NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1779 of 2019

- Khushiram Kundnani S/o Late Mr. R. M. Kundnani Aged About 46 Years R/o Sector-1, Avanti Vihar, P.S. Telibandha, Raipur, Chhattisgarh 492001.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Officer-In-Charge, Police Station Azad Chowk, Raipur District Raipur, Chhattisgarh, 492001.

---- Respondent

For Applicant	: Shri Arvind Shrivastava and Shri Harshvardhan Parganiha, Advocates.
For Respondent/State	: Smt. Hamida Siddiqui, Dy. A.G.
For Objector	: Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Arvind Singh Chandel
Order On Board

24/01/2020

1. The applicant has preferred this first bail application filed under Section 438 of Cr.P.C. for apprehending arrest in connection with Crime No. 305/2019 registered at Police Station Azad Chowk, Raipur, District Raipur, (C.G.) for offence punishable under Sections 409 and 420 of I.P.C.

2. Facts of the case, in brief, is that present applicant Khushiram Kundnani, Kishore Virani (Complainant) and one Pawan Sharma entered into a partnership deed for the purpose of carrying out business relating to marketing in all kinds of real estate projects and registered their partnership firm in the name of M/s E-Grace Infraventures. The above partners executed the said partnership deed on 26.09.2014 wherein the applicant had 50% shareholding in the partnership and the complainant and Mr. Pawan Sharma had 25% shareholding each respectively. On 10.10.2019, one of the partners namely Kishore Virani made a written complaint stating that due to dishonest transactions and improper account maintaining by the applicant, he ended his partnership from the business on 21.05.2016 and thereafter, started his independent real estate business i.e. J.V. Reality. It is further alleged that applicant withdrew total Rs. 18,00,000/- through cheques from bank account of E-Grace Infraventure Firm on different dates i.e. 14.06.2016, 18.06.2016 and 30.06.2016 with the help of forged signature of the complainant and transferred the said amount to his personal bank account. Thus, the applicant committed the crime in question. On the basis of the above background, offence has been registered.

3. Learned Counsel appearing for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to business rivalry. He further submits that there are many litigations pending between both the parties regarding their business. The cheques dated 14.06.2016 and 18.06.2016 bear the signature of the complainant only. Though the hand writing expert has examined the signatures put on the cheques as forged, but the handwriting expert has only examined the photocopy of cheques and observed them with her naked eyes and given the opinion. Giving opinion after mere examining the photocopy of cheques at this stage is not reliable. Thus, signature bear in the cheques dated 14.06.2019 and 18.06.2016 appears to be of complainant. It is further submitted that the alleged transaction of Rs. 18,00,000/- occurred in the year 2016 and for the last three years no objection, no demand or any report was made by the complainant. The complainant has also given an undertaking on 18.06.2016 wherein he has stated that he was partner of M/s E-Grace Infra ventures till 15.06.2016. The said undertaking was given on 18.06.2016 and cheques were issued on 14.06.2016 and 18.06.2016 from which it can be *prima facie,* established that the cheques bear the signature of complainant himself. A false complaint has been lodged by the complainant against applicant due to some dispute in business. It is further submitted that custodial interrogation of the applicant is also not required and applicant is ready to abide by all the terms and conditions made during investigation of the case. Looking to the above, it is prayed that applicant may be released on anticipatory bail.

4. Learned Counsel appearing for the State and Objector oppose the bail application. They jointly submit that as per the opinion of the hand-writing expert, the signature put on the cheques dated 14.06.2016 and 18.06.2016 is forged, thus, *prima facie,* case is made out against applicant. It is further submitted by State Counsel that specimen signature of the applicant is required to be obtained by the prosecution for taking the opinion from hand-writing expert, however, State Counsel fairly admits that for the said purpose no custodial interrogation of the applicant is required. Thus, it is sufficient to get the specimen signature of the applicant for hand-writing expert opinion. Looking to the allegation made against applicant, anticipatory bail application of the applicant should be rejected.

5. I have heard learned Counsel appearing for the parties and perused the material available with due care.

6. Taking into consideration the submissions put-forth on behalf of the parties, considering the facts and circumstances of the case, evidence collected by the prosecution and particularly considering the fact that incident occurred in the year 2016 and F.I.R. has been lodged on 10.10.2019 i.e. after a gap of about three years, without further commenting on other merits of the case, I am inclined to extend the benefit of anticipatory bail to the present applicant.

7. Accordingly, the anticipatory bail application 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 Rs. 20,000/- with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned trial Court. They 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/her from disclosing such fact to the

Court,

(ii) He shall not act in any manner which may be prejudicial to fair and expeditious trial, and

(iii) He shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

(iv) He shall appear before the concerned Investigating Officer within **two weeks** and provide their specimen signature to him/her for further examination.

9. It is made clear that on non-compliance of any of the conditions imposed above shall lead to dismissal of anticipatory bail applications automatically.

Sd/-
(Arvind Singh Chandel)
Judge

Prakash