

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.1142 of 2020**Order Reserved on : 20.10.2020Order Passed on : 2.11.2020

Mohan Singh, aged about 43 years, son of Shri T.P. Singh, resident of Quarter/House No.270, Sector 1, Type B, Balco Nagar, Korba, Tahsil and District Korba, Chhattisgarh

---- Applicant**versus**

State of Chhattisgarh through Police Out Post CSEB, Police Station City Kotwali, Korba, District Korba, Chhattisgarh

---- Respondent

For Applicant	:	Shri Rajkamal Singh, Advocate
For Respondent/State	:	Shri Alok Nigam, Government Advocate
For Objector	:	Shri Manoj Paranjpe, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**C.A.V. ORDER**

1. The instant is first application for grant of anticipatory bail to the Applicant. He is apprehending his arrest in connection with Crime No.653 of 2020 registered with Out Post CSEB, Police Station City Kotwali, District Korba for offence punishable under Sections 420, 406 and 409 of the Indian Penal Code.
2. Case of the prosecution, in brief, is that Applicant Mohan Singh is the Director of a firm Mahalaxmi Associates and Complainant Deepak Agrawal is the Director of a firm Sarvamangla Infrabuild Private Limited. In the year 2016-2017, Applicant's firm Mahalaxmi Associates was to receive a contract from Hindustan Zinc Limited,

Rajasthan for execution of a civil work amounting to Rs.33,82,00,000/-. At that time, the Applicant approached the Complainant and offered him a partnership in execution of the said work which was to be allotted to the Applicant's firm by Hindustan Zinc Limited. The Applicant gave assurance to the Complainant that in execution of the said work, the Complainant would be a partner of 50% in profit. The Applicant made a proposal that the value of the work is Rs.33,33,00,000/- and the profit will be shared equally. Based on the offer of the Applicant, the Complainant gave bank guarantee of Rs.80,00,000/- in the name of his firm. At that time, on being asked by the Applicant, for the said work, the Complainant gave 2 JCB machines on rent @ Rs.85,000/- per JCB machine per month for execution of the said work. During the period of execution of the said work, on being asked by the Applicant, the Complainant gave a total sum of Rs.57,90,000/- to the Applicant in cash and through various bank transactions on different dates. In the meanwhile, the Complainant kept on asking the Applicant to execute a partnership deed and make him a partner in the work, but the Applicant kept on avoiding execution of such deed. The Applicant told the Complainant that after completion of the work, he will refund him whole of his amount along with his share in the profit. After completion of the work, when the Complainant made demand for refund of his amount invested, his share of profit and the amount of rent for the JCB machines supplied, the Applicant gave him only the rent of Rs.41,96,976/- for the JCB machines and told him that he will give his remaining amount later. Thus, the Applicant kept the payment of the Complainant pending. A total sum of Rs.1,12,41,088/- including interest is due to be paid by the Applicant to the Complainant. On

4.6.2020, the Complainant visited the office of the Applicant and made demand for the sum of Rs.1,12,41,088/-. The Applicant assured the Complainant that he will give him his amount without 4 days, but he did not give him the said amount within the said period. Thereafter, on 24.6.2020, the Complainant again visited the office of the Applicant and made demand for his money, but the Applicant refused to make him payment of the due amount. Thereafter, the Complainant made a report against the Applicant on the basis of which First Information Report has been registered against the Applicant on 28.7.2020.

3. Shri Rajkamal Singh, Learned Counsel appearing for the Applicant submitted that the Applicant is innocent and he has been falsely implicated in the case. The matter is purely of civil nature and it pertains to a civil dispute between the two firms of the Applicant and the Complainant arising out of an understanding to work jointly on 50-50% partnership in joint venture in relation to execution of the work valued at Rs.33,83,00,000/- awarded by Hindustan Zinc Limited. The Complainant initially invested a sum of Rs.9,90,000/- through his firm Sarvamangla Infrabuild Private Limited and also invested a further sum of Rs.59,90,000/- through M/s M.K. Gupta, a sister concern/an associate firm of Sarvamangla Infrabuild Private Limited. Out of the sum of Rs.59,90,000/-, an amount of Rs.15,00,000/- was taken back by M/s M.K. Gupta in the year of investment itself. The Complainant's firm Sarvamangla Infrabuild Private Limited had also appointed a supervisor in relation to execution of the aforesaid work for whose salary a total amount of Rs.11,12,434/- has been paid by the Applicant's firm. Till date, Applicant's firm Mahalaxmi Associates has

made payment of total Rs.53,09,410/- to the Complainant and his associate firms. Finalisation of accounts of Hindustan Zinc Limited and Applicant's firm Mahalaxmi Associates is still due and final bill of the Applicant is yet to be paid by Hindustan Zinc Limited. Referring to various emails of the Applicant's firm Mahalaxmi Associates addressed to Hindustan Zinc Limited, it was further submitted that total bill of Rs.2,48,11,554/- of the Applicant is still pending before Hindustan Zinc Limited. Since this payment of the Applicant has not yet been released by Hindustan Zinc Limited, final payment of the Complainant is pending. It was further submitted that the Complainant started disputing the arrangements in the year 2018 only and he also wrote a letter to Hindustan Zinc Limited on 17.9.2018 for release of his bank guarantee. Thereafter, the Complainant called back his JCB machines also. The bank guarantee given by the Complainant expired on 14.6.2019 and the aforesaid work also got completed in the year 2019 itself. Because of the vendor dispute, final bill has not been released by Hindustan Zinc Limited and, therefore, payment of the Complainant is pending. The dispute between both the firms is of civil nature and can be resolved by a Civil Court. Their dispute can be of breach of an oral agreement only not a breach of trust. The Complainant has made investment in the work and that is not an entrustment and, therefore also, no offence of criminal breach of trust is made out. As regards the offence under Section 420 of the Indian Penal Code, it was submitted by the Learned Counsel that there is no deceit given by the Applicant nor is any dishonest inducement on his part. Therefore, the offence under Section 420 of the Indian Penal Code is also not made out. The Applicant never refused partnership of sharing of 50% in the profit.

Since the work has already been completed, execution of a partnership deed is immaterial. Final bill is still pending before Hindustan Zinc Limited and, therefore, payment of the Complainant is also pending. There is no criminal intent on the part of the Applicant and, therefore, no criminal case is made out. Hence, it was prayed that the Applicant may be admitted to benefit of anticipatory bail.

4. Shri Alok Nigam, Learned Government Advocate appearing for the Respondent/State and Shri Manoj Paranjpe, Learned Counsel appearing for the Objector/Complainant jointly opposed the bail application. Learned Counsel Shri Paranjpe submitted that the Applicant is a habitual offender and similar kinds of offences have been committed by him in other matters also. The intent and conduct on the part of the Applicant clearly go to show that since very beginning he has been trying to cheat on the Complainant. The Applicant had made a promise and based on the said promise the Complainant made investment of huge amount. According to Shri Paranjpe, a sum of Rs.1,50,00,000/- towards 50% profit is due to be paid by the Applicant to the Complainant. Despite this amount, a sum of Rs.76,95,050/- was transferred by the firm of the Complainant to the Applicant. This amount of Rs.76,95,050/- plus a sum of Rs.5,72,905/- towards balance rent of JCB machines plus interest on these two amounts, total amounting to Rs.1,12,41,088/- is to be received from the Applicant. Thus, on addition of Rs.1,50,00,000/- towards 50% of the profit to the aforesaid amount of Rs.1,12,41,088/-, the total amount due to be received from the Applicant comes to Rs.2,62,41,088/-. According to Shri Paranjpe, the present is not a civil dispute. The intent on the part of the Applicant since beginning

has been to cheat on the Complainant. Since the Applicant had assured a partnership of sharing of 50% in the profit, the Complainant had given bank guarantee of Rs.80,00,000/-. But, despite being asked frequently for execution of a partnership deed, the Applicant did not come forward. This clearly shows that the intent of the Applicant since beginning is to cheat on the Complainant. A huge sum of the Complainant is involved. The Applicant has been dishonest since beginning. *Prima facie*, the case under Sections 420, 406 and 409 of the Indian Penal Code is made out. Thus, Shri Paranjpe claims that the Applicant does not deserve grant of anticipatory bail and prays for rejection of the instant application.

5. I have heard Learned Counsel appearing for the parties. I have also minutely perused the contents of First Information Report, the documents submitted by the Applicant and the Objector/Complainant along with their bail application and objection, respectively.
6. Having heard Learned Counsel appearing for the parties and having perused all the documents placed before me, I find that it is not in dispute that the firm of the Applicant had received a contract from Hindustan Zinc Limited for execution of a civil work amounting to Rs.33,82,00,000/-. Thereafter, an oral agreement took place between the Applicant and the Complainant for execution of the said work on a partnership of sharing of 50% in the profit. It is also not in dispute that on being asked by the Applicant, the Complainant submitted bank guarantee for Rs.80,00,000/-. It also appears that for execution of the said work, the Complainant made investment of a huge sum. It also appears that the Complainant gave 2 JCB machines on rent for the purpose of execution of the said work. A part payment of rent of

the said 2 JCB machines has been made by the Applicant. Some part of the amount of investment of the Complainant has also been refunded by the Applicant. The dispute seems to be for part of the amount which is not received by the Complainant against his investment. With regard to sharing of 50% in the profit, from the documents submitted on behalf the Applicant, it appears that final settlement between the firm of the Applicant and Hindustan Zinc Limited is still pending and, therefore, payment of the Complainant is pending. The bill of the Applicant is pending before Hindustan Zinc Limited and, therefore, at this stage, what is the total amount of profit of the Complainant cannot be estimated. The Applicant has not refused sharing of 50% in the profit. The dispute which now remains appears to be of civil nature. Letter dated 17.9.2018 (Annexure A-3 of the bail application) also shows that the dispute between the parties arose in the year 2018 itself. At that time, the Complainant did not lodge any FIR against the Applicant. The present FIR has been lodged by the Complainant against the Applicant after withdrawal of his bank guarantee and completion of the aforesaid work. Since final settlement between the firm of the Applicant and Hindustan Zinc Limited is pending, the dispute is running since the year 2018, the FIR has been lodged in the year 2020 and the present dispute appears to be of civil nature, without further commenting on other merits of the case, I am inclined to grant anticipatory bail to the Applicant.

7. Accordingly, the application for grant of anticipatory bail 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

his furnishing a personal bond in the sum of Rupees Five Lakhs with one solvent surety for a sum of Rupees Five Lakhs to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. The Applicant shall fully cooperate with the investigation and 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