

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 843 of 2021**

- Narayandas Sundarani, S/o Late Shri Manghirmal Sundarani, Aged About 68 Years R/o. House No. C/90, Sector-4, Devendra Nagar, Raipur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh, Through The State Economic Offence Investigation And Anti Corruption Bureau, Raipur Chhattisgarh.

---- Respondent

For Applicant : Shri Y.C. Sharma, Senior Advocate with
Shri Sachin Nidhi, Advocate

For Respondent/ State : Shri Ashish Tiwari, G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/07/2021**

1. This is the third bail application under Section 438 of the Code of Criminal Procedure has been filed by the applicant apprehending his arrest in connection with Crime No. 44/2015 registered at Police Station State Economic Offence Investigation & Anti Corruption Bureau, Raipur for the offence punishable under Sections 420, 467, 468, 471, 428 and 120 (B) of IPC and Section 13 (1) (D) and 13 (2) of Prevention of Corruption Act, 1988.
2. The first bail application was dismissed on 18.01.2017. The second bail application was dismissed as withdrawn on 13.04.2018.
3. As per the prosecution case, the applicant is partner of M/s. Sundrani

Construction Company. They were awarded the work for construction of Bridge over Arpa river at Koni-Mangla-Bilaspur Road. The agreement was executed between the State and the firm. The completion of job was made in the year 2007 and the competent authority also certified that the work done by the applicant was very good. The work was for construction of bridge with 11 piers that is the bridge polls were to be constructed and with each pier underground pile was to be made. The said work was being supervised on behalf of the Government by S.C. Khandelwal, Executive Engineer, P.S. Chandel and R.K. Verma.

4. In the year 2014 Neorprin bearing which was placed over pier cap was to be changed as a routine manner and for such change of bearing, work was carried out on 16.05.2016. While such work was being carried out during inspection it was found that certain piers were completely damaged. The steel liners were also absent over the concrete bed which were to give support to the pillars and in absence of steel lining, the works had caused damage to the concrete to the extent of 50-60%. The further test was directed by modern method of Ultra Sound Pulse Velocity about the quality of concrete wherein it was found that Piers No. 2, 3, 5, 6, 7, 8, 9, 10 & 11 except Piers 1 & 4 were without proper steel liner. The liner though was used over the exposed part of the river bed, but in lower part of the pier which found support at the rock below the river bed to form the base the steel lining was missing. It is, therefore, the case of prosecution that the applicants along-with officers of the Public Works Department, prepared the forged document to show that the basement work has been carried out according to the drawing and severe deviation from technical specification was made in construction, consequently the repair work had to be carried out almost equal to the cost/expenditure incurred and as such the applicant in connivance with the officers of the department extended undue benefit to

each other.

5. Learned counsel for the applicant would submit that the applicant is aged about 68-69 years and he has suffered Covid-19 infection with other comorbidities which is evident from Annexure P-8 and angiography thereafter has been advised by the Hospital. He would further submit that the Coordinate Bench of this Court in MCRCA No. 19 of 2020 while considering the case of Suresh Chandra Khandelwal on 20.08.2020 by its order has held that proceedings under Section 82 of the Cr.P.C was not followed before declaring the said person as a proclaimed absconder. The case in hand is similar to the other person who are enlarged on bail apart from the fact that the present applicant has suffered with Covid-19 infection recently with other comorbidities, therefore he may be enlarged on bail.
6. Per contra, learned State counsel opposes the prayer for grant of anticipatory bail and submit that the applicant is still not been apprehended and avoided arrest, therefore he may not be granted anticipatory bail.
7. Heard learned counsel for the parties and perused the documents.
8. Considering the certificates which are enclosed would show that the certificate has been issued from Ramkrishna Care Hospital which is a hospital of repute, wherein it is shown that he has suffered Covid-19 infection and other certificate is issued by Heritage Hospital wherein angiography has been advised. The Coordinate Bench of this Court in MCRCA No. 19 of 2020 in its order dated 20.08.2020 while considering the bail of Suresh Chandra Khandelwal has observed that before declaring the applicant as absconder the procedure prescribed under Section 82 of the Cr.P.C. has not been followed. In such case, while considering such order the name of the present applicant Narayandas Sundarani also appeared in the order of Trial Court. While dealing with such finding of the Trial Court of 03.04.2018 the Co-ordinate bench of this Court on 20.08.2020 has held that

before declaring the accused as absconder the trial court did not followed the procedure and held as under:-

'It is, thus, abundantly clear that the declaration of the applicant as an absconder is not in terms of Section 82 of the Cr.P.C, but it is by way of a mechanical exercise without following the procedure. Relevant part of the order sheet of the trial Court only says that since the warrant issued by the Court has not been executed it appears the applicant is absconding or concealing himself, therefore, he is declared as an absconder. In absence of issuance of proclamation such declaration of a person as an absconder would not debar him from applying and availing the benefit of anticipatory bail, if he is otherwise entitled for it on merits.'

This observation made by the co-ordinate bench would also be applicable to the present applicant.

9. Considering the same the present applicant also appears to be on similar footing and no purpose would be served and no custodial interrogation is required which is evident from the submission made by the State in CRMP NO. 1798 of 2017 on 22.02.2018. The fact is till date no arrest is made by prosecution. Considering the medical report of Covid-19 infection and age of applicant with comorbidities, I am inclined to allow this anticipatory bail application on the similar footing in terms of the bail granted to the co-accused Suresh Chandra Khandelwal by Coordinate Court.

10. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant, he shall be released on anticipatory bail on his executing a personal bond for a sum of Rs. 50,000/- with one surety in the like sum to the satisfaction of the arresting officer with the following conditions:-

- (i) that the applicant shall make himself available for interrogation before the investigation officer if further required;
- (ii) that the applicant 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 facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

Goutam Bhaduri
Judge

Jyoti