

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1478 of 2019**

Ashish Kawale S/o Shri Ashok Kawale Aged About 35 Years R/o Nandanwan, Rajendra Nagar, Nagpur, Maharashtra, District : Nagpur, Maharashtra.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station Civil Line Bilaspur District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh.

---- Respondent

For the Applicant : Shri R.K. Gupta, Advocate.
For the Respondent/State : Shri G.S. Patel, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****07.11.2019**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.

2. This is the second bail application of the applicant filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant who is apprehending arrest in connection with Crime No. 865 of 2018, registered at Police Station – Civil Lines, District – Bilaspur, Chhattisgarh for the offences punishable under Sections 120(B), 34 and 420 of the Indian Penal Code. The first bail application of the applicant was dismissed as withdrawn on 28.1.2019 in M.Cr.C.(A) No. 180 of 2019.

3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. In fact, the transaction between the applicant

and the co-accused with the complainant was purely of civil nature and there is no denial that the advance amount was received from the complainant. As the agreement for sale could not be performed by the applicant's side, the FIR has been lodged only for the purpose of extracting money from the applicant and the co-accused for which a civil remedy is available to the complainant. Hence, it is prayed that the applicant be benefited with grant of anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the applicant and the co-accused have received an amount of Rs.18,00,000/- from the complainant without having authority to receive the same on the pretext of executing an agreement, as such, the offence is very clearly made out. It is further submitted that the applicant has been granted interim relief in a writ petition which has been separately filed by him, in which he is under interim protection, hence, his application is not maintainable.

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

6. Complainant – Smt. Deepa Bajaj entered into an agreement for purchase of property with this applicant and co-accused – Sanjay Kanwal Singh Saini. Both of them were representing the real owner Sanjay Bittalrao. It is stated that the applicant and co-accused have received in total Rs.18,00,000/- as advance without any authority. Later on, the sale of the property was not executed in favour of the complainant, therefore, the complaint.

7. Considered the entire material present in the case-diary. It is found that there is another agreement of complainant with co-accused – Sanjay Kanwal Saini in which both have agreed that the earlier agreement for sale shall not be performed and instead refund shall be made to the complainant, therefore, there is no denial on the part of the applicant's side that in the agreement advance amount was received, which is again agreed to be refunded to the complainant. The objection raised by the State counsel that the applicant has interim protection and has obtained interim relief from the writ Court by itself cannot be a ground to deny the prayer for anticipatory bail because it is statutory relief for which the applicant has a right to pray for. Hence, after overall consideration, I feel inclined to allow this application.

8. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant 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. He shall also abide by the following conditions:

- '(i) that the applicant shall make himself available for interrogation before the Investigating Officer as and when required;
- (ii) that the 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 from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

- (iv) that 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/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi