

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**M.Cr.C.A. No. 751 of 2019**

1. Rahul Wassan S/o Pradeep Kumar Wassan Aged About 34 Years R/o Wassan Chal, Agroha Marg, Korba, Tahsil And District Korba, Chhattisgarh
2. Sahil Wassan S/o Pradeep Kumar Wassan, Aged About 33 Years R/o Wassan Chal, Agroha Marg, Korba, Tahsil And District Korba, Chhattisgarh
3. Ujjwal Wassan S/o Pradeep Kumar Wassan Aged About 31 Years R/o Wassan Chal, Agroha Marg, Korba, Tahsil And District Korba, Chhattisgarh

***---- Applicants***

***Versus***

- State Of Chhattisgarh Through S.H.O. Of The Police Station Balco Nagar, Korba, District Korba, Chhattisgarh

***---- Non-applicant***

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|-------------------------|-----------------------------------|
| For Applicants          | – Mr. Manoj Paranjpe, Advocate.   |
| For Non-applicant/State | – Mr. Subhash Yadav, Dy.G.A.      |
| For complainant         | – Mr. Nilkanth Malviya, Advocate. |

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

**Order on Board**

**26-07-2019**

1. Apprehending arrest in connection with Crime No.38/2019, registered at Police Station – Balco Nagar, Korba, District- Korba, Chhattisgarh for offence punishable under Sections 420, 409, 34 of the I.P.C., the applicants have preferred this application for grant of anticipatory bail.
2. It is submitted by the learned counsel for the applicants that the applicants are partners in the firm J.S.D. Associates. The firm of the applicants had received a work order under contract from Bharat Aluminum Company Limited (Balco) for vacating ash from one of the collection ponds. The firm of the applicants then entered into a sub-contract with complainant Eastern Engineering and Construction Company. The work under contract could not make progress as

expected because of the objection raised by the villagers and the slow work done by the complainant company. However, a compromise took place between the applicant and the complainant on 10.05.2017, thereafter all the amount due towards the complainant company were paid. The complainant company then has made additional claim and when the payment has been denied by the applicants, then this baseless F.I.R. has been lodged. The applicants firm has been protected by an interim order of this Court passed in Cr.M.P. No.704/2019 vide its order dated 20.03.2019. Therefore, on this basis, it is prayed that the applicants be granted anticipatory bail.

3. Learned counsel for the State/non-applicant opposes the application and submits that the evidence present in the investigation made so far that the applicants have cheated the complainant and misappropriated the amount entrusted to them. Therefore, these applicants are not entitled for grant of anticipatory bail.
4. Learned counsel for the objector adopts the argument advanced by the learned counsel for the State and submits that as the applicants are protected by the interim order of this Court in writ petition, therefore, there is no apprehension of their being arrested in this case. Hence, for this reason alone, the application under Section 438 of Cr.P.C. is not maintainable.
5. In reply, it is submitted by the learned counsel for the applicants that interim relief granted to the applicants in writ petition does not come in the way of the applicants for presenting application under Section 438 of Cr.P.C. relying on the order of this Court passed in ***M.Cr.C. No.2882/2018 of R.T. Ram Chandran & Anr. Vs. State of Chhattisgarh & Anr.***, in which it is held by this Court that interim relief does not act as a protective umbrella, as it was envisaged in the case of

***Salauddin Abdulsamad Shaikh Vs. State of Maharashtra*** reported in ***(1996) 1 SCC 667***. Thereafter, this Court has in that order relying on the judgment of ***Hema Mishra Vs. State of Uttar Pradesh & Ors.*** Reported in ***(2014) 4 SCC 453***, referred to the judgment of ***State of Orissa Vs. Madan Gopal Rungta*** reported in ***AIR 1952 SC 12***, in which it was held that an interim relief can be granted only as an aid and as ancillary to the main relief which may be applicable to the party on final determination of his rights in statutory proceedings. Therefore, this application is maintainable.

6. Further reliance has also been placed on the judgment of Supreme Court in ***State of Telangana Vs. Habib Abdullah Jeelani And Ors.*** Reported in ***(2017) 2 SCC 779*** in which the Hon'ble Supreme Court has deprecated the practice of granting the interim relief in presence of statutory relief available under Section 438 of Cr.P.C.
7. Heard learned counsel for the parties and perused the case diary.
8. It is not denied that the applicants are partners in the firm J.S.D. Associates and they had entered into a sub-contract with the complainant- Eastern Engineering and Construction Company. The dispute that has been raised by the complainant is this that after performance of the work under the contract a payment of Rs.54,54,201/- is yet to be made by the applicants because of which, he feels cheated and defaulted.
9. In view of the order of this Court passed in ***M.Cr.C. No.2882/2018*** in ***R.T. Ram Chandran Vs. State of Chhattisgarh & Anr.*** and the judgment of Supreme Court in ***Salauddin Abdulsamad Shaikh Vs. State of Maharashtra (supra)***, ***Hema Mishra Vs. State of Uttar Pradesh & Ors. (Supra)***, ***State of Orissa Vs. Madan Gopal Rungta (Supra)*** and ***State of Telangana Vs. Habib Abdullah Jeelani And***

**Ors. (Supra)** I am of this opinion that petition under Section 438 of Cr.P.C. is maintainable.

10. After considering on the entire facts and circumstances and the nature of the case, this shows that the complainant has a remedy available on the civil side as well and after considering on the purpose of filing of this complaint, I am of this opinion that it is a fit case for grant of anticipatory bail to the applicant.

11. Accordingly, the anticipatory bail application is allowed. 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 each in the like sum to the satisfaction of the concerned Investigating Officer. The applicants 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 him/her 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.

Certified copy as per rules.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
**Judge**