NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No.731 of 2020

Order Reserved on : 27.8.2020

Order Passed on : 21.9.2020

Ashok Agrawal, son of Late Nand Kishore Agrawal, aged 66 years, resident of Krishna Rice Mill, Mungeli Road, Mangla Chowk, Bilaspur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Devendra Nagar, Raipur, District Raipur, Chhattisgarh

---- Respondent

M.Cr.C.(A) No.755 of 2020

Abhishek Agrawal, son of Ashok Agrawal, aged 38 years, resident of Krishna Rice Mill, Mungeli Road, Mangla Chowk, Bilaspur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Devendra Nagar, Raipur, District Raipur, Chhattisgarh

---- Respondent

M.Cr.C.(A) No.759 of 2020

Sanjay Khanna, son of Late Indra Khanna, aged 45 years, resident of Warehouse Road, Bilaspur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Devendra Nagar, Raipur, District Raipur, Chhattisgarh

---- Respondent

and

M.Cr.C.(A) No.770 of 2020

1. Dulal Banerjee, son of Durgadas Banerjee, aged 49 years, resident of 4/44, Parasrampuriya Towers, Link Garden CHS, Off Link Road, Lokhandwala, Andheri West Mumbai, 400053
2. Mayur Govindbhai Kanani, son of Govindbhai Gokaldas Kanani, aged 41 years, resident of B/303, Ekta Bhumi Garden, Duttpada Road-2, Rajendra Nagar, Borivali East, Mumbai, 400066

3. Sudhir Sarin, son of Satish Chander Sarin, aged 53 years, resident of B-46, Second Floor, Sarvodaya Enclave, Delhi, 110017
4. Sunil Sethi, son of Baldeoraj Sethi, aged 54 years, resident of 80-C, LIG DDA Flats, Gulabi Baug, Delhi, 110007
5. Rajesh Kumar Mittal, son of Omprakash Mittal, aged 47 years, resident of Flat No.294, Seemant Vihar Apartments, Behind Redisson Hotel, Sector 14, Kaushambi, Gaziabad, U.P., 201012

---- Applicants

versus

State of Chhattisgarh through Police Station Devendra Nagar, District Raipur, Chhattisgarh

---- Respondent

For Applicants	:	Shri Rajeev Shrivastava, Shri Malay Shrivastava, Advocates
For Respondent/State	:	Shri Sunil Otwani, Additional Advocate General
For Objector/Complainant	:	Shri Avi Singh, Shri Y.C. Sharma, Shri Sachin Nidhi, Advocates

Hon'ble Shri Justice Arvind Singh Chandel

CAV ORDER

1. All the anticipatory bail applications arise out of a common crime number, therefore, they are heard and disposed of together.

2. The instant are first applications for grant of anticipatory bail to the Applicants. They are apprehending their arrest in connection with Crime No.51 of 2020 registered with Police Station Devendra Nagar, Raipur for offences punishable under Sections 120B, 409, 420, 34 of the Indian Penal Code (As submitted by Learned Additional Advocate General appearing for the State/Respondent, subsequently, offences under Sections 467, 468, 471 of the Indian Penal Code were also added).

3. The case, in brief, is that Applicant Ashok Agrawal is Manager of one company, namely, Hathway CCN Multinet Private Limited ('the CCN Company' for short). All the other Applicants as well as Complainant

Gurmeet Singh Bhatia are Directors of the CCN Company. Applicant Abhishek Agrawal is son of Applicant Ashok Agrawal. The CCN Company is engaged in business of cable network in the State of Chhattisgarh since 2010. On 10.6.2020, a written complaint was filed by Complainant/Director Gurmeet Singh Bhatia against other Directors and Manager of the CCN Company, i.e., the Applicants herein with the allegations *inter alia* that the business of the CCN Company is being run by Applicant Ashok Agrawal and his son Applicant Abhishek Agrawal. After appointment of the Complainant as a Director of the CCN Company, he made demands for his dividend in the CCN Company from Applicant Abhishek Agrawal from time to time. Applicant Abhishek Agrawal assured him that he will be paid his dividend in future. Whenever the Complainant asked to show accounts of the CCN Company, he was not shown the same and was being avoided to see the same. In the year 2016, work of digital connection was started by the CCN Company. Then the Complainant again made demand for payment of his dividend. He was replied that after completion of the work of digital connection, he will be paid his dividend. But, thereafter also, he was not paid his dividend. It is further alleged that whenever any meeting of the CCN Company was convened, the Complainant was not called to attend the meeting. On a doubt getting raised in his mind, the Complainant made an inquiry in the CCN Company on his own. On the inquiry, it was found by him as under:

(1) In the year 2016, in place of new set top boxes, second hand/old set top boxes were purchased by the CCN Company from Indore (Madhya Pradesh) and were supplied to the customers and resultantly a

financial loss of Rs.3,30,00,000 was suffered by the CCN Company.

(2) From the business of cable network a sum of Rs.10,00,00,000 and from the carriage fee a sum of Rs.10,00,00,000 was received in cash by the Applicants, but the same were not deposited in the account of the CCN Company and were distributed by them among themselves, which resulted financial loss of Rs.20,00,00,000 to the CCN Company.

(3) By making forged entries in the accounts of the CCN Company, a total estimated financial loss of Rs.40,00,00,000 was caused to the CCN Company.

(4) A loss of Rs.5,00,00,000 was caused to the CCN Company by submitting forged bills against purchases of various articles relating to the CCN Company.

(5) The Applicants did not issue receipts against receipt of payments from local cable operators and did not deposit the said amount in the account of the CCN Company and withheld the same with them and thereby they caused loss of crores of rupees to the CCN Company.

(6) In the year 2016, Applicants Ashok Agrawal and Abhishek Agrawal, without any resolution or authority of the CCN Company, opened two accounts in the Central Bank of India, one at Shankar Nagar, Raipur branch and the other at Civil Line, Raipur branch and by depositing the income of the CCN Company in those two accounts they are misusing the said deposits in their favour.

It is further alleged by the Complainant that in the year 2019, he made a written complaint to the Registrar of Companies and to the Hathway Private Limited, Head Office, Mumbai. On this, the

Applicants contacted him and they assured him that they will pay his whole dividend very soon and they will also deposit the amount of loss caused to the CCN Company in its account. But, they did not do so. On the basis of the written complaint dated 10.6.2020 submitted by the Complainant, First Information Report was registered against the Applicants for the aforesaid offences.

4. Shri Rajeev Shrivastava, Learned Counsel assisted by Shri Malay Shrivastava, Learned Counsel appearing for the Applicants submitted that the Applicants have been falsely implicated in the case to satisfy the demand and settle business rivalry. From perusal of the FIR, it is apparent that the present is a civil dispute which has been designed and coloured as a criminal case just to settle the *inter se* rivalry and grab the company. The Complainant has attended the meetings of Board of Directors and also annual general meetings. In the meetings of Board of Directors, the Complainant raised his protest against Applicant Abhishek Agrawal and all his allegations were duly considered in the meeting of the Board of Directors which was attended by the Complainant also and the complaints were not substantiated and the Complainant also concurred with the resolution of the Board of Directors without any protest. It was further submitted that the period of the alleged offences is said to be between 18.11.2010 and 10.6.2020 and the transactions in question being commercial in nature require preliminary inquiry, but the police registered the case without preliminary inquiry which is in violation of the law laid down by the Supreme Court in **Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1.** It was further submitted that the CCN Company is an income tax payee company and the account of the company is audited account and the audit report is placed in the annual general meetings every year and the same has been approved by the Complainant also without any protest. Referring to the complaint dated 14.6.2019 made by the Complainant to the Registrar of Companies, it was further submitted that as directed by the Registrar of Companies vide his letter dated 3.7.2019, a meeting of Board of Directors was convened on 4.7.2019 in which the Complainant had participated and in which the grievances of the Complainant were discussed and an extra-ordinary general meeting of the share-holders of the CCN Company was called for 12.8.2019. On 12.8.2019, in the said meeting of the share-holders, the Complainant had registered his attendance through his proxy in which the proposal for removal of Applicant Abhishek Agrawal was rejected by 80.48% votes. It was further submitted that in the complaint dated 14.6.2019 made to the Registrar of Companies, there was no complaint regarding non-payment of dividend to the Complainant. Since the Complainant did not succeed in removing Applicant Abhishek Agrawal from the Board of Directors of the CCN Company, he lodged the forged and fabricated FIR. Referring to the provision of Section 245 of the Companies Act, 2013, it was submitted that the entire allegations show that it is an *inter se* dispute between the Directors of the CCN Company for which a remedy is available under Section 245 of the Companies Act, 2013. Further referring to Sections 206, 207, 211, 213, 221, 435, 436, 445, 448, especially Sections 212 and 447 of the Companies Act, 2013, it was submitted that exclusive power to make investigation in this case lies with Serious Fraud Investigation Officer and the police has no power to investigate into the matter. It was further submitted that none of the Applicants is a public servant and, therefore, offence under Section 409 of the Indian Penal Code is not made out. It was further submitted that the FIR was lodged much belatedly without assigning any reason therefor. The matter is based upon documentary evidence. The related documents are already given to the Registrar of Companies. Custodial interrogation is also not required. It was finally submitted that the FIR was lodged with a *mala fide* intention. The nature of the dispute is civil. The transactions in question are commercial. *Prima facie,* no case is made out against the Applicants. All the Applicants are reputed persons of the society. Custodial interrogation of the Applicants is not required. Therefore, they may be granted benefit of anticipatory bail.

5. Shri Sunil Otwani, Learned Additional Advocate General appearing for the State/Respondent first submitted that during the course of investigation, other offences under Sections 467, 468 and 471 of the Indian Penal Code were also added. It was further submitted by him that till 24.6.2020, none of the Applicants or their any representative appeared before the Investigation Officer nor any audit report of the CCN Company was submitted. Contrary to that, the Complainant submitted the audit report of the CCN Company. The Applicants have not come up to the Court with clean hands and, therefore, they are not entitled to get any relief. It was further submitted that the CCN Company was formed in the year 2010 and at that point of time, with a resolution of the company, account of the company was opened in HDFC Bank and there were five signatories to operate the account of the company. But, in the year 2016, without any resolution or authority of the CCN Company, two accounts were opened in Central Bank of India, one at Shankar Nagar, Raipur and the other at Civil

Line, Raipur by Applicants Ashok Agrawal and Abhishek Agrawal showing that they were authorised by the CCN Company and the accounts will be operated through their signatures only. It was further submitted that Applicants Ashok Agrawal and Abhishek Agrawal formed their own company, namely, Nand Kishore Infrastructure and CCN Ltd. It was further submitted that the infrastructure of the CCN Company were used in Nand Kishore Infrastructure and CCN Ltd. and the money received from different consumers including CSPDCL, Haribhumi, PWD and Railtel were deposited in the account of Nand Kishore Infrastructure and CCN Ltd. Referring to the 161 Cr.P.C. statements of witnesses Amul Garudi, Hitesh Vyas, Himanshu Mishra, Arun Kumar, Santosh Verma, Hemant Sharma, Mannu Gupta, Samir Kole and Manjeet Singh, it was further submitted that it reveals that second hand/old set top boxes were supplied to the consumers. The whole collection of cash was being given to Applicant Ashok Agrawal. The cash being received from advertisements was also being given to Applicants Ashok Agrawal and Abhishek Agrawal. The cash being collected from cable operators was also being given to Applicants Ashok Agrawal and Abhishek Agrawal in which other Directors of the CCN Company were also involved. Thus, according to Learned State Counsel, the offences alleged against the Applicants are *prima facie* made out. With regard to the argument advanced on behalf of the Applicants that the case can only be investigated by a Serious Fraud Investigation Officer appointed under the Companies Act, it was submitted by Learned State Counsel that there is no bar that the police authority cannot investigate into the matter. Reliance was placed by Learned State Counsel on **Kanwar Pal Singh v. State of Uttar Pradesh, 2019 SCC OnLine SC 1652, Surendra Nath Sarkar v.**

Kali Pada Das, AIR 1940 Calcutta 232, S.P. Gupta v. State (NCT of Delhi), 2005 SCC OnLine Del 417 and **State of West Bengal v. Narayan K. Patodia, (2000) 4 SCC 447**. As regards custodial interrogation, it was submitted by Learned State Counsel that during the course of investigation, numbers of notices were issued to the Applicants to appear and participate in the investigation, but they did not participate. Numbers of documents are required to be collected from the possession of the Applicants especially from Applicants Ashok Agrawal and Abhishek Agrawal and, therefore, custodial interrogation of Applicants Ashok Agrawal and Abhishek Agrawal is essential. Hence, it is prayed that the anticipatory bail applications may be rejected.

6. Shri Avi Singh, Learned Counsel assisted by Shri Y.C. Sharma and Shri Sachin Nidhi, Learned Counsel appearing for the Objector/Complainant submitted that as per rules of the CCN Company, new set top boxes were to be purchased from the Hathway Private Limited, Head Office, Mumbai, but second hand/old set top boxes of Hathway brand were purchased from Indore (Madhya Pradesh) at lower rates and the same were supplied to the consumers and the amounts received against such supply were not deposited in the account of the CCN Company, but were deposited in the account of the personal company of Applicants Ashok Agrawal and Abhishek Agrawal, namely, CCN Digital Network, Bilaspur. All the Applicants cheated on the Complainant and the Hathway Private Limited, Head Office, Mumbai in a planned way and embezzled crores of rupees. It was further submitted that recovery of material documents from the Applicants is yet to be done. Therefore, custodial interrogation of Applicants Ashok Agrawal and Abhishek

Agrawal is required. Reliance has been placed upon the judgment in **Smt. Ramesh Kumari v. State of NCT of Delhi, 2016 SCC OnLine Del 4054.**

7. In reply, Shri Rajeev Shrivastava, Learned Counsel appearing for the Applicants submitted that the whole audit report has been handed over to the Station House Officer in which no personal transaction is involved. With regard to purchase of second hand/old set top boxes, it was submitted that every set top box has a number and the set top boxes are operated by Mumbai Head Office and all the set top boxes are of Hathway Company itself. With regard to installation of second hand/old set top boxes, Hathway Company has never made any complaint nor has raised any grievance. With regard to carriage fee amounting to Rs.10,00,00,000, it was submitted that the amount is received from the broadcaster through account payee cheque and all the amount is mentioned in the account statement of the CCN Company. According to the audit reports, purchases of various articles relating to the CCN Company were made for Rs.2,50,00,000 only and, therefore, the allegation that without making any purchase forged bills for Rs.5,00,00,000 against purchases were submitted is not acceptable. Every year, audit has been done and no irregularity or embezzlement has been found. No consumer has made any complaint. Hathway Private Limited, Head Office, Mumbai has also not raised any grievance. The dispute relates to mutual transactions between the Directors of the CCN Company. With regard to the case law of **Kanwar Pal Singh case** (supra) referred to by Learned Additional Advocate General appearing for the State/Respondent, it was submitted that the said case relates to the provision of Section 22 of the Mines Regulation Act and, therefore, the same is not applicable to the present case. With regard to the other case laws, namely, **Surendra Nath Sarkar case** (supra), **S.P. Gupta case** (supra) and **State of West Bengal case** (supra), it was submitted that these case laws are of before the year 2013 and till that time Section 447 of the Companies Act was not in existence and till that time provision of appointment of a Serious Fraud Investigation Officer was also not in existence and, therefore, these case laws are not applicable to the present case. With regard to the argument advanced by Learned State Counsel that the audit report was submitted by the Complainant, it was submitted that the audit report is available in public domain and anybody can download/obtain the same. Therefore, it does not matter that the audit report was not submitted by the Applicants. It was further submitted that the matter is based upon documentary evidence and the documents are available in the office of the CCN Company and whatever documents were asked to be given, the same have already been given to the Investigating Officer and in future also if any document is asked to be submitted the same will be handed over. Non-appearance of the Applicants before the Investigating Officer was due to danger of pandemic Covid-19. Therefore, custodial interrogation of the Applicants is not required.

8. I have heard Learned Counsel appearing for the parties. I have also minutely perused the contents of FIR, statements of witnesses recorded under Section 161 Cr.P.C. referred to by Learned State Counsel, provisions of Sections 245, 212 and 447 of the Companies Act, 2013 and other material available in the case diary.

9. It appears that the present is an *inter se* dispute between the Directors of the CCN Company regarding dividend and other obligations. Looking to the allegations, the matter appears to be of civil nature. The matter is based upon documentary evidence. Most of the documents are available in the office of CCN Company. Other required documents are claimed to have already been handed over by the Applicants. It seems that custodial interrogation of the Applicants is not necessary.

10. In view of the aforestated, I am inclined to grant anticipatory bail to the Applicants. Their bail applications are allowed.

11. 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 Two Lakhs with two solvent sureties each for a sum of Rupees One Lakh to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. The Applicants shall fully cooperate with the investigation and 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

Gopal