

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 19.10.2020

Order Passed on : 04/11/2020

M.CR.C.(A) No. 680 of 2020

Samudram Singh (wrongly mentioned as Samundra Ram Singh), S/o. Late Shri N. K. Singh, aged about 72 years, R/o. 'Peepal', 1-172, Housing Board Colony, Boriyakala, Raipur Chhattisgarh.

---- Applicant

Versus

The State of Chhattisgarh, Through - The S.H.O, Police Station, State Economic Offences Wing, State Anti-Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

M.CR.C.(A) No. 714 of 2020

1. Shailendra Singh, S/o. Shri Samudram Singh, aged about 48 years, R/o. MIG 21, Nehru Nagar, Bilaspur (C.G.)
2. Smt. Saraswati Singh, W/o. Shri Shailendra Singh, aged about 40 years, R/o. MIG 21, Nehru Nagar, Bilaspur (C.G.)

---- Applicants

Versus

The State of Chhattisgarh, Through- The SHO, P.S., State Economic Offences Wing, State Anti-Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

M.CR.C.(A) No. 715 of 2020

1. Deependra Singh, S/o. Shri Samudram Singh, aged about 36 years, R/o. 'Peepal', 1-172, Housing Board Colony, Boriyakala Raipur, Chhattisgarh.
2. Smt. Pankaj Singh, W/o, Shri Deependra Singh, aged about 22 years, R/o. 'Peepal', 1-172, Housing Board Colony, Boriyakala, Raipur, Chhattisgarh.

---- Applicants

Versus

The State of Chhattisgarh, Through- The SHO, P.S., State Economic Offences Wing, State Anti-Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

M.CR.C.(A) No. 716 of 2020

Meena Singh, W/o. Samudram Singh, aged about 60 years, R/o. 'Peepal' 1-172, Housing Board Colony, Boriyakala, Raipur Chhattisgarh.

---- Applicant

Versus

The State of Chhattisgarh, Through- The SHO, P.S., State Economic Offences Wing, State Anti-Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

M.CR.C.(A) No. 728 of 2020

Samund Ram Singh, S/o. Late Shri Nankun Singh, aged about 72 years, Retired O.S.D., Excise Commissioner Officer Raipur, Chhattisgarh. R/o.- 'Peepal', 1/172, Housing Board Colony, Boriakala, Raipur, District- Raipur, Chhattisgarh.

---- Applicant

Versus

The State of Chhattisgarh, Through- P.S. - State Economic Offences Wing, State Anti-Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

M.CR.C.(A) No. 907 of 2020

1. Jainendra Singh, S/o. Shri Samudram Singh, aged about 38 years, R/o. F-316, Rama Green City Bilaspur District Bilaspur Chhattisgarh.
2. Smt. Shikha Singh, W/o. Shri Jainendra Singh, aged about 37 years, R/o. F-316, Rama Green City Bilaspur, District Bilaspur Chhattisgarh.

---- Applicants

Versus

The State of Chhattisgarh, Through- The SHO, P.S., State Economic Offences Wing, State Anti-Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

For Applicants

: Mr. Kishore Bhaduri, Advocate

For Respondent/State

: Mrs. Fouzia Mirza, Addl. Advocate General

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

04/11/2020

1. All the above applications for grant of anticipatory bail is heard and decided together by this common order.
2. The bail application bearing M.Cr.C.(A) No.728/2020 is the second bail application, which has been filed by the applicant – Samundram Singh apprehending his arrest in connection with Crime No.12/2019, registered at Police Station – A.C.B./E.O.W., Raipur, District – Raipur (C.G.) for offence punishable under Section 7 (C) of the Prevention of Corruption Act, 1988 and Section 420, 467, 468, 471 and 120-B of the Indian Penal Code. The first bail application bearing M.Cr.C.(A) No.1107 of 2019 of the applicant - Samund Ram Singh in respect of the above crime number was dismissed on merits vide order dated 26.09.2019. Whereas, the bail applications bearing M.Cr.C.(A) No.680/2020, M.Cr.C.(A) No. 714 of 2020, M.Cr.C.(A) No. 715 of 2020, M.Cr.C.(A) No. 716 of 2020 and M.Cr.C.(A) No. 907 of 2020 are the first bail applications, filed by the applicant – Samundram Singh and other accused persons respectively apprehending their arrest in connection with Crime No.14/2019, registered at Police Station – A.C.B., Raipur, District – Raipur (C.G.) for offence punishable under Section 13 (1) (b), 13 (2) of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code.
3. It is submitted by the learned counsel for the applicants that FIR in Crime No.12/2019 was registered against the applicant- Samund Ram Singh for commission of offence under Section 7

(C) of Prevention of Corruption Act, 1988 and Section 420, 467, 468, 471, 120-B of the Indian Penal Code. Whereas, the FIR in Crime No.14/2019 has been registered against the applicant Samud Ram Singh and others for commission of offence under Section 13 (1) (b) read with Section 13 (2) of the Prevention of Corruption Act and Section 120-B of the Indian Penal Code. The first bail application bearing M.Cr.C.(A) No.1107/2019, filed by applicant - Samund Ram Singh for grant of anticipatory bail in Crime No.12/2019 was dismissed on merits by this Court on 26.09.2019. Whereas, M.Cr.C.(A) No.680/2020 is the first bail application for grant of anticipatory bail in respect of the Crime No.14/2019.

4. Arguing on the second bail application bearing M.Cr.C.(A) No.728/2020 for grant of anticipatory bail to the applicant – Samund Ram Singh, it is submitted by the learned counsel for the applicant that the case of the applicant was not correctly explained by the counsel, who has argued the matter in previous bail application, therefore, the counsel for the applicant seeks to elaborate on the case in hand. It is submitted that the crux of the allegation against the applicant in Crime No.12/2019 is this, that he being an Officer on Special Duty and In-charge of fixing the price for the country made foreign liquor and country liquor, has made erroneous proposition for the price fixation in the interest of the contractors and retailers because of which, the State exchequer has suffered huge loss.

5. It is further submitted that the documents have been filed regarding the note-sheet moved for fixation of the price of the country and foreign liquor in the year 2013-14 and 2014-15. These documents show that minimum and maximum price for the liquor is fixed by C.G. State Beverages Corporation Limited and on the basis of the same, the note-sheet has been forwarded by this applicant in official capacity, which was approved by the Excise Commissioner and subsequently by the Secretary on behalf of the Minister for Excise Department. It is submitted that the applicant has not made any proposition on his own. It is submitted that although there was a proposition in the note-sheet for the year 2013-14, that contractors should be given profit of 60% and in the proposition for the year 2014-15, the margin of profit of the contractors was proposed to be 50% of the sale proceed. The approval of this pricing was decided by the superior authorities up to the level of Minister, Department of Excise. No question was ever raised by any of the superior authority regarding the pricing made, therefore, there is nothing to suggest that the applicant has done any act with any criminal intent and for the purpose of making profit for himself. There is no complaint made by any of the persons concerned against the applicant that he has received any undue benefit from the pricing policy mentioned here-in-above.
6. It is further submitted that the other allegations against the applicant in Crime No.12/2019 that he has manipulated the

record, is baseless and without any support of any evidence. The applicant had successful carrier until he has retired in the year 2009. The applicant was then appointed by the State Government as Officer on Special Duty because of his expertise in the pricing of the excise products and he continued on this post up till 2018, until he himself resigned. Therefore, the allegations made regarding the commission of offence under Section 420, 467, 468, 471, 120-B of the Indian Penal Code are totally not made out. Further there is no evidence present as required to establish a case under Section 7 (C) of Prevention of Corruption Act, 1988, hence, it is prayed that he may be granted anticipatory bail in this case.

7. In respect of the bail application bearing M.Cr.C.(A) No. 680/2020, it is further submitted by the learned counsel for the applicants that the case registered against him is baseless. The inventory made by the ACB includes the property of this applicant and also the exclusive property of other co-accused persons with which, this applicant has no connection. The FIR in this case has been lodged by the ACB with ulterior motive and it appears to be politically motivated, because the applicant had served during the tenure of the previous government. As there is government of different political party at present, therefore, he is now being maliciously persecuted for his service rendered to the earlier government. The applicant had submitted in detail the Form No.1, 2, 3 & 4 explaining the acquisition of each and every

articles in the inventory by him and his family members along with source of income for making such acquisition, which has not been taken into consideration by the investigation officer.

8. It is further submitted that the applicants in other bail applications are the relatives of the applicant – Samud Ram Singh and there is no applicability of Section 13 (1) (b) read with Section 13 (2) of the Prevention of Corruption Act upon them. A third person can be prosecuted only under Section 8 or Section 9 of the Prevention of Corruption Act, which is not a case in this matter. It is submitted that the investigation is complete and there is no requirement of any custodial interrogation to be made from any of the applicants. Hence, it is prayed that all the applicants be granted anticipatory bail.
9. Smt. Fouzia Mirza, learned Additional Advocate General opposes all the applications for grant of anticipatory bail and submits that none of the applicants are entitled for grant of anticipatory bail. Replying to the arguments of applicants' counsel in M.Cr.C.(A) No.728/2020, she submits that this Court has passed an order of rejection in detail in M.Cr.C.(A) No.1107/2019 vide order dated 26.09.2019. The applicant then approached the Supreme Court of India through SLP (Cri) No.11385/2019, which has been disposed off by order dated 12.02.2020, stating that the Supreme Court is not inclined to entertain the petition under Article 136 of the Constitution of India. However, it was made clear that the question of custodial interrogation of the petitioner would only

arise if such need is felt and the special leave petition was dismissed. It is submitted that subsequent to the dismissal of the prayer of the applicant before the Supreme Court, the present bail application M.Cr.C.(A) No.728/2020 can not be entertained by this Court. It is submitted that Hon'ble Supreme Court has in its order, left open that the question of custodial interrogation of the petitioner has to be determined by the investigation agency and the investigation agency has this opinion that the applicant – Samund Ram Singh is required to be interrogated.

10. It is submitted by the learned Additional Advocate General that the Investigation Officer has made all the efforts to find the applicant Samund Ram Singh, but he was not found in place of his residence and he has totally declined to cooperate with the investigation. The allegation against the applicant is of this nature that he has deliberately mislead and miscalculated the profit margin to be given to the contractors, which was excessive being 60% of 2013-14 and 50% for the year 2014-15, whereas the margin for profit of the contractors was on much lower side in the neighboring States. It is submitted that the applicant further made miscalculation with respect to the price according to the proof liter by rounding up the price proposed, the benefit of which has directly gone to the contractors. This concept of rounding up was cooked up by the applicant, which has caused loss to the State. Therefore, the interrogation of the applicant is required, to clarify these points found in the investigation. The statement of the

witnesses recorded under Section 161 of Cr.P.C. also clearly implicates the applicant. The filing of charge-sheet in this case is no hindrance for further investigation, as the same is permitted under Section 173(8) of Cr.P.C.. It is also submitted that all the arguments that have been submitted for the present bail petition were previously presented before this Court in M.Cr.C.(A) No.1107/2019, which have been dealt with and rejected.

11. Replying to the arguments submitted in connection with the other bail applications arising out of Crime No.14/2019, it is submitted by learned Additional Advocate General that the investigation made very clearly shows that this applicant was found in possession of assets, which was disproportionate to the income made by him. The family members of the applicant – are the beneficiaries of corrupt practice of the applicant Samund Ram Singh as nothing was found in the investigation to show that the family members of the applicant have their own sources of income to acquire and maintain the property, that has been found recorded in their names.
12. Reliance has been placed on the judgment of Supreme Court in case of **State of M.P. Vs. Pradeep Sharma**, reported in **(2014) 2 SCC 171** and submits that the applicant has not cooperated with the investigation, challan has been filed against the applicant in Crime No.12/2019, whereas other challan in Crime No.14/2019 is ready to be filed showing him as absconder, therefore, any absconder can not get any benefit for grant of anticipatory bail. It

is further submitted that the offence under Section 120B of the Indian Penal Code has been added in Crime No.14/2019, which is specific to show the involvement of the family members of the applicant in the commission of crime. Therefore, it is prayed that the applicants may not be benefited with grant of anticipatory bail.

13. In reply, it is submitted by the learned counsel for the applicants, that all the allegations that are present against the applicant – Samund Ram Singh are matters of departmental enquiry. Miscalculation, mis-representation or making erroneous proposition are not offences under Prevention of Corruption Act. The requirements of proof for commission of offence under Section 7 of Prevention of Corruption Act is not made out and that, there is requirement of strict proof in such cases. It is again submitted that the proposition made by the applicant was based on the landing price fixed by the C.G. Beverages Corporation Limited. Therefore, he has no role in making erroneous proposition. It is also replied that rounding up is a mathematical concept and by application of this concept, nobody gets unduly benefited. The custody of the applicant Samud Ram Singh is not at all required in both the cases. It is submitted that the addition of offence under Section 120-B of the Indian Penal Code in Crime No.14/2019 is a mismatch, as there can not be conspiracy with respect to the commission of offence under Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act.

Relying upon the judgment of Supreme Court in case of **Nirmal Jeet Kaur Vs. The State of Madhya Pradesh**, reported in **(2004) 7 SCC 558**, it is submitted that the applicant has approached this Court, therefore, he is in formal custody, hence, he is needed to be protected from the unwarranted actions of the respondent/agency. It is prayed that relief be granted to the applicants.

14. I have heard the learned counsel for both the parties and perused the case diary.
15. Firstly, the second bail application filed by the applicant -Samund Ram Singh M.Cr.C.(A) No. 728 of 2020 is dealt with. The earlier application M.Cr.C.(A) No.1107/2019 was dismissed on merits on 26.09.2019 by a detailed order. This order was challenged before the Supreme Court of India, by Special Leave to Appeal (Criminal) No.11385/2019 and the same has been dismissed vide order dated 12.02.2020. Looking to this development, the judicial propriety calls that this Court should not entertain the second application filed by the applicant – Samund Ram Singh after the decision rendered by the Supreme Court, which appears to be a decision on merits. In the order of the Supreme Court, question of custodial interrogation has been left open and such requirement is present or not that shall be solely upon the investigation agency to decide and proceed with. Therefore, this Court is unable to make re-appreciation of the facts and circumstances present in the case as the judicial propriety clearly

bars the same, hence, the second application bearing M.Cr.C.(A) No. 728/2020 for grant of anticipatory bail is rejected.

16. The case of the prosecution in Crime No.14/2019 is this that the applicant – Samund Ram Singh was appointed as Public Servant in Revenue Department of the State in the year 1971. The applicant was then promoted as District Excise Officer in the year 1979, who continued on this post in different places of posting up till the year 2009, when he superannuated. Subsequent to which, the applicant was appointed on contract basis by the State Government on the post of Officer on Special Duty, in Chhattisgarh Excise Department, where he continued up to the year 2018. It was found in the investigation that father of the applicant Samund Ram Singh had expired. The applicant has three sons and a wife. The source of income of the sons is only the ancestral and the agricultural property, whereas, the wife of the applicant is only a house wife, who has no separate source of income. In the raid conducted, it was found that the property were standing in the name of the family members of the applicant also. The conclusion shows that total expenditure on the assets were Rs.6,58,78,737/-, whereas, the total income of the applicant Samund Ram Singh during the check period was Rs.2,98,45,689/-, on this basis it was held that the disproportionate assets of the applicant Samund Ram Singh was found to the tune of 120.73%. The investigation has been completed in this case.

17. There is nothing to suggest in the present matter that the applicant – Samund Ram Singh is in custody or he can be deemed to be in the custody of this Court, because he has never appeared before the agency or before any Court. Therefore, the ratio as laid down in **Nirmal Jeet Kaur (Supra)** has no relevance in the present case. On the other hand, the reliance of the learned Additional Advocate General in **State of M.P. Vs. Pradeep Sharma (supra)**, has a relevance, wherein it has been observed that a person, who has been declared proclaimed offender in terms of Section 82 of the Code, is not entitled to the relief of anticipatory bail.
18. On this point, the learned Additional Advocate General submits that all the assets of the applicant Samud Ram Singh are seized, therefore, any proceeding under Section 82 of Cr.P.C. was not needed in this case, however, principle is clear that any absconder who has not cooperated in the investigation, should not be benefited with grant of anticipatory bail. This submission has been opposed by the applicants' counsel that compliance of Section 82 of Cr.P.C. is strict requirement, without which, the applicant Samud Ram Singh can not be declared as absconder.
19. As regards the prayer made by the applicant -Samud Ram Singh in Crime No.14/2019, looking to the non-cooperation of the applicant himself in the investigation that has proceeded against him, this Court is not inclined to extend the benefit of Section 438 of Cr.P.C. to the applicant – Samud Ram Singh. Therefore, the

M.Cr.C.(A) No.680/2020 is rejected.

20. After considering the facts, circumstances of the case and the evidence present against the other applicants, this Court is inclined to extend the benefit of Section 438 of Cr.P.C. to the applicants in bail applications bearing M.Cr.C.(A) No.714 of 2020, M.Cr.C.(A) No.715 of 2020, M.Cr.C.(A) No.716 of 2020 and M.Cr.C.(A) No.907 of 2020.
21. Accordingly, the bail applications bearing M.Cr.C.(A) No.680 of 2020 and M.Cr.C.(A) No.728 of 2020 are rejected and the bail applications bearing M.Cr.C.(A) No.714 of 2020, M.Cr.C.(A) No.715 of 2020, M.Cr.C.(A) No.716 of 2020 and M.Cr.C.(A) No.907 of 2020 are allowed.
22. It is directed that in the event of arrest of the applicants (in M.Cr.C.(A) No.714 of 2020, M.Cr.C.(A) No.715 of 2020, M.Cr.C.(A) No.716 of 2020 and M.Cr.C.(A) No.907 of 2020) in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on executing a personal bond in sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned Investigating Officer. The applicants shall also abide by the following conditions :

(i) that the applicant shall make themselves available for interrogation before the investigating officer as and when required;

(ii) that 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/her from disclosing such facts to the Court or to any police officer;

(iii) that the applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram