

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 171 of 2020**

Sunny Jain s/o. Late Shri Ashok Kumar Jain, aged about 35 years, caste Jain, Proprietor Sunny Borewells, in frnt of United Hospital, Purana Bus Stand, Rajnandgaon, Tahsil and District Rajnandgaon (CG). **---- Applicant**

Versus

State of Chhattisgarh through District Magsitrate, Rajnandgaon, District Rajnandgaon (CG). **---- Respondent**

For Applicant	:	Mr. Tarendra Kumar Jha, Advocate.
For Respondent/State	:	Mr. Vimlesh Bajpi, Govt. Advocate.
For Objector	:	Mr. Abhishek Sharma, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17-06-2020

Heard.

1. The applicant has preferred this bail application under Section 438 of Code of Criminal Procedure 1973 apprehending his arrest in connection with Crime No. 36 of 2020 registered at Police Station Basantpur, District Rajnandgaon (C.G.) for alleged commission of offence under Sections 417 and 420 read with Section 34 of IPC.
2. Case of the prosecution is that the applicant has purchased 1,30,613 kg of TMT Bar from the complainant for cost of Rs.60,30,255/- on credit. Out of total amount, applicant had only paid Rs.46,11,532/- and the balance amount of Rs.14,18,723/- is not being paid with dishonest intention even though the applicant is engaged in the trade and purchase under which after purchasing

TMT Bar from the complainant, he is selling those items to other persons.

3. Learned counsel for the applicant argued that in order to recover the balance amount from the applicant, the complainant had filed a false criminal case. The complainant instead of taking civil remedy for breach of contract, has taken recourse to institute criminal case to twist the arms of the applicant. Learned counsel for the applicant relying upon the decision of Hon'ble Supreme Court in the matter of **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others vs. Nirma Cerglass Technics (P) Ltd and others**, reported in 2016(1) SCC 348 argued that present case is not a case of cheating but at the most it may be breach of contract. He further submits that the applicant has not disputed his civil liability but money cannot be recovered from him by registering a false criminal case. He further submits that out of total amount, he has already paid huge amount of Rs.46,11,532/-. He is a businessman, therefore, in these circumstances, he may be protected by anticipatory bail.

4. On the other hand, learned counsel for the State and learned counsel for the objector both oppose the prayer for grant of anticipatory bail and submit that the applicant is a habitual offender and he has been cheating those with whom he has been entering into business deal of sale and purchase. Learned State counsel submits that against the present applicant many other criminal cases have been registered as after having received supply he has not

made any payment. It is argued by learned counsel for the Objector that while the applicant was purchasing TMT Bar from the complainant at higher rate of Rs. 40.50 per kg and Rs. 39/- per kg, he was selling those TMT Bars in the open market at a lower rate which shows that he had indulged in cheating of the complainant.

5. On *prima facie* consideration, present appears to be a case of a civil dispute. Even, according to the case of the prosecution and the objector, applicant has already paid Rs.46,11,532/- out of Rs.60,30,255/-. Criminal case was lodged against the applicant when he failed to pay the balance amount of Rs.14,18,723/- despite repeated demands. Even if the applicant admits his liability of payment of balance amount, at this stage, as the applicant has paid a huge amount, he is entitled to anticipatory bail.

6. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- along with one local surety for the like amount to the satisfaction of the Arresting Officer and the applicant shall abide by all the following terms and conditions.

- (i) that the applicant shall make himself available for interrogation by a Police Officer as and when required;
- (ii) that he 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

facts to the Court or to any Police Officer.

- (iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E

Raju