

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1511 of 2018

1. Anil Kumar Shivdasani S/o Late Shri A. K. Shivdasani Aged About 54 Years R/o Akashdeep, Dayalband Tehsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Harish Kumar Shivdasani S/o Late Shri A. K. Shivdasani Aged About 47 Years R/o Akashdeep, Dayalband Tehsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh Through Police Station Chakradharnagar, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent

For Applicants	:	Mr. Sunil Otwani, Advocate.
For Respondent/State	:	Mr. Anant Bajpai, Panel Lawyer.
For Objector	:	Mr. B. P. Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

03/01/2019

1. The applicants have preferred this bail application under Section 438 of Cr.P.C. apprehending their arrest in connection with Crime No.359/2018 registered at Police Station-Chakradharnagar, District – Raigarh(C.G.), for the offence punishable under Sections 420 & 406 r/w 34 of the Indian Penal Code.
2. Learned counsel for applicants submits that applicants are innocent and have been falsely implicated in this case. The fact is this that

applicants and the complainant entered into business transaction, in which, the applicants made some purchases for which they were liable to make payment of price, however, due to recession in their business they could not pay the said amount. The complainant has option to go for civil remedy. Some other complainants, who have complaint against these applicants, have approached the National Company Law Tribunal, Mumbai, and in one such case filed by Harsh Vinimay Pvt. Ltd., the National Company Law Tribunal vide order dated 29.10.2018 has appointed Interim Resolution Professional as per the provisions of the Insolvency and Bankruptcy Code, 2016. The complainant is also entitled to file his claim for payment of the purchased goods before this Interim Resolution Professional, however, the complainant has also filed any such claim. Hence, it is clear that no crime has been committed by the applicant and the dispute between the complainant and the applicant is purely civil in nature, therefore, it is prayed that this applicant be granted anticipatory bail.

3. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that according to the complaint made and the inquiry conducted on that basis, it has been found that act of the applicants in placing orders for purchase of goods from various concerns had been with intention to cheat them from the very beginning, hence, no case is made out for grant of anticipatory bail.
4. Apart from adopting the arguments advanced by learned counsel for the State, learned counsel for the objector further submitted that the inquiry report clearly mentions that fraud has been committed by the applicants with deliberate design as their company was already in the

process of winding-up even then the orders were placed for purchase of goods from the complainant and other companies. Instead of using the goods i.e. raw material, purchased by them from the complainant and other companies, the applicants had sold the same in the open market. Hence, there is clear element of criminality in the act of the applicants. The relief that may be given by the NCLT can be claimed by the complainant and other concerns but that does not absolve the applicants from their criminal liability.

5. In reply, it is submitted by the counsel for applicants that the industries of applicants are still operational and there was no malicious intention on the part of the applicants. As the applicants are apprehending their arrest, therefore, they cannot give their appearance in public place, hence, the arguments submitted by the State counsel and the objector are without any substance.
6. Heard both the parties and perused the case diary.
7. Complaint has been made by Harendra Prasad Singh on behalf of Maa Mani Industries Pvt. Ltd. that the applicants, who are Directors of Mamahamaya Steels Pvt. Ltd., Bilaspur, with intention to cheat had placed orders for purchase of iron ingots worth Rs.34,30,084/- and out of which they made of payment of only Rs.9 lakh and an amount of Rs.25,30,084/- is still outstanding. Since the applicants failed to pay the remaining amount, FIR has been lodged.
8. Considered on the entire material present in the case diary and also perused all the documents attached with the application. It is yet to be investigated whether the industry of applicants has already been winded up when the orders for supply of goods were placed. However, it is clear from the material present in the case diary, that the

complainant has an option to move on the civil side by approaching NCLT or preferring claim before the IRP appointed by NCLT with respect to the insolvency proceeding that has been started against the applicants. Hence, after due consideration, I am of this opinion that applicant should be granted anticipatory bail.

9. Accordingly, the anticipatory bail application is allowed and 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 each of them executing a personal bond in the sum of Rs.25,000/- with one surety 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.

Sd/-

(Rajendra Chandra Singh Samant)
Judge