

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.No.9982 of 2018**

1. Jitendra Bhatiya, aged about 51 years, Son of Manohar Bhatiya, R/o. House No.H-76, Floral City, Dunda, P.S. Mujgahan, Raipur, District Raipur (CG)
2. Santosh Shrivastava, aged about 47 years, son of Awadesh Kumar Shrivastava, R/o. Rama Life City, Bilaspur, District Bilaspur (CG)

---Applicants**Versus**

State of Chhattisgarh, through the Station House Officer, Police Station New Rajendra Nagar, Raipur, District Raipur (CG)

---Non-Applicant

For Applicants	:	Mr.Sanjay Agrawal, Advocate
For Non-Applicant	:	Mr.Ghanshyam Patel, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****24/4/2019**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants, who have been arrested in connection with Crime No.26/2018, registered at Police Station-New Rajendra Nagar, Raipur, District-Raipur (CG), for the offence punishable under Sections 420 & 120B/34 of the IPC and Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as "the Act of 1881").

2. Case of the prosecution, in brief, is that the applicants being Director/Partner of Adhiraj Developers obtained a sum of ₹ 9,16,000/- from complainant-Ashok Kaushal from 9.2.2014 to 24.2.2014 to sell a plot in his name in Gulshan Vatika situated at Sejbahar, Raipur, but did not execute the sale deed in favour of the complainant as assured and ultimately, when the complainant demanded his amount deposited, issued post dated cheque of ₹ 9,16,000/- towards the said amount, which has been

dishonoured on being presented before the Bank and thereby committed the offence under Section 420 and 120B of the IPC and Section 138 of the Act of 1881.

3. Learned counsel for the applicants would submit that the applicants have not committed any offence and they have falsely been implicated in crime in question. He would further submit that the applicants are Director/Partner of Adhiraj Developers. It is the case of dishonour of cheque, for which remedy is available to the complainant to file criminal complaint under Section 138 of the Act of 1881 and there is no criminality for offence under Section 420 of the IPC. It is not the case of the prosecution that plots are not available to the applicants' Company for allotting and executing sale deed in favour of the complainant, it is only because of non-development of area in question due to unavoidable reasons, plot could not be registered in favour of the complainant. The applicants are in jail since 4.2.2018, charge-sheet has already been filed and no useful purpose will be served by detaining them in jail, as such, they be released on bail on appropriate terms. He would also submit that co-accused Sudeep Wadodkar has been released on regular bail by this Court vide order dated 31.10.2018 in M.Cr.C. No.6502 of 2018 and case of the present applicants is similar to that of co-accused Sudeep Wadodkar.

4. On the other hand, learned Government Advocate for the State would oppose the bail application and submit that the applicants' company did not allot the plot to the complainant at all and when he demanded refund of money deposited by him, cheque has been issued in his favour, which has become dishonour, which shows the dishonest intention on the part of the applicants and there are more than 100 investors to whom the applicants being Director/Partner of the Company have cheated, as such, they are not entitled for regular bail.

5. I have heard learned counsel for the parties and perused the case diary.

6. Taking into consideration the facts & circumstances of the case, nature & gravity of the offence, particularly considering that cheque issued to the complainant has become dishonour, which is punishable under Section 138 of the Act of 1881 on complaint to be filed at the instance of the complainant and particularly taking into nature of dispute between the parties and F.I.R. lodged only after dishonour of cheque issued to the complainant and the fact that the applicants are in jail since 4.2.2018, charge-sheet has already been filed, the trial is likely to take time and the fact that co-accused Sudeep Wadodkar has been released by this Court, this Court is of the opinion that present is a fit case, in which, the applicants should be enlarged on regular bail.

7. Accordingly, the bail application filed on behalf of the applicants under Section 439 of the Cr.P.C. is allowed. It is directed that the applicants shall be released on bail on their furnishing a personal bond in the sum of **₹ 1,00,000/-** each with one surety in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.

Certified copy as per rules.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-