

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 31-1-2019

Delivered on 4-2-2019

MCRC No. 7032 of 2018

- Shashank Balasaheb Bhapkar S/o Bala Saheb Bhapkar Aged About 27 Years R/o Sukvani Garden, Sai Dhabar, Link Road, Chinchvad, District Pune Maharastra

---- Applicant

Versus

- The State Of Chhattisgarh Through District Magistrate, District Janjgir Champa Chhattisgarh

---- Non-applicant

For applicant	Mr. Shrikant Mishra with Ms. Kiran Kulkarni and Shri Manish Thakur, Adv.
For State	Mr. Shailendra Dubey, Addl. Adv. General with Shri S.R.J. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no bail application is pending before any other court.
2. The applicant has been arrested in connection with Crime No 246/2015 registered in police station Champa, Distt. Janjgir Champa (CG) for offence punishable under Section 420/34 of the IPC and Section 3, 4 and 5 of the Chit Fund Act, 1982.
3. This is admitted by applicant that at the time of establishment of Sai Prasad Group and Company he was the Director. The company had floated various collective investment schemes to the public at large for investing money. SEBI had initiated action against the company. EOW Mumbai had investigated into the matter for default of payments to investors and seized various properties of the company.
4. Prosecution story in brief is that the company was running chit fund scheme across India. They induced public at large that on making investment in the company they will get maximum interest in short period, and the amount would become double. So many

persons trapped in their scheme. More than 40 cases involving more than 60 crores of rupees are pending against the company. In the case in hand complainant Rathram Chauhan on account of bluff given by the company, invested huge amount in the company. Neither he nor other investors got repayment from the company.

5. Counsel for the applicant submitted that when applicant was minor, he became Director in the company. The liabilities of the investors are secured by the properties of the company. He had given conditional NOC for the auction of the properties of the company. Some properties are already auctioned. Sale proceeds have been deposited in the account of EOW Mumbai. He is in custody since 2016 and there is no progress in trials. From behind the bar he cannot accelerate the repayment process to the investors. Hence he be released on bail.

6. Counsel for the applicant drew my attention on the order dated 3-2-2017 passed by Designated Court under the MPID Act at Bombay City, Civil and Sessions Court, Mumbai.

7. Counsel for the applicant placed reliance on a decision of Hon'ble Supreme Court in the matter of State of **Kerala -v- Raneef** [(2011) 1 SCC 784] wherein Hon'ble Supreme Court held that delay in trial is one of the important fact for consideration while granting bail.

8. Counsel for the applicant further placed reliance on a decision of Hon'ble Supreme Court in the matter of **Bhim Singh -v- Union of India and others** [(2014) 14 SCC 545] which is related to the repatriation. In the case in hand repatriation is not involved, thus applicant does not get any help from the above cited case.

9. Counsel for the applicant also placed reliance on a decision of Hon'ble Supreme Court in the matter of **Hussain and another -v- Union of India** [(2017) 5 SCC 702] wherein Hon'ble Supreme Court observed that as a supplement to Section 436-A of the Cr.P.C. but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such assessment must be made by the concerned trial Court from time to time.

10. In the case in hand the matter before this Court is for bail. This Court cannot say that what sentence is likely to be awarded if conviction is recorded by the trial Court. In other words it is the trial Court who can assess that what sentence may be awarded to the applicant if conviction is recorded. Thus, applicant does not get any help from the observation made by Hon'ble Supreme Court in the matter of **Hussain** (supra).

11. On the other hand, the State Counsel opposed the bail application.

12. Looking to the facts and circumstances of the case, looking to the huge amount involved in the matter, looking to the fact that complainants are from across the country, and the seriousness of the offence, and the impact of granting bail to the applicant, this Court finds that in the case in hand mere delay in trial is itself not sufficient ground to release the applicant on bail. Thus, he does not get any help from the judicial precedent laid down by Hon'ble Supreme Court in **State of Kerala** (supra). Consequently this Court is not inclined to grant bail to the applicant.

13. The application is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge