

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1296 of 2020**

Smt. Kanchan Kalash W/o Shri Prakash Kalash, aged about 53 years R/o Gursukh Villa, V.I.P. Road, Raipur, Tehsil & Distt. Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh through Police Station Civil Lines, Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. Manoj Paranjpe and Mr. Ankur Agrawal, Advocates
For Respondent	:	Mr. Alok Nigam, Govt. Advocate
For Objector Trilochan Singh	:	Mr. Kishore Bhaduri, Advocate
For Objector Sharad Goyal	:	Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

09/10/2020

1. The matter is heard through video conferencing.
2. The applicant has filed this application under Section 438 of the Cr.P.C for grant of anticipatory bail as she is apprehending her arrest in connection with Crime No. 206/2018 registered at police station – Civil Lines, Raipur (C.G.) for the offence punishable under Section 420/34 of the IPC.
3. According to the case of the prosecution, on 28/05/2018 Complainant Trilochan Singh Saluja lodged an FIR against the applicant and other co-accused persons, namely Prakash Kalash (husband of the applicant), Vikram Rana and Neelmadi alleging therein that the applicant and other co-accused persons have sold an agricultural land through registered sale-deed on 20/09/2012 to the Complainant, which was already

mortgaged in the Punjab National Bank. The applicant is real sister of Vikram Rana. One Poonam Singh and Vikram Rana had started a firm namely Vardman Infrastructure. On 20/09/2012, the said firm sold the land bearing Khasara No. 171/4 ad-measuring area 0.378 hectare to the Complainant. The applicant being a power of attorney holder of Vikram Rana executed the said sale-deed in favour of the Complainant for the consideration amount of Rs. 56,70,000/-. At the time of execution of the said sale-deed, a clear statement was made by the vendor that the property is free from all encumbrance. It has been alleged that prior to that execution, Poonam and Vikram had mortgaged the said land in favour of one M/s Goodluck Petroleum Company Pvt. Ltd. It is further alleged that the applicant was knowing this fact from beginning, but concealing this fact, the applicant had executed the sale-deed in favour of the Complainant. On the basis of the said complainant, FIR has been registered.

4. Counsel appearing on behalf of the applicant submits that the applicant has been falsely implicated in the present case. Virtually, brother of the applicant namely Vikram Rana and one Poonam Singh Rajput had constituted a firm namely Vardman Infrastructure. The business of the said firm was to purchase and sell the land. Since Vikram Rana was residing in Punjab, therefore, he had executed the power of attorney in favour of the applicant and being a power of attorney holder of Vikram Rana, the applicant had executed the sale-deed in favour of the Complainant and also sold the land to Sharad (one of the Objector in this case) in the year 2012. Consequently, in the year 2015, Vikram Rana partner of the firm came to know that the subject matter of the above

sale-deed was mortgaged in favour of the Punjab National Bank by the Director of M/s Goodluck Petroleum Company Pvt. Ltd by making forged signature of Vikram Rana, therefore, Vikram Rana had lodged a complainant against Poonam and M/s Goodluck Petroleum Company Pvt. Ltd., which has been registered vide crime number 97/2015 in the Police station Golbazaar, Raipur. As a counter blast, Poonam Singh Rajput has filed a criminal complaint against Vikram Rana, the applicant, her husband Prakash Kalash and Sharad, all partners of M/s Chhattisgarh Real State including partner Trilochan Singh (Complainant in the present case) which was registered as Criminal Case No. 4591/2017. Thereafter, Vikram Rana has filed a civil suit against Poonam Singh and other persons seeking declaration that the mortgaged being illegally executed by firm and wife. In his written statement filed in the above civil suit, the Complainant has accepted the contents of the Plaintiff Vikram Rana that the mortgaged was done by forged signature of the Vikram Rana by Poonam Singh Rajput. After registration of complaint made by Poonam, he had entered into a compromise with the applicant and other Directors of his company. Consequently, the proceeding against the Complainant and other Directors were dropped. Thereafter, in collusion with Poonam, the Complainant Trilochan immediately after their compromise had filed the present false and fabricated report against the applicant and other co-accused persons. The Complainant also filed a civil suit for declaration and permanent injunction for the mortgaged land against Prakash Kalash, Vikram Rana, Neelmadi and the applicant, but left Poonam Singh Rajput, which also shows that as a counter blast, a false and fabricated report has been lodged only against the applicant and her husband leaving

Poonam Singh Rajput. It is further submitted that the applicant is a lady and house wife. She had signed the said sale-deed only in the capacity of power of attorney holder of Vikram Rana. She was not having the knowledge that Poonam Singh Rajput by making forged signature of Vikram Rana had mortgaged the land in Punjab National Bank, therefore, prima-facie no case of cheating is made out against the applicant. It is further submitted that from the contents of the FIR and other material available on record, it appears that the main allegations are against the husband of the applicant i.e. Prakash Kalash who has already granted benefit of anticipatory bail by Hon'ble Supreme Court and the amount of Rs. 50,00,000/- have already been deposited by him before the Ho'ble Apex Court. He further submits that all the material documents have been gathered by the prosecution, therefore, custodial interrogation of the applicant is also not required. Therefore, he prays to extend the benefit of anticipatory bail to the applicant.

5. Mr. Alok Nigam, Govt. Advocate appearing on behalf of the State opposes the bail application.
6. Mr. Kishore Bhaduri, counsel appearing on behalf of Objector Trilochan Singh opposes the bail application and submits that Trilochan and his father Parvinder Singh (one of the partner of M/s Chhattisgarh Real State) were well known to the applicant and her husband i.e. Prakash Kalash. They were having cordial relationship with them, therefore, at the time of execution of the said sale-deed, without seeing the original documents, M/s Chhattisgarh Real State executed the said sale-deed. He further submits that at the time of execution of the sale-deed, the

applicant and her husband Prakash Kalash have categorically stated that the land in question is free from all encumbrance. On the said declaration, the entire amount of Rs. 56,70,000/- was paid through cheques. The said cheques were encashed by Neelmadi, one of the staff of Prakash Kalash, who specifically has stated in his statement given in the affidavit to the effect that the encash amount has been paid to Prakash Kalash. In the year 2015, when Punjab National Bank published notice of auction of the said land, then first time, the Objector came to know that the accused persons had already mortgaged the said land in the bank. Thereafter, the Complainant approached the accused persons and at that time, they replied that the land is free from all encumbrance. They also told that all the proceeding before the appropriate forum will be drawn in their favor. They also assured that even if it does not happen, they will arrange an alternative property in their favour. The Objector thereafter, waited for alternative land as told by the accused persons, but after lapse of long time, the accused persons failed to provide the said land, then the Objector made an FIR against the accused persons. He further submits that since beginning the fact was well within the knowledge of the applicant that the land in question is mortgaged in the bank, yet being a power of attorney holder, she executed the sale-deed. Therefore, there is sufficient material available against the applicant for the alleged crime in question. Thus, it is prayed by him that the application may be rejected.

7. Mr. B.P. Sharma, counsel appearing on behalf of Objector Sharad Goyal submits that he is also one of the purchaser in the fraudulent made in this case. He submits that at the time of execution of the sale-deed, the

applicant along with her husband gave assurance that the land is free from all encumbrance and believing their assurance, the sale-deed was executed. Consequently, the Objector came to know that the land purchased by him is in security of loan obtained from Punjab National Bank, therefore, forgery has been done by the applicant and her husband. Thus, the applicant is not entitled to get anticipatory bail. It has been further submitted that though the husband of the applicant has been granted protection by the Hon'ble Supreme Court, initially the anticipatory bail application of Prakash Kalash was dismissed by this Court vide order dated 18/10/2019 in MCRCA No. 1017/2019. Referring to paragraphs 5, 8 and 9 of the said order of this Court, it has been argued by the counsel that after considering the entire facts of the case, this Court has refused to grant anticipatory bail to the husband of the applicant although he is not a party of the sale-deed. In respect of the present applicant, it is submitted that since the applicant herself is signatory and appended her signature in the sale-deed, therefore, she cannot get any relief at this stage. Therefore, it is prayed that the application of the applicant may be rejected.

8. In his rejoinder/reply, learned counsel appearing on behalf of the applicant submits that in criminal cases registered against any accused persons, the role plays by the each of the accused persons is to be seen. Though Prakash Kalash was not the signatory in the said sale-deed, but as alleged in the FIR, he had induced the Complainant and on believing him without seeing the original document, the Complainant party executed the sale-deed and consideration amount was also received by Prakash, therefore, the main role was played by Prakash. Therefore, this Court has

refused to grant anticipatory bail to him. With regard to the applicant, the only allegation is that being a power of attorney holder, she had signed the sale-deed, therefore, her case is totally different from Prakash and Prakash has already been granted anticipatory bail by the Hon'ble Supreme Court.

9. I have heard counsel for the parties and perused the contents of the FIR and other documents annexed with the bail application as well as annexed with the objections and also perused other material available on record.
10. From perusal of the contents of the FIR as well as other material available on record and from the arguments advanced by the counsel for the parties, there is no doubt that the applicant had signed the sale-deed being a power of attorney holder of Vikram Rana. From the contents of the FIR and other material, it also appears that at the time of execution of the sale-deed, husband of the applicant Prakash Kalash had given oral statement that the land is not mortgaged anywhere and all consideration amount of Rs. 56,70,000/- was also encashed by him and obtained by him. Therefore, the case of the applicant is different from Prakash Kalash. The main and major allegations are against Prakash Kalash who has already granted protection from Hon'ble Supreme Court. The applicant is a lady and house wife. Further, this case is totally based upon documentary evidence. The material documents have already been collected by the prosecution, therefore it appears that no custodial interrogation is required in the present case.
11. Taking all the facts of the case into consideration and the role played by

the applicant, the allegation made against her and further considering the fact that the main allegations are against her husband i.e. Prakash Kalash who have already granted protection by the Hon'ble Supreme Court, I am of the view that present is a fit case for grant of anticipatory bail to the applicant.

12. Accordingly, the anticipatory bail application is allowed.
13. It is directed that in the event of arrest, the applicant shall be released on bail on furnishing a bond in the sum of Rs.1,00,000/- with one surety for the like sum to the satisfaction of the officer arresting her and she shall abide by all the following terms and conditions

- i. That, the accused/applicant shall make herself available for interrogation before the concerned Investigating Officer as and when required;
- ii. The accused/applicant 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/her from disclosing such facts to the Court or to any police officer;
- iii. The accused/applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- iv. The applicant shall appear before the trial Court on each and every date given to her by the said Court till disposal of the trial.

14. Certified copy, as per rules.

Sd/-
(Arvind Singh Chandel)
Judge