

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

(Proceedings through Video Conferencing)

M.Cr.C. No. 3530 of 2021

- Sudhir Kumar Tiwari S/o- Late Shankar Prasad Tiwari, aged about 45 years, R/o- Brahman Para Mohbhata Road, Bemetara, District Bemetara (C.G.)

---- Applicant

Versus

- State of Chhattisgarh Through S.H.O.- Bemetara, District Bemetara (C.G.)

---- State/Non-Applicant

For Applicant : Shri Vivek Sharma, Advocate

For Non-Applicant/State : Dr.(Ms.) Veena Nair, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya, J

Order on Board

16.08.2021

1. The applicant has preferred this first bail application under Section 439 of Cr.P.C. as he is in jail since 05.07.2019 in connection with Crime No. 396/2018 registered in Police Station- Bemetara, District Bemetara (CG) for the offence punishable under Sections 409 & 420/34 of IPC.
2. As per prosecution story, when the present applicant was posted as Samiti Prabandhak in Seva Sehkari Samiti Maryadit, Kusmi from the year 2014 to 2017, he made embezzlement of Rs.91,44,197.17/- which was found by the Higher Authorities. Therefore, offences under Section 409 & 420/34 of IPC registered against the applicant.
3. Learned counsel for the applicant submits that the applicant is innocent persons and has been falsely implicated in this case. He submits that the applicant has no criminal antecedents, there is no likelihood of the applicant tampering with the prosecution evidence or absconding, he is in jail since 05.07.2019 and due to Covid-19 pandemic, trial is likely to take some time for its final disposal. Therefore, the applicant be released on bail by this

Court. He further submits that as per charge-sheet, there are as many as 18 witnesses and till date only 01 witness has been examined. He also submits that co-accused namely Rakesh Dubey has already been granted bail by the trial Court in the same crime, copy of bail order is marked as Annexure-A/2 in the present bail application. He has placed reliance on the decision in the matter of ***Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.***

4. On the other hand, learned counsel for the State opposes the bail application and submits that the applicant has no criminal antecedents.
5. In the matter of *Sanjay Chandra* (supra), 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.

6. 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.

7. Considering the facts and circumstances of the case, considering the nature of allegation made against the present applicant, at the time of incident, he was Sahayak Prabandhak and during that time committed the aforesaid embezzlement, the pre-trial detention of the applicant who is 45 years old which comes to about two years, charge-sheet has already been filed, there is no progress in trial as out of 18 witnesses only 01 witness has been examined so far, due to covid-19 pandemic, conclusion of trial may take some time, the fact that the applicant has no criminal antecedents, there is no likelihood of the applicant tampering with the prosecution evidence or absconding as admitted by both the counsels and further that the co-accused person has already been granted bail by the trial Court, keeping in view the judgments of Hon'ble Supreme Court in *Arnab Manoranjan Goswami* case and *Sanjay Chandra* case (supra), without commenting anything on merits of the case, the application is allowed.
8. It is directed that in the event of applicant executing a personal bond for a sum of Rs.2,00,000/- with two sureties of Rs.1,00,000/- each to the satisfaction of the concerned Trial Court, he shall be released on bail, on

following conditions :-

- i. 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 fact to the Court.
- ii. he shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- iii. he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- iv. he shall strictly follow the COVID-19 protocol issued by the Central Government / State Government / Local Authority.
- v. he shall not involve himself in any offence of similar nature in future.

9. Let a copy of this order be forwarded to the concerned Police Station forthwith who shall inform the trial Court in the event of applicant involving himself in similar nature of offence.

Sd/-
(Gautam Chourdiya)
Judge

vatti