

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

(Proceedings through Video Conferencing)

M.Cr.C. No. 4775 of 2021

- Vivek Prakash S/o (Late) Shri Om Prakash, aged 50 years, R/o G-201, Jewel of Noida, Sector – 75, Noida, District Gautambudh Nagar (U.P.)

---- Applicant

Versus

- State of Chhattisgarh Through the Station House Officer, Police Station Gudhiyari, District Raipur (C.G.)

---- State/Non-Applicant

For Applicant	:	Shri Abhishek Sinha, Senior Advocate with Shri Aditya Pandey, Shri D.L. Dewangan, Shri Samrath Singh Marhas, Advocates
For Non-Applicant/State	:	Dr.(Ms.) Veena Nair, Deputy Advocate General
For Objector	:	Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Order on Board

06.08.2021

1. The applicant has preferred this first bail application under Section 439 of Cr.P.C. as he is in jail since 23.01.2021 in connection with Crime No. 24/2020 registered in Police Station- Gudhiyari, District - Raipur (CG) for the offence punishable under Sections 420 & 34 of IPC.
2. On complaint being made by the complainant in Police Station Gudhiyari, Raipur against applicant and others, during investigation it was found that the applicant Vivek Prakash who is Director of M/s Pantel Technologies Private Limited (hereinafter referred to as 'PTPL') and Independent TV Ltd. have cheated and misappropriated money of Innov8 Incorporation, Raipur in the name of security deposit, hardware, commission & TDS amounting to Rs.2 crore.
3. As per submission of learned senior counsel for the applicant, the complainant alongwith Company of the present applicant namely M/s Pantel Technologies Private Limited (hereinafter referred to as 'PTPL') executed

agreement as Annexure-A/4. When that agreement was executed on 05.11.2018 between the PTPL and Innov8 Incorporation, that agreement was signed by Managing Partner Ayush Mundhra on 05.11.2018. During this time, from the date of agreement till 31.03.2019 near about 80,000 consumers were provided settop-box and services worth about Rs.15 crores along with goods were provided to the complainant in the month of January & February 2019. Due to Telecom Regulatory Authority of India (hereinafter referred to as 'TRAI'), changing the rules, the business of the applicant company was hampered and stopped. Goods worth Rs.15 crores were provided by the applicant's company to the complainant as per statements of Preeti Singhal Mundhra and Sourabh Agrawal. After the change of TRAI Rules, the dispute arose as goods of near about 1 crore rupees were not sent by the applicant to the complainant and further commission of Rs.50 lacs & TDS of Rs. 18 lacs were not paid by the applicant to the complainant. Therefore, this issue was raised by another operational creditor Ankur Tayal before the National Company Law Tribunal, New Delhi (hereinafter referred to as 'NCLT') and the matter is pending before the NCLT in Company Petition No. IB-923/ND/2020, and the claim of the complainant is also pending as per Annexure-A/11. The said dispute is pending before NCLT under Insolvency and Bankruptcy Code. Thus, looking to the fact that there was no intention of the applicant for cheating the complainant, charge-sheet has been filed in this case, the dispute arose after one year of execution of agreement between the parties when TRAI changed the rules, admittedly the applicant has provided goods/services worth Rs.15 crores to the complainant and only goods of Rs.1 crore remains to be supplied, the said dispute is already pending before the NCLT, the detention period of the applicant from 23.01.2021, the applicant has also been released as per direction of the Hon'ble Supreme Court by trial Court due to Covid-19 and

there is no allegation against the present applicant that he misused the liberty granted in his favour, he may be released on bail.

4. On the other hand, learned counsel for the State opposes the bail application.
5. Learned counsel for the objector also opposes the bail and submits that the applicant intentionally cheated the complainant and goods worth Rs. 1 crore have not been supplied to the complainant by the applicant's company. This apart, the applicant has also illegally retained commission of Rs.50 lacs of the complainant and not deposited the TDS of Rs.18 lacs with the government which was deducted from the account of the complainant. The complainant has taken the loan and due to the fraudulent act of the applicant, he is now in great financial crisis. Therefore, the applicant does not deserve to be released on bail.
6. Considering the facts and circumstances of the case, nature of allegations made against the applicant, the dispute between the parties appears to be commercial in nature, the matter is already pending before the NCLT, due to change of rules by TRAI, the business of the applicant got hampered and stopped leading to dispute between the parties, the detention period of the applicant who is 50 years old, the offence is triable by the Magistrate, due to Covid-19 the applicant was on bail granted by the trial Court and he did not misuse the liberty of bail, the fact that there is no likelihood of the applicant tampering with the prosecution evidence or absconding as admitted by both the counsels, charge-sheet has already been filed and due to covid-19 pandemic, conclusion of trial may take some time, without commenting anything on merits of the case, the application is allowed.
7. 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.

8. 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