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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.935 of 2020**Order Reserved on : 4.9.2020Order Passed on : 30.9.2020

Yashwant Kumar Agrawal, son of Shri Ganpat Lal Agrawal, aged about 48 years, resident of Gram Bonda, P.S. Saria, District Raigarh, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Police Station Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondent

M.Cr.C.(A) No.984 of 2020

Chandresh Dewangan, son of Devcharan Dewangan, aged about 32 years, resident of Ward No.03, Chandrapur, P.S. Chandrapur, District Janjgir-Champa, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Station House Officer, Police Station Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondent

M.Cr.C.(A) No.1029 of 2020

Krishna Kumar Rathore, son of Shri Gayaram Rathore, aged about 40 years, resident of Village and Post Sivni, Police Station and Tahsil Champa, Civil and Revenue District Janjgir-Champa, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Officer-in-Charge, Police Station City Kotwali, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondent

M.Cr.C.(A) No.1087 of 2020

Umesh Kumar Agrawal, son of Radheshyam Agrawal, aged about 40 years, resident of Budhwari Bazar, Sakti, Police Station Sakti, District Janjgir-Champa, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Station House Officer, Police Station Kotwali, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondent

M.Cr.C.(A) No.1113 of 2020

Santosh Kumar Agrawal, aged about 38 years, son of Vijay Kumar Agrawal, Proprietor Agrawal Stores, resident of Bamhanidih, P.S. Bamhanidih, District Janjgir-Champa, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Kotwali, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondent

and

M.Cr.C.(A) No.1170 of 2020

Ramakant Patel, son of Nehrulal Patel, aged about 47 years, resident of Gorra, P.S. Kotra Road, Tahsil and District Raigarh, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Arakshi Kendra Kotwali, District Janjgir-Champa, Chhattisgarh

---- Respondent

For Respective Applicants	:	Shri K.A. Ansari, Senior Advocate with Shri Ramesh Nayak, Advocate, Shri Maneesh Sharma, Shri T.K. Jha, Shri Hari Agrawal, Shri Shashank Thakur, Shri Basant Dewangan, Advocates
For Respondent/State	:	Shri Alok Nigam, Government Advocate
For Objector/Complainant	:	Shri Prasoon Agrawal, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

CAV ORDER

1. The matter was reserved on 4.9.2020 for passing of orders. As a consequence of the written communication dated 29.9.2020

submitted by Shri Alok Nigam, Learned Government Advocate appearing for the State/Respondent that one of the Applicants, namely, Ramakant Patel, who has preferred the anticipatory bail application bearing M.Cr.C.(A) No.1170 of 2020 has now been arrested for the offence in question, M.Cr.C.(A) No.1170 of 2020 stands dismissed as having become infructuous.

2. The remaining anticipatory bail applications relate to same crime number, therefore, they are heard and disposed of together.
3. The subject applications are first applications for grant of anticipatory bail to the Applicants. They are apprehending their arrest in connection with Crime No.306 of 2020 registered with Police Station Kotwali, Janjgir, District Janjgir-Champa for offence punishable under Sections 408, 409, 418, 420, 120B of the Indian Penal Code.
4. The facts, in brief, are that the Complainant in this case is a company, namely, Insecticides (India) Limited, Head Office Delhi (for short 'the Insecticides Limited'), which manufactures insecticides. Akhilesh Kumar Singh is Marketing Development Manager of the Insecticides Limited. He made a written complaint on behalf of the Insecticides Limited against the present Applicants and other co-accused persons. Co-accused R.S. Rathore is Zonal Manager and co-accused Ganga Sagar Panda is Territorial Manager of the Insecticides Limited. Yashwant Kumar Agrawal, Chandresh Dewangan and Umesh Kumar Agrawal are dealers of the Insecticides Limited in Chhattisgarh State and Santosh Kumar Agrawal and Krishna Kumar Rathore are distributors of the Insecticides Limited in Chhattisgarh State. On 4.7.2020, Akhilesh Kumar Singh, Marketing Development Manager of the Insecticides Limited made a written complaint against total 18

persons as well as some unknown persons. On the basis of said written complaint, the aforesaid offence was registered against the present Applicants and other co-accused persons. In the written complaint and the First Information Report, it has been alleged that the Insecticides Limited's Zonal Manager/co-accused R.S. Rathore and Territorial Manager/co-accused Ganga Sagar Panda, in connivance with the present Applicants and other co-accused persons named in the FIR, sold the goods manufactured/supplied by the Insecticides Limited directly to other persons at lower prices than the stipulated price. It is further alleged that R.S. Rathore and Ganga Sagar Panda also manipulated the stock register and have either sold the stock in cash or have hidden the stock without issuing any challan and thereby they have caused loss of total Rupees Twenty Two Crores to the Insecticides Limited.

5. Shri Maneesh Sharma and Shri T.K. Jha, Learned Counsel appearing for Applicants Yashwant Kumar Agrawal and Chandresh Dewangan, respectively submitted that both the Applicants are working as dealers of the Complainant company, i.e., the Insecticides Limited since February, 2018 and April, 2019, respectively and till lodging of the FIR, there was clear and transparent business relation between these two Applicants and the Insecticides Limited/Complainant company. The pesticides were supplied to these two Applicants by the Insecticides Limited on the basis of invoice generated by the Insecticides Limited in the name of these two Applicants' firms and after delivery of goods, payments were made to the Insecticides Limited. The same was going on smoothly since February, 2018 and April, 2019, respectively. When the ledger of 2019-2020 of the

Insecticides Limited/Complainant company was forwarded by the Insecticides Limited to these two Applicants then objection was raised on few invoices by these two Applicants that the goods shown in those invoices were never delivered to them. Thereafter, these two Applicants have been falsely implicated by the Insecticides Limited/Complainant company.

Shri Hari Agrawal, Learned Counsel appearing for Applicant Umesh Kumar Agrawal submitted that in the month of September, 2019, the firm of this Applicant was approached by the officials of the Complainant company/the Insecticides Limited to become dealer/distributor of the Complainant company. On 24.9.2019, this Applicant remitted a security deposit of Rupees Fifty Thousand in the account of the Complainant company/the Insecticides Limited. The firm of this Applicant also handed over 3 blank cheques and 3 signed letter heads of the firm of this Applicant to those officials of the Complainant company/the Insecticides Limited. Thereafter, this Applicant did not have any communication from the Insecticides Limited nor was any order for supply of goods placed by the firm of this Applicant or any goods was received from the Insecticides Limited.

Shri Shashank Thakur, Learned Counsel appearing for Applicant Santosh Kumar Agrawal submitted that it was the practice prevalent in the field that once an order is placed, the goods are dispatched as per the order along with detailed challan and transport receipt and when the goods are handed over to the consignee, a receipt of such delivery is given by the consignee. But, in the present case, this Applicant has not received any goods nor has he given any receipt

and further the challan and the transport bills are also not in his name. As regards the acknowledgment dated 21.6.2020, allegedly executed by Applicant Santosh Kumar Agrawal, it was submitted by Learned Counsel Shri Shashank Thakur that though the acknowledgment is in the letter head of this Applicant, the acknowledgment does not bear any signature of this Applicant. Rather, it bears signature of one Abhishek, with whom, this Applicant has no acquaintance. Therefore, no case is made out against this Applicant on the basis of the said acknowledgment also.

Shri K.A. Ansari, Learned Senior Advocate assisted by Shri Ramesh Nayak, Learned Counsel appearing for Applicant Krishna Kumar Rathore submitted that R.S. Rathore and Ganga Sagar Panda, who are officials of the Complainant company/the Insecticides Limited sold the medicines directly to the customers and other retailers and did not inform about the sale to this Applicant. It seems that both of them, in a greedy manner, bypassed the authorised distributor of the Insecticides Limited and received the discounts which was being provided by the Insecticides Limited to the authorised distributor. Referring to the acknowledgment dated 21.6.2020 (Annexure A-3), Learned Senior Advocate further submitted that this fact has been acknowledged by R.S. Rathore and Ganga Sagar Panda also and the acknowledgment is also signed by them.

All the Learned Counsel appearing for the respective Applicants further jointly submitted that the main allegations are against Ganga Sagar Panda and R.S. Rathore, officials of the Complainant company/the Insecticides Limited who cheated on the Complainant

company and committed misappropriation also. From the contents of the FIR, it appears that the dispute between the Complainant company and the Applicants relates to non-payment for the goods supplied by the Complainant company to the Applicants. Therefore, the matter is purely of civil nature. No case is made out against any of the Applicants. The main accused persons R.S. Rathore and Ganga Sagar Panda have already been arrested. *Prima facie*, no case is made out against any of the present Applicants and, therefore, they be extended the benefit of anticipatory bail.

6. Shri Alok Nigam, Learned Government Advocate appearing for the State/Respondent opposed the anticipatory bail applications. Referring to the confessional statement of co-accused Ganga Sagar Panda recorded under Section 164 Cr.P.C. and further referring to the statements of witnesses recorded under Section 161 Cr.P.C., he submitted that sufficient material is available against the present Applicants to implicate them in the crime in question. The offence is of serious nature. Hence, it was prayed that the anticipatory bail applications may be rejected.
7. Regarding Applicants Yashwant Kumar Agrawal and Umesh Kumar Agrawal, Shri Prasoon Agrawal, Learned Counsel appearing for the Complainant company/Objector submitted that Applicant Yashwant Kumar Agrawal had placed an order on 27.6.2019 (Annexure 'B' of M.Cr.C.(A) No.935 of 2020) to the Complainant company for supply of pesticides to the firm, namely, Bansal Agro owned by Applicant Umesh Kumar Agrawal as also to the firm, namely, Balaji Traders owned by one Saurabh Agrawal. On the basis of the order dated 27.6.2019, the Complainant company supplied pesticides for total

Rs.5.2 Crores to the said two firms as per the details mentioned in Annexure 'C' of M.Cr.C.(A) No.935 of 2020. It was further submitted by Shri Prasoon Agrawal that the firm of Applicant Umesh Kumar Agrawal received the pesticides on 30.6.2019. Therefore, the argument advanced by Shri Hari Agrawal, Learned Counsel appearing for Applicant Umesh Kumar Agrawal that no pesticides were received by the firm of Applicant Umesh Kumar Agrawal is not sustainable. Further referring to the contents of the supply order dated 27.6.2019 issued by Applicant Yashwant Kumar Agrawal (Annexure 'B' of M.Cr.C.(A) No.935 of 2020), it was submitted by Learned Counsel Shri Prasoon Agrawal that the payment of the goods/pesticides supplied to the firms Bansal Agro and Balaji Traders was to be made by Applicant Yashwant Kumar Agrawal. Thus, it is clear that Applicants Umesh Kumar Agrawal, Yashwant Kumar Agrawal, already arrested co-accused persons R.S. Rathore and Ganga Sagar Panda and the owner of Balaji Traders, i.e., Saurabh Agrawal committed a conspiracy against the Complainant company and thereby the present Applicants have committed the offence in question.

With regard to Applicant Chandresh Dewangan, it was submitted by Shri Prasoon Agrawal, Learned Counsel appearing for the Complainant company/Objector that Applicant Chandresh Dewangan, conspiring with R.S. Rathore and Ganga Sagar Panda directly executed trading of pesticides of total Rs.2,10,08,458/- and Applicant Chandresh Dewangan has acknowledged this fact vide acknowledgment dated 19.6.2020 (Annexure 'D' of M.Cr.C.(A) No.984 of 2020).

With regard to Applicant Krishna Kumar Rathore, Learned Counsel Shri Prasoon Agrawal submitted that Applicant Krishna Kumar Rathore also, conspiring with R.S. Rathore and Ganga Sagar Panda, directly sold pesticides worth Rs.1.5 Crores of the Complainant company to the dealers and he has admitted this fact vide Annexure A1 dated 21.6.2020 of M.Cr.C.(A) No.1029 of 2020.

Regarding Applicant Santosh Kumar Agrawal, Learned Counsel Shri Prasoon Agrawal submitted that Applicant Santosh Kumar Agrawal, conspiring with R.S. Rathore and Ganga Sagar Panda, directly supplied pesticides worth Rs.2.55 Crores of the Complainant company in the market and this Applicant has admitted this fact vide acknowledgment dated 21.6.2020 (Annexure A of M.Cr.C.(A) No.1113 of 2020).

Lastly, Shri Prasoon Agrawal, Learned Counsel appearing for the Complainant company/Objector submitted that all the Applicants conspired with co-accused persons R.S. Rathore and Ganga Sagar Panda and in connivance with them the Applicants supplied the goods/pesticides of the Complainant company to the dealers/retailers at half price than the stipulated price and thereby they caused a loss of Rupees Twenty Two Crores to the Complainant company. There are sufficient material available against all the Applicants. Therefore, their anticipatory bail applications deserve to be dismissed.

8. I have heard Learned Counsel appearing for the parties. I have also minutely perused contents of the FIR, other material annexed with the anticipatory bail applications moved by the Applicants and with the objection submitted by the Complainant/Objector. From perusal of

the said entire material, it reveals that R.S. Rathore, Ganga Sagar Panda, Yashwant Kumar Agrawal, Umesh Kumar Agrawal and Saurabh Agrawal, making conspiracy, got the pesticides worth Rs.5.2 Crores of the Complainant company supplied to the firms of Umesh Kumar Agrawal and Saurabh Agrawal and now Yashwant Kumar Agrawal denies his role in the said supply stating that he himself did not receive the goods/pesticides. Umesh Kumar Agrawal denies his liability on the ground that he did not place any order for supply of pesticides to the Complainant company. From the material available before this Court, it appears that since beginning the intention of Applicants Yashwant Kumar Agrawal and Umesh Kumar Agrawal was to commit fraud. Therefore, the argument advanced that the matter is of civil nature is not sustainable. With regard to Applicants Chandresh Dewangan and Krishna Kumar Rathore, it appears that they, in connivance with R.S. Rathore and Ganga Sagar Panda, directly got goods/pesticides of the Complainant company supplied in the market and now they have also denied payment of the Complainant company. It appears that since beginning their intention was also to commit fraud. With regard to Applicant Santosh Kumar Agrawal, though acknowledgment dated 21.6.2020 was submitted by the Objector/Complainant company, this acknowledgment does not bear any signature of Applicant Santosh Kumar Agrawal. Rather, the said acknowledgment bears signature of one Abhishek. Learned Counsel appearing for the State as also Learned Counsel appearing for the Objector/Complainant company are not able to point out availability of any other document or material against Applicant Santosh Kumar Agrawal.

9. Hence, in view of the above discussion, I do not find any substance in the anticipatory bail applications preferred by Applicants Yashwant Kumar Agrawal, Chandresh Dewangan, Krishna Kumar Rathore and Umesh Kumar Agrawal. Their bail applications, i.e., M.Cr.Cs(A) No.935 of 2020, 984 of 2020, 1029 of 2020 and 1087 of 2020 are, therefore, dismissed.
10. For the reasons aforesaid, I find that the application preferred by Applicant Santosh Kumar Agrawal deserves to be allowed and, therefore, his application M.Cr.C.(A) No.1113 of 2020 is allowed.
11. It is directed that in the event of arrest of Applicant Santosh Kumar Agrawal [M.Cr.C.(A) No.1113 of 2020] in connection with the aforesaid crime, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rupees Two Lakhs with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. He 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