

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 884 of 2020**

- Ishak Shah S/o Shri Samsuddin Shah Aged About 25 Years R/o- Dhancha Bhawan, Kurud, Bhilai, P.S. Jamul, Tehsil and District- Durg, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through- Station House Officer, Police Station Chhuikhadan, District- Rajnandgaon, Chhattisgarh.

---- Respondent

For Applicant	: Shri Parag Kotecha and Shri Vivek Kumar Agrawal, Advocates.
For Respondent/State	: Shri Ghanshyam Patel, G.A.
For Objector	: Shri Raghvendra Pradhan, Advocate.

Hon'ble Shri Justice Arvind Singh Chandel**Order On Board****08/10/2020**

Heard through video conferencing.

1. The applicant has preferred the first bail application under Section 438 of Cr.P.C. for apprehending arrest in connection with Crime No. 31/2020 registered at Police Station Chhuikhadan, District – Rajnandgaon, (C.G.) for the offence punishable under Section 406 of the IPC (later on converted in Section 409 of IPC as submitted by learned State Counsel).
2. According to the case of the prosecution, complainant Ganesh Sahu lodged FIR against present applicant wherein it has been alleged that he (complainant) has taken contract work for installing electric poles

from Chhattisgarh Electricity Distribution Company and present applicant has been given work of labour contract and also given electric wire of 61 Km along with other hardware materials and said items were kept in village panchayat Laxmanpur, Chhuikhadan. Allegedly, present applicant dishonestly misappropriated the said articles. On the basis of the said report, offence has been registered against applicant.

3. Learned Counsel appearing for the applicant submits that applicant is innocent and has been falsely implicated in the present case. He further submits that *prima facie*, no case is made out against present applicant. It is further submitted that complainant Ganesh Sahu has taken contract from the Chhattisgarh Electricity Distribution Company and applicant was given contract of labour work on the basis of oral instructions. Complainant has given work of fixing about 40 electric poles to the applicant for which labour payment of about Rs.2,50,000/- is due on complainant. Referring to the letter dated 15.5.2019 written by applicant to the Chief Engineer, CSPDCL, Rajnandgaon i.e. annexure A/3, learned Counsel submits that vide this letter applicant has requested for making the due payment. Due to this complainant has lodged false and fabricated report against applicant. Further referring to annexure D/6, it is clear that electric wires were received by the complainant himself and there is no such evidence available on record regarding hand-over of the said electric wires to the applicant. As per annexure D/6, on 20.8.2019, it is mentioned that applicant has received the alleged wire but no signature of receiving is made by the applicant. Vide dated 15.5.2019 i.e. annexure A/3 a letter has been

written by applicant to the Officers of CSPDCL regarding labour payment and on 20.8.2019, applicant received the electric wire on behalf of complainant, this fact is not acceptable. Thus, the fact that applicant has misappropriated the electric wire, is *prima facie*, not established. Therefore, it is prayed that applicant may be granted benefit of anticipatory bail.

4. Learned Counsel appearing for the State and Objector oppose the anticipatory bail application. Referring to the statement of the witnesses recorded under Section 161 of Cr.P.C., learned State Counsel submits that applicant has received the bundle of wire from *Panchayat Bhavan*. Further referring to the whatsapp chatting between applicant and complainant, learned Counsel for Objector submits that present applicant has received the alleged wire. Thus, there are sufficient evidence available on record against applicant and *prima facie*, case is made out against him. Therefore, anticipatory bail application of the applicant may be rejected.
5. I have heard learned Counsel appearing for the parties and perused the material available.
6. Taking into consideration the submissions put-forth on behalf of the parties, considering the facts and circumstances of the case, evidence collected by the prosecution and after going the entire documents annexed with bail application, objection filed by the Counsel for Objector, on perusal of statements of the witnesses and after going through the contents of annexure D/6 dated 25.5.2019, it appears that electric wires were received by the complainant himself and there is

no such evidence available on record regarding hand-over of the said electric wires to the applicant and on 20.8.2019 applicant has received the alleged wire but there is no signature of applicant for receiving the same is available nor any statement is recorded in this regard, therefore, without further commenting on other merits of the case, I am inclined to extend the benefit of anticipatory bail to the present applicant.

7. Accordingly, the anticipatory bail application is allowed.

8. It is directed that in the event of arrest of the applicant in connection with the aforesaid crime, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rs. 20,000/- with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned trial Court. He shall also abide by all the following terms and conditions :

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

Sd/-
(Arvind Singh Chandel)
Judge