

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 05-10-2020Order delivered on 09-10-2020MCRC No. 1824 of 2020

1. Sachin Gorakh S/o Late Soukhilal Gorakh Aged About 40 Years R/o Shivaji Marg. Tikrapara, Bilaspur, Tashil And District Bilaspur Chhattisgarh

---- Applicant

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station City Kotwali, Bilaspur, District Bilaspur Chhattisgarh

---- Respondent

For Applicant	Mr. Rajeev Shrivastava, Advocate
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For Respondent /State	Mr. K.K. Singh, Govt. Advocate
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For Objector	Mr. Awadh Tripathi, Advocate
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(Proceedings through Video Conferencing)Hon'ble Mr. Justice Prashant Kumar MishraOrder On Board

1. Heard.
2. The applicant has preferred this first bail application under Section 439 of CrPC, as he is arrested in connection with Crime No.60/2020, registered at Police Station City Kotwali, Bilaspur (CG), for the offence

punishable under Sections 384, 420, 466 & 467 of the Indian Penal Code and Section 4 of the Protection of Debtor Act, 1937.

3. As per the First Information Report (FIR) lodged by the complainant namely; Tarkelan Topano on 15-2-2020, he has obtained loan of Rs.3.00 lacs from the applicant to be repaid along with interest at the rate of 2% per month, however, despite repaying the amount the applicant demanded Rs.21.00 lacs more and is abusing & criminally intimidated him. It is also mentioned in the FIR that large number of Railway Employees have been provided loan by the applicant and all of them are threatened to return inflated amounts.
4. In course of investigation, the concerned Police recovered several documents which are in the nature of memos for recovery or attachment issued by the Executing Court directing the Railway to attach a particular amount from the monthly salary of the borrower and deposit the same in the Court.
5. At the time of hearing of this bail application it came to the notice that the concerned Police have sought verification from the District & Sessions Judge, Bilaspur in respect of certain memos issued by the Executing Court, which has passed the compromise decree. Since it related to the record of the Court, this Court directed the District & Sessions Judge, Bilaspur, to conduct enquiry and submit a report.

6. Pursuant to the said direction of this Court, the District & Sessions Judge, Bilaspur, submitted a report dated 9th September, 2020 informing that in three cases pertaining to borrowers namely; Kanhaiya Lal, Albish Bilamor & E.A. Paul the memos purportedly issued by the 5th Civil Judge Class-II, Bilaspur or any of the present Executing Civil Court have, in fact, not been issued by the said Court(s), therefore, the memos have been, *prima facie*, found to be forged documents.
7. Mr. Rajeev Shrivastava, learned counsel appearing for the applicant, would submit that all the offences are triable by the Judicial Magistrate First Class. There is no proof that the documents have been concocted or generated by the applicant. Shri Shrivastava would further submit that there is no dispute that compromise decrees have been passed by the Civil Court in different cases including the above three cases and the statement of Ms Rekha Pandey recorded in course of enquiry conducted by the District & Sessions Judge, Bilaspur, would clearly prove that the Executing Courts have directed for issuance of memos, therefore, it is not a case where the seized memos are in conflict with the orders passed by the Executing Courts.
8. Per contra, Mr. K.K. Singh, learned Govt. Adv. appearing for the State and Mr. Awadh Tripathi, learned counsel appearing for the objector, would oppose the bail application on submission that the applicant has created a terror in the locality by indulging in money lending,

criminal intimidation and gambling. Large number of Railway Employees have become prey to the tactics of the applicant, therefore, the applicant may not be released on bail.

9. Mr. Awadh Tripathi, learned counsel appearing for the objector, would additionally submit that the applicant was allowed ad-interim bail by this Court, but he did not surrender on expiry of the period of interim bail, but for the direction issued by this Court the applicant had all the intentions to remain free without there being any bail order in his favour.
10. Case diary contains copies of the various agreements and decrees passed by the Civil Court or the Lok Adalat. There is no material indicating that the decrees have not been passed by the Civil Court or the Lok Adalat. Even the memos issued were directed to be issued by the trial Court. Albeit the memos seized from the applicant have not been found to be actually issued by the Court, but it is not a case where no such direction for issuance of memos were passed by the Executing Court.
11. True it is that the applicant was released on ad-interim bail by this Court and he did not surrender immediately, however, at present he has surrendered and is confined in jail.
12. It is to be seen that even the complainant would state that he obtained loan from the applicant. Likewise, other

victims would also state that they have obtained loan from the applicant, but he demands exaggerated amount as repayment. Thus, it is not a case that the borrowers have not obtained loan and yet the applicant created forged agreements and obtained compromise decrees in a fraudulent manner.

13. Considering the entire facts situation of the case, further considering the fact that the offences are triable by the JMFC; and also considering the fact that the applicant has remained in detention from 16-2-2020 to 20-3-2020 and thereafter, from the last week of August, 2020 to till date, I am of the opinion that present is a fit case to release the applicant on regular bail with the following conditions :-

- He shall not contact the borrowers in any manner nor shall indulge in any criminal activity in relation to any of the borrower during pendency of the trial.
- In the event any borrower lodges complaint with the police alleging any criminal activity against them by the applicant the present bail order shall stand cancelled. The concerned police would be at liberty to arrest the applicant for this crime also.
- Any of the borrower, who has been cited as one of the victim in the instant case, would

be at liberty to move for cancellation of this bail order if the applicant indulges in any criminal activity and the concerned police does not arrest him.

- The applicant shall execute a personal bond for a sum of Rs.1,00,000/- with two local sureties for the like amount to the satisfaction of the trial Court; and
- He shall appear before the trial Court on each and every date given by the said Court.

14. Certified copy as per rules.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri