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HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No. 155 of 2019

Vidit Sharma S/o Shubhash Sharma Aged About 30 Years R/o Village L. I. G. -109, Shailendra Nagar, Raipur Tehsil And District Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Golbazar, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondent

And

M.Cr.C. No. 9472 of 2018

Subhash Sharma S/o Lokeshwar Sharma Aged About 59 Years R/o Village- H.I.C.C. 109a, Shailendra Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh.

---- Applicant

Vs

State Of Chhattisgarh Through The Station House Officer, Police Station-Gol Bazar, (Wrongly Mention City Kotwali In The Order), Raipur, Chhattisgarh., District : Raipur, Chhattisgarh.

---- Respondent

And

M.Cr.C.(A) No. 323 of 2019

Nirmaleshwar Sharma S/o L.P. Sharma Aged About 59 Years R/o Puspak Nagar Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Civil Line, Raipur Chhattisgarh., District : Raipur, Chhattisgarh.

---- Respondent

And

M.Cr.C.(A) No. 328 of 2019

Vidit Sharma S/o Shubhash Sharma Aged About 30 Years R/o Village L. I. G.-109, Shailendra Nagar, Raipur Tehsil And District Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Civil Line, Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Kishore Bhaduri and Shri Pawan Kesharwani, Advocates.
For the Respondent/State	:	Shri H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

20.03.2019

Heard.

1. All these applications are being decided by this common order as they arise from the similar incident. M.Cr.C.(A) No. 155 of 2019, M.Cr.C.(A) No.323 of 2019 and M.Cr.C.(A) No. 328 of 2019 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 the following crime numbers and registered at following police stations for the following offences:

Applicants in M.Cr.C.A. No.	Crime Number	Police Station	Offences u/s
M.Cr.C.(A) No.155 of 2019	141 of 2018	Gol Bazar, Raipur	420 and 120B of the Indian Penal Code.
M.Cr.C.(A) No.323 of 2019	507 of 2018	Civil Lines, Raipur	120B, 420, 467, 468 and 471 of the Indian Penal Code.
M.Cr.C.(A) No.328 of 2019	507 of 2018	Civil Lines, Raipur	120B, 420, 467, 468 and 471 of the Indian Penal Code.

M.Cr.C. No. 9472 of 2018 is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 by applicant – Subhash Sharma for grant of regular bail to him, who has been arrested in connection with Crime No.141 of 2018, registered at Police Station – Gol Bazar, Raipur, District – Raipur, Chhattisgarh for the offence punishable under Sections 420 and 120B of the Indian Penal Code.

2. Learned counsel for the applicants submits that the applicants have been falsely implicated in this case. No case is made out against the applicants on the basis of the material placed before the Court by the prosecution. Applicant – Subhash Sharma in M.Cr.C. No. 9472 of 2018 is in jail since 11.9.2018. Criminal colour has been given to the case which is of purely a civil nature. A sale deed has been executed and on that basis, it is alleged that fraud has been committed. In the sale deed itself, it is mentioned that the consideration amount was promised to be paid through cheque and there was a further clause that in case the amount of consideration is not paid the title passed would remain intact. At the most, the complainant can move to the Civil Court praying that the sale deed has become voidable because of nonpayment of consideration. As the title had already passed in favour of applicant – Subhash Sharma in M.Cr.C. No.9472 of 2018, he had entitlement to mortgage the land and borrow from the bank. Applicant – Vidit Sharma in M.Cr.C.(A) Nos. 155 of 2019 and 328 of 2019 has been implicated in this case only for the reason that he is the son of main accused – Subhash Sharma in M.Cr.C. No.9472 of 2018.

On behalf of applicant – Vidit Sharma in M.Cr.C.(A) No.155 of 2019, it is submitted that the applicant has been falsely implicated in this case in connection with a loan transaction and because of nonpayment of the loan by the borrower/ father of this applicant as his account has become non-performance asset (NPA). The complainant in this case was a guarantor and the bank has given notice to him because of that, false and baseless complaint has been filed against this applicant. Hence, for these reasons, the applicants are entitled for grant of regular/ anticipatory bail.

3. On the other hand, learned counsel for the State opposes the bail applications and the arguments submitted in this respect. It is submitted that applicant – Subhash Sharma in M.Cr.C. No. 9472 of 2018 has borrowed Rs.9 crores from the bank on the basis of fraudulent sale deed which was executed by playing fraud on the complainant and he has also not paid the consideration amount. When things went wrong, the Directors of the said company i.e. all the applicants appointed insignificant persons and the employees as Directors which shows their intention to defraud. Applicant – Subhash Sharma in M.Cr.C. No. 9472 of 2018 has criminal antecedents. Hence, for these reasons, none of the applicants deserve to be enlarged on regular/ anticipatory bail.

4. In reply, it is submitted that the investigation is persistently going on and applicant – Subhash Sharma in M.Cr.C. No. 9472 of 2018 has made the purchase of the property for the Company. Regarding the criminal antecedents against applicant - Subhash Sharma in M.Cr.C. No.9472 of 2018, it is replied that he is on bail in all the other cases. With regard to the fact of payment of consideration, the applicants intend to prove in their defence, that cash consideration was paid to the complainant/ seller of the land, which he is now not acknowledged and he is making misuse of the clause in the deed. It is also submitted that because of nonpayment of the loan to the bank action under the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) has been initiated. The property and assets of applicant - Subhash Sharma in M.Cr.C. No. 9472 of 2018 has been seized for recovery of the loan amount. There is no law which puts any restriction on borrowing therefore, the case against all the applicants is of totally a civil nature. Hence, for these reasons, the applicants are entitled for grant of regular/ anticipatory bail.

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

6. The case in Crime No. 141 of 2018 is that complainant – Sunil Kumar Maheshwari has filed a complaint under Section 156(3) of the Cr.P.C. on the basis of which, FIR has been lodged. Applicant - Subhash Sharma in M.Cr.C. No. 9472 of 2018 represented himself as a Director of Vintrade Private Limited Company. On the basis of the relation with applicant - Subhash Sharma in M.Cr.C. No. 9472 of 2018, the complainant arranged to transfer his property on promise for payment of consideration through five post-dated cheques and the sale deed was executed on 25.9.2013. When the cheques were presented for payment in the bank the same were dishonoured. The complainant has filed complaints against applicant - Subhash Sharma in M.Cr.C. No. 9472 of 2018 and others under Section 138 of the Negotiable Instruments Act which is pending before the Court. In the meanwhile, negotiation for compromise was going on and then the complainant came to know that the subject matter of the sale deed that is the same property has been mortgaged by applicant - Subhash Sharma in M.Cr.C. No. 9472 of 2018 in bank for obtaining a loan of Rs.9 crores in a

fraudulent manner and in connivance with the bank officials. Hence, this case.

7. The complainant in Crime No.507 of 2018 is Harbansh Lal in which the facts of the case are same as aforementioned. The additional allegation that has been made is that one additional clause was added in the sale deed in a fraudulent manner by the applicants which mentions, that the payment of consideration was promised to be made through post-dated cheques and that even if the cheques were dishonoured, the title of the purchaser would remain intact and no legal proceedings can be drawn against him. Hence, on this basis, it is alleged that the offence of fraud, forgery and cheating was committed.

8. Considered the entire material present in the case-diary of all the cases. This fact is not denied that the sale deed was executed between the parties on 25.9.2013 and the complainant himself is signatory to the document which was registered in presence of the registration officer therefore, the presumption would be there of due execution. The clause which is alleged to be fraudulent though bars of legal proceedings, but this restriction is against the public policy and against the provisions of Contract Act, therefore, the complainant has right to challenge and right to *sue* for cancellation of sale deed on the ground of nonpayment of consideration. However, in the matter of borrowing amount after mortgaging the same property, appears to be taken up for realization of borrowed amount through action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, therefore, it cannot be denied

that there is a glimpse of civil nature in this case. Hence, both the applicants deserve to be released on regular and anticipatory bail.

9. Accordingly, the bail applications filed under Sections 439 and 438 of the Cr.P.C. are allowed.

10. Accordingly, the anticipatory bail applications are allowed and it is directed that in the event of arrest of applicants – Vidit Sharma and Nirmaleshwar Sharma in M.Cr.C.(A) No. 155 of 2019, M.Cr.C.(A) No.323 of 2019 and M.Cr.C.(A) No. 328 of 2019 in connection with the aforesaid offence, they shall be released on bail by the Officer arresting them on executing a personal bond in sum of Rs.25,000/- on each crime with one surety in the like sum to the satisfaction of the concerned Investigating Officer. They 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 them 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.'

11. It is directed that applicant – Subhash Sharma in M.Cr.C. No. 9472 of 2018 shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed. In case any default is committed by the applicant/s in appearing before the concerned trial Court, this order granting bail shall stand cancelled automatically.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi