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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 19/08/2019****Order Delivered on : 06/09/2019****M.Cr.C.(A) No. 1264 of 2019**

Mukesh Gupta, son of Shri Jaidev Gupta, aged about 56 years, resident of E-2, Civil Lines, Raipur, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh through Station House Officer, police station Supela, District Durg.

---- Respondent**And****M.Cr.C.(A) No. 1338 Of 2019**

Surya Bhan Singh S/o. late Lal Mani Singh aged about 63 years, Former Chief Executive Officer, Sada Permanent R/o. Village Kapuri, Bhaglan post officer Churhat, District Sidhi Madhya Pradesh.

---- Applicant**Vs**

State of Chhattisgarh through Station House Officer, police station Supela, District Durg.

---- Respondent

For the Applicants	:	Shri S.K. Vyas, Senior Advocate with Shri Rajeev Shrivastava, Shri Amin Khan, Ms. Sonali Goyal, and Shri Malay Shrivastava, Advocates in M.Cr.C.(A) No. 1264 of 2019 and Shri Abhishek Sinha, Advocate with Ms. Rajni Singh, Advocate in M.Cr.C.(A) No. 1338 of 2019.
For the Respondent/State:		Shri S.C. Verma, Advocate General with Shri Ghanshyam Patel, G.A.
For the Intervener/Objector:		Manik Mehta, present in person.

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

Heard.

1. Both these applications are being decided by this common order as they arise from the same incident. These are the first bail applications under Section 438 of Cr.P.C. filed by the applicants for grant of anticipatory bail, who are apprehending arrest in connection with Crime No.605 of 2019 registered at Police Station – Supela, Durg, District Durg for the offence punishable under Sections 201, 409, 420, 421 467, 468 and 471 of the Indian Penal Code.

2. Learned counsel for applicant – Mukesh Gupta in M.Cr.C.(A) No. 1264 of 2019 submits that the applicant was posted as Superintendent of Police, Durg between August, 1996 to August, 1998. The applicant was ex-officio member of Special Area Development Authority (SADA) on 28.5.1998. Pursuant to which, allotment of a plot was made in his favour by SADA and a sale deed was executed on 11.6.1998 for which the applicant has paid the price through cheque. In the year 2017, the applicant in his official capacity had registered a criminal case against a political leader. Thereafter, a counter complaint was filed by that political leader against the applicant regarding which, the applicant has offered an explanation vide Annexure-A/2. An enquiry was made on that complaint in which the matter was closed. Thereafter, a complaint was filed by complainant – Manik Mehta vide Annexure-A/6. On that basis, the FIR has been lodged and investigated ignoring the fact that the enquiry was conducted and closed by the concerned authority and no illegality was found in the same.

On behalf of applicant – Surya Bhan Singh in M.Cr.C.(A) No. 1338 of 2019, it is submitted that the applicant was the then Chief Executive Officer of SADA who is now retired. It is not denied that the applicant executed a

sale deed on behalf of SADA. Subsequent to the allotment made by SADA and the resolution passed in this respect, this applicant has simply complied with the resolution passed in this respect. It is a fact that on the date of execution of sale deed, SADA was dissolved, therefore, it may be a case of only procedural infirmity and there is no criminality. The allotment made in favour of the co-accused has not been annulled and the sale deed has also not been set aside.

It is further argued that this SADA was dissolved by a notification dated 8.6.1998. Subsequent to which, the Collector of the District had taken charge under the provisions of Section 76 of the Chhattisgarh Nagar tatha Gram Nivesh Adhiniyam, 2010, which provides for such dissolution when all the assets and liabilities of the authority stand vested with the municipality or the Municipal Corporation. The Collector of District Durg had taken charge of the assets of SADA and issued a memo on 12.6.1998 and subsequent to that, the applicant himself was appointed as Commissioner of Municipal Corporation by order dated 15.6.1998. The matter has been enquired and closed by the then Inspector General of Police heading the Economic Offences Wing and Anti Corruption Bureau. At that time, by memo dated 27.10.2010, a departmental enquiry was proposed against this applicant, which was closed by order dated 6.12.2018 by Madhya Pradesh Government, Nagariya Vikas Yevam Awas Vibhag, Mantralaya.

Reliance has been placed on the judgment of the Supreme Court in the case of **Bhadresh Bipinbhai Sheth vs. State of Gujarat and Another** reported in **(2016) 1 SCC 152**.

3. Learned Advocate General argued that it is a case where criminality of both the applicants is apparently present. The SADA was dissolved by notification dated 8.6.1998. The applicants in both the cases are well aware of this dissolution and also that no sale deed could have been executed lawfully on 11.6.1998, but the applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 by misuse of his power and influence got the sale deed executed in his favour which shows criminality and criminal misconduct on his part. It is claimed by the applicant that allotment of plot in his favour was made by resolution dated 20.5.1998, however, a communication has been received from Secretary, Municipal Corporation that no meeting was held on 20.5.1998, which shows that applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 had manipulated the resolution. Further, the most important fact is that by notification dated 8.6.1998, the SADA was dissolved with immediate effect and therefore, it did not exist. The Collector of the District was appointed as Administrator of Municipal Corporation on 10.6.1998 and he was the authority who could have carried on further business with respect to the assets of SADA. Another example with regard to manipulation of applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 is that he was allotted the plot of double size of his entitlement, therefore, it is a clear example of abuse of power and it is expected that huge manipulation has been done regarding the allotment procedure with total disregard to the legality of the same. Therefore, it is a specific case where there is requirement of custodial interrogation of applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019. Further, it is submitted that applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 is highly influential and powerful person and capable of tampering with the investigation that is to be made in this case. Hence, it is prayed that his application be rejected.

Reliance has been placed on the judgment of the Supreme Court in the case of **State Represented by the CBI vs. Anil Sharma** reported in **(1997) 7 SCC 187** wherein it was held that in case of corruption in high places by a person holding high office and where interrogation of a person is essential for the investigation, in that case discretion under Section 438 of the Cr.P.C. should never be exercised. Reliance has also been placed on the judgment of the Supreme Court in the case of **Sudhir vs. State of Maharashtra and Another** reported in **2016(1) SCC 146** in which it was held by the Supreme Court that where there is offence of misappropriation of public funds and corruption and there is requirement of custodial interrogation for the investigation to progress, in such cases, grant of anticipatory bail was deprecated. Reliance has also been placed on the judgment of **Jai Prakash Singh vs. State of Bihar and Another** reported in **(2012) 4 SCC 379**, wherein it was held that the anticipatory bail can be granted only in exceptional cases where the Court is *prima facie* of the view that the applicant is falsely enroled in the crime and he is not likely to misuse his liberty. On this basis, it is prayed that the applications of both the applicants be rejected. The opinion given by Law Secretary regarding the earlier complaint against applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 cannot be regarded as final verdict. Further, there are statements of witnesses against the applicants to make out substance in the case registered against them.

4. Intervener/ Objector – Manik Mehta submits that he is the complainant in this case and on the basis of the complaint filed by him, the offence under Sections 420, 467, 468, 471, 409 and 201 of the Indian Penal Code have been registered against applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of

2019. His grievance is that applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 married with his sister – Dr. Miki Mehta, who died under mysterious circumstances regarding which the objector has suspicion of murder but the case has been suppressed because of misuse of the position of applicant – Mukesh Gupta and in the meanwhile, several threats were given to the objector and his family members by this applicant and important documents were made to vanish from the police investigation. It is submitted that the applicant is a dreaded misuser of the official position and power and manipulator of official records. On various allegations of corruption against applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019, the Chairman of Lok Aayog of Chhattisgarh has recommended for investigation to be made by C.B.I. or N.I.A. which is itself suggestive that how influential this applicant is. This applicant has committed numerous irregularities in the business of SADA by misusing his powers which needs detailed investigation. It is alleged that the sale transaction of applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 with SADA is a criminal act which has been given cover of a simple transaction. Therefore, the applicant is not entitled for grant of anticipatory bail.

5. In reply, it is submitted by counsel for applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 that the suspicious death of the sister of intervener has been enquired by Judicial Magistrate First Class, in complaint filed by Smt. Shyama Mehta and the complaint has been dismissed mentioning various grounds for dismissal. Further, the opinion given by the law department that no offence has been committed in this case has been disregarded by the police for lodging FIR. It is a case in which no misappropriation has been done and no offence of forgery has been

committed. The Lok Aayog report given against applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 has been challenged before this Court in which the applicant has been granted interim relief.

6. In reply, it is submitted by counsel for applicant – Surya Bhan Singh in M.Cr.C.(A) No. 1338 of 2019 that this applicant is not a member to the resolution of the SADA Committee, he has simply complied with the resolution and executed the sale deed in favour of the applicant. Therefore, he has not committed any offence.

7. A written complaint has been filed by complainant – Manik Mehta stating that while applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 was posted as Superintendent of Police in District Durg in the year 1998 who was also ex-officio member of SADA, Bhilai. He has by misuse of power obtained an allotment of plot of an area beyond his entitlement at subsidized price and has paid a nominal price for the same. The allotment was made by SADA, however, the SADA was dissolved by the State Government by notification dated 8.6.1998 with immediate effect therefore, SADA was no longer in existence, even then applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 by misuse of his position and despite knowledge of the dissolution of SADA got the sale deed executed in his favour on 11.6.1998 which was totally without authority and that sale deed was executed before any consideration was paid for the same. Subsequent to that, applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 constructed the house in the said plot without any sanction from the authorities and the expenses made on the construction is totally unaccounted. The sale of the said plot with construction by applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 to

Anil Agrawal and Smt. Anita Agrawal at a considerable price of Rs.42,00,000/- on 27.12.2006 was again a manipulation because the actual market price of the property was only Rs.27,00,000/-, according to the Collector rate. It shows commission of offence of fraud, forgery and cheating. It is alleged that thereafter, applicant – Mukesh Gupta in M.Cr.C. (A) No.1264 of 2019 had made purchase of a house in Delhi at an exorbitant price which is disproportionate to his lawful sources of income. On the basis of this complaint, FIR has been lodged and the investigation is being taken up.

8. Heard counsel for both the parties and perused the case diary.

9. The facts are undisputed that subsequent to filing an application for allotment of land in favour of the applicant and a resolution of the Committee for SADA, before the sale deed could be executed the SADA was dissolved on 8.6.1998 by the notification of the State Government. Therefore, no authority was left with the erstwhile SADA authorities to proceed with the same transaction, even then, the sale deed was executed on 11.6.1998 and the possession of land was handed over to applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 which may appear to be an irregularity, but there are serious allegations that applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 has misused his power and position and influenced the authorities for the execution of said sale deed. The contents of FIR further allege use of unaccounted money for making construction on the same plot and also it is alleged that the sale of the said plot with construction at an inflated price is an act of money laundering. The applicant had been Superintendent of Police at that time and subsequently he has been assigned important

postings and he was holding position of influence all the time. There is allegation that he has influenced all the enquiries with respect to the complaint against him. It may be so that complainant – Manik Mehta has a personal grievance against the applicant regarding the suspicious death of his sister, which he claims that the same has not been enquired and investigated properly only for the purpose of protecting applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 in that case.

10. Learned Advocate General has also submitted that there are other criminal cases registered against the applicant in which he has been protected by the interim order by this Court, however, there was a condition that the applicant shall cooperate with the investigation in those cases. Applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 is not appearing and not cooperating with the investigation, therefore, it appears to be a case where there is a requirement to interrogate applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 in custody.

11. It has been brought to the notice of this Court today, that applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 has been granted interim relief by the Hon'ble Supreme Court in W.P.(Cr.) No. 230 of 2019 by order dated 2.9.2019, in which the investigation in FIR No. 605 of 2019 registered in police station Supela, Durg, Chhattisgarh has been stayed until further orders.

12. Hon'ble Supreme Court while entertaining the W.P. (Cr.) No. 230 of 2019, has passed an order on interim basis without making any observation

regarding the present case, which cannot be considered as a precedent. These petitions are brought praying for statutory reliefs, which is being considered on the basis of material present in the case and on the submissions made from both the sides in the exercise of jurisdiction under Section 438 of the Cr.P.C.

13. The exercise of jurisdiction under Section 438 of the Cr.P.C. is purely discretionary. The investigation in this case is at very initial stage the objections raised by the Learned Advocate General and the Objector are by themselves allegations regarding the past conduct of applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019, therefore, for these reasons, I do not feel inclined to grant anticipatory bail to applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 looking to the numerosity of allegations against him. Hence, the bail application of applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 is rejected.

14. Considering that the Respondent/ State and the Intervener/ Objector have no specific objection in grant of anticipatory bail to applicant – Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 and his role has also been limited only to this extent that subsequent to dissolution of the SADA Committee he has executed sale deed in favour of applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019, therefore, I feel inclined to grant anticipatory bail to applicant – Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019.

15. Accordingly, the bail application filed under Section 438 of the Cr.P.C. by applicant – Mukesh Gupta in M.Cr.C.(A) No.1264 of 2019 is rejected.

16. Accordingly, the anticipatory bail application of applicant – Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 is allowed and it is directed that in the event of arrest of applicant - Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 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. Applicant - Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 shall also abide by the following conditions:

- '(i) that applicant - Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 shall make himself available for interrogation before the Investigating Officer as and when required;
- (ii) that applicant - Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 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 them from disclosing such facts to the Court or to any police officer;
- (iii) that applicant - Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that applicant - Surya Bhan Singh in M.Cr.C.(A) No.1338 of 2019 shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.'

Sd/-
(Rajendra Chandra Singh Samant)
Judge