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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 232 of 2021

- Shankar Sahu, S/o Pardeshi Sahu, aged about 43 years, R/o Ambedkar Nagar, Ward No.58, Urla, P.S. Mohan Nagar, Tehsil and District Durg (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh – Through : District Magistrate, Dhamtari, District Dhamtari (C.G.)
2. Prateek Shrivastava, S/o Manmohan Shrivastava, aged about 32 years, R/o. 179-A, Rauabandha Sector Bhilai, District Durg (C.G.)

---- Respondents

For Applicant	:	Mr. Prasoon Agrawal, Advocate.
For Respondent.	:	Mr. Devesh Verma, G.A.
For Objector	:	Mr. C.K. Sahu, Advocate.

Hon'ble Smt. Justice Rajani Dubey

Order on Board

25/03/2021

1. This application under Section 438 of the Code of Criminal Procedure has been filed by the applicant who is apprehending his arrest in connection with Complaint Case No.625/2020 pending before Judicial Magistrate First Class, Dhamtari, District Dhamtari (C.G.) for the offence punishable under Sections 420, 409, 467 and 468 of Indian Penal Code.

2. The complainant (respondent No.2) case, in brief, is that he got the tender to run foreign and country made liquor shops for the financial year 2016-17, but since the complainant had no experience to run the business, he engaged the applicant for carrying out the business on behalf of the complainant from 05.03.2016 and, thereafter, executed the special power

of attorney in the favour of the applicant. It has been alleged that the applicant while running the business of the complainant had procastinated in giving details of transaction of the complainant's business and had caused huge loss to the complainant with respect to the financial year 2016-17. It has been specifically alleged by the complainant that the accused had misappropriated the sum to the tune of Rs.70-80 lakh. It has been further alleged that the applicant had used the amount for his own personal benefit and gain.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the crime in question. He further submits that a special power of attorney has been executed between the complainant and applicant to run complainant's liquor business. The complainant has stated that an amount of Rs.80 Lakh has been used by the applicant in inappropriate manner by depositing it in his bank account for construction work, but the bank statement (Annexure A-7 (37 to 40)) does not reflect the said amount, thus, it cannot be said that the said amount has been disbursed. Learned counsel, referring to cash book (Annexure A-7), also pointed out opening balance and closing balance of the same, which clearly shows that there is no misappropriation of fund by the applicant. It is next submitted that in inquiry report conducted by police, it has been specifically observed by the police that no amount has been misappropriated by the applicant.

4. Counsel for the State however opposes the application for anticipatory bail. Learned State counsel submits that

documents available on record clearly shows prima-facie case against the applicant. Learned State counsel also submits that one Madanlal Jain also examined in the case and he has stated the applicant has misappropriated the fund of complainant.

5. Mr. C.K. Sahu, learned counsel for objector opposing the anticipatory bail application submits that the applicant was employed to look after the business of complainant (respondent No.2) on the salary of Rs.10,000/- per month, but the applicant has not provided the details of income and expenses of business to the complainant and keep the entire money in his own bank account at Axis Bank, IDBI Bank and INDUS IND bank at Durg Branch. He also submits that the applicant is having criminal background and he has criminal antecedent also.

6. After hearing counsel for the parties and considering the facts and circumstances of the case, and further considering the nature of offence and quality of evidence, without commenting anything on merits of the case, this Court is of the considered opinion that it is a fit case to grant anticipatory bail to the applicant.

7. Accordingly, the application is allowed. It is directed that in the event of arrest of the applicant in connection with aforesaid crime number, he shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety for the like sum to the satisfaction of the concerned arresting/investigating officer or the court concerned, as the case may be, with the following terms and conditions:

(i) that the applicant shall make himself available for interrogation/medical examination before the concerned investigating 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 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/-

(Rajani Dubey)
Judge

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