

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC (A) No. 572 of 2021

Bilkish Begum W/o Mohammad Asad Alias Arshad, Aged About 45 Years, R/o - Behind Masjid, Chhotapara, Raipur, District- Raipur, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh Through The Station House In- Charge, Police Station- City Kotwali, Raipur, District : Raipur, Chhattisgarh.

--- Respondent

For Applicant	: Mr. B.P. Sharma, Advocate.
For State	: Mr. B.P. Banjare, Dy. GA.
For Complainant	: Mr. Pranjal Agrawal, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

02/08/2021

Heard.

1. Applicant has filed this bail application under Section 438 of Cr.P.C. apprehending her arrest in connection with Crime No.71/2021 registered at Police Station – City Kotwali, Raipur, (CG), for the offence punishable under Section 420 of the Indian Penal Code.
2. Case of the prosecution, in brief, is that complainant Sharik Memon has lodged written complaint before concerned Police Station mentioning therein that on 07.06.2017, an agreement was executed between applicant and complainant, complainant agreed to purchase the property for Rs.80,00,000/-. Paid advance of Rs.40 lacs towards purchase of property as mentioned in agreement and after receiving balance amount by applicant, sale deed would be executed. Applicant has not made any effort to execute sale deed even after lapse of much time, on the contrary she got demolished structure standing on the land with ill intention. Based upon written report, FIR is registered against present applicant for offence under Section 420 of IPC.
3. Learned counsel for the applicant submits that cause of action for lodging complaint is the agreement entered into between applicant and complainant, which is placed on record as Annexure P-3. As per contents of agreement, it is evident that complainant has provided loan amount of Rs.40 lacs to applicant,

which is to be returned within a period of 2 months. A condition was also mentioned in agreement that in case loan amount is not returned, applicant shall execute sale deed in respect of property in question in favour of complainant. There is also specific mention that in case applicant fails/refuses to execute sale deed, then amount of loan is to be repaid with additional amount of Rs.10 lac ie total Rs.50 lacs is to be refunded. He further submits that dispute raised by complaint is purely of civil nature and no criminality in any manner is attached in the act of applicant. At the time of taking loan amount of Rs.40 lacs, house mentioned in agreement is owned by applicant herself, which she has purchased in the year 2014 by way of registered sale deed from Smt. Ahmadi Mustaq for consideration of Rs.73 lacs. In the sale deed of applicant it is mentioned that house was 50 years old having no value. The building was dilapidated. There is no allegation with regard to act of deceiving complainant from inception as property is owned by applicant herself in her name. From the contents of agreement itself it is clear that agreement was executed in view of transaction of loan. Hence, applicant may be extended benefit under Section 438 of Cr.P.C.

4. On the other hand, learned State Counsel opposes the submissions made by learned counsel for applicant and submits that there is specific allegation levelled against present applicant that after entering into agreement in respect of sale of property mentioned therein, applicant has not executed sale deed and thereby illegally retained amount of Rs.40 lacs of the complainant. The act of applicant comes within the purview of cheating, hence, she is not entitled for grant of anticipatory bail.
5. Learned counsel for the Objector/complainant submits that applicant entered into an agreement with complainant for the purpose of sale of property mentioned therein, received amount of Rs.40 lacs from complainant for repayment of loan amount obtained from Magma Housing Finance Company Limited. But after accepting the amount, she has not repaid entire loan amount,

which is still outstanding in name of applicant. Applicant failed to comply with the conditions of agreement, she was required to execute sale deed but instead of executing sale deed, entire structure standing over the land, which is subject matter of agreement, has been demolished with ill intention and thereby applicant has cheated the complainant. Complainant is having both remedies available ie civil as also criminal. In support of his contentions, he relied upon the judgment of Hon'ble Supreme Court in case of **K. Jagadish vs Udaya Kumar GS & Anr** reported in **(2020) 14 SCC 552**. He also submits that applicant is in the habit of cheating the persons, hence, she is not entitled for grant of anticipatory bail.

6. Heard learned counsel for the parties.
7. Perused copy of agreement (Annexure P-3), contents of which, are not disputed by learned counsel for the State and learned counsel for the Objector/complainant. Para No. 4 of agreement would show that document is executed towards security of loan amount of Rs.40 lacs taken by applicant from complainant. It is also mentioned that in case amount is not returned within 2 months, after accepting balance amount of Rs.40 lacs applicant will execute sale deed. In Para No.3 also it is mentioned that if for any reason agreement of sale is cancelled, then applicant/first party is required to pay Rs.10 lacs apart from amount of Rs.40 lacs to complainant on account of non-execution of sale deed. The case law relied upon by learned counsel for the Objector is on different fact.
8. Considering the entire facts and circumstances of the case, nature of allegation levelled against applicant, contents of agreement executed between applicant and complainant on 07.06.2021, without commenting anything on merits of the case, I am inclined to grant anticipatory bail to the applicant.
9. Accordingly, anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the crime in question, she shall be released on bail by the officer arresting her on executing a personal

bond in sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Arresting Officer. The applicant shall also abide by the following conditions :

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-