

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 902 of 2021**

- Nirmal Jhaamnani S/o late Pursottam Das Jhaamnani aged about 40 years R/o Nirmal Brokers, Ramsagar para Raipur Tahsil and District Raipur Tahsil & District Raipur Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: Station House Officer, Police Station Pulgaon, District Durg, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Awadh Tripathi, Adv.
For Non-applicant- State	: Mr. B.P. Banjare, Dy.Govt. Adv.
For objector	: Mr. Anmol Sharma, Advocate

*(proceedings through video conferencing)***Hon'ble Shri Parth Prateem Sahu, Judge****ORDER****13/08/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No. 236/2021 registered at Police Station Outpost Jewra Sirsa, Pulgaon, District- Durg (C.G.) for the offence punishable under Sections 420, 406 of IPC.
2. As per the case of prosecution, the complainant is dealing in the business of manufacturing and sale of cattle feeds in the name and style of S.K. Industries. On 11.10.2019, present applicant gave a mobile call to complainant showing his desire for purchase of 60-70 tons of kanki (cattle feeds). On 13.10.2019, goods were loaded in two trucks, one bearing registration no. as TN 52M 9292 of which driver was having mobile number as 9289729511, goods valuing of Rs. 5,52,955/- and another TN 52T 0200 of which driver was having

mobile number as 9344667388, goods valuing of Rs. 4,28,789/-, as such the total cost of goods was Rs. 9,81,744/-. Applicant at the time of loading the goods visited the go-down/ premises and stated that some another person is reaching with the amount of the goods and the loading process of the goods to be continued. He waited there for some time but no person other than the applicant came with the amount of the goods and subsequently the applicant ran away along with the goods loaded on trucks valuing Rs. 9,81,744/- Even after making several demands of the price of goods, applicant has not paid the price of goods and therefore the complaint was lodged, based on the written complaint instant crime is registered against the present applicant.

3. Mr. Awadh Tripathi, learned counsel for the applicant would submit that the applicant is working as broker. He submits that he earns only commission on the sale transaction between the parties. The goods have been sold to the party of Tamilnadu which is also appearing from the fact that both the trucks on which goods were loaded are from Tamilnadu. He further submits that after sometime due to lockdown period, purchasers of goods at Tamilnadu could not able to pay the cost of goods to the complainant but instead of taking any action against them complaint is lodged against applicant. He submits that even if the case of the complainant is taken as it is, that the applicant has purchased goods and not paid the amount, he is having remedy to file appropriate proceedings for recovery of money of the goods. In alternate, it is contended that the complainant only to pressurize the applicant made an attempt to give color of criminal act to the civil dispute.
4. On the other hand, Mr. B.P. Banjare, learned State counsel opposes

the submissions made by learned counsel for the applicant, he read-over the written complaint and contents of F.I.R. to submit that the applicant from the inception has intention to cheat him and therefore at the time of loading of the goods, he visited the premises of complainant, assured him that some other person is reaching with the amount of goods but instead of paying any amount, applicant fled away along with truck loaded with goods, hence, there is material against the present applicant to connect him in the instant crime.

5. Mr. Anmol Sharma, learned counsel for the objector, would submit that the contention of learned counsel for the applicant that he is working as broker may not be correct. He submits that it is applicant himself who contacted him and shown his desire of purchasing the cattle feeds of 60-70 tons from the complainant. It is the applicant who purchased the cattle feeds valuing of Rs. 9,81,744/- and has not apid the cost of the goods till date. He submits that the bills have been issued in the name of applicant, hence, the contention of applicant that the purchaser is from Tamilnadu is not correct. He might be selling the goods purchased from the complainant to somewhere else, but the transaction is between the complainant and the applicant, therefore, the applicant is liable to pay the cost of the goods. He further contended that had it been the case that the goods were to be sold to the parties at Tamilnadu then the bills might have been issued in the name of party at Tamilnadu and not in the name of applicant. He does not dispute that as per the complaint, the allegation is that the applicant from the premises of complainant fled away with the truck loaded with goods without making payment of cost of goods. Upon putting specific query with regard to document Annexure O/2 filed along with copy of objection by the complainant in this proceeding, he submits that this complaint to the Superintendent

of Police is of an earlier date but referring to the copy of mobile chat, he submits that there was admission of the applicant that he will pay the cost of goods and assurance have been given time and again which continued till 22nd January 2021, as per the mobile chat available in the record, but not paid single penny.

6. I have heard learned counsel for the respective parties.
7. From perusal of document Annexure O/2 filed by complainant himself along with objection would show that in the said complaint, the complainant has mentioned that the present applicant has purchased the goods on credit, on assurance that cost of the goods will be paid within 15-20 days. It is also mentioned that goods were transported from the premises of the complainant on 13.10.2019 and 14.10.2019 in two different trucks. This complaint is dated 18.08.2020. The subsequent complaint based on which instant crime is registered against present applicant is filed on 21.06.2021 wherein the facts narrated in the complaint is entirely different. In that complaint, the allegation levelled against the present applicant is that the applicant at the time of loading of goods on the truck came to the premises, gave assurance that in a short while another person is reaching with the amount of cost of goods but no one came along with amount to be paid for the goods loaded in the truck and subsequently the applicant fled away from the premises along with trucks.
8. Taking into consideration, the contradictory facts pleaded by the complainant himself in two complaints ie. one dated 18.08.2020 and another dated 21.06.2021, without commenting anything on merits of the case, I am inclined to allow the bail application.
9. Accordingly, application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question

(236/2021), he shall be released on anticipatory bail by the Officer arresting him on their executing a personal bond in the sum of Rs. 25,000/- with one surety in the like sum to the satisfaction of the concerned arresting Officer. Applicant shall also abide by the following conditions:

- (i) that the applicant shall make himself available for interrogation before the Investigation Officer as and when 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 him by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge