

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****M.CR.C.(A). No. 851 of 2019**

Shreshtha Pathak, S/o. Shri Mithlesh Kumar Pathak, Aged About 35 Years, R/o. Sarkanda, Police Station - Sarkanda, District Bilaspur Chhattisgarh.

----Applicant***Versus***

State Of Chhattisgarh, Through - Station House Officer, Police Station - Sarkanda , District Bilaspur Chhattisgarh.

---- Respondent

For Applicant	: Mr. Achyut Tiwari, Advocate
For Respondent/State	: Mr. Ghanshyam Patel, G.A.
For Complainant	: Mr. Surendra Kumar Dewangan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****19/07/2019**

1. Apprehending arrest in connection with Crime No.421/2019, registered at Police Station – Sarkanda, District – Bilaspur (C.G.) for offence punishable under Section 420, 467, 468 & 120 of the Indian Penal Code, the applicant has preferred this application for grant of anticipatory bail.
2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. No case is made out against the applicant regarding commission of offence as alleged. The applicant is builder, he had entered into an agreement for sale of the plot with the complainant – Harendra Nath Pandey on 13.05.2017 and had received Rs.20.00 lakhs in advance. The land regarding which the agreement was executed was recorded in the name of this applicant at the time the agreement took place. In the later on development, the applicant has simply failed to perform his part, which is only breach of promise for which the complainant

has civil remedy available, therefore, this FIR has been lodged against the applicant in arm twisting manner to realize the amount paid. Therefore, it is prayed that the applicant may be granted anticipatory bail.

3. Per contra learned State counsel opposes the application for grant of bail and the submissions made in this respect. It is submitted that on the date of agreement, the land was not recorded in the name of the applicant, it was recorded in the name of Sheikh Jakir, therefore, it shows that the applicant had intention to cheat from very beginning.
4. Counsel for the objector after adopting the argument advanced by the learned counsel for the State, submits that the applicant had never intended to perform the agreement as he was not the owner of the land for which the agreement was executed by him. Hence, he is not entitled for grant of anticipatory bail.
5. I have heard the learned counsel for the parties and perused the case diary and the documents placed on record.
6. The case of the prosecution is briefly discussed herein above.
7. There is no denial that the agreement was executed between the applicant and the complainant. Secondly, there is no denial that the applicant has received Rs.20.00 lakhs from the complainant. The only dispute is that whether the land was recorded in the name of the applicant is not, to which the counsel for the applicant explains that the applicant is a builder, therefore, he is bound to perform the contract. In case, the complainant makes the demand of amount paid in advance, the applicant is ready to refund the same during the pendency of the trial. Therefore, in the light of the aforesaid

circumstances, this Court is inclined to extend the benefit of Section 438 of Cr.P.C. to the applicant.

8. Accordingly, the anticipatory bail application filed under Section 438 of Cr.P.C. is allowed.
9. 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.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge