

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.625 of 2021

- Ganeshram Dahariya, aged about 65 years, son of Late Lalaram Dahariya, R/o village Devari, Police Station and Tahsil Akaltara, District Janjgir Champa (CG)

---- Applicant

Versus

1. State of Chhattisgarh, through the Station House Officer, Police Station Akaltara, District Janjgir Champa (CG)
2. Badri Prasad, aged about 50 years, Son of Budhram Dahariya, R/o village Devari, Police Station and Tahsil Akaltara, District Janjgir Champa (CG)

---- Non-applicants

For Applicants	:	Mr. N.K. Chatterjee, Advocate
For Non-applicant No.1	:	Mr. Nitansh Jaiswal, Panel Lawyer
For Non-applicant No.2	:	Mr. T.K. Jha, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

3/8/2021

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 Criminal Complaint Case No.201/2021 registered against him in the Court of learned Judicial Magistrate 1st Class, Akaltara, District Janjgir Champa (CG) for commission of offence under Section 420, 34 of IPC.
2. Facts of the case, in brief, are that on 26.5.2018 non-applicant No.2 filed a complaint under Section 200 of CrPC before the learned Judicial Magistrate 1st Class, Akaltara, based upon which summons/notices were issued to present applicant and co-accused Maniram, for their appearance on 24.4.2021. This made present applicant and co-accused Maniram to file two separate applications before the Court below for grant of anticipatory bail to them, which came to be rejected vide order dated 12.4.2021. Thereafter, both of them approached this

Court for grant of anticipatory bail. However, during pendency of this anticipatory bail application, co-accused Maniram died, as submitted by learned counsel for applicant.

3. Mr. N.K. Chatterjee, learned counsel for applicant would submit that the complaint is based on the sale deeds said to be executed by deceased Maniram (co-accused) in favour of complainant/non-applicant No.2 in the year 2007 & 2009 under which some piece of land was sold to complainant/non-applicant No.2. He further submits that deceased Maniram was brother of present applicant, but present applicant has not played any role in execution of sale deeds in favour of complainant/non-applicant No.2. He further submits that present applicant is neither signatory in any of sale deeds nor the complainant has approached him before purchasing the land for verification of land or transaction. He further submits that under the family settlement, the land sold to the complainant prior to partition, had fallen into share of present applicant and thereafter his name was also mutated in the revenue records. Complainant / non-applicant No.2 has also filed a civil suit bearing C.S. No.31A/18 against present applicant & deceased Maniram before the Civil Judge Class-1 Akaltara for declaration of title and possession, in which an injunction order has been passed in favour of complainant/non-applicant No.2. He further submits that criminal complaint before the jurisdictional Magistrate is filed after filing of civil suit. He submits that anticipatory bail application of present applicant has been rejected by the Court below concerned on the ground that warrant of arrest is not issued by the learned Judicial Magistrate 1st Class, Akaltara, hence there is no apprehension of arrest of present applicant, which is not sustainable. As present applicant is apprehending his arrest in respect of commission of cognizable offence, as alleged in the complaint, therefore, anticipatory bail application is maintainable. In support of his submission, learned counsel places his reliance on decision of Hon'ble Supreme Court in

Sushila Agrawal & ors vs. State (NCT of Delhi) & anr
reported in **(2020) 5 SCC 1**.

4. On the other hand, Ms. Anjali Singh Chouhan, learned Panel Lawyer for the State opposes the bail application.
5. Mr. T.K. Jha, learned counsel for complainant / non-applicant No.2 would submit that present applicant hatched up a criminal conspiracy with co-accused deceased Maniram and fraudulently sold the land to complainant stating that the same is free from all encumbrances, whereas on the date of registration of sale deed, a case/litigation in respect of land, which is subject matter of sale deed, was pending between present applicant and co-accused Maniram. He further submits that if the fact of pendency of litigation in respect of land in question is disclosed to the complainant, he would not have purchased it. He further submits that based on alleged family settlement between present applicant and co-accused Maniram, present applicant got mutated his name in the revenue records without intimating complainant. Hence, there is involvement of present applicant also in commission of crime in question.
6. I have heard learned counsel for the parties.
7. Taking into consideration nature of allegations, as mentioned in the complaint that sale deeds have been executed by Maniram only, which shows that there is no involvement of present applicant in execution of sale deed; there is no allegation that the complainant has ever inquired from present applicant about the status of land, which is subject matter of sale deed executed in his favour, and further considering the ruling of Hon'ble Supreme Court in case of **Sushila Agrawal (supra)**, without commenting anything on merits, I am inclined to grant benefit of anticipatory bail to applicant.
8. Accordingly, this anticipatory bail application is allowed and it is directed that in the event of arrest of applicant in connection

with criminal case 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 Arresting Officer. Applicant shall also abide by the following conditions:

- (i) that he shall make himself 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 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 Court below on each and every date given to him by the said Court till final disposal of case.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-