NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC (A) No. 938 of 2021

Umesh Panchal S/o Mohan Panchal, Aged About 28 Years, R/o Behind Vijay Steel, Kotra Road, Raigarh, District Raigarh, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh Through Station House Officer, Police Station -City Kotwali, District Raigarh, Chhattisgarh.

--- Respondent

For Applicant	:	Mr. Amit Sharma, Advocate.
For State	:	Mr. Vimlesh Bajpai, GA.
For Objector/Complainant	:	Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

14/09/2021

Heard.

1. Applicant has filed this bail application under Section 438 of Cr.P.C. apprehending his arrest in connection with Crime No.1008/2021 registered at Police Station –City Kotwali, Distt Raigarh, (CG), for the offence punishable under Section 408 of the Indian Penal Code.

2. Case of the prosecution, in brief, is that applicant was earlier working with complainant firm “Shri Balaji Trader” as Clerk (Munshi) since last 10 years. Complainant firm is engaged in business of selling of angle, channel, sheet, plate and pipe on wholesale and retail. Applicant was associated with complainant for purchase and sale of Iron Goods, arrangement of vehicles for transportation, collection of payment of credit amount from purchasers. Since wife of complainant was suffering from Breast Cancer, complainant and his family members are required to remain out of station for her treatment, during that period entire business was being taken care off by applicant. Applicant had registered firm Known as “Ashish Enterprises”, started supplying of Iron Goods to other business firm who were purchasing Iron Goods from complainant firm

thereby committed breach of trust. Opening of Ashish Enterprises by appellant came to know from other business friends of complainant. Upon inquiring it revealed that Ashish Enterprises is registered in name of younger brother of applicant which is run by applicant himself, because his younger brother Ashish Panchal is in employment elsewhere. It is further alleged in complaint that applicant has prompted the complainant to sell the goods on credited to some of business firm assuring that he will collect/recover the amount from them but has not recovered the same. due to which complainant firm has caused heavy loss. After getting knowledge that applicant himself is running Ashish Enterprises, selling Iron Goods to customers of complainant, complainant asked him to bring his account books and Bank transaction. Initially, applicant agreed but on second day he did not came to his place of work, on phone call intimated that he will not come to his place of work and will not show his Bank statement or account books. Applicant collected money from the consumers/clients of complainant but not deposited it in the accounts of complainant firm. Applicant caused loss of Rs.20 lacs to complainant. Based upon written report, FIR was registered against applicant for aforementioned offence.

3. Learned counsel for the applicant submits that applicant has not committed any offence as alleged against him. It is brother of applicant, in whose name Ashish Enterprises is registered. Applicant has not caused any loss to complainant firm, applicant deposited all the money collected in account of complainant firm during his employment. Applicant was working as clerk with complainant firm and worked there with honesty and dedication. The main grievance of complainant is coming of Ashish Enterprises in same business as of complainant and competing

with him in the market, other purchasers of Iron Goods got an option of purchase of products due to which, complainant might have suffered some loss in business. The account of Shri Balaji Traders is being regularly checked by complainant and his tax consultant but at no point of time allegation of collecting money and not depositing it in account of complainant firm has been made. In first complaint, it is only mentioned that, on instance of applicant, goods on credit have been sold to certain business firm and when complainant found that on earlier complaint no offence is made out, subsequently, some other false allegations have been added that applicant has collected money and not deposited in account of complainant firm. Complaint has been lodged only on account of business rivalry. Hence, applicant may be enlarged on anticipatory bail.

4. Learned State Counsel opposes the submissions of learned counsel for the applicant and submits that in FIR there is specific allegation against applicant of causing loss to complainant firm. Amount collected from Raj Laxmi Fabrication, Ma Durga Construction, Tirupathi and Trupathi Engineering was collected by applicant but not deposited in account of complainant firm. Applicant got registered Ashish Enterprises in name of his younger brother, started business with clients of complainant. In statement of wife of complainant recorded under Section 161 of Cr.P.C it has come that on 16.09.2018 applicant has taken Rs.4 lacs from her stating that business client by name Deepak Kalia (Proprietor of DLS Wiring) is in requirement of cash amount of Rs. 4 lacs which she handed over to applicant, but was not given to Deepak Kalia and misappropriated the said amount. From contents of FIR and statements recorded under Section 161 of Cr.P.C of complainant and his wife shows involvement of

applicant in the alleged offence. Hence, applicant is not entitled for grant of anticipatory bail.

5. Learned counsel for the complainant/Objector submits that applicant taking benefit of medical ailment of wife of complainant, who is suffering from breast cancer, had caused heavy loss to complainant firm by registering Ashish Enterprises in name of his brother, doing business with clients of complainant. Applicant has collected amount from some of client of complainant and not deposited the same in account of complainant firm. The amount of Rs.4 lacs was taken from wife of complainant ie Anita Khirwal for giving cash amount to Deepak Kalia but has not given to him. Payment of Rs.4 lacs to applicant is entered into account books maintained by wife of complainant.

6. At this stage, learned counsel for applicant submits that allegation of taking Rs.4 lacs is absolutely false and baseless and after thought only to implicate applicant in graver offence. Allegation of taking Rs.4 lacs from wife of complainant is of September 2018. Complainant is a businessman making payment of cash of huge amount of Rs.4 lacs to another business amount which should have been recorded in account books showing credited in name of Deepak Kalia but there is no mention of giving any amount in account book of DLS Wiring of which Deepak Kalia is proprietor. In First report lodged on 12.06.21 there is no mention of taking Rs.4 lakhs from wife of complainant for making payment to Deepak Kalia proprietor of DLS Wiring. When they realised that no offence would be made on first report, second report is lodged on 14.07.2021. In second complaint all sort of allegations are levelled. When complainant became aware of some illegal act committed by applicant on 05.06.2021 then why it is not mentioned in the first report. All the

allegations are after thought only on account of business of rivalry.

7. Heard learned counsel for the parties, perused case diary, documents annexed along-with bail application, application for permission to assist the prosecution.

8. Perusal of written complaint would show that applicant was working with complainant firm since last 10 years. As per allegations, when complainant and his family members went out of station for treatment of Ankita Khirwal (wife of complainant) during the relevant period applicant was looking after the business and taking benefit of situation, he had opened another business enterprise in name and style of Ashish Enterprises, started dealing with clients of complainant firm. Ledger account in complainant firm of DLS Wiring available in case diary for a period from 01.04.2018 to 31.03.2019 does not reflect cash payment of Rs.4 lacs to Deepak Kalia. Ledger account in the name of Deepak Kalia of the year 2018-19 specifying as ‘to be of DLS Wiring” shows cash payment of Rs.4 lacs and closing balance of Rs.4 lacs, but this ledger account is till 31.04.19. Looking to the nature of business and account of one of client of complainant, it cannot be expected that business accounts was not looked into by applicant. In statements of Anup Kumar Poddar (Proprietor of Tirupati Enginerring), Trilochan Prasad Yadav (Proprietor of Raj Laxmi Fabrication) and Manoj Singh (Proprietor of Ma Durga Construction), they have stated that amount of Rs.8,470/-, Rs.16,000/-, and Rs.20,000/- has been collected by applicant in the month of November 2020, February 2021 and April 2021 respectively.

9. Considering the entire facts and circumstance of this case, nature of allegation made in first complaint submitted on 12.06.21 and second complaint on 14.07.21, without commenting anything on merits of the

case, I am inclined to allow the application for grant of anticipatory bail.

10. Accordingly, anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the crime in question, she shall be released on bail by the officer arresting her on executing a personal bond in sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Arresting Officer. The applicant shall also abide by the following conditions :

(i) that applicant shall make himself available for interrogation before the investigating officer as and when required;

(ii) that 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 applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that applicant shall appear before the trial Court on each and every date given to her by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-