NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No.871 of 2020

Order Reserved on : 27.8.2020

Order Passed on : 21.9.2020

1. Ashok Agrawal, son of Late Nand Kishore Agrawal, aged 66 years,
2. Abhishek Agrawal, son of Ashok Agrawal, aged 38 years,

   Both are residents of Krishna Rice Mill, Mungeli Road, Mangla Chowk, Bilaspur, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through Station House Officer, Police Station Supela, Durg, District Durg, Chhattisgarh

---- Respondent

and

M.Cr.C.(A) No.1013 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 Govind Bhai Kanani, son of Govind Bhai Gokaldas Kanani, aged 41 years, resident of B/303, Ekta Bhumi Garden, Duttpada Road-2, Rajendra Nagar, Borivali East, Mumbai, 400066
3. 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.
4. Sudhir Sarin, son of Satish Chandra Sarin, aged 53 years, resident of B-46, Second Floor, Sarvodaya Enclave, Delhi
5. Sunil Sethi, son of Baldeoraj Sethi, aged 54 years, resident of 80-C, LIG DDA Flats, Gulabi Baug, Delhi
6. Manish Kumar Jain, aged 40 years, son of Mahendra Kumar Jain, resident of 198, Bhawani Nagar, Indore (M.P.)

---- Applicants

versus

State of Chhattisgarh through Station House Officer, Police Station Supela, Durg, District Durg, 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. Both 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.391 of 2020 registered with Police Station Supela, Durg 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 Bhaskar CBN Multinet Private Limited (for brevity 'the Bhaskar CBN Company'). All the other Applicants as well as Complainant Gurmeet Singh Bhatia are Directors of the Bhaskar CBN Company. Applicant Abhishek Agrawal is son of Applicant Ashok Agrawal. The Bhaskar CBN Company is engaged in business of cable network in the State of Chhattisgarh since 2010. On 26.6.2020, a written complaint was filed by Complainant/Director Gurmeet Singh Bhatia against other Directors and Manager of the Bhaskar CBN Company, i.e., the Applicants herein with the allegations *inter alia* that the business of the Bhaskar CBN Company is being run by Applicant Ashok Agrawal and his son Applicant Abhishek Agrawal. After appointment of the Complainant as a Director of the Bhaskar CBN Company, he made demands for his dividend in the Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN Company from Indore (Madhya Pradesh) and were supplied to the customers and resultantly a financial loss of Rs.2,19,00,000 was suffered by the Bhaskar CBN 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.8,47,00,000 was received in cash by the Applicants, but the same were not deposited in the account of the Bhaskar CBN Company and were distributed by them among themselves, which

resulted financial loss of Rs.18,47,00,000 to the Bhaskar CBN Company.

(3) By making forged entries in the accounts of the Bhaskar CBN Company, a total estimated financial loss of Rs.36,00,00,000 was caused to the Bhaskar CBN Company.

(4) A loss of Rs.5,00,00,000 was caused to the Bhaskar CBN Company by submitting forged bills against purchases of various articles relating to the Bhaskar CBN 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 Bhaskar CBN Company and withheld the same with them and thereby they caused loss of crores of rupees to the Bhaskar CBN Company.

(6) A sum of Rs.9,60,00,000/- was received from providing direct connections to the consumers, but the said amount was not deposited in the account of the Bhaskar CBN Company and the said amount was distributed among the Applicants and thereby they embezzled the said amount.

(7) In the year 2016, Applicants Ashok Agrawal and Abhishek Agrawal, without any resolution or authority of the Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN Company in its account. But, they did not do so. On the basis of the written complaint dated 26.6.2020 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 also filed another FIR on 10.6.2020 against the Directors of one other company, namely, Hathway CCN Multinet Private Limited with exactly identical vague allegations without any proof whatsoever. All the Directors including the Complainant were called to attend the meetings of the Board of Directors. The Complainant himself remained present and participated in multiple Board meetings of the Bhaskar CBN Company. It was further submitted that the period of the alleged offence is between 2010 and 2020 and it was submitted that the transactions in question are commercial in nature and require preliminary inquiry. But, the police registered the case without a 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 Bhaskar CBN Company is an income tax payee company and the accounts 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. The Complainant has also made a complaint to the Registrar of Companies in respect of the other company Hathway CCN Multinet Private Limited, which is also engaged in the similar business like the Bhaskar CBN Company. As directed by the Registrar of Companies, a meeting of Board of Directors was convened which was attended by the Complainant also. In the said meeting, grievances of the Complainant were discussed and an extra-ordinary general meeting of the share-holders of the said Hathway CCN Multinet Private Limited was called for 12.8.2019. On 12.8.2019, in the said meeting, the Complainant registered his attendance through his proxy in which the proposal for removal of Applicant Abhishek Agrawal was rejected. Since the Complainant did not succeed to remove Abhishek Agrawal from the Board of Directors, he first lodged the false and fabricated FIR at Raipur and subsequently lodged the present FIR at Police Station Supela, Durg. 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 Bhaskar CBN 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 despite directions issued by the Investigating Officer, none of the Applicants or their any representative appeared before the Investigating Officer nor was any document submitted before the Investigating Officer. Contrary to that, the Complainant submitted the audit report of the Bhaskar CBN Company. It was further submitted that the Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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, 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 Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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.8,47,00,000, 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 Bhaskar CBN Company. According to the audit reports, purchases of various articles relating to the Bhaskar CBN 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 Bhaskar CBN 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. It was further submitted that the matter is based upon documentary evidence and the documents are available in the office of the Bhaskar CBN 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 Bhaskar CBN 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 Bhaskar CBN 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