

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1995 of 2019

- Sushil Kumar Marwaha S/o Shri Gopichand Marwaha Aged About 70 Years
R/o Shiv Vatika Avasiya Maryadit, Ashwani Nagar, Raipur District Raipur
Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Azad
Chowk, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Applicant	: Shri Yogesh Pandey, Advocate
For Respondent/State	: Shri Alok Nigam, G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Order On Board

10/02/2020

1. The applicant has preferred the first bail application filed under Section 438 of Cr.P.C. for apprehending arrest in connection with Crime No. 333/2019 registered at Police Station Azad Chowk, Raipur District – Raipur, (C.G.) for offence punishable under Sections 420, 406, 467, 468, 120-B/34 of Indian Penal Code.
2. Facts of the case, in brief, is that complainant Harivallabh Agrawal is partner of M/s Mahamaya Construction and he has constructed and

developed flats at Mahadev Road known as Shiv Vatika. He sold one Flat No. A/305 to one Sanju Devi Pugaliya on 24.12.2010 by way of registered sale deed. Subsequently, Sanju Devi sold the said flat to one Subhash Kumar Mishra. Thereafter, on 29.10.2019 complainant made a report alleging that as per the provision mentioned in Sale Deed and Prakoshtha Declaration, payment of 2% of sale amount has to be made to the builder during subsequent sale of the flat, thereafter, builder issues the NOC. Allegation against the present applicant is that he took the said 2% sale amount of the said flat, thereby, he committed crime in question. On the basis of the said, 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. He further submits that applicant has neither taken the alleged amount nor issued any N.O.C. At the relevant time, applicant was the Chairman of the Society and being in the capacity of Chairman, he issued NOC to the seller Sanju Devi regarding her no liability. *Prima facie*, no case is made out against present applicant. He further submits that applicant has not received any amount for N.O.C. from the seller/Smt. Sanju Devi. Sanju Devi. She has also written a letter to the Dy. Registrar Co-operative Society, Raipur (C.G.) wherein she has clearly stated that she has not paid any amount whatsoever for obtaining the N.O.C. from the applicant. Since, applicant has not received any amount, therefore, offence under Section 420 of I.P.C. is not made out against him. With regard to offence under Sections 467, 468, it is submitted that at the relevant time, applicant was the

President of the Society and on the basis of application made by Seller Sanju Devi, he issued the N.O.C. in capacity of President of the Society. Thus, applicant has neither committed any forgery nor has prepared any forged documents. Therefore, *prima facie*, no offence under Sections 467, 468 is made out against applicant. Looking to the above, it is prayed that applicant may be released on anticipatory bail.

4. Learned Counsel appearing for the State opposes the bail application.
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, 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. He 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 him by the said Court till disposal of the trial.

Sd/-
(Arvind Singh Chandel)
Judge

Prakash