NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC (A) No. 666 of 2021

1. Bhanu Kumar Rai S/o Bhagwat Rai, Aged About 47 Years.
2. Smt. Geetaram Rai, W/o Bhanu Kumar Rai, Aged About 36 Years.
   Both are R/o- village - Sargaon, Tehsil - Pathariya, District – Mungeli, Chhattisgarh.

---- Applicants

Versus

State of Chhattisgarh Through - Station In-charge, Police Station - Sargaon, District – Mungeli, Chhattisgarh.

--- Respondent

For Applicant	:	Mr. Sourabh Dangi, Advocate.
For State	:	Mr. B.P. Banjare, Dy. GA.
For Complainant	:	Mr. Pallav Mishra, Advocate.

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

13/08/2021

Heard.

1. Applicants have filed this bail application under Section 438 of Cr.P.C. apprehending their arrest in connection with Crime No.27/2021 registered at Police Station –Sargaon, Distt -Mungeli, (CG), for commission of offence punishable under Section 406 read with Section 34 of the Indian Penal Code.

2. Case of the prosecution, in brief, is that applicants, who are relatives of complainant, were working with complainant in her petrol pump running in name of Bharti Fuels, Sargaon. In the year 2013, Indian Oil Corporation Limited issued an advertisement for allotment of Gas Agency. Present applicants shown their intention to take gas agency and asked complainant to extend financial help, and in-turn, they will give her appropriate profit. Complainant, came in words of applicants and extended loan of Rs.35 lacs after entering into agreement that until loan amount is refunded, she will operate Gas Agency. Applicants have purchased land for which also she extended loan of Rs.12 lacs out of

which, 18 decimal land was purchased in name of applicant No.1 and 6 decimal land was purchased in name of complainant. Gas Agency came in operation in the month of February 2015 and thereafter complainant was managing the affairs of gas agency. But suddenly possession of gas agency was taken up the applicants in the month of January 2018. Applicants have cheated and misappropriated the fund handed over by complainant. Based upon complaint, instant crime is registered against present applicants.

3. Learned counsel for the applicants submits that it is not in dispute that applicants are uncle and aunt of complainant. It is also undisputed fact that after issuance of advertisement, applicants have shown their interest of taking gas agency for which they have taken loan of Rs.35 lacs. At the time of taking loan amount, written agreement was executed between the parties in an ordinary paper and applicants abided conditions of agreement. As per agreement loan amount is to be returned to complainant with interest at the rate of 12% per annum. As per agreement, complainant herself operated the gas agency for a period of 3 years and has taken profit, which is appearing from balance sheet enclosed alongwith application for taking documents on record, which comes to Rs.3,23,705/-, Rs.5,90,000/- and Rs.6,21,042/-. It is also pointed out that as per agreement she was to run gas agency for the period of one year but she has operated for a period of 3 years. The property handed over to complainant is owned by applicants as gas agency and the land upon which gas agency was constructed is in name of applicant No.1. It is applicants, who took over their own business for which license by the Indian Oil Corporation Limited was issued in their name. Hence, offence under Section 406 of Cr.P.C would not be

attracted. If at all complainant was aggrieved is only with respect to refund of the loan amount which is dispute of civil nature but only to make pressure upon applicants, instant crime is got registered against them. It is further pointed out that with respect of amount of Rs.12 lacs at the time of entering into agreement of handing over the loan, applicants have handed over two cheques to complainant but due to financial crises cheques were dis-honoured for which complainant has lodged complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Court of competent jurisdiction on 11.10.2018 before filing of report to concerned Police Station. In the said complaint, there is no such allegation levelled against applicants of misappropriating funds etc. As per written report filed before the concerned Police Station she was operating the gas agency upto January, 2018 whereas complaint under Section 138 of the Negotiable Instruments Act was filed on 11.10.2018, which shows that report has been lodged with ulterior motive only to make pressure upon applicants and trying to convert civil litigation into criminal act against applicants.

4. Per contra, learned counsel for the State opposes the submissions made by learned counsel for the applicants and submits that applicants have executed two agreements of taking loan amount, one of Rs.12 lacs and other is for Rs.35 lacs. In the subsequent agreement which has been executed in the year, 2015, applicants have agreed to hand over business till the refund of the loan amount. Hence, applicants have committed the offence as alleged against them.

5. Learned counsel for the Objector/Complainant opposes the bail application. He submits that applicants themselves have executed the agreement of taking loan amount of Rs.35 lacs with interest at the rate of

12% per annum. Once business was handed over to complainant for running till refund of loan amount, applicants could not have forcefully taken possession of business, hence, they have committed criminal breach of trust. They are not entitled for grant of anticipatory bail. However, he does not dispute the fact that the gas agency was alloted in name of applicant No.1 by the Indian Oil Corporation Limited.

6. Heard learned counsel for the parties.

7. Considering the entire facts and circumstances of the case, nature of allegation, the fact that in agreement it is mentioned that applicants have to return the loan amount alongwith interest, business was in name of applicant No.1 which managed by complainant for a period of 3 years and also taken the profit, without commenting anything on merits of the case, I am inclined to grant anticipatory bail to the applicant.

8. Accordingly, anticipatory bail application is allowed and it is directed that in the event of arrest of the applicants in connection with crime in question, they shall be released on bail by the officer arresting them on executing a personal bond in sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the concerned Arresting Officer. The applicants shall also abide by the following conditions :

(i) that applicants shall make themselves available for interrogation before the investigating officer as and when required;

(ii) that applicants 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 them from disclosing such facts to the Court or to any police officer;

(iii) that applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that applicants shall appear before the trial Court on each and every date given to them by said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-