

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 167 of 2021**

- Harish Chand Gayakwad, aged about 53 years, S/o Shri Raghunath Gayakwad, R/o Qtr No. 57/B, D. Pocket, Maroda Sector, Bhilai, Tahsil and District-Durg Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: the Station House Officer, Police Station- Bhilai Nagar, Distt. Durg, Chhattisgarh

-----Respondent

For Applicant	: Mr. Ali Asgar, Advocate.
For Respondent- State	: Mr. Ajay Kumrani, Panel Lawer
For objector	: Mr. Virendra Verma, Advocate on behalf of Mr. Purnendra Khichariya, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****26/03/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No.32/2021 registered at Police Station Bhilai Nagar, District Durg (C.G.) for the offence punishable under Section 420 r/w Section 34 of IPC.
2. Case of the prosecution is that, the complainant No. 1, who is a retired employee of Bhilai Steel Plant, on persuasion of one Vijay Uikey and present applicant, has made investment of about 34 Lacs with AGM Corporation Company which is based at Nagpur, but when he asked for return of investment, a cheque was issued by the AGM Company under the signature of Director which became dishonored. Thereafter, the complainants Prahlad Singh Thakur and Smt. Purnima Thakur have filed an application under Section 156(3) of CrPC before the court of competent jurisdiction and upon considering the said application and hearing the parties, learned Magistrate has directed for registering F.I.R. and submission of Final Report. Based on the direction of learned Magistrate,

F.I.R. was registered bearing number 0032/2021 for offence punishable under Section 34 and 420 of IPC against Sushil Ramesh Kolhe, Managing Director, AGM Corporation, Pankaj Ramesh Kolhe, Proprietor, Bharat Sahu, Vijay Uikey and the present applicant Harish Gayakwad. Present applicant who is working as Chief Yard Master and Vijay Uikey are employees of Bhilai Steel Plant. Allegation against the present applicant is that he and co-accused Vijay Uike visited house of Prahlad Singh Thakur (Retired DGM, Bhilai Steel Plant) and told him the LED networking system run by the AGM Corporation which gives 4.17% profit in two years and 3% after 3 years. Complainants deposited Rs. 1 Lac through cheque, Rs. 33 Lac through RTGS and Rs. 80,000/- through online payment mobile vallet. After the due time, complainants did not get their profit nor the principal amount. Thereby, all of them, the Director of AGM Company Sushil Ramesh Kolhe, Proprietor Pankaj Ramesh Kolhe, Manager Bharat Sahu and their local assistants Vijay Uikey and applicant have cheated them.

3. Anticipatory bail application filed before the Court below was rejected by impugned order.
4. Mr. Ali Asgar, learned counsel for the applicant submits that the applicant has been falsely implicated in the crime, he has nothing to do with AGM Company with which the complainant Prahlad Singh Thakur has made investment. He submits that housewives of number of employees of the Bhilai Steel Plant have joined as member with the AGM Company, based at Nagpur. Initially, all the investments made have been returned with some profit. He also submits that this investment is in network system, the person who becomes the first member makes other persons as member and investor for whom that member becomes promoter. To support his submission, he refers Annexure A-4 which is registration form of complainant No. 1 (Prahlad Singh Thakur), on which, while becoming member and investor in the AGM Company, name of promoter is shown as

Smt. Purmina Thakur who is wife of Prahlad Singh Thakur. He submits that the complainant has made investment on the basis of convincing efforts made by his wife who was initially investor under wife of Vijay Uikey and subsequently became promoter. He further submits that wife of the applicant who is only the member with AGM Company in the family, applicant has nothing to do and he has not even promoted the complainant to make investment. He submits that as per document placed on record at page no. 33, showing the name of 13 persons/ investors to whom the wife of present applicant promoted for becoming a member and they made investment, in which name of complainant does not find place. He submits that only to take undue advantage, applicant being a government servant at Bhilai Steel Plant, made false allegation against him to recover the money by pressure and threat which he lost with the AGM company. He also submits that the criminal proceedings cannot be used as a tool for recovery of any amount. He submits that for being a member, the investor/ promoter has to visit the office of Company and in the present case, AGM company is situated at Nagpur, Smt. Purnima Thakur, wife of complainant, has visited the office and taken membership with it and thereafter invested money directly before the Company after entering into an agreement with the Managing Director of the Company. He submits that the agreement is also placed on record as Annexure A-3 which also bears the seal of Notary of Napur. He submits that looking to the financial condition of the Company, wife of present applicant has withdrawn herself from the Company upon which a cheque has been issued to her but subsequently it has been informed by the Managing Director of the Company that looking to the paucity of the funds in the bank account, she may not deposit the same in her account. Thereafter, a letter has been issued that the Company will issue new cheque to the wife of applicant and also to the other member for which she stood promoter. He submits that applicant has filed statement of bank account to show that his wife has also invested money and she is

also a sufferer. He submits that applicant is a government servant, absolutely false and fabricated case is registered against him, hence, he may be enlarged on anticipatory bail. He places his reliance on SLA (Cri.) No. 1247/2021 (Manoj Kumar Sood and another vs. State of Jharkhand) passed by the Hon'ble Supreme Court.

5. Learned State counsel submits that on the basis of application filed by Prahlad Singh Thakur and his wife Smt. Purnima Thakur under Section 156(3) of CrPC, learned Magistrate has directed for registration of F.I.R. and submission of Final Report, based on which, F.I.R. was registered against present applicant and four other persons. He further submits that the complainant has specifically made an allegation against the present applicant that he visited along with Vijay Uikey to his house and convinced him to make investment in the AGM Company and only on that basis, complainant has made investment of Rs. 34 lacs, which he received after his retirement from his service. He also pointed out that as per the document available on record, complainant Purnima Thakur entered into an agreement for becoming a member in the month of June, 2018 and since then they have made their investment. Cheque issued by the Company was dishonored. Action of the present applicant comes within the purview of Section 34 IPC, hence, F.I.R. has been registered against the present applicant and the offence as alleged against the present applicant is grievous in nature.
6. Mr. Virendra Verma, learned counsel for objector submits that it is the present applicant and one Vijay Uikey who approached the complainant to make investment in the AGM Company, on the basis of which, he made huge investment of his hard earned money, but the Company ran away and he has lost Rs. 34 lacs. He also submits that, prima facie, applicant has committed offences.
7. I have heard learned counsel for the respective parties.

8. Taking into consideration the nature of allegation levelled against the present applicant that he and Vijay Uikey visited the complainant and persuaded him to make investment with the AGM Company, perusal of agreement entered into by Smt. Purnima Thakur for becoming a member was executed at Nagpur, this was not disputed by the learned counsel for the respondent. This shows that Smt. Purnima Thakur had visited the office of Company at Nagpur and after becoming satisfied, she has taken membership of the Company. Learned counsel for the complainant has not controverted the document Annexure A-4, which is the registration form showing the name of Prahlad Singh Thakur as member of Company and his promoter was none other than his wife Smt. Purnima Thakur. This document does not show that the present applicant, in any manner, involved in promoting the complainant Prahlad Singh Thakur for making his investment. Other document available at page 33 and the submission made by learned counsel for applicant referring to it that even Prahlad Singh Thakur and Purnima Thakur have not promoted by wife of present applicant Smt. Sujata.
9. Taking into consideration the nature of allegation, contents of F.I.R. Ext. A-8, considering the facts and documents placed on record by learned counsel for the applicant which remained uncontroverted, wherein it appears that Prahlad Singh Thakur was promoted by his wife Smt. Purmina Thakur for making investment. Even Smt. Purmina Thakur was not promoted by applicant, no amount is deposited with applicant at any point of time, without commenting anything on merits, I am inclined to grant anticipatory bail to the applicant.
10. Accordingly, application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question (32/2021), he shall be released on anticipatory bail by the Officer arresting him on his executing a personal bond in the sum of Rs. 25,000/- with one surety in the

like sum to the satisfaction of the concerned Investigation Officer. Applicant shall also abide by the following conditions:

- (i) that the applicant shall make himself available for interrogation before the Investigation Officer as and when required;
- (ii) that the applicant 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 facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan