

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on : 19.09.2019

Order passed on : 01/10/2019

MCRCA No. 1238 of 2019

- Sushil Chandra Pagariya S/o Late Mangilal Pagariya, Aged About 56 Years, R/o Mahaveer Plaza, Tagore Nagar, Raipur, Tahsil and District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through Police Station- Civil Lines, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

-----Non-applicant

For Petitioner : Shri N. Naha Roy, Advocate.
For State/non-applicant : Shri Ghanshyam Patel, Govt. Advocate.
Shir Maneesh Sharma and Shri Animesh Tiwari, Advocates for the objector.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

01/10/2019

1. Apprehending arrest in connection with Crime No416/2019 registered at Police Station Civil Lines, Raipur, District- Raipur, Chhattisgarh for offence punishable under Section 420, 467, 468 of the IPC, the applicant has preferred this application for grant of anticipatory bail.
2. It is submitted on behalf of the applicant that the applicant has been falsely implicated in this case. In fact, it is a civil dispute which has been converted in criminal proceeding by the complaint of this case. The applicant and the complainant both are real brothers. They had some dispute earlier with respect to joint family property regarding which a civil suit was filed. However, both the parties have

compromised and the dispute has been resolved. The application for compromise that was filed in the civil suit contained condition agreed by both parties that all the cases criminal as well as civil filed against each other will be withdrawn. The complainant has not honoured that agreement, although a decree has been passed on the basis of compromise entered into by both the parties. This case was not withdrawn. The allegation that this applicant had secured loan from the Bank for M/s. C.G. Power Project Pvt. Ltd. Raipur by forging signature of another director Smt. Durga Devi Pagariya and has misappropriated the same is totally false. As it was Durga Devi Pagariya herself who has signed the loan papers and the loan that was secured has been utilized for C.G. Power Project Pvt. Ltd. itself. Copy of balance sheets are produced to demonstrate that the loan so secured are shown in the same. Therefore, the amount has been utilized by the company. Hence, the allegation that the applicant has siphoned the amount from the bank account of the company is totally false. It is further submitted that the petitioner is a cancer patient and he is required to undergo treatment continuously. Therefore, for these reasons, it is prayed that he may be granted anticipatory bail.

3. Learned counsel for the State/non-applicant opposes the application and submission made on behalf of the applicant and submits that in the FIR lodged and the investigation made there is substance present that this applicant has by forgery withdrawn a loan in the name of the company and has misappropriated the same and custodial interrogation would be required in the case. Therefore, the application may be rejected.
4. Learned counsel for the objector adopts the argument advanced by the

applicant and submits that the reference made to the compromise is with respect to other litigation pending before the parties. Further, the applicant has himself challenged the compromise decree by filing a civil revision which is pending before this Court. There is clear evidence present in the case to show that the loan was obtained in the bank account of the company and then by misuse of his authority the applicant has transferred the same into bank account of Mangilal and sons, from where he has made withdrawal of the whole loan amount for his personal use which was never deposited back. Reliance on the balance sheet of the company by the applicant is for the purpose of misguiding this Court. As to save the reputation of the company objector has made repayment of the loan. It is also argued that the applicant was suffering from cancer, but now he is cured after successful operation and treatment, regarding which documents are filed, which shows that the applicant was certified as cured from cancer in the year 2016. It is submitted that in this particular case custodial interrogation of the applicant is specifically required.

5. In reply, it is submitted that the cancer of the applicant has not been cured, regarding which documents are presented before the Court and the dispute regarding which this FIR has been lodged, was earlier compromised even then the applicant is being prosecuted for the same. Hence, it is prayed that the application may be allowed.
6. Heard learned counsel for the parties and perused the case diary.
7. Complaint has been lodged by complainant Gajraj Pagariya that in the year 2013 his wife, Smt. Durga Devi Pagariya and the applicant were Directors of C.G. Power Project Pvt. Ltd. Raipur. During that time the applicant by forging the signature of Durga Devi Pagariya submitted

loan application form in the bank and secured a loan of about Rs. 1,50,00,000/-. The loan was secured, but was not utilized for the C.G. Power Project Pvt. Ltd. It was fraudulently withdrawn and misappropriated for personal use by the applicant, regarding which the FIR has been lodged on 07-07-2019.

8. The applicant had also filed a petition on the same ground WPCR No.556/2019 which has been dismissed by this Court on 09-08-2019 at the motion stage itself. The contention made on behalf of the applicant needs to be established in his defence. On the other hand, there is substance present in the case diary to show that a case of forgery and cheating is made out against the applicant, which needs to be investigated thoroughly for which there may be requirement of custodial interrogation of the applicant. The documents filed on behalf of the applicant does not show a clear diagnosis that his cancer has revived and the prescription of the doctor appears to be simply a follow up procedure. Therefore, the claim of the objector that the cancer of the applicant had been cured is not negated. After going through the facts and circumstances of this case as it is present in the case diary, I am of this view that it is not a fit case for grant of anticipatory bail.
9. Consequently, the application filed under Section 438 of the Cr.P.C. by the applicant for grant of anticipatory bail is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge