

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 333 of 2021

- Asim Nikals, aged about 36 years, Son of Shri Vinod Kumar, Caste Isai, resident of Section 10, Sadak No.33, Bhilai, Tehsil and District Durg, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh Through the Station House Officer, P.S. Jarhagaon, District Mungeli (CG)

---- Non-applicant

For Applicants	:	Mr. Ashish Shukla, Advocate
For Non-applicant	:	Mr. Srikant Kaushik, Panel Lawyer

Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

7/7/2021

1. This is an application under Section 438 of CrPC for grant of anticipatory bail to the applicant as he apprehends his arrest in connection with Crime No.35/2021 registered at Police Station Jarhagaon, District Mungeli for commission of offence punishable under Section 420 of the Indian Penal Code.
2. The prosecution story, in brief, is that on 21.11.2020 complainant Shiv Kumar Sahu has lodged a written complaint with the police station Jarhagaon mentioning therein that the applicant has entered into an agreement with complainant & one Sanjeev Kumar Kashyap to sell land bearing Khasra No.8/7, 10/6 & 12/17 total area 0.11 acre, situated at village Pendridih, Tahsil and District Mungeli. The applicant has also obtained advance amount of Rs.5,00,000/- i.e. Rs.4,50,000/- by way of cheque drawn on State Bank of India and Rs.50,000/- in cash, from the complainant party. Under the agreement, period for execution of sale deed has been provided of 11 months. After execution of the agreement, the applicant stating that he is in need of money has further taken

some amount in cash. On 26.2.2020 the complainant and said Sanjeev Kumar Kashyap were called by present applicant in the office of Sub-Registrar, Mungeli for execution of two sale deeds and for the said purpose, they have also purchased stamp of Rs.56,000/- for each sale deed. However, the applicant has sold the land in question to one Manoj Jaiswal by executing sale deed in his favour. On the basis of the complaint, instant crime was registered against the present applicant.

3. Mr. Ashish Shukla, learned counsel for the applicant submits that bare perusal of the allegations levelled against present applicant in the complaint would show that the dispute between the parties is purely of civil nature. There is no allegation that present applicant is not the owner of the land in respect of which he has entered into agreement with the complainant. He submits that dire need of money and failure of the complainant to get the sale deeds executed within reasonable time, has compelled the present applicant to sell his land to some other person i.e. Manoj Jaiswal. Applicant is not having any ill intention on the advance money received from the complainant. In fact, the applicant himself has sent a notice through his advocate to the complainant calling upon him to take back the advance amount of Rs.5 lakhs paid by him to present applicant at the time of execution of agreement to sell. He submits that no criminal act is done by the present applicant, as alleged, hence he may be granted benefit under Section 438 of CrPC.
4. Per contra, Mr. Kaushik, learned Panel Lawyer for the State opposes the submissions made by learned counsel for the applicant and submits that the applicant has cheated the complainant party by executing agreement to sell, taking advance amount of Rs.5 Lakh and thereafter executing sale deed in favour of some other person i.e. Manoj Jaiswal. Hence, the applicant is not entitled for grant of anticipatory bail.

5. I have heard learned counsel for the parties.
6. Taking into consideration the nature of allegations levelled against present applicant that after entering into agreement to sell with the complainant party and obtaining advance amount of Rs.5 Lakhs, he has executed sale deed in favour of some other person and further considering that applicant himself sent a notice to the complainant party asking them to take back the advance amount paid to him by them, I am of the view that present is a fit case where the applicant should be released on anticipatory bail.
7. Accordingly, the application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, 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 Investigating Officer. The applicant shall also abide by the following conditions :
 - (i) that he shall make themselves available for interrogation before the Investigating Officer as and when required;
 - (ii) that he 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 he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) that he 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

roshan/-