

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 151 of 2020

Chamru Ram Khairwar (In The Order Dated 10.12.2019 Mentioned Only Chamru Ram) S/o Shri Panchram, Aged About 42 Years Caste- Khairwar, R/o Ward No.5 Sakti, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The District Magistrate, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondent

For Applicant	:	Shri R.K. Gupta, Advocate
For State	:	Shri Dinesh Tiwari, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/06/2020

Heard.

1. The applicant has filed this application for grant of anticipatory bail under Section 438 Cr.P.C. as he is apprehending his arrest in connection with Crime No. 320/2019, registered at Police Station -Baradwar, District- Janjgir-Champa (CG) for the offence punishable under Sections 409 and 420 IPC.
2. Case of the prosecution is that during the period the applicant was posted and working as Secretary, he embezzled Rs.22,77,266/- by claiming Rs.9,96,000/- towards those toilets which were either half constructed or construction was not at all commenced. It is also alleged that amount released in favour of beneficiaries who had constructed toilets at their own expenses, that amount of Rs.12,81,266/- was also misappropriated.
3. Learned counsel for the applicant would argue that all 1065 toilets in village Panchayat- Sarkeli were completed and then only it was declared as Open Defecation Free (ODF) on 2.10.2018. He further submits that as against the total number of toilets constructed by the panchayat, the panchayat was

required to be paid Rs.1,22,88,786/- but only Rs. 92,54,288/- were released and the gram panchayat is yet to receive Rs.3,034,480/- towards various payments including payment to those beneficiaries who had constructed the toilets at their own expenses and were required to be paid bonus amount at different rates depending upon the scheme under which they had constructed. He further submits that when some of the beneficiaries did not receive amount due to them, they started making complaints which were duly inquired into and enquiry report dated 1.5.2019 was submitted in which there is no prima facie material found regarding any corruption practiced by the present applicant. Rather, it was observed that balance amount may be paid to beneficiaries after complete fund is received and that can also be utilized for completing construction of toilets which was incomplete. Despite this report, no funds were allotted and the villagers who had not received money, kept on pressurizing the panchayat body. This was also explained by the Sarpanch, Panchas and the present applicant by sending information to the Collector. He further submits that under the pressure of the villagers, when second enquiry was constituted and its report was submitted on 31.10.2019, it contained a misdirected report that amount has been embezzled by incomplete, not started and not surveyed toilets and by diverting fund payable to beneficiaries, towards payment of construction material. There is no finding of submission of any forged bill. The applicant explained his position on the basis of verified facts vide his letter dated 26.11.2019. It is further submitted that though in the earlier enquiry out of 9, only 2 beneficiaries stated having received the amount and it was observed that others have not been paid, the applicant has filed affidavit of many others who have also stated that they have also received amount. The allegation is merely of financial irregularities and not of embezzlement because even according to the factual material contained in the enquiry report, all that has been found is that the funds have been diverted towards making payment of material, therefore, this is at the most, a matter of departmental action, but no criminality is involved. It is also submitted that on 11.12.2019, a chart containing details of toilets constructed under MGNREGA scheme of gram panchayat- Sarkeli has been prepared signed and certified by the CEO and programme officer of Janpad Panchayat, Sakti, which shows that huge amount of Rs.28,90,000/- is yet to be accounted in favour of gram panchayat Sarkeli. Therefore, it is prayed,

the applicant may be extended the benefit of anticipatory bail.

4. On the other hand, learned counsel for the State opposed the application and submits that allegations against present applicant are serious as they relate to embezzlement of huge amount of public money. He would submit that the FIR has been registered only on the basis of preliminary enquiry conducted by senior official in which a prima facie case has been found against present applicant who was working as Panchayat Secretary. According to him, the enquiry report dated 31.10.2019 (Annexure D-5) itself reveals the manner in which lakhs of public fund were siphoned in the name of making payment to different persons. He submits that affidavits of receipt of amount by the beneficiaries shows that the applicant is tampering with the prosecution witnesses who are the complainant that their money has not been paid. He also submits that as far as non- receipt of balance amount towards construction is concerned that is a separate matter, but there is a prima facie material of embezzlement. Therefore, the applicant is not entitled to grant of bail.
5. Having considered the submissions made by learned counsel for the respective parties, taking into consideration the disclosure made by learned State counsel from the case diary and also taking into consideration various documents placed on record particularly various enquiry report, the prosecution case appears to be that the applicant while working as Secretary has embezzled huge amount and funds have been diverted for the purpose other than the purpose for which it was provided. According to the enquiry report dated 31.10.2019, many beneficiaries have not received the payment and their funds have been diverted. It is also observed in the report that many toilets have not been completed and in many cases construction has not even started and the funds allotted for the same has also been misappropriated by showing as 'utilized'. Therefore, looking to the aforesaid material on record, present is not a fit case for grant of anticipatory bail to the applicant.
6. The application is accordingly rejected.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge