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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7122 of 2020

1. Raju Kumar Sidar Son of Devsingh Sidar, Aged around 25 Years, Occupation - Driver, Resident of Village- Mundawar, P.S.- Haset, District- Janjgir-Champa (Chhattisgarh), District : Janjgir-Champa, Chhattisgarh
2. Acchelal Pal Son of Dashvi Pal, Aged around 38 Years, Occupation- Driver, Resident of Village- Baardih, P.S.- Chunar, District- Mirzapur (Uttar Pradesh), District : Mirzapur, Uttar Pradesh
3. Harish Kumar Son of Laxmi Prasad Chouhan, Aged around 32 Years, Occupation - Driver, Resident of Village- Mundwar, P.S.- Shivrinarayan, District- Janjgir-Champa (Chhattisgarh), District : Janjgir-Champa, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh, through the Police Station - Basantpur, Distt. Balrampur-Ramanujganj (Chhattisgarh), District : Balrampur, Chhattisgarh

---- Non-applicant

MCRC No. 7240 of 2020

1. Phoolchand Mohto Son of Lalit Mahto, Aged around 45 Years, Occupation - Driver, Resident of Village - Seersi, Police Station - Eechaak, District - Hazaribagh (Jharkand), District : Hazaribagh, Jharkhand

---- Applicant

Versus

- State of Chhattisgarh, through the Police Station - Basantpur, District - Balrampur-Ramanajganj (Chhattisgarh), District : Balrampur, Chhattisgarh

---- Non-applicant

MCRC No. 7355 of 2020

1. Rakesh Sharma S/o late Jagdish Prasad Sharma, Aged About 55 Years, Occupation Business, R/o Gajanandpuram Raigarh House No. 5, District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Basantpur, District- Balrampur-Ramanujganj, Chhattisgarh, District : Balrampur, Chhattisgarh

---- Non-applicant

For Applicant(s) –Shri Manoj Paranjpe, Advocate (in MCRC No.7355 of 2020),
Shri Hari Agrawal, Advocate (in MCRC No.7122 of 2020 and
MCRC No.7240 of 2020).

For Non-applicant/State – Shri D.P. Singh, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-11-2020

1. All these three applications are being decided by this common order as they arise out of the same crime number.
2. These are first applications filed by the applicants under Section 439 of the Cr.P.C. for grant of regular bail.

MCRC No.7122 of 2020 has been filed by applicants Raju Kumar Sidar, Acchelal Pal and Harish Kumar as they have been arrested on 23-08-2020 in connection with Crime No.125/2020 registered at Police Station - Basantpur, District Balrampur-Ramanujganj, Chhattisgarh for the offence under Section 420, 120-B of the IPC.

MCRC No.7240 of 2020 has been filed by applicant Phoolchand Mahto as he been arrested on 23-08-2020 and MCRC No.7355 of 2020 has been filed by applicant Rakesh Sharma as he has been arrested on 29-09-2020, in connection with Crime No.125/2020 registered at Police Station - Basantpur, District Balrampur-Ramanujganj, Chhattisgarh for the offence under Section 420, 120-B of the IPC and Section 21 of Mines and Minerals (Development and Regulation) Act, 1957.

3. It is submitted by learned counsel for applicant Rakesh Sharma (applicant in MCRC No.7355 of 2020) that this applicant is a contractor, who made purchase of coal from SECL in an auction and on the basis of this purchase the applicant was having entitlement to make sale of the coal to any person anywhere. The sale price has been paid to the SECL which included the GST of Central as well as the State. The only requirement for the applicant was to generate E-way bill, as it is required under Rule 138 of the Central Goods and Services Tax Rules, 2017 (in short 'the Rules, 2017') and the same E-way bill and invoice were raised by him, on the basis of which coal were being transported in the trucks. The drivers of the said trucks were in

possession of the E-way bill and invoice which was compliance of Rule 138A of the Rules, 2017. The police personnel of P.S. Basantpur have erroneously stopped and made seizure of the trucks in which coal was being transported. The police station served with a notice to SECL and the SECL has made no complaint against the applicant and others, neither the GST department has made any complaint. There is no case at all made out regarding evasion of the GST. This applicant is in jail since 29-09-2020. Therefore, it is prayed that this applicant may be granted bail.

4. Learned counsel appearing for applicants Raju Kumar Sidar, Acchelal Pal and Harish Kumar (applicants in MCRC No.7122 of 2020) and applicant Phoolchand Mahto (applicant in MCRC No.7240 of 2020) submits that the respondent/State had no authority to lodge any FIR with respect to the acts alleged to have been committed by these applicants. The case is strictly under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (in short 'the Act, 1957'). Section 22 of the Act, 1957 clearly provides that cognizance with respect to any offence committed under this Act can be taken by the Court, only on the basis of complaint in writing made by a person authorized in this behalf by the Central Government or the State Government. Police has no such authority. Further, police again has no authority for any offence committed under the GST Act. Under Section 134 of the CGGST Act it is clearly provided that the Court shall be empowered to take cognizance in cases under the Act on complaint only, when the previous sanction of the Commissioner is available. Therefore, the action taken by the respondent is malafide. These applicants have not committed any offence. Therefore, it is prayed that these applicants may be granted bail.

5. Learned counsel for non-applicant/State opposes the submissions and submits that offence under Section 420 and 120-B of the IPC were registered against the applicants, for which the respondent has authority and jurisdiction

to lodge FIR and investigate. It is a case in which e-auction was conducted and the sale was made by the SECL to applicant Rakesh Sharma on condition that the coal purchased was to be supplied within the State, whereas, applicant Rakesh Sharma was supplying the coal on destination out of the State of Chhattisgarh. In the memorandum statement given by one of the accused it is clearly revealed that fraud has been committed by conspiracy. Therefore, none of these applicants has entitlement for grant of bail.

6. Heard learned counsel for the parties and perused the documents.

7. As per the prosecution case, on 21-08-2020 P.S. Basantpur made seizure of the trucks from drivers which were loaded with coal. On inspecting the documents of transport it was found that there was manipulation in the place of destination. The FIR was lodged and during investigation on the memorandum statement some of the co-accused persons have made confessional statement about conspiracy and fraud that the coal was destined to be sold in place out of Chhattisgarh. Hence, this case.

8. Considered on the submissions and on the entire facts present in the case diary. It appears that the applicants did not have any criminal antecedent and there is no requirement of their continuous detention. Therefore, I am of this view that it would be appropriate to grant bail to all these applicants.

9. Consequently, all these three applications filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail are hereby allowed. It is directed that the applicant shall be released on bail on his furnishing in each of these cases a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court, for his appearance as and when directed.

10. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge