

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1769 of 2020

- Bharat Kumar Chandrakar S/o Shri Dhaniram Chandrakar Aged About 45 Years R/o - Ward No. 02, Bhatgaon, Police Station - Bhatgaon, Balodabazar, District - Balodabazaar (Chhattisgarh)

---- Petitioner

Versus

- State Of Chhattisgarh Through The Station House Officer, police Station - Bilaigarh, District- Balodabazar (Chhattisgarh)

---- Respondent

MCRCA No. 53 of 2021

- Lakheshwar Chandra S/o Pratap Chandra Aged About 41 Years R/o Village Salaunikala (Fad Prabhari Gram Nagarda), Police Station And Tahsil Bilaigarh, District Balodabazar Bhatapara Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Of Police Station Bilaigarh, District Balodabazar Bhatapara Chhattisgarh

---- Respondent

For Respective Applicants	Mr. K. Rohan and Mr. Anil Gulati, Advocates
For Respondent /State	Mr. Alok Nigam, Government Advocate

SB.: Hon'ble Mr. Justice Prashant Kumar Mishra

Order On Board

3/3/2021

1. Heard.
2. These are the two applications filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the applicants, who are apprehending their arrest in connection with Crime No.207/2020 registered at Police Station Bilaigarh, District Balodabazar-Bhatapara (CG) for the offence punishable under Sections 408 & 409 read with Section 34 of the IPC.
3. Applicant – Bharat Kumar Chandrakar is the Society Manager whereas the applicant – Lakheshwar Chandra is the Fad Prabhari of Prathmik Krishi Sakh Sahakari Samiti Maryadit, Salounikala, District Baloda Bazar-Bhatapara. The society was earmarked for procurement of paddy during 2019-20 procurement season. During the subject procurement period the society purchased 84164.80 quintals of paddy of which 78623.04 quintals were transported to millers and collection centers and balance quantity of 5541.76 quintals should have remained in the society, but during physical verification no paddy was found in the society and thus the applicants have committed misappropriation of Rs.1,38,54,400/-. The FIR was lodged after an enquiry was made under the orders of Collector, Baloda Bazar-Bhatapara.
4. It is argued that the applicants had filed WPC No.1122 of 2020, which was disposed of with other connected writ petitions by common order dated 13-7-2020 directing the respondents therein to undertake preliminary enquiry/investigation in respect of any alleged shortage of paddy of loss caused to the

respondents in the process of purchase of paddy. If any deliberate and willful act on the part of the petitioners or office bearers of the society is found, the respondents would be entitled to take appropriate steps in terms of the agreement/contract entered into between the parties. Thereafter, the enquiry was conducted, but the applicants herein were not heard. Thus, principles of natural justice were not followed and the enquiry report is under challenge in WPC No.2723 of 2020. It is further argued that the agreement contains an arbitration clause, therefore, the extreme step of lodging of FIR could not have been taken without initiating the arbitration proceedings.

5. Learned counsel for the State, *per contra*, would oppose the bail applications.
6. After the order was passed in WPC No.1122 of 2020, the concerned Collector constituted the enquiry committee, which submitted its report on 30-9-2020 based on which the FIR was lodged on 26-10-2020. Thus, the Collector has ensured a preliminary enquiry before setting the criminal law in motion. It is clearly mentioned in the enquiry report during physical verification 5541.76 quintals of paddy was not available in the society. Such whopping shortage cannot occur only on account of dryage or eating of cattle or act of God. The applicants being the Society Manager and Fad Prabhari of the society were duty bound to protect such hefty quantity of paddy valuing Rs.1,38,54,400/-, but they have misappropriated the same. The

arbitration clause in the agreement is attracted only when there is civil dispute. In case of culpable negligence amounting to misappropriation, the agreement has no role to play. Even otherwise, the agreement is between the society and the MARKFED and not between the applicants and the MARKFED.

7. Considering the seriousness of the offence, I am not inclined to extend the benefit of Section 438 of Cr.P.C. to the applicants.
8. Accordingly, the applications are dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

Gowri