NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1044 of 2020

- Shri Vishal Naidu S/o Shri P. Kishore Naidu Aged About 39 Years R/o Floor No. 8, Flat No. 803, Raheja Residency, Avanti Vihar, Raipur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Somani Police Station District Rajnandgaon Chhattisgarh

---- Respondent

For Applicant	:	Shri Arvind Shrivastava, Advocate
For State	:	Shri Neeraj Pradhan, Panel Lawyer
For Objector	:	Shri Avinash Chand Sahu, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

12/04/2021

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.108/2020 registered at Police Station – Somani, District – Rajnandgaon CG) for alleged commission of offences under Section 406, 420, 467, 468, 471 of IPC.

2. Prosecution story is that the complainant - Sandeep Uplanchiwar lodged report in the police station stating that he is one of the partners in one Jagdamba Infra Tech, Chandrapur, Maharashtra and he, along with other partners, purchased 20.987 hectares of land in village – Sakra in the name of other firm which was later on diverted for development of housing project in the name of Balaji Dream City. A business deal was struck on M/s. Active Growth, INC through its partners Ajit Nahar, Vishal Naidu and Vinay Gupta under which, an agreement was executed to the effect that the complainant firm shall be paid Rs.20 crores from M/s. Active Growth, INC for taking

over project but as per the agreement, first installment of Rs.3 crores was not paid within one month but only Rs.70 lakhs was paid. Therefore, the agreement was canceled and the amount of Rs.70 lakhs was returned. Thereafter, another agreement for sale of 30 plots on commission of 15% was entered into between the parties. Thereafter, the accused entered into agreement with various purchasers and without filling necessary details, signatures of the complainant were obtained which was followed by sale of as many as 30 plots vide registered sale deed which was signed by the complainant on the assurance of the accused. However, thereafter, the entire sale consideration of 30 plots was not paid but only 70% of the sale consideration was paid and @ 15% commission, another 15% was dishonestly misappropriated. It was also alleged that even after sale of 30 plots, accused is entering into agreements, collecting money and falsely projecting himself as the owner of the project.

According to the complainant, the applicant / accused prepared forged and fabricated agreement which were never executed by the complainant and on that basis, he had entered into various agreements with intending purchasers, collected huge amount and thereby committed offences alleged.

3. The bail application filed by the applicant was rejected by the Court below.

4. Learned counsel for the applicant would argue that the complainant has taken recourse to a concoct criminal case on fabricated charges only to settle civil disputes arising in view of business transactions between the parties as there are certain disputes with regard to monetary settlement with each other. He would submit that even according to the complainant, the parties had business transactions and they are not strangers to each other and agreement dated 04/01/2017 was entered into. Under the project, the applicant and its firm had invested crores of rupees towards development of project which amount was liable to be paid and dispute arose between the parties with regard to payment and when agreement dated 04/01/2017 was not respected. Ultimately a suit was filed on 06/11/2018 for appropriate declaration but in

that suit, by filing written statement, a false plea was taken that agreement dated 04/01/2017 was not executed by the complainant and then only, FIR was lodged on 14/06/2020. He would argue that sale transaction of 36 plots in addition to 30 plots which are not in dispute by the complainant, was on the basis of various agreements entered into by the applicant with the intending purchasers on the basis of agreement dated 04/01/2017 only. If at all, agreement dated 04/01/2017 was not entered into by the complainant, he would have never signed the sale deeds duly registered in respect of additional 36 plots. The details of agreements entered into between the parties from time to time and the sale deeds and other details have been placed on record in support of the aforesaid argument. Learned counsel further drew attention of this Court to order Annexure A/9 passed by RERA and submitted that the applicant was found having incurred huge expenditure to the tune of crores of rupees towards development of project and complainants are acting dishonestly by not making necessary adjustments and now making afterthought allegations of forged and fabricated agreement. Learned counsel would further argue that number of sale deeds have been registered under the signature of the complainant themselves in the year 2018, 2019 and 2020 and therefore, the complainant's case that there was no agreement dated 04/01/2017 and agreement dated 05/01/2017 was canceled on 21/04/2017, is patently false and afterthought. He would submit that the original title deeds are only with the applicant which is part of Annexure A/9 which also shows that the allegations against the applicant is false. Referring to letter dated 09/06/2018 also, it is argued that the act of the complainant in appointing the applicant as agent only shows that the applicant was continuing to work in the project with the complainant and the complainant cannot say that after 21/04/2017, all their business relations have come to an end. He further drew attention to Annexure A/12, statement of the bank that huge amount of money was transferred by the applicant in favour of the complainant in 2018. Learned counsel would further submit that the so called hand writing expert's report that the signature of the complainant on agreement dated 04/01/2017 are forged, is not based on authentic collection of original signature but from doubtful sources and it being not a case that the signatures were collected by the authorities and sent to hand writing expert for report, the same is liable to be ignored in view of judgment of the High Court of Madhya Pradesh in MCrC No.431/2014 (*Abhay Jain and ors. V. State of Madhya Pradesh and anr.*) passed on 06/08/2018.

5. On the other hand, learned State counsel and counsel for objector submit that initially the applicant firm and complainant's firm had entered into business relationship under which, housing project was to be developed and the applicant was given limited right to enter into agreement in respect of specified number of plots i.e. 30 in number only. The applicant failed to pay the amount as agreed to between the parties under agreement dated 05/01/2017. As against three crores which was to be paid under first installment within one month, only 70 lakhs was paid. Therefore, this agreement was canceled on 21/04/2017 and the entire amount of Rs.70 lakhs was returned through cash transfer and other mode. Thereafter, no business relationship existed between the parties. The appointment of the applicant as agent was limited for representation before RERA and that does not mean that business relationship existed. The applicant forged agreement dated 04/01/2017 which was never executed by the complainant or its partner, which was not known to them. On the basis of this forged agreement, the applicant started entering into various agreements towards sale of plots and started collecting huge amount from intending purchasers. Even under the earlier agreement towards sale of 30 plots, 70% of the sale consideration was paid and in excess of commission of 15%, another 15% of sale consideration was misappropriated dishonestly.

Learned counsel for the complainant would submit that the agreements which were originally entered into between the complainant and the accused and copy of agreement dated 04/01/2017 were sent for report of hand writing expert and the hand writing expert has opined that the signature on agreement dated 04/01/2017 are fabricated and not that of the complainant and the partners. Therefore, it is clear that in the garb of business transaction, the applicant was involved in criminality by forging an agreement though agreement dated 05/01/2017 was later on, canceled on 21/04/2017.

6. The argument of learned counsel for the parties and the material placed on record were considered by this Court.

7. The material on record, *prima facie*, show that there existed a business transaction between the applicant firm and the complainant firm. Even according to the complainant firm, they had entered into agreement on 05/01/2017 with the applicant firm but according to the complainant, the applicant did not pay Rs.3 crores within one month as agreed to between the parties. Therefore, that agreement was canceled on 21/04/2017. The amount of Rs.70 lakhs which was paid by the applicant's side was returned to them. The complainant has come out with a case that the applicant forged agreement dated 04/01/2017 and is wholly improbable that if there already existed agreement dated 04/01/2017, why would the complainant enter into agreement dated 05/01/2017 and that too there being no mention or reference of agreement dated 04/01/2017 in agreement dated 05/01/2017. Further, this Court finds that there were business transactions between the parties and huge amount of money transferred from one party to another. Serious dispute between the parties are pending and order passed by RERA is also on record. Further, it appears that the applicant is claiming huge amount in his favour on the ground that they have invested huge amount towards development of the land and plot under sale and large number of plots were sold vide registered sale deed. However, complaint of the complainant is that the applicant had forged agreement dated 04/01/2017 and no such agreement was entered into by the complainant. The applicant filed a suit on 06/11/2018 but in that case, on the very first date i.e. on 30/07/2019, the complainant has taken a stand that they have not executed any agreement and the case was adjourned which was followed by filing of FIR on 14/06/2020. Therefore, even if on *prima facie* consideration, it is found that there existed some business transaction between the parties and there are claims and counter claims between the parties, there is serious allegation of forging the document dated 04/01/2017. This allegation is *prima facie* supported from the report of hand

writing expert which is placed on record by the complainant / objector. As against this, no material has been placed by the applicant with regard to credibility of the agreement. In such a situation, where allegations of fabricating and forging agreement dated 04/01/2017 has been leveled on the basis of report of the hand writing expert, benefit of anticipatory bail cannot be extended to the applicant. Even from the case diary which was disclosed before this Court during the course of hearing, there is nothing to show that during investigation, any report of hand writing expert was called that the signature of so called agreement dated 04/01/2017 is not forged. In view of above, benefit of anticipatory bail cannot be granted to the applicant. The application is, therefore, rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti