

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2411 of 2021**

- Rajesh Seth S/o Late Shri Kailash Seth, Aged About 48 Years R/o Main Road Tarbahar, Bilaspur, Police Station - Tarbahar Bilaspur, District - Bilaspur Chhattisgarh.

---- Applicant
In Jail

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station - Tarbahar, District - Bilaspur Chhattisgarh

---- Respondent

CRA No. 165 of 2021

- Rajani Seth W/o Shri Rajesh Seth Aged About 45 Years R/o Main Road Tarbahar, Bilaspur, Police Station Tarbahar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Anusuchit Jati Kalyan Bilaspur, District Bilaspur Chhattisgarh.

---- Respondent

CRA No. 445 of 2021

- Rajesh Seth S/o Late Shri Kailash Seth, Aged About 48 Years R/o Main Road Tarbahar, Bilaspur, Police Station- Tarbahar Bilaspur, District- Bilaspur (C.G.)

---- Appellant
In Jail

Versus

- State Of Chhattisgarh Through- The Station House Officer, Police Station- Anusuchit Jati Kalyan Bilaspur, District- Bilaspur (C.G.)

---- Respondent

MCRCA No. 755 of 2021

- Rajni Seth W/o Rajesh Seth, Aged About 45 Years R/o Main Road, Tarbahar, Bilaspur, Police Station - Tarbahar, District - Bilaspur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station - Tarbahar, District - Bilaspur Chhattisgarh.

---- Non-Applicant

MCRCA No. 804 of 2021

- Rajni Seth W/o Sh. Rajesh Seth Aged About 45 Years O/c Housewife, R/o Main Road, Tarbahar, Bilaspur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through P.S. Tarbahar District Bilaspur Chhattisgarh.

---- Non-Applicant

For applicant/appellant : Shri R.R. Soni, Adv.
in MCRC No.2411/21 &
CRA No.445/21

For applicant/appellant in : Shri Sandeep Shrivastava, Adv.
MCRCA Nos.755/21, 804/21
& CRA No.165/21

For State : Dr. (Ms.) Veena Nair, Dy. A.G.

For Objector in MCRC No. : Shri Hemant Kesharwani, Adv.
2411/2021 & MCRCA No.
804/2021

For Objector in CRA No. : Shri Amiyakant Tiwari, Adv.
165/21 & CRA No.445/21

Hon'ble Shri Gautam Chourdiya, J
Order On Board

03/09/2021

All the aforesaid cases are being disposed of by this common order.

02. **MCRCA No.755/2021 & MCRCA No.804/2021** have been filed by applicant Rajni Seth under Section 438 of CrPC apprehending her arrest in connection with Crime No.151/2020 & 158/2020 registered at Police Station – Tarbahar, Distt. Bilaspur (CG) for offence punishable under Section 420/34 of IPC respectively whereas **CRA No.165/2021** has been filed by appellant Rajni Seth under Section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against order dated 3.12.2020 passed by Special Judge (FTC), Bilaspur rejecting her anticipatory bail application in connection with Crime No.01/2020 registered at Police Station – Anusuchit Jati Kalyan, Bilaspur for the offence punishable under Sections 420, 120B/34 of IPC and Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

03. **MCRC No.2411/2021** has been filed by applicant Rajesh Seth under Section 439 of CrPC for grant of bail as he is arrested in connection with Crime No.158/2020 registered at Police Station – Tarbahar, Distt. Bilaspur for the offence punishable under Section 420/34 of IPC whereas **CRA No.445/2021** has been filed by Rajesh Seth under Section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the 23.2.2021 rejecting his regular bail application in connection with Crime No.01/2020 registered at Police Station – Anusuchit Jati Kalyan, Bilaspur for the offence punishable under Sections 420, 120B/34 of IPC and Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

04. **MCRCA No.755/2021**: As per prosecution case, complainant Santosh Rai purchased a flat in the project Vinayak Heights launched by Rajesh Seth for a total sum of Rs.34 lacs, out of which he paid Rs.2.50 lacs as advance and Rs.27 lacs was financed through Cent Bank. It is alleged that the loan was sanctioned by the officials of the Cent Bank in connivance with the accused persons and the search report by the counsel for the bank was false. The property on which the project was being built is disputed and Khasra No.903 is the government land. It has been alleged that the accused persons sold a flat to the complainant which was unauthorizedly built on the government land. Hence report being lodged to the above effect, offence under Section 420/34 of IPC has been registered against the accused persons.

05. **MCRCA No.804/2021 & 2411/2021**: As per prosecution case, accused Rajesh Seth and Rajni Seth committed fraud with complainant Sheetla Prasad Tripathi in the name of giving them a flat in Vinayaka Heights by getting a loan of Rs.17 lacs sanctioned in his name in connivance with the officials of Cent Bank which was later transferred in the account of Rajesh Seth and then Rajesh Seth transferred Rs.8 lacs in account of the said bank. Though the flat was got registered in the name of complainant after receiving Rs.2.50 lacs as advance but possession of the same has not been handed over to him. It is alleged that the land on which the flats have been constructed, is government

land.

06. **CRA Nos.165/2021 & 445/2021** : As per the prosecution case, accused Rajesh Seth and his wife accused Rajni Seth constructed certain flats in the name of Vinayaka Heights Building near under-bridge at Tarbahar, Bilaspur and thereafter entered into an agreement with complainant Vighneshwar Naik for sale of a flat to him for Rs.25 lacs. The complainant gave advance amount of Rs.4.95 lacs to the accused persons. Thereafter, the accused persons in connivance with the bank officials of Cent Bank got home loan of Rs.20 lacs sanctioned in favour of the complainant on the basis of forged documents of their illegal construction which was made on the government land earmarked for *Gothan* and obtained the said amount from the complainant in a fraudulent manner. It is alleged that co-accused Abhay Dubey while working as Credit Officer in the Cent Bank, intentionally sanctioned the home loan of the complainant on the basis of forged documents in connivance with accused Rajesh Seth and Rajni Seth. When complainant Vighneshwar Naik, a member of scheduled caste, after coming to know about the fraudulent act of the accused persons, went to the bank and informed the co-accused Abhay Dubey of the same, he was humiliated by him along with other bank employees in the name of his caste.

07. Learned counsel appearing for applicant/appellant Rajni Seth submits that she is an innocent person and has been falsely implicated in the crime in question. From the overall material collected by the prosecution, none of the ingredients of the offence alleged against her are made out in this case. There is no specific allegation against applicant/appellant Rajni Seth showing her involvement in the alleged crime. Similarly situated co-accused Smt. Aparna Biswas and Nitin Nigam have been granted anticipatory bail by the co-ordinate Bench of this Court vide order dated 6.11.2020 passed in CRA Nos. 712/2020 and 728/2020 respectively. It is submitted that charge sheet has already been filed, there is no necessity of custodial interrogation of the applicant/appellant, there is no apprehension of her absconding or tampering with the evidence and due to Covid-19 pandemic conclusion of the trial may take some time. Therefore, she be released on

anticipatory bail.

08. Learned counsel for the applicant/appellant Rajesh Seth submits that Rajesh Seth is an innocent person and has been falsely implicated in this case merely on the basis of suspicion. From the documents available on record, it can be seen that there was no intention on the part of the applicant/appellant Rajesh Seth of cheating the complainant party, dispute between the parties is purely of civil nature; he is languishing in jail since 22.12.2020; charge sheet has already been filed; nothing is required to be seized from him; there is no apprehension of his absconding or tampering with the evidence and due to Covid-19 pandemic conclusion of the trial is likely to take some time. Therefore, the applicant/appellant Rajesh Seth be released on bail.

09. On the other hand, learned counsel for the State vehemently opposes the bail applications/appeals.

10. Earlier an application raising objection to release of applicant Rajesh Seth was filed in MCRC No.2411/2021. However, during pendency of the bail application, both the parties agreed to resolve their dispute amicably and executed a settlement deed whereby the applicant Rajesh Seth is ready to pay back the entire sale consideration and other expenses to the objector/complainant in installments. Hence, an application (IA No.3/2021) for withdrawal of the objection has been filed by counsel for the objector/complainant which is duly supported by an affidavit of the complainant Shitala Prasad Tripathi. Upon due consideration, IA No.03/2021 is allowed.

11. Shri Amiyakant Tiwari, learned counsel appearing for the objector/complainant opposes the respective bail applications/appeals.

12. **MCRC Nos.755/2021, 804/2021 & CRA No.165/2021 :** Considering the facts and circumstances of the case, the nature of allegation against applicant/appellant Rajni Seth, that she was only a partner in the project Vinayaka Heights Building being run by accused Rajesh Seth who was conducting the affairs of the said business; name of Rajni Seth is not there in the FIR; charge sheet has already

been filed; there is no requirement of her custodial interrogation; co-accused Smt. Aparna Biswas and Nitin Nigam have been granted anticipatory bail by the co-ordinate Bench of this Court; she never misused the interim protection granted to her by this Court; there is no apprehension shown by the counsel for the parties of her absconding or tampering with the prosecution evidence or witnesses and due to Covid-19 conclusion of the trial is likely to take some time, this Court is of the opinion that present is a fit case for grant of anticipatory bail to her. Accordingly, MCRC Nos.755/2021, 804/2021 & CRA No.165/2021 are allowed.

It is directed that in the event of arrest of applicant/appellant Rajni Seth in connection with the aforesaid crime numbers, she shall be released on anticipatory bail on her executing personal bond for a sum of Rs.2 lacs with two sureties of Rs.2 lacs each to the satisfaction of the arresting officer.

MCRC No.2411/2021 and CRA No.445/2021 :

13. In the matter of **Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.**, the Hon'ble Supreme Court has observed in Para-22 of the said judgment as under:

“22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

14. In the matter of **Arnab Manoranjan Goswami Vs. The State of Maharashtra & Ors. in Criminal Appeal No. 742 of 2020 arising out**

of SLP (Crl) No. 5598 of 2020, the Hon'ble Supreme Court has reiterated certain factors which are to be kept in mind while considering the matters for grant of bail to the accused. In Para-57 of the said judgment, it has been observed as under:

“57. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarized as follows:

- i. The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
- ii. Whether there exists a reasonable apprehension of the accused tampering with the witness or being a threat to the complainant or the witnesses;
- iii. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;
- iv. The antecedents of and circumstances which are peculiar to the accused;
- v. Whether *prima facie* the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
- vi. the significant interest of the public or the State and other similar considerations.”

15. Considering the facts and circumstances of the case, that after taking permission from the concerned revenue and municipal authorities applicant/appellant Rajesh Seth constructed flats on the land in question, thereafter he executed sale deeds in favour of the complainants, after execution of sale deeds the complainants obtained

loan from the Cent Bank; there has been money transaction between the parties through cheques; Rajesh Seth also sent legal notice to the complainant for not paying the entire sale consideration to him and therefore, the present dispute arose between the parties; during pendency of the bail application (MCRC No.2411/2021), both the parties agreed to resolve their dispute amicably and executed a settlement deed whereby the applicant Rajesh Seth is ready to pay back the entire sale consideration and other expenses to the objector/complainant in installments and as such, there is no objection on behalf of counsel for the complainant to his release on bail; the fact that he is in jail since 22.12.2020; the offence is triable by the Magistrate; charge sheet has already been filed but trial has not yet commenced; keeping in view the judgments of the Hon'ble Supreme Court in **Sanjay Chandra** (supra) and **Arnab Manoranjan Goswami** (supra); due to Covid-19 conclusion of the trial is likely to take some time; nothing is required to be seized from him; there is no apprehension shown by counsel for the parties of his absconding or tampering with the prosecution evidence or witnesses; without commenting anything on merits of the case, in my opinion present is a fit case for his release on bail.

Accordingly, MCRC No.2411/2021 and CRA 445/2021 are allowed. It is directed that in the event of applicant/appellant Rajesh Seth executing a personal bond for a sum of Rs.2 lacs with two sureties of Rs. 2 lacs each to the satisfaction of the trial Court, he shall be released on bail.

16. It is made clear that the applicants/appellants Rajni Seth and Rajesh Seth shall be released on bail on the following terms and conditions:

- (i) They 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 fact to the Court,
- (ii) They shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) They shall appear before the trial Court on each and every

date given to them by the said Court till disposal of the trial.

- (iv) They shall strictly follow the COVID-19 protocol issued by the Central Government / State Government / Local Authority.

Let a copy of this order be forwarded to the concerned police station forthwith who shall inform the trial Court in the event of applicants/appellants involving themselves in any offence of similar nature.

Sd/

(Gautam Chourdiya)

Judge

Khan