NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C.(A). No. 1177 of 2019

1. Mulchand Dewangan, S/o. Late Shri Dukhuram Dewangan, Aged About 47 Years, R/o. Kanharpuri, Tahsil- Gurur, Balod, District- Balod, Chhattisgarh.
2. Lokesh Sahu, S/o. Late Murharam Sahu, Aged About 40 Years, R/o. Gurur, Balod, District- Balod, Chhattisgarh.
3. Yuvraj Dewangan, S/o. Shri Dayalu Ram Dewangan, Aged About 35 Years, R/o. Village- Kandul, Gunderdehi, Rajnandgaon, District- Rajnandgaon, Chhattisgarh.
4. Parmanand Sahu, S/o. Late Shri Rupram Sahu, Aged About 52 Years, R/o. Heerapur, Jhalmala, Balod, District- Balod, Chhattisgarh.
5. Anil Chouhan, S/o. Shri Arun Chouhan, Aged About 34 Years, R/o. Kanchan Bandh, Rajnandgaon, District- Rajnandgaon, Chhattisgarh.
6. Shukhdevo Sahu, S/o. Khorbahara Ram Sahu, R/o. Village- Sambalpur, Balod, District- Balod, Chhattisgarh.
7. D.R. Sahu, S/o. Shri Puranlal Sahu, Aged About 49 Years, R/o. Tandesara, Tahsil- Gurur, Balod, District- Balod, Chhattisgarh.

----Applicants

Versus

1. State of Chhattisgarh, Through : Suprintendent of Police, Ambikapur, District- Surguja, Chhattisgarh.
2. Gyandas, S/o. Basant Das, Aged About 30 Years, R/o. Village- Sumerpur, Post- Raghunathpur, Lundra, District- Ambikapur, Sarguja, Chhattisgarh.

---- Respondent

For Applicants	:	Mr. Shakti Raj Sinha & Mr. O.P. Sahu, Advocates
For Respondent	:	Mr. Devendra Pratap Singh, Dy.A.G.
For Objector	:	Mr. Akash Kumar Kundu, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

19/09/2019

1. Apprehending arrest in connection with Crime No. Nil, registered at Police Station – Lundra, District – Ambikapur- Sarguja (C.G.) for

offence punishable under Section 420, 406, 467, 468, 471, 120-B, 384 of the Indian Penal Code and Section 3, 4, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Section 10 of the Chhattisgarh Nikshepiko Ke Hito Ka Sanrankashan Adhiniyam, 2005 and Section 3, 4 of Arth Shodhan Vivaran, Adhiniyam, 2002, 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 have been falsely implicated in this case. No case is made out against the applicants on the basis of the material present in the case diary. In-fact the applicants are investors in the schemes of the Anmol India Group Company and had for sometime acted as an agent only for these reason, no criminality can be held on the part of the applicants. The mentioning in the FIR that applicants were member of Core Committee is totally imaginary as there is no such documents to show that there had been any Core Committee and the applicants are the members of the same. ROC search report has been filed as Annexure A-4 to show that none of these applicants are the director of the company. One of the Director Mohd. Junaid himself has given an application to the Chief Minister. Copy of the same is annexed as Annexure A-5, in which he has not named the applicants as his associates. Further the applicants themselves have filed a complaint to the S.P., Rajnandgaon that they are being pressurized to make false statement against the reputed persons of the State. These applicants are party to the writ petition No.401/2017, which is pending before this Court praying for different reliefs. Further the offence under Section 10 of C.G. Protection of Depositors Interest

Act, 2005 is not made out against these applicants. It is submitted that in similar case, this Court has granted anticipatory bail to the persons similarly worked as an agent for the company. Hence, it is prayed that they 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 the applicants being the member of the Core Committee were directly responsible for the affairs of the fraudulent company. There is named FIR against these applicants. Hence, the offence under Section 10 of Protection of Depositors Interest Act is made out. Under Section 15 of the same Act 2005, application under Section 438 of Cr.P.C. is barred. It is also submitted that these applicants have filed one W.P.(Cr.) No.517 of 2019, in which this Court has denied the interim relief by order dated 27.08.2019 keeping in view the directions of Hon'ble Supreme Court in case of ***State of Telangana Vs. Habib Abdullah & Ors***, reported in ***(2017) 2 SCC 779***. Therefore, the application be rejected.

4. Counsel for the objector adopts the arguments advanced by the State and submits that there is clear allegation that these applicants were actively engaged in promoting, advertising the business of the defaulter company. Further the counsel for the objector has filed different writ petitions before this Court praying for registration of FIR against these applicants and others because of which he has been threatened by the applicant No.1 on mobile phone to separate himself from the prosecution of writ petitions otherwise, he will have to face consequences regarding which complaint has been made to S.P., Bilaspur. Copy of which is filed as Annexure O-1. Investigation of the case is at preliminary stage, therefore, there is

no ground to entertain this application. Therefore, the application be rejected.

5. In reply counsel for the applicants submits that counsel for the objector has conducted professional misconduct, he himself is the counsel for these applicants in writ petition No.401/2017, therefore, his objection should not be entertained by this Court. It is also submitted that as the case under Section 10 of C.G. Protection of Depositors Interest Act, 2005 is not made out, therefore, the bar under Section 15 of the Act is not applicable. It is also submitted that under Rule 5 of C.G. Protection of Depositors Rules, 2005 provides that on receipt of complaint from the depositors or otherwise the Competent Authority may initiate such inquiry as he may deem necessary to satisfy himself as to whether or not any financial establishment has fraudulently defaulted. No such complaint has been filed before such Competent Authority by the investors, therefore, direct entertainment under Section 156 (3) of Cr.P.C. by the Special Court is erroneous. Hence, it is prayed that the applicants be granted anticipatory bail.

6. I have heard the learned counsel for the parties and perused the case diary and the documents placed on record.

7. An application was filed under Section 156 (3) of Cr.P.C. before the Special Court constituted under Protection of Depositors Interest Act, 2005 in Ambikapur, District – Sarguja. The Special Court by order dated 30.05.2019 allowed the application and directed for registration of FIR. The FIR has been registered in which it is stated that these applicants were the members of Core Committee, who along with directors of the company and other came before the public to make believe in the schemes of the Anmol India Group

Company because of which number of investors including the complainant made investments, which have been lost and no refund has been made. The offices were closed and whereabouts of all the persons concerned were not known to the innocent investors.

8. Considered the submissions made and the contents of the case diary. On perusal of Section 10 of the C.G. Protection of Depositors Interest Act, 2005, it is found that penal clause for defaults by financial establishments and the person, who are to be held responsible are the promoter, partner, director manager or any other person or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment. There is no mention of any Core Committee or person of such Committee in this provision. Therefore, the applicability of Section 15 of the C.G. Protection of Depositor's Interest Act, 2005 in this case is a question, which may be answered in the investigation, which may made by the police. From the perusal of the FIR, it is not found that these applicants gave direct inducement to any person to make any deposit in the fraudulent schemes and also for the reason that in similar other cases, the agents, who had worked for this company, have been granted anticipatory bail by this Court, hence for these reasons, this Court is inclined to extend the benefit of Section 438 of Cr.P.C. to the applicants.

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

10. 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

Balram