(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.1211 of 2021

- Rakesh Rajak, S/o Late Ratiram Rajak, aged about 28 years, R/o Tulsinagar Ward No.02, Out Post -C.S.E.B., Korba, Police Station Kotwali, Korba, District Korba (CG)

---- Applicant (In Jail)

Versus

- State of Chhattisgarh, through Station House Officer, Police Station-Kotwali, Korba, District Korba (CG).

....Non-applicant

For Applicant	:	Mr. Dharmesh Shrivastava, Advocate
For Non-applicant	:	Mr. Vimlesh Bajpai, Govt. Advocate
For Objector	:	Mr. Anish Tiwari, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

7.7.2021

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant, who is in custody since 12.1.2021 in connection with Crime No.36/2021 registered at Police Station Kotwali, Korba (CG) for commission of offence punishable under Sections 409 & 420 of the Indian Penal Code.
2. Case of the prosecution, in brief, is that complainant Jay Kumar Soni lodged a complaint with the police mentioning therein that the complainant is engaged in the business of export and sale of cenosphere, which is used in power plants. He used to sell Cenosphere to co-accused Pramod Kumar Chandrakar and others. It is alleged that present applicant in collusion with co-accused Pramod Kumar Chandrakar forged

signature of complainant's wife in the invoice of the company, withdrew Rs.13,98,134/-, which was of the complainant, distributed between them and thereby they have committed the offence punishable under Sections 409 & 420 of IPC. Based on the aforesaid complaint, the instant crime was registered against present applicant and he was arrested on 12.1.2021.

3. Mr. Dharmesh Shrivastava, learned counsel representing the applicant submits that applicant has been roped in a false and frivolous case. Even if the entire allegations contained in the complaint are taken as it is, then also the offence under Section 409 & 420 of IPC would not be made out. He further submits that the amount in the bank account of present applicant was transferred by co-accused Pramod Chandrakar, there is no allegation that on the strength of a forged money receipt, the present applicant got transferred the amount in his bank account. The allegation that applicant has forged signature of complainant's wife in the invoice is also baseless. Alleged forged invoice seized by the police has not been sent to handwriting expert for his opinion. Referring to the affidavit filed by the Objector as Annexure O-1, he submitted that co-accused Pramod, with whom the complainant was having business relationship, has admitted that it is he who transferred the amount to the bank account of present applicant. Hence, from the contents of affidavit itself it is clear that present applicant has not committed any offence, as alleged against him, in any manner. He further submits that

the applicant is in jail since 12.1.2021, the offence is triable by the Magistrate 1st Class, charge sheet has been filed and the conclusion of trial may take some time. He also submits that co-accused Pramod Kumar Chandrakar has been released on bail by co-ordinate Bench of this Court vide order dated 13.4.2021 in M.Cr.C. No.2328/2021. Hence, the applicant may be released on regular bail.

4. Per contra, Mr. Vimlesh Bajpai, learned State Counsel opposes the submissions made by learned counsel for applicant and submits that there is specific allegation of forging of invoice of the company of complainant's wife by making signature of the wife of complainant. He further pointed out that amount which is of the firm owned by wife of complainant has been transferred in the account of present applicant partly and part of the amount has been deposited in the bank account of co-accused Pramod Kumar Chandrakar.

   On a specific query being put by this Court to the learned State Counsel as to whether seized invoice has been sent to the handwriting expert for opinion, he replied that no such report is available in the charge sheet. He submits that as per allegation, total amount involved is Rs.13,98,132/-.

5. Mr. Anish Tiwari, learned counsel for the Objector would argue that serious allegations have been levelled against present applicant of forging signature of complainant's wife who is proprietor of the firm and further getting transferred the money due to the firm of complainant's wife partly in his bank account and part of the amount has been kept by co-accused Pramod.

He further submits that co-accused Pramod Kumar Chandrakar has been granted bail only on the ground that he has returned the amount of his share.

On putting a specific query in view of affidavit filed by the Objector as Annexure O-1 that it is co-accused Pramod Chandrakar who transferred Rs.8 Lakhs in the account of complainant, learned counsel for Objector submits that the applicant should have returned the amount transferred in his bank account. He submits that as the applicant has forged the invoice, hence he is not entitled to be released on regular bail.

6. I have heard learned counsel for the parties.

7. Perusal of FIR would show that some bonus amount of Rs.13,98,132/- towards the sale of cenosphere on the license issued in the name of firm of the wife of complainant has been sent by Shyam Impex, Raipur through PC Shipping Company, Durg, which is owned by co-accused Pramod Kumar Chandrakar. Out of aforementioned amount, a sum of Rs.6,65,000/- was transferred in bank account of applicant and a further sum of Rs.70,000/- was received through phone-pay. It is alleged that amount which is due to the firm of wife of complainant has been transferred in the account of applicant by practising fraud. Affidavit of co-accused Pramod Kumar Chandrakar, which is relied upon by the complainant himself and filed at Page No.6 of the objection, would show that co-accused has stated that he has transferred Rs.8 lakhs in the account of present applicant without informing the complainant. Further there is admission of the learned

counsel for the complainant that the complainant has received back Rs.6 lakh from co-accused Pramod Kumar Chandrakar.

8. Taking into consideration the overall facts and circumstances of case, the nature of allegations, the contents of affidavit of co-accused Pramod Kumar Chandrakar placed on record by the complainant/objector; there is no report of handwriting expert in the charge sheet; applicant is in jail since 12.1.2021; the offence is triable by the Magistrate 1st Class, charge sheet has already been filed and the conclusion of trial may take some time, without commenting anything on merits of the case, I am inclined to allow this bail application.

9. Accordingly, the application is allowed and it is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety in the like sum to the satisfaction of the trial Court concerned on the conditions that;

   a) he shall appear before the trial Court concerned regularly on each and every date unless exempted from appearance.
   b) he shall not, in any manner, tamper with the prosecution witnesses.
   c) If applicant is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-