

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 115 of 2021**

- Khaleed Khan S/o Shri Jaabir Khan aged about 38 years, R/o Near Samlaya Mandir P.S. & Tahsil Ambikapur District Surguja Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: Station House Officer, P.S. Ambikapur, District Surguja, Chhattisgarh

-----Respondent

For Applicant	: Mr. Nishi Kant Sinha, Advocate
For Respondent- State	: Mr. Hariom Rai, Panel Lawyer

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****23/03/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of regular bail as he has been arrested in connection with Crime No.924/2020 registered at Police Station Ambikapur, District Surguja (C.G.) for the offence punishable under Sections 406, 407, 420 and 34 of IPC.
2. Case of the prosecution is that, complainant is a Manager of transport company Mahamaya Associate Risda, dealing with business of transportation. The Mahamaya Associate is engaged under contract to transport Double Bull cement of NU Vista limited. Applicant's truck has been engaged for transporting 640 bags of cement from Balodabazar to Daltonganj. As per gate pass number 702452, dated 22.11.2020, truck from NU Vista limited, Balodabazar started after loading 640 bags of cement for Daltonganj. After 4-5 days of coming out of truck from factory, when it did not reach to Daltonganj warehouse, search has been made for whereabouts of the truck. Upon calling on mobile phone of the driver of truck by name Atif, he stated that he has left the job and upon having talk

with the owner of the truck, it has been stated that he has sold the cement for the price of Rs. 1.80 lacs but he did not receive the entire consideration and hence, he will pay only Rs. 50,000/- towards the cement. The said incident was reported by the Manager of transport agency to the concerned police station, based on which, F.I.R. was registered against the present applicant with crime number 924/2020 for offences under Sections 406, 407, 420 and 34 of IPC.

3. Learned counsel for the applicant submits that the applicant has not committed any offence as alleged against him. The civil dispute between the complainant and the applicant has been given colour of criminal act. He submits that the truck owned by the present applicant was loaded with 640 cement bags started from Balodabazar on 22.11.2020, which reached at Daltonganj on scheduled date and time but it has been informed by the person at warehouse that there was no vacant space in the warehouse to unload the truck. Due to this act of warehouse, truck of the applicant had to keep standing for 4-5 days at Daltonganj and in between, due to change of weather and heavy rains, some cement bags have been drenched. He submits that the person of warehouse has unloaded only the bags which were not drenched in rain. False and fabricated complaint has been lodged against the present applicant only after making complaint to the concerned police station by him on 27.12.2020 (Annexure A-4). He submits that the dispute arose only when the present applicant has demanded for the fare of the transportation. He also submitted that the dispute between the parties is of civil nature, hence, the present applicant be granted benefit under Section 438 of CrPC.
4. Opposing the submission made by learned counsel for the applicant, learned Panel Lawyer for the State submits that the truck of the applicant loaded with 640 bags of cement for transporting from factory at Balodabazar to Daltonganj warehouse did not reach there. He submits

that the Manager of transport company has lodged complaint that the present applicant has sold 640 bags of cement in between and thereby committed breach of trust. He also submits that the crime registered by the police is under investigation. He also pointed out that the so called complaint said to be lodged by the present applicant on 27.12.2020 is prepared by the present applicant and is an afterthought and the complaint does not bear the seal of the concerned police station.

5. I have heard learned counsel for the respective parties.
6. As per the submissions made by the respective parties, there is no dispute with regard to the engagement of the truck bearing registration no. CG15-AC-5623 owned by the present applicant for transporting 640 bags of cement. The complaint is that the bags loaded in the truck have not reached to its destination place at Daltonganj warehouse. The submission made by the learned counsel for the applicant that the truck reached to Daltonganj but it was not unloaded by the persons available at the warehouse and the truck had to keep standing at Daltonganj for about 5-6 days and due to rains, subsequently, the cement became drenched. There is no document placed on record to show that the drenched as well as undrenched cement was unloaded at destination place of Daltonganj warehouse, as argued.
7. For the foregoing reasons, I do not find it a fit case to grant benefit under Section 438 of CrPC to the applicant.
8. Accordingly, the bail application stands dismissed.

Sd/-
(Parth Prateem Sahu)
Judge