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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.1629 of 2019**

Ajit Pramod Kumar Jogi, son of Late Shri K.P. Jogi, aged about 73 years, resident of Anugrah, Sagaon Bungalow, Civil Lines, Raipur, Police Station Civil Lines, Raipur, District Raipur, 492001, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Police Station Pandari, District Raipur, Chhattisgarh

---- Respondent

and**M.Cr.C.(A) No.1631 of 2019**

Amit Jogi, son of Ajit Pramod Kumar Jogi, aged about 42 years, resident of Anugrah, Sagaon Bungalow, Civil Lines, Raipur, Police Station Civil Lines, Raipur, District Raipur, 492001, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Police Station Pandari, District Raipur, Chhattisgarh

---- Respondent

For Applicants	:	Shri Surendra Singh, Senior Advocate assisted by Shri Vivek Sharma, Advocate
For State/Respondent	:	Ms. Hamida Siddiqui, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****29.1.2020**

- Both the anticipatory bail applications relate to a common crime number, therefore, they are decided together.
- M.Cr.C.(A) No.1629 of 2019 and M.Cr.C.(A) No.1631 of 2019 have been preferred by the present Applicants apprehending their

arrest in connection with Crime No.39 of 2019 registered at Police Station Pandari, District Raipur for offences punishable under Sections 406, 420, 120B, 171E, 171F of the Indian Penal Code and Sections 9 and 13 of the Prevention of Corruption Act.

3. According to the case of the prosecution, an assembly bye-election for Antagarh constituency was scheduled to be held in the year 2014. Co-accused Manturam Pawar was selected candidate to contest for and on behalf of the Indian National Congress Party and he had filed his nomination for the same vide Form B. Last date for filing nomination was 27.8.2014 and last date for withdrawal of nomination was 30.8.2014. Allegedly, co-accused Rajesh Munat, the then Minister, Dr. Punit Gupta, son-in-law of the the then Chief Minister and the present Applicants conspired with Congress Party candidate Manturam Pawar and Manturam Pawar in lieu of huge money offered and accepted by the present Applicants as well as co-accused Rajesh Munat and Dr. Punit Gupta, without any information to the Congress Party, withdrew his candidature of his own on 29.8.2014. Thereby, the present Applicants as well as Rajesh Munat and Dr. Punit Gupta interfered with the election process as also criminal breach of trust along with cheating and other offences under the Prevention of Corruption Act was committed. It is the further case of the prosecution that the present Applicants along with Rajesh Munat and Dr. Punit Gupta played active role to hatch the conspiracy. According to the telephonic conversation of the accused persons and their voice recordings proof, transaction of huge money took place among the accused persons and as a result of such conspiracy and in lieu of money paid Manturam Pawar, all of a

sudden, withdrew his candidature. In this regard, a written complaint was filed by one Ms. Kiranmayi Nayak on 3.2.2019. On the basis of the said written complaint, police registered the crime in question.

4. Learned Senior Counsel appearing for the Applicants submits that even if the prosecution version is admitted as a whole, only *prima facie* case under Sections 171C, 171E and 120B of the Indian Penal Code can be made out against the present Applicants and these offences are bailable offences. It is further submitted that the entire prosecution case is based on transcripts of audio tapes, but who recorded the tapes, when the conversation took place, how the Complainant came into possession of the said tapes and how the said tapes were made available to police are not clear. It is further submitted that on an earlier point of time, the tapes were sent to Chandigarh for forensic examination and report, but it was opined that the tapes were doctored/manufactured as the original tapes were not available. Therefore, on the basis of the said tapes, no offence is made out. It is further submitted that after a period of 5 years, the statements of witnesses, Firoz Siddiqui and Ameen Memon have been recorded under Section 161 of the Code of Criminal Procedure. Firoz Siddiqui is a convict under Section 302 of the Indian Penal Code. It is further submitted that statements of Ameen Memon and Firoz Siddiqui would appear to be part of conspiracy, therefore, both these witnesses are accomplice and the entire case of the prosecution is based on the statements of these accomplice. Therefore, their statements are not duly reliable. It is further submitted that with regard to Sections 406 and 420 of the Indian Penal Code, no entrustment of

property was made by the Complainant to the Applicants and it is not the case of the prosecution that Congress Party gave money along with goods to the Applicants and they have converted to their own use to attract the aforesaid sections. With regard to Section 420 of the Indian Penal Code, it is submitted that there is no material on record on the basis of which it could be established that the present Applicants were delivered any property by Complainant Ms. Kiranmayi Nayak or the Congress Party. Therefore, the ingredients of Section 420 of the Indian Penal Code are not made out. It is further submitted that *prima facie* no offence under Sections 9 and 13 of the Prevention of Corruption Act is made out against the present Applicants. Even if it is assumed that the Applicants in their private capacity bribed Manturam Pawar, only offences under Sections 171E and 171F of the Indian Penal Code are made out which are bailable. It is further submitted that earlier a petition being Writ Petition (Cr) No.53 of 2017 was filed by Indian National Congress Party in the year 2017 with a prayer to register First Information Report of the same incident and to investigate into the conspiracy. The said writ petition was dismissed by this Court by order dated 28.4.2017. Against the order of dismissal, a writ appeal was preferred before a Division Bench of this Court. The Division Bench too dismissed the writ appeal. Then the matter went upto the Supreme Court by way of S.L.P. and by order dated 4.1.2019 the said S.L.P. was withdrawn by the Congress Party. After change of government in the State, an S.I.T. was formed and FIR was registered on 3.2.2019. Thus, from the above also, it is clear that due to political rivalry, the FIR was registered after change of government in the

State. It is further submitted that on the same facts, other co-accused persons Rajesh Munat and Dr. Punit Gupta have already been granted benefit of anticipatory bail by this Court vide order dated 16.4.2019 passed in M.Cr.C.(A) No.419 of 2019 and M.Cr.C.(A) No.312 of 2019, respectively. Therefore, in these circumstances, the present Applicants may also be extended the benefit of anticipatory bail.

5. Learned Counsel appearing for the State/Respondent, referring to the statements of witnesses Firoz Siddiqui and Ameen Memon, submits that according to these witnesses the entire conspiracy was done by the present Applicants along with Manturam Pawar and other co-accused persons. Particularly, in presence of witness Firoz Siddiqui, Applicant Amit Jogi had given a sum of Rupees Three Crores and Fifty Lakhs in three installments. Thus, there is sufficient evidence available on record against the Applicants against their involvement in the crime. Therefore, the case of the present Applicants is different from the case of Dr. Punit Gupta and Rajesh Munat. It is further submitted that Form B was given to Manturam Pawar which was a valuable security as legal right was created in favour of Manturam Pawar to contest the election for and on behalf of the Congress Party. On the basis of such candidature, Manturam Pawar put into bargain, therefore, offences under Sections 406, 420 read with Section 120B of the Indian Penal Code are made out. Learned Counsel further refers to the conversation done between the Applicants, other co-accused persons and witnesses Firoz Siddiqui and Ameen Memon and submits that all the transcripts are supported by certificate issued under Section 65 of the Indian Evidence Act.

Therefore, the transcripts are relevant. It is further submitted that co-accused Rajesh Munat was the then Minister. Dr. Punit Gupta was also holding a public post and Applicant Amit Jogi was also an M.L.A. and they used their position to cause withdrawal of candidature of Manturam Pawar and, therefore, offence under Section 13 of the Prevention of Corruption Act would be attracted. Learned Counsel submits that considering these aspects the anticipatory bail applications of the present Applicants may be rejected.

6. In reply to the arguments of the State Counsel, Learned Senior Counsel appearing for the Applicants submits that even if the entire statements of Firoz Siddiqui and Ameen Memon are taken as they are, only offences under Sections 171E and 171F of the Indian Penal Code are made out, which are bailable.
7. I have heard Learned Counsel appearing for the parties and perused the entire case diary minutely.
8. Considering the facts and circumstances of the case and the arguments advanced on behalf of the parties, further considering the fact that the incident is of the year 2014 and the FIR was lodged on 3.2.2019, i.e., the offence was registered after 5 years, further considering that earlier in the year 2017 this Court had dismissed the petition seeking investigation and thereafter no individual complaint either by way of FIR or private criminal complaint was filed and further considering the fact that on the same facts co-accused Dr. Punit Gupta and Rajesh Munat have

already been granted benefit of anticipatory bail by this Court, the present Applicants also deserve to get benefit of anticipatory bail.

9. Accordingly, both the anticipatory bail applications are allowed.
10. It is directed that in the event of arrest of the Applicants in connection with the aforesaid crime, they shall be released on anticipatory bail on each of them furnishing a personal bond in the sum of Rupees One Lakh with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. The Applicants shall also abide by all the following terms and conditions:
 - (i) They 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) They shall not act in any manner which will be prejudicial to fair and expeditious trial, and
 - (iii) They shall appear before the Trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Arvind Singh Chandel)
JUDGE