

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 732 of 2021**

Rafi Ahmed, S/o Late Habibullah Khan, Aged About 56 Years,
R/o DaldalSivani, Mowa, Raipur, Tehsil and District Raipur,
Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Police Station Khamardih,
Raipur Chhattisgarh.

---- Non-applicant

For Applicant : Shri Ankur Agrawal, Advocate
For Non-applicant/State : Shri B.L. Sahu, Panel Lawyer
For Objector : Ms. Supriya Upasane, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

23.08.2021

1. The applicant has preferred this first bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as he is apprehending his arrest in connection with Crime No. 29 of 2021 registered at Police Station Khamardih, Raipur, Chhattisgarh for offence punishable under Section 420 of Indian Penal Code.
2. Case of the prosecution, in brief, is that, present applicant based on power of attorney executed in his favour by one Mahesh Kumar Chhugani (owner of land) dated 05.01.2015, has entered into an agreement to sale the land bearing Khasra No.372/1 measuring 1250 square feet situated at Mahirishi Valmiki Ward, Village Telibandha, Raipur for total consideration of Rs.23,23,750/-. The sale deed was executed by applicant as

power of attorney holder of Mahesh Kumar Chhugani on 25.05.2015. After execution of sale deed, name of purchaser/complainant Smt. Kavita Agrawal was mutated in the revenue record. After sometime, when they visited the plot, they found that some other persons were offering prayer on the plot and upon asking, they were informed that this land is allotted to their Institution by State Government, upon which, they approached the concerned Patwari. The Patwari informed them that land from Khasra number, they have purchased, is a Government land. When they found that the land sold to them vide sale deed dated 25.05.2015 was of Government land, they approached the applicant and demanded the money back, which was not considered by the applicant. Thereafter, report was lodged initially before the Station House Officer, Police Station Khamaridih on 21.04.2018, complaint to Superintendent of Police on 06.05.2019 and complaint to Inspector General of Police on 22.10.2019. Based on the written complaints, First Information Report was registered against the applicant on 10.02.2021.

3. Shri Ankur Agrawal, learned counsel for the applicant would submit that land which was sold was owned by Mahesh Kumar Chhugani. It is the owner of the land, who executed power of attorney in his favour authorizing him to appear before the Court relating to property bearing Khasra Nos.372/1 and 372/7 measuring 7175 square feet. In the same power of attorney, applicant is also authorized to sale the land on his behalf. Based on power of attorney executed in his favour, applicant has sold the

property owned and recorded in the name of Mahesh Kumar Chhugani to different purchasers including complainant. He has not committed any act of cheating, but he acted on behalf of executant of power of attorney, hence, all the act done is to be treated to be done by Mahesh Kumar Chhugani. He further submits that in the sale deed executed in favour of complainant, there is specific mention with regard to re-numbering of Khasra numbers and Khasra No.372/7 measuring 7175 square feet has been re-numbered as Khasra No.372/1. After selling the land, entire sale consideration has been handed over to owner of the land, hence, applicant may be enlarged on anticipatory bail.

4. Per contra, Shri B.L. Sahu, Panel Lawyer for the State opposing the submissions made by learned counsel for the applicant, would submit that applicant in the garb of power of attorney executed by Mahesh Kumar Chhugani has sold the Government land to complainant for total consideration of Rs.23,23,750/-. During the course of investigation, power of attorney has been submitted by applicant before the Police Station and perusal of details of property mentioned therein, would show overwriting in Khasra numbers and some other part of power of attorney. He further submits that Police has obtained certified copy of power of attorney from the Office of Deputy Registrar wherein Khasra number of the land executed by power of attorney holder has been mentioned as Khasra Nos.371/1 and 371/7 and not Khasra Nos.372/1 and 372/7. Applicant has manipulated the description of property mentioned in original power of attorney, hence, he has

committed an offence as alleged against him. He pointed out that similar nature of allegation of entering into an agreement of sale with one Vikram Bhatt and accepting money for the land, which was the disputed land and subsequently agreed to return the amount, is appearing in the statement of Vikram Bhatt. He further argued that applicant along with this bail application has filed several documents, but has not filed any document on record to be a re-numbering slip or proceeding maintained by Revenue Department, hence, present applicant is not entitled for grant of anticipatory bail.

5. Ms. Supriya Upasane, learned counsel for the objector would submit that before execution of sale deed, applicant had shown power of attorney and also made part of the record of sale deed, but at the time of submission of sale deed before the Registering Authority, power of attorney has been withdrawn from the sale deed by the applicant. When complainant asked and demanded the copy of power of attorney, applicant has not supplied the same. The power of attorney filed along with application for grant of anticipatory bail is manipulated. The details of property mentioned in power of attorney, particularly Khasra numbers have been manipulated by overwriting and correcting the Khasra numbers. The complainant got the copy of power of attorney from the Police Department, wherein Khasra numbers is mentioned as 371/1 and 371/7 and not as 372/1 and 372/7. Applicant cheated the complainant by forging original power of attorney and executing the sale deed of the land recorded in the name of

Government as grass land. She further pointed out that after lodging of complaint to the Police Station, during the course of investigation, applicant had recorded his statement admitting the guilt and agreeing for return of amount in the year 2020. She submits that proceeding was also recorded by the then Investigating Officer, who unfortunately died due to Corona infection. The statement of applicant, may be part of the case diary.

6. Upon putting specific query to the learned counsel for the State whether such statement or undertaking of refund of amount is there or not, he submits that statement of applicant dated 28.10.2020 is available on record wherein he agreed for refund of the amount of Rs.23,23,750/-, details of three different cheques of Laxmi Mahila Nagrik Sahkari Bank is also mentioned.
7. I have heard learned counsel for the parties and perused the case diary.
8. Perusal of case diary would show that Police has obtained certified copy of power of attorney executed by Mahesh Kumar Chhugani in favour of applicant on 05.01.2015 issued by Deputy Registrar, Raipur. In the said certified copy of power of attorney, details of property is mentioned as Khasra Nos.371/1 and 371/7, whereas power of attorney placed on record by applicant mentions Khasra Nos.372/1 and 372/7. In description of property, Khasra numbers are clearly appearing to have overwritten. Further, in the original power of attorney, period of power of attorney has been mentioned to be of one year, whereas in the

power of attorney (Annexure A/2) filed by the applicant in support of his case shows overwriting and mentioning it to be for a period of two years.

9. Taking into consideration the facts and circumstances of the case, nature of allegations, particularly, perusal of certified copy of power of attorney obtained from the Office of Deputy Registrar, Raipur and overwriting made in the power of attorney filed by the applicant along with statement of witnesses, I do not find it to be a fit case to enlarge the applicant on anticipatory bail.

10. Accordingly, anticipatory bail application is dismissed.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh