

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRCA No. 1096 of 2019

- Prakash Kedia S/o Late Shri Abirchand Kedia Aged About 61 Years R/o Near Airtel Office, Metro Heights, Police Station- Telibandha, Raipur, District- Raipur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station- Amanaka, District- Raipur, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Anil Khare, Senior Advocate along with Mr. Jashneet Singh Hora and Mr. Harshwardhan, Advocates.
For Respondent/State	: Mr. Alok Nigam, G.A.
For Objector	: Mr. Y.C. Sharma, Advocate.

Hon'ble Shri Justice Arvind Singh Chandel
Order On Board

08/11/2019

1. The applicant has filed this bail application for grant of anticipatory bail under Section 438 of the Cr.P.C. as he is apprehending his arrest in connection with crime no. 177/2019, registered at Police Station Amanaka, Distt. Raipur (C.G.) for the offence punishable under Section 420 of the IPC.
2. As per prosecution story, on 08.05.2019, complainant namely Abhishek Jain had made a complaint before police station alleging therein that the applicant herein had entered into an agreement/MoU for providing way/to the complainant for its land, which is located behind applicant's land. It is alleged that the complainant vide a sale deed dated 04.08.2018 also conveyanced a part of his land admeasuring about 0.425 Hectares for a total consideration amount of Rs. 99,88,000/-. In order to make payment

of the sale consideration, the applicant had issued post dated cheques in favour of the complainant, out of the one post dated Cheque No. 102767 amounting to Rs. 9,00,000/- was bounced, as instructed by the applicant to the complainant that not to submit Cheque Nos. 120776, 120777 & 102778 each cheque amounting to Rs. 5,96,040/-. Since, the applicant was not having sufficient bank balance and he instructed the complainant not to submit the cheque unless he asked to do so. Thereafter, the complainant approached the applicant again but no response was given and in the meanwhile the cheques had become invalid thus total sale consideration an amount of Rs. 26,88,120/- was not paid by the applicant to the complainant. It is further alleged that after taking the amount of Rs. 30 Lakhs as per the agreement, the obligation has not been fulfilled by the applicant and dishonestly by cheating the applicant had induced the complainant to return four cheques to the applicant amounting to Rs. 26,88,120/- and had caused wrongful loss to the complainant.

3. Learned senior counsel appearing on behalf of the applicant submits that the applicant is innocent and has been falsely implicated in the present case. On the basis of complaint made by the complainant, prima facie no offence under Section 420 of the IPC can be made out against the applicant. The entire matter is of civil nature. Referring various judgments of the Supreme Court, particularly, in *Devendra vs. State of Uttar Pradesh*, reported in (2009) 7 SCC 495, *V.P. Shrivastava vs. Indian Explosives Ltd*, reported in (2010) 10 SCC 361, *Satishchandra Ratanlal Shah vs. State of Gujarat*, reported in 2019 SCC Online SC 196 and *Anand Kumar Mohatta Vs. State (Govt. of NCT of Delhi)*, reported in 2018 SCC Online SC 2447, it is further argued by the learned Senior Counsel that the complainant has converted the civil dispute into a criminal case which is impermissible in the eyes of law and an abuse of the process of law. He further submits that virtually the first cheque was dishonored because of overwriting and the other three cheques referred by the complainant were not produced by him within stipulated period. The applicant is still ready to pay remaining amount of Rs. 26,88,120/-, in this regard, he has already been prepared a banker's cheque also. The complainant himself not compliance the relevant clauses of agreement

regarding construction of road. As directed by the complainant, some persons forcefully entered into the property of the applicant and they had demolished the servant quarters as well as the boundary wall of the applicant and started construction of the road, therefore, the applicant has also filed a complaint before the police station. Thereafter, the applicant has also filed a civil suit before the Civil Court and after that on 15.05.2019, the complainant made false, exaggerated and concocted complaint against the applicant. He finally submits that the applicant is 61 year old and reputed person of his society, he is permanent resident of above mentioned address and there is no chance of his absconding, therefore, he may be granted benefit anticipatory bail.

4. Per contra, learned counsel appearing on behalf of State and objector opposes the bail application.
5. It is vehemently argued by the learned Counsel for the objector that the applicant herein is one of the partners of Kedia Business Park who entered into the said agreement with the complainant. At the time of execution of agreement, it was within the knowledge of the applicant that there were some other partners also. But, the applicant did not disclose this fact and entered into the said agreement and thereby he committed fraud.
6. In this regard, learned Counsel for the applicant submits that in the agreement itself, it has been mentioned that Kedia Business Park Firm is a partnership firm. It has also been disclosed that Manju Kedia wife of the applicant and Sanju Kedia son of the applicant are the other partners of the firm, therefore, it is within the knowledge of complainant that other partners were also in the said firm. Therefore, no cheating has been taken place.
7. I have heard learned Counsel for the parties.
8. Considering the facts and circumstances of the case, evidence collected by the prosecution, arguments advanced by both the counsel appearing for the parties and further considering the fact that prima facie it appears that it is a civil dispute. In these circumstances, without further

commenting on other merits of the case, in my considered opinion, it is a fit case for grant anticipatory bail to the applicant.

9. Accordingly, the anticipatory bail application is allowed.

10. It is directed that in the event of arrest, the applicant shall be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety for the like sum to the satisfaction of the officer arresting him and he shall abide by all the following terms and conditions:-

- I. That the accused/applicant shall made himself available for interrogation before the concerned Investigating Officer as and when required;
- II. The accused/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. The accused/applicant shall not act, in any manner which will be prejudicial to fair and expeditious trial; and
- IV. 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.

Sd/-

(Arvind Singh Chandel)
Judge