(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.104 of 2021

- Vidit Sharma, S/o Subhash Sharma, aged about 30 years, R/o HIG C-109A, Shailendra Nagar, Raipur, Tehsil Raipur, District Raipur (CG)

Applicant

Versus

- Central Bureau of Investigation through PS- ACB Branch, Raipur (CG)

---- Non-applicant

&

MCRCA No.203 of 2021

- Subhash Sharma, S/o Lokeshwar Sharma, aged about 59 years, R/o HIG C-109A, Shailendra Nagar, Raipur, Tehsil Raipur, District Raipur (CG)

Applicant

Versus

- Central Bureau of Investigation through PS ACB Branch, Raipur (CG)

---- Non-applicant

M.Cr.C. (A) No.104 & 203 of 2021

For Applicant	:	Mr. Kishore Bhaduri, Sr. Advocate with Mr. S. Bhaduri, Advocate
For Non-applicant	:	Mr. Ramakant Mishra, Asst. Solicitor General.

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

24/8/2021

1. Since above anticipatory bail applications arise out of same crime number, they are being heard together and disposed of by this common order.

2. Applicants have preferred above two applications under Section 438 of CrPC for grant of anticipatory bail to them as they apprehend their arrest in connection with FIR No.5432/2020, RC1242018A0013 of 2018 registered at Police Station- ACB, Raipur for commission of offence punishable under Sections 420, 409, 120B of the Indian Penal Code.

3. Case of the prosecution, in brief, is that on 25.6.2018 a written complaint was lodged by the Assistant General Manager, Central Bank of India, Raipur (CG) (for short 'the bank') mentioning therein that M/s Vidit Freight Movers Pvt. Ltd. (for short 'the Company') was incorporated on 21.2.2011. The Company through Dipesh Vyas approached the bank on 1.3.2014 for grant of credit facilities. Upon discussions and consideration of proposal, credit facilities were sanctioned on 29.3.2014 under Working Consortium Arrangement amongst Central Bank of India, Punjab National Bank & Axis Bank in the ratio of 40%, 40% & 20% respectively. Complainant bank has sanctioned CCH Limit of Rs.7.5 Crore and ODBD limit of Rs.2.50 Crore. Credit loan facility account of the Company became NPA due to non-payment of installments. Consequently, the bank along with other consortium banks instituted proceedings under the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 before the Debt Recovery Tribunal at Jabalpur for recovery of Rs.27.55 Crore. Upon audit, it revealed that the company is controlled by applicants and they by placing wrong facts and entries in their books have succeeded in obtaining credit facilities and thereby cheated the bank and other consortium banks. Based on written complaint, FIR is registered against applicants on 29.12.2018 for commission of aforementioned offence.

4. Mr. Kishore Bhaduri, learned Senior Counsel for applicants submits that period of commission of offence has been shown to be from March, 2014 to March, 2018. Complaint was lodged on 16.11.2018 based upon which FIR was registered on 29.12.2018; investigation was taken up by non-applicant CBI and on completion of investigation, charge sheet has also been filed on 14.12.2020 before the Court of competent jurisdiction. He further submits that the applicants participated and cooperated in the entire investigation with non-applicant CBI. They appeared personally before the authorities

concerned as and when directed. After filing of charge sheet, the applicants have yet not received summons from the trial Court but they had strong apprehension that they will be sent to custody upon appearing before the trial Court concerned, therefore, after filing of charge sheet, they moved an application under Section 438 of CrPC for grant of anticipatory bail, which has been erroneously rejected by the Court below on the ground that offences registered against applicants are serious in nature and merely because custodial interrogation of applicants is not required, benefit under Section 438 CrPC cannot be extended to them. He submits that reasons assigned by the Court below for rejecting anticipatory bail application of applicants are erroneous. Unless and until allegations levelled against applicants are proved, the presumption of innocence is in favour of applicants. Applicants are permanent residents of the city of Raipur, they are having status and reputation in the society and if they are sent to jail, they would loose their social standing and reputation. He also submits that only because offences alleged against applicant are cognizable and non-bailable or the law provides for arrest, it is not necessary that applicants must be arrested, particularly when charge sheet is already filed. The Investigating Officer, who conducted investigation, also did not find it appropriate to arrest applicants during the course of investigation. In these circumstances, the Court below ought to have allowed anticipatory bail application of applicants. He further contended that during pendency of these bail applications, interim protection has been granted to applicants and they have not misused the same. As per his instructions, till date applicants have not received summons of the trial Court. In support of his submissions, learned Senior Counsel places his reliance on the decision of Hon'ble Supreme Court dated 16.8.2021 in Cr.A. No.838/2021 arising out of SLP (Cr) No.5442/2021, parties being Siddharth vs. State of UP & another.

On merits, learned Senior Counsel submits that on the date of incorporation of the company i.e. 21.2.2011, applicants were Directors of the company but later on they resigned from the post of Directors on 3.4.2013. As per allegations made in written complaint, the company through one Deepesh Vyas had approached the bank on 1.3.2014 i.e. after about 11 months from the date of resignation of applicants from the post of Directors of the Company. Applicants have been made accused on the basis of suspicion that it is they who were controlling the company, which is not supported by any documentary evidence on record. It is contended that applicants will appear before trial Court on each date of hearing.

5. On the other hand, Mr. Ramakant Mishra, learned Assistant Solicitor General for non-applicant CBI opposes the submissions made by learned Senior Counsel for applicants and submits that allegation levelled against applicants are serious in nature, they have incorporated the company and even after tendering resignation, they were controlling the company through their employees. Applicants have hatched up a conspiracy, cheated the bank by placing incorrect facts before it and thereby caused huge loss of about Rs.25 Crores to the bank. Applicant Subhash Sharma has signed the documents as guarantor which shows his active involvement in the company. After completion of investigation, charge sheet has been filed, but warrant of arrest is not issued against applicants, as such they do not have apprehension of their arrest. Applicants have to appear before the Court below on issuance of summons. He submits that the order of Hon'ble Supreme Court in case of Siddharth (supra), relied upon by learned Senior Counsel for applicants, is not applicable to facts of present case. Even otherwise, the applicants cannot claim parity in bail matters. In case of Siddharth (supra) the issue for consideration before Hon'ble Apex Court was "**whether at the time of filing of charge sheet presence of**

accuse therein is necessary or not" and not with respect to grant of anticipatory bail. However, he does not dispute factual submissions made by learned Senior Counsel for applicants that after registration of FIR on 29.12.2018, the Investigating Agency has not arrested applicants in the course of investigation, they appeared before the Investigating Agency and cooperated in investigation; charge sheet is filed and now there is no further need of custodial interrogation of applicants.

6. I have heard learned counsel for parties.

7. It is not in dispute that FIR was registered in respect of offence said to have been committed from March, 2014 to March, 2018. Written complaint was lodged on 16.11.2018 based upon which FIR was registered on 29.11.2018. Applicants participated and co-operated in the entire investigation. After completion of investigation, charge sheet has been filed on 14.12.2020. In the complaint itself the complainant has mentioned the date of resignation of applicants from the post of Director of the Company as '3.4.2018'. Proposal for credit facilities was submitted by the Company on 1.3.2014 through Deepesh Vyas. Apprehension of arrest shown by the applicants is reflecting from the bail rejection order. The Hon'ble Supreme Court while passing order dated 16.8.2021 in case of Siddharth (supra) has considered the issue **'whether anticipatory bail application of appellant therein ought to have been allowed at the time of filing of charge sheet**". Other issue before the Hon'ble Supreme Court in that case was "**whether the trial Court can insist on arrest of an accused to take charge sheet on record**". The Hon'ble Supreme Court while answering the aforementioned issue has held thus:-

> ".......We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of

the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yon the charge sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge sheet.

We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arise when the custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar's case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the chargesheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven years of registration of the FIR, we can think of no reason why at this stage he must be arrested before the charge sheet is taken on record. We may note that learned counsel for the appellant has already being stated issued the before us that appellant will on summons put the appearance before the trial court........"

8. In case at hand also, after registration of FIR, applicants have participated and co-operated with Investigating Agency; after completion of investigation, the charge sheet has been filed before the concerned Court. Learned Senior Counsel for applicants has already stated that on summons being issued, the applicants will put their appearance before the trial Court.

9. Keeping in mind the above decision of Hon'ble Supreme Court in case of Siddharth (supra) and the entire facts and circumstance of case at hand, I am of the view that present is a fit case where applicants should be extended with benefit of

anticipatory bail under Section 438 of CrPC. Accordingly, both the applications are allowed and it is directed that in the event of arrest of **applicant Vidit Sharma in M.Cr.C (A) No.104/2021** and **applicant Subhash Sharma in M.Cr.C. (A) No.203/2021** in connection with crime in question, they shall be released on anticipatory bail by the officer arresting them on their executing a personal bond in the sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the Arresting Officer. Applicants shall also abide by following conditions:

(i) that they shall make themselves available for interrogation before Investigating Officer as and when required;

(ii) that they shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him/her from disclosing such facts to Court or to any police officer;

(iii) that they shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that they shall appear before the trial Court on each & every date given to him by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-