

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 256 of 2020

Sunil Gupta S/o Late Ramchandra Gupta Aged About 56 Years R/o Opposite Of City Club, Station Road, Durg, Tahsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Police Station, Jamul, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

MCRCA No. 400 of 2020

Ashish Gupta S/o Late Ramchandra Gupta Aged About 44 Years R/o 734, Padmnabhpur, Durg, Tahsil And District Durg, C.G., District : Durg, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Police Station, Jamul, District Durg, C.G., District : Durg, Chhattisgarh

---- Respondent

For Applicants	:	Shri Anand Shukla, Advocate
For State	:	Shri Lalit Jangde, Dy. Govt. Advocate
For Objector	:	Shri Suyash Dhar, Advocate appears under instructions from Shri Vaibhav Shukla, Advocate

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

Order On Board

03/12/2020

Heard.

1. The applicants are the brothers and also Director/Proprietor of their business establishment which runs in the name and style as Ganpati Allied Private Ltd. and Ganpati Wires. They have filed these applications for grant

of anticipatory bail under Section 438 Cr.P.C. apprehending their arrest in connection with Crime No. 38/2020, registered at Police Station- Jamul Thana, District- Durg (CG) for alleged commission of offence under Sections 409, 420, 506 and 34 IPC.

2. Case of the prosecution, in brief, is that the applicants, in the name of their Trade Firms, kept on purchasing huge quantity of MS rod/ MS wire from the complainant between period from 15th May 2019 to 30th June 2019 worth Rs.1,67,46,671/-. It is, however, alleged that though some part payment was made by the applicants towards the cost of supplied material, the balance amount which is more than Rs.79 lakh is not being paid by the applicants and whenever the complainant used to request, the applicants, instead of making any payment, started threatening the complainant and also warned of dire consequence and finally, when no payment was made, the complainant approached the police on the allegation that the act of the applicants in withholding payment of balance amount, amounts to criminal breach of trust and the applicants obtained huge quantity of supply on the assurance of payment but no such payment was ever intended to be made. Thus inducing the complainant to supply huge quantity by false statement is an act of cheating.
3. Learned counsel appearing for the applicants would argue that present is a case of civil dispute between the parties. He submits that the applicants are not denying their liability. The applicants have already paid huge amount of more than Rs.1 crores 8 lakh as against total payment of Rs.1,67,46,671/-. Referring to notice under Insolvency and Bankruptcy proceedings, learned counsel for the applicants would argue that the complainant in the said notice has raised demand of an amount which is not the same as stated in FIR, which itself shows that it is a dispute of civil nature. He further submits that contents of this notice would also show that complainant himself, at the time when he gave notice, treated it to be a case of civil dispute alleging breach of contract. However, the applicants in reply to said notice have raised serious issue with regard to quality of supplied items and thus, this gave rise to a dispute between the parties. At the same time, it is only a civil dispute and, therefore, the applicants are being falsely implicated only to twist their arms to make balance payment

as claimed by the complainant.

4. On the other hand, learned counsel for the State and Objector would argue that present is not a case of simple breach of contract. The complainant has clearly stated in his FIR that huge supply were made to the applicants in their Trade establishment and the total amount which was required to be paid by the applicants was Rs.1,67,46,671/-, but only a part of that was paid and, thereafter, the applicants, though in a position to pay the balance amount, are deliberately denying their liability by raising frivolous issue regarding quality of the supplied material, which clearly show that there was, right from the beginning, an intention to cheat and the applicants were never intended to make full payment.
5. On prima facie consideration, it is found that the applicants have been supplied MS rod and MS wires, industrial products, from the complainant during the month of May & June 2019. FIR states that out of total payment due and payable by the applicants to the complainant, only Rs.1,08,65,353/- has been paid and the dispute is with regard to payment of the balance amount. Further, on prima facie consideration, no agreement in writing or any document has been placed on record to show that the supply was on such condition from which it could be deduced that the applicants had a criminal intent, only on the ground that balance payment have not been made.
6. Therefore, considering the aforesaid material on record, particularly taking into consideration payment of more than Rs.1 crore 8 lakh out of Rs.1,67,46,671/-, in the considered opinion of this Court, present is a fit case for grant of anticipatory bail because there is considerable force in the submission of learned counsel for the applicants that recourse to criminal case has been taken only as an arm-twisting method to recover balance amount, without taking recourse to civil remedy or any other remedy available under the law.
7. The applications are accordingly allowed and it is directed that in the event of arrest, applicants- Sunil Gupta and Ashish Gupta shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- along with two local sureties each for the like amount to the satisfaction of

the arresting officer, with following further conditions that:-

- (i) the applicants shall make themselves available for interrogation by the police officer as and when required;
- (ii) 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 him from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen