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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 2110 of 2019

- Ashish Gupta S/o Late Ramchandra Gupta Aged About 44 Years R/o 734, Padmnabhpur, Durg, Tahsil And District : Durg, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station, Gudiyari, District : Raipur, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Anand Shukla, Advocate.
For Respondent/State	:	Mr. Lalit Jangde, Dy. G.A.
For Objector	:	Mr. Anil Pillai, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

11/12/2020

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.449/2019 registered at Police Station– Gudiyari, District : Raipur (C.G.) for alleged commission of offence under Sections 420, 34 of Indian Penal Code.

2. Prosecution case is that during the course of business transaction, the applicant and co-accused, towards payment of supply of goods by the complainant, had given two cheques in the sum of Rs.3,83,86,175.82p and when these cheques were submitted for being honored, they got bounced.

3. Learned counsel for the applicant would argue that present is dispute of civil nature. He would submit that the dispute between the parties has chequered history. The applicant and his brother Sunil Gupta are running business concern in the name of M/s. Ganpati Steel and Ganpati Wires. The complainant had been supplying raw materials to the industrial concern of the applicant since long and there are old business relations. In course of time, against supply of raw material,

due to market condition, the applicant could not pay the entire cost of raw material supplied, therefore, the parties entered into an agreement on 12.06.2019 whereunder, amongst various terms and conditions, the complainant party agreed to control and run business operation of the applicant's industrial units and taking major share in the profits of the ongoing business which was to be adjusted against the amount liable to be paid by the applicant to the complainant which was to the tune of Rs.2,72,15,223.70p. The applicant acknowledged that the sister concern also owed debt to the complainant towards supply of raw material and Rs.75,19,790.36p. was payable by M/s. Ganpati Wires and Rs.36,51,161.76p. by M/s. Ganpati Associates. Under the agreement, the applicant party was to receive a fix amount whereas entire business operations were to be controlled by the complainant. It is also submitted that by way of security, certain cheques were obtained by the complainant. As long as the business was smoothly running, after the execution of the agreement, the complainant was receiving the amount directly in the bank account but later on, when it was not getting any profit out of the business, without notice to the applicant/accused, the cheques which were deposited with the complainant as security, were submitted in the bank for being honoured without the notice and knowledge of the applicant / accused and under these circumstances, those cheques bounced. Learned counsel for the applicant would submit that the applicant is not denying from its liability but the complainant is taking coercive actions by submitting the security cheques. Further referring to various transactions of the bank, copy of which has been filed subsequently, it is submitted that from the perusal of the bank statement, it is clear that huge amount has been paid to the complainant from July, 2019 onwards till the date of filing of the FIR which shows there was no dishonest intention on the part of the applicant. Therefore, in these circumstances, the applicant may be protected by giving benefit of anticipatory bail.

4. On the other hand, learned State Counsel and counsel for objector would argue that from the beginning, intention of the applicant has been to cheat the complainant. Earlier, the payment towards supply failed and cheques bounced and later on, the complainant, the applicant and co-accused entered into an agreement under which, it was agreed that the complainant may receive the profits of the ongoing business by taking its control, receiving finished goods and operating bank account but the complainants came to know later on that no authorisation letter was submitted in the bank by the applicant / accused. It is further

submitted that the complainant further came to know that sale proceeds of the finished goods, which were to be paid to the complainant, were also diverted dishonestly by the accused which is seen from bank statements and the entries filed along with objection. Record, tax papers has also been referred to. Learned State Counsel and counsel for objector would submit that cheques of huge amount towards payment were given and by doing so, the accused induced the complainant to continue supply of goods.

5. In the present case, as it is disclosed from the material placed before this Court, including the case diary of the case, there are disputes between the applicant and the complainant with regard to payment towards supply of raw materials which is used by the accused for operating its industrial activities. The cheques which were presented are not denied by the accused but it has been stated by the accused that those cheques were deposited by the accused with the complainant by way of security. However, on perusal of agreement dated 12.06.2019 which is an admitted document between the parties, there is no mention regarding any deposit of cheques by the applicant with the complainant by way of security. There is no mention of said cheques. Moreover, the amount involved in the dishonored cheque is huge and according to the complainant statement, repeated defaults were being made by the accused towards payments while they were receiving goods and when the complainant proceeded to take action against him, on 15.11.2019, two cheques one of Rs.2,72,15,223.70p. towards discharge of liability of Ganpati Allied Works Private Limited, other cheques of 50 lakhs each, (total of 1 crore) were given towards discharge of liability of Ganpati Steel on the assurance that the amount would be paid against these cheques. When these cheques were presented in the bank, the cheques bounced. The complainant required the accused to supply goods to M/s. Jantram Steel and B.M. Product and the goods were sent to those companies by the complainant, against which, the accused received Rs.11,25,141/- and Rs.3,25,529/- falsely stating to be representing the complainant and got deposited in his own account.

6. Therefore, considering the amount involved and that the cheques being repeatedly presented also bounced and there being no material to show that the cheques were deposited with the complainant by way of security only and further that the accused have neither denied their liability nor disputed that the cheques were issued by him, a prima facie

case is made out against accused.

7. Present is not a case where the complainants are only claiming payment of balance amount of cost of material supplied to the accused but in the present case, cheques of huge amount bounced when presented for being honoured.

8. This Court protected present applicant and co-accused Sunil Gupta by grant of anticipatory bail under MCRCA No.256 of 2020 & MCRCA No.400 of 2020 in connection with Crime No.38/2020 registered at Police Station- Jamul, District- Durg, C.G. where similar allegations were leveled against the present applicant and co-accused by the complainant therein that against supply of raw materials, payments were withheld. In that case, present accused were protected by grant of anticipatory bail as against total payment of Rs.1,67,46,000/-, as substantial payment of Rs.1,08,00,00/- had been made by the accused and further, that was not a case where cheques were given and bounced. In the present case, the accused has given cheques which bounced.

9. An argument has also been raised that the co-accused has been granted regular bail by this Court but the said argument cannot be accepted. In view of disclosure of material as aforesaid, it is not a fit case for grant of anticipatory bail, though, the applicant may surrender and apply for regular bail on the ground of parity before Court below.

10. In the result, the application is rejected and interim bail granted earlier is cancelled.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Ravi