

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M.Cr.C (A). No. 910 of 2021

Smt. Vimlesh Pandey D/o S.P. Tiwari, Aged About 58 Years, R/o Gulab Nagar, Mopka, Police Station -Sarkanda, District -Bilaspur, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh Through- Station House Officer, Police Station -Sarkanda, District -Bilaspur, Chhattisgarh.

---- Respondent

MCRCA No. 922 of 2021

Smt. Anita Tiwari W/o R. N. Tiwari, Aged About 60 Years, R/o Gulab Nagar, Mopka, Police Station -Sarkanda, District -Bilaspur, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through - Station House Officer, Police Station -Sarkanda, District -Bilaspur, Chhattisgarh.

--- Respondent

For Applicant	: Mr. Amit Kumar, Advocate.
For State	: Mr. Vimlesh Bajpai, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

11/08/2021

Heard.

1. As above bail applications arise out of same crime number, they are being heard together and decided by this common order.
2. Smt. Vimlesh Pandey in MCRCA No.910/2021 is sister of co-accused R.N. Tiwari and Smt. Anita Tiwari in MCRCA 922/2021 is wife of R.N Tiwari.
3. This is an application filed under Section 438 of Cr.P.C. for grant of anticipatory bail to applicants as they apprehend their arrest in connection with Crime No.860/2021 registered at Police Station -Sarkanda, Bilaspur, District -Bilaspur, for commission of offence punishable under Section 420/34 of the Indian Penal Code.

4. Case of the prosecution is that co-accused R.N. Tiwari approached the complainant informing him that he want to sell lands bearing Khasra No.15/86 measuring 1200 sq fts situated at village -Lingiadih and Khasra No.798/4 measuring about 0.51 acres situated at village -Mopka. Complainant visited the site and agreed to purchase the land. In the year, 2009, complainant has given amount of Rs.5 lacs for each piece of land to R.N. Tiwari as advance in presence of witnesses Brijesh Singh and Ravi Soni. Thereafter, in the year 2019, upon execution of agreement of sale of land, complainant handed over amount of Rs.32 lacs & Rs.25 lacs for two different pieces of land as mentioned above. When complainant came to know that the land, which is purchased by him, is a disputed land, he approached R.N. Tiwari for returning back his amount. R.N.Tiwari stated that he has invested said amount in some other land, he will return his amount with profit. Thereafter, amount of Rs.54 lacs was returned to complainant, but not returned balance amount of Rs.13 lacs and profit. Based upon complaint, instant crime is registered against applicants and co-accused R.N. Tiwari.
5. Learned counsel for the applicants submits that contents of complaint shows that complainant has done all dealings and talks with R.N. Tiwari and not with applicants. Even payment of amount was to him. It is R.N. Tiwari, who has shown the land to complainant. When complainant shown his desired not to purchase land, asked his money return. Except balance amount of Rs.13 lacs and damages, major portion of amount has been returned to complainant ie Rs.54 lacs. As per allegation that R.N. Tiwari has made statement that he will return balance amount also with some interest/profit. Contents of complaint itself shows that it is for

balance of amount, dispute raised is of civil nature. Complaint has been lodged only to pressurize the applicants. Applicants are ladies and not actively participated in alleged deal, but for signing the agreement. They have not accepted any amount as per contents of complaint. Hence, they may be released on anticipatory bail.

6. Learned State Counsel opposes the submission made by learned counsel for the applicant and submits that in complaint, there is specific allegation that R.N. Tiwari has shown the land and stated that lands are free of all encumbrances, there is no dispute on it. But after entering into agreement and making payment of amount of Rs.67 lacs it came to know that said land was disputed piece of land thereby applicants are also involved in commission of instant crime. However, on putting a question to learned State Counsel, he submits that in complaint or FIR it is mentioned that major portion of amount of Rs.54 lacs has already been returned to complainant, allegation is with regard to balance amount of Rs.13 lacs.
7. Learned counsel for the Objector submits that R.N. Tiwari has shown the land available for sale and stated that land is free from all encumbrances upon which complainant has agreed to purchased it. Whereas after entering into agreement and making payment of Rs.67 lacs, Complainant came to know that land is a disputed land. Applicants, who are sister and wife of R.N. Tiwari were well aware about act of R.N. Tiwari, but even then they have signed the agreement. Hence, they are also involved in the act of R.N, Tiwari, they are not entitled for grant of anticipatory bail. It is also pointed out that in the impugned order it is mentioned that said land is recorded in name of one Madan Lal.

8. Heard learned counsel for the parties.
9. FIR, which is based on complaint, reflects that complainant has paid amount of Rs.10 lacs in the year 2009 and after lapse of about 10 years amount of Rs.25 lacs and 32 lacs have also been paid to R.N. Tiwari for respective pieces of land. As land involved in dispute, complainant showing his intention that he is not interested to purchase it. R.N. Tiwari refunded amount of Rs.54 lacs to complainant which is undisputed fact. Complaint was lodged in respect of balance amount of Rs.13 lacs and damages/profit as agreed by R.N. Tiwari to be paid to complainant. Further, contents of FIR shows that all the dealings, conversation and finality of deals including making payment is with R.N. Tiwari and not with present applicants. Applicants have only signed the document.
10. Considering the entire facts and circumstances of the case, nature of allegations, the fact that major portion of amount has already been refunded to complainant ie Rs.54 lacs out of alleged amount of Rs.67 lacs paid by complainant, applicants are lady, without commenting anything on merits of the case, I am inclined to grant anticipatory bail to applicants.
11. Accordingly, application is allowed and it is directed that in the event of arrest of the applicants in connection with the crime in question, they shall be released on anticipatory bail by the officer arresting them on their furnishing a personal bond in the sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the Arresting Officer. The applicants shall also abide by the following conditions :

- (i) that the applicants shall make themselves available for interrogation before the Investigating Officer as and when required;
- (ii) that the applicants 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 applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-