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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1002 of 2020

- Sunil Baradia, S/o Duli Chand Baradia, Aged About 59 Years R/o Sadar Bazar, Rajnandgaon, Thana Basantpur, Tahsil And District - Rajnandgaon Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through Police Station - Basantpur, District - Rajnandgaon Chhattisgarh

---- Respondent

For Applicant	:	Shri Abhinav Kardekar, Advocate
For State	:	Smt. Fouzia Mirza, Addl. Adv. Gen.
For Objector	:	Shri Parag Kotecha, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/11/2020

Heard.

The applicant is apprehending his arrest in connection with Crime No.248/2020 registered at Police Station – Basantpur, District - Rajnandgaon (CG) for alleged commission of offences under Section 420 IPC.

2. Prosecution case is that the applicant had taken huge amount of Rs.30 lakhs from the complainant – Kanhaiyalal and his wife by stating that he is proprietor of Baradia Jewellers and Dhanesh Finance and assurance was given that they will be given membership of Yugantar Public School and Engineering College management. It is alleged that after taking Rs.20 lakhs in 2016 and Rs.10 lakhs in 2018, the applicant did not make them member in the school and kept on giving false promise and return of the amount as assured was not given and total amount of only Rs.3,30,000/- were given to

the complainant and remaining Rs.26,70,000/- remains unpaid and despite report lodged in the police station, remaining amount has not been repaid. Therefore, it is a case of cheating.

3. Learned counsel for the applicant would argue that present is a case of civil dispute between the parties. The applicant has been duly registered as proprietor of Baradia Jewellers and he was also member of Yugantar Public School from 1997 to 2019. He would submit that the applicant has not disputed receipt of Rs.30 lakhs but under the agreement between the parties, the applicant had been giving benefit of share of profit and regular payment in periodic manner which have been made to the complainant eversince 2016 which is reflected and evident from the ledger and bank account statement. As the complainant started asking money so early, the applicant could not arrange the money and they lodged report in the police station and police also enquired the matter and it was treated as non-cognizable and report under Section 155 CrPC was submitted. Later on, on pressure of the complainant, police registered the case. He would argue that various bank statements clearly show that the applicant had returned total amount of Rs.10,02,000/- to the complainant – Kanhaiyalal and his wife – Usha Devi Jain. Therefore, the applicant may be granted anticipatory bail.

3. On the other hand, learned State counsel and counsel for the Objector submit that the FIR has been lodged by the police on the basis of complaint that on false status that the accused holds proprietorship of Baradia Jewellers and Dhanesh Finance, Rs.30 lakhs were collected but they were not given membership and certain nominal amount was given which was only Rs.3,30,000/- and remaining amount, till date, remains unpaid.

Lastly, it is submitted by learned State counsel that against the applicant, other cases are also pending and there is one case where a lady had committed suicide because she had claimed that the applicant was not returning money to her and offence registered. On this, learned counsel for the applicant submits that in that case also, the applicant has been granted anticipatory bail.

4. Upon *prima facie* consideration of the present case, the applicant received amount through cheques in the year 2016 and in 2018. The applicant has placed on record, ledger and bank statement which shows that periodical return eversince 2016 till 20/06/2020. These statements, *prima facie*, indicate that approximately Rs.10 lakhs was paid by way of periodical statement. However, the dispute is that only Rs.3,10,000/- was returned. Irrespective of the dispute with regard to amount of payment to the complainant by the applicant, *prima facie*, it appears that when the applicant failed to give benefit of share of profit to the complainant, in the year 2019, a complaint was made in the police station and police made enquiry and prepared report under Section 155 CrPC that it was non-cognizable case. Letters which have been placed on record by the applicant also *prima facie* indicate that time and again, the applicant was called and the applicant was paying amount from time to time. Therefore, in view of the aforesaid disclosure, submission of learned counsel for the applicant that present is a civil dispute and not a criminal case because the applicant did not give any false promise by giving false statement regarding his status as Proprietor of Baradia Jewellers and even as member of Yugantar Public School since 1997 uptill 2019, in the opinion of this Court, present is a fit case for grant of anticipatory bail.

5. Accordingly, this application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- along with two local sureties for the like amount to the satisfaction of the arresting officer and he shall abide by all the following terms and conditions -

(i) that the applicant shall make himself available for interrogation by a Police Officer as and when required;

(ii) that 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 facts to the Court or to any Police Officer.

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

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

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

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