all evidence to show that the applicant had intention to cheat from the very beginning. Hence, the application may be rejected.

5. In reply, it is submitted that negotiation of sale of the shops with complainant started in the year 2010 and the payment were received in installments by the applicants. As the business of the applicant has failed, he could not keep his promise. The auction notice that has been published must be in knowledge of the objector. As the applicant has compromised in the other cases against him, there is possibility of compromise in this case also. Regarding shop No.204 it is submitted that although the sale was made to Gopi Chand Kirshnani, but the said Gopi Chand Kirshnani had backed out, therefore, that shop was available for sale again. Hence, entering into the agreement for sale of the said shop was bonafide by all means. Therefore, it is prayed that the applicant may be granted anticipatory bail.

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

7. According to the FIR lodged complainant Subodh Singhania entered into an agreement with this applicant who was Director of R.K. Jain Construction India Pvt. Ltd. to purchase five shops in R.K. Mall. The consideration of

Rs.1,12,59,192/- was paid. Later on, transfer of the shops was not done and neither the amount of consideration was repaid to the complainant. Hence, this case.

8. Considered on each and every material present in the case diary. After due consideration, the negotiation for shop No.204 is though not clear, but the applicant has given explanation which needs to be verified. Apart from that, it was a civil transaction which has failed and the complainant has also a remedy to file civil suit. Therefore, for these reasons, I feel inclined to allow this application.

9. 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.

10. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge