

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.138 of 2020****Order Reserved on : 26.2.2020****Order Passed on : 3.3.2020**

Sanjay Jain (Dhariwal), son of Shri Tansukhchand Dhariwal, aged about 45 years, resident of 11 Mahaveer Colony, Durg, District Durg, Chhattisgarh

---- Applicant**versus**

State of Chhattisgarh through In-Charge Police Station Supela Bhilai, District Durg, Chhattisgarh

---- Respondent**and****M.Cr.C.(A) No.189 of 2020**

Prakash Jayaswal, son of Late Ramashray Jayaswal, aged about 59 years, resident of 618, Dakhin Dari Road, Flat No.304A VIP Terrace, Post Office Shribhumi, Police Station Lake Town, South Dumdum District North 24 Pargana, Kolkata (West Bengal)

---- Applicant**versus**

State of Chhattisgarh through In-Charge Police Station Supela Bhilai, District Durg, Chhattisgarh

---- Respondent

For Applicants	: Shri Anand Shukla and Shri S.R. Rao, Advocates
For State/Respondent	: Shri Anand Verma, Dy. Govt. Advocate
For Objector	: Shri Goutam Khetrpal and Shri Avinash Chand Sahu, Advocates

Hon'ble Shri Justice Arvind Singh Chandel**C.A.V. ORDER**

- Both the anticipatory bail applications relate to a same crime number, therefore, they are decided together.

2. The anticipatory bail applications have been preferred by the Applicants apprehending their arrest in connection with Crime No.627 of 2019 registered at Police Station Supela Bhilai, District Durg for offences punishable under Sections 469, 420, 201 of the Indian Penal Code and Section 66C of the IT Act.
3. According to the prosecution, Complainant Suresh Kothari is one of the Directors of Mahaveer Awasiya Yojna Private Limited and Rajat Buildcon India Private Limited and is having about 72% shares of Rajat Buildcon India Private Limited and 28% shares of Mahaveer Awasiya Yojna Private Limited. Both co-accused Anjay Surana and Rajat Surana and Prakash Jayaswal, who is one of the present Applicants are other Directors of the company. On 5.1.2019 and 15.1.2019, two written complaints were made by the Complainant. It has been alleged by him that in the month of August, 2017, Sanjay Jain (Dhariwal), who is one of the Applicants herein, along with co-accused Anjay Surana hatched a conspiracy and appointed Anjay Surana's son Rajat Surana (co-accused) as a Director and pressurised the Complainant for resignation. On 15.12.2018, when the Complainant was browsing company's website, he did not find his name as a Director of the company. Thereafter, he came to know that without his knowledge, both the present Applicants and other co-accused persons, on the basis of forged and fabricated documents, uploaded on the website of Registrar of Companies (ROC) a form having No.DIR11, which is a notice for resignation of the Complainant as a Director and filed form No.DIR12 for resignation of the Complainant using digital signature of co-accused Rajat Surana. On the basis of said two complaints, police registered the crime in question. Later on,

during the course of investigation, offences punishable under Sections 467, 468, 471, 120B of the Indian Penal Code were also added.

4. Learned Counsel appearing for the present Applicants submitted that the allegations levelled against the Applicants clearly demonstrate that there was an *inter se* dispute between the Directors of the company. It was submitted that Section 245 of the Companies Act provides remedy of class action and, therefore, alternative remedy is available with the Complainant. But, on account of the Complainant's political influence, the offences in question have been registered against the present Applicants. The allegation made by the Complainant that his resignation has been filed without his knowledge is false and has no force. The Complainant, vide letter dated 1.12.2018 addressed to the Board of Directors, resigned due to some personal reasons and requested to accept his resignation from the office of the Director of the company. The Board of Directors, as per Section 168 of the Companies Act, strictly followed the relevant provisions and informed the Registrar of Companies (ROC) regarding resignation of the Complainant. After receiving the resignation from the Complainant, the same has been filed for DIR11 and DIR12 with digital signature of Rajat Surana. Both DIR11 and DIR12 have been filed from the office of SMR and in this regard the statement of Sudhir Dwivedi, who is a partner of Applicant Sanjay Jain, has been recorded. Sudhir Dwivedi has categorically stated that the Complainant came along with his original resignation and thereafter forms DIR11 and DIR12 were uploaded on the website of the ROC. This clearly shows that there is no involvement of

any of the Applicants in the offences in question. According to the Counsel, after filing of form DIR11, a message is automatically sent to the concerned persons and in the present case also the message was sent to the Complainant and he is fully aware of the fact, but he has made a false allegation. He has falsely stated that this fact came to his knowledge for the first time on 25.12.2018 when he was browsing the website. It was further submitted that the allegation made by the Complainant that the Applicants, by collusion with other persons, used his digital signature on several occasions without his knowledge, has no force as the digital signature is password protected and without knowledge of the Complainant the same could not be used. If digital signature of the Complainant was used earlier without his knowledge, then he could have blocked his digital signature. But, he did not do so. With regard to the report of handwriting expert, it was submitted by the Counsel that since the Complainant had sent to the handwriting expert photo copies of the documents which were uploaded on the website of ROC, it is mentioned in the report of the handwriting expert that the documents were computer generated. It was further submitted by the Counsel that both the Applicants have fully cooperated during the investigation. They appeared before the Investigating Officer and submitted all the documents pertaining to the matter and their statements have also been recorded by police. In the entire complaint, no specific allegation against Applicant Prakash Jayaswal is made and merely because he is a Director of the company he has been made an accused. Likewise, Applicant Sanjay Jain has been falsely implicated in the case. He is neither a Director of the

company nor is a share holder of the company. He is also not a tax-consultant nor an auditor of the company. He did not upload forms DIR11 and DIR12 on the website of ROC. Therefore, no case is made out against him also. It was further submitted that the main accused Rajat Surana has already been granted benefit of regular bail by this Court in M.Cr.C. No.7148 of 2019 on 15.11.2019 and Anjay Surana has already been granted benefit of anticipatory bail by the Sessions Court. It was further submitted that no custodial interrogation of the present Applicants is required. It was prayed that both the present Applicants may be granted benefit of anticipatory bail.

5. Learned Counsel appearing for the State/Respondent as well as Learned Counsel appearing for the Objector opposed the arguments advanced on behalf of the Applicants.
6. It was submitted on behalf of the Objector that from the report of handwriting expert, *prima facie*, it is established that instead of digital signature of the Complainant, computer generated signature has been used. Applicant Sanjay Jain is one of the partners of SMR from where, as stated by Sudhir Dwivedi, forms DIR11 and DIR12 were uploaded on the website of ROC. Thus, sufficient material is available against the present Applicants. The offence which has been committed by the Applicants along with other co-accused persons is an economic offence. An application for mutation is already moved by the accused persons. Thereby, the accused persons want to grab the whole land belonging to the company. It was further submitted that custodial interrogation of the Applicants is required to know how the digital signature of the

Complainant was misused and through which instrument the said misuse was done.

7. I have heard Learned Counsel appearing for the parties and perused the entire case diary and the other material available minutely.
8. Considering the facts and circumstances of the case, the arguments advanced on behalf of the parties, particularly, considering the fact that handwriting expert's opinion is based on photo copies of the documents and further considering that during investigation statements of both the present Applicants have already been recorded by police and also considering the fact that form DIR12 was uploaded by Rajat Surana by using his digital signature and he has already been granted benefit of regular bail by this Court and further considering the fact that against Applicant Prakash Jayaswal there is no specific allegation and that Applicant Sanjay Jain is not a Director nor a share holder or beneficiary of the company, without further commenting on other merits of the case, in my considered view, both the Applicants are entitled to get benefit of anticipatory bail.
9. Accordingly, the anticipatory bail applications are allowed.
10. It is directed that in the event of arrest of the Applicants in connection with the aforesaid crime, they shall be released on anticipatory bail on each of them furnishing a personal bond in the sum of Rupees One Lakh with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the

concerned Trial Court. The Applicants shall also abide by all the following terms and conditions:

- (i) They 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 fact to the Court,
- (ii) They shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) They shall appear before the Trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Arvind Singh Chandel)
JUDGE