

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.945 of 2021

- Mohammad Shahid, S/o Raful Aazam, aged about 34 years, R/o Sector-2, Civic Centre, Bhilai, District Durg (CG).

---- Applicant

Versus

- State of Chhattisgarh, through District Magistrate, Durg, District Durg (CG)

---- Non-applicant

For Applicant	:	Mrs. Fouzia Miraz, Sr. Advocate with Mr. Arijit Tiwari, Advocate.
For Non-applicant	:	Mr. B.L. Sahu, Panel Lawyer
For complainant/objector	:	Mr. Ishan Verma, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

16/8/2021

1. This is an application under Section 438 of CrPC for grant of anticipatory bail to applicant as he apprehends his arrest in connection with Crime No.267/2021 registered at Police Station Khursipar, District Durg (CG) for commission of offence punishable under Section 420, 34 of IPC.
2. Case of the prosecution, in brief, is that complainant Ashwini Kumar Kaushal lodged written report on 4.7.2021 mentioning therein that complainant and one Bhupendra Dewangan while studying in Kalyaan College, came in contact with present applicant and thereafter friendly relationship was developed between them. In the year 2016 the Chhattisgarh Professional Examination Board got published an advertisement for appointment on the posts of Hostel Superintendent and Hostel Warden. Applicant informed both the complainants that he is having contacts and he can provide employment on any of the posts advertised. He also stated to the complainant that for each post of Hostel Warden, a sum of Rs.4 Lakhs is to be paid to him i.e. Rs. 2 Lakh as advance and Rs.2 Lakh after appointment. Both the complainants gave Rs.2 Lakh each i.e. Rs.4 Lakh, and one Madan Kumar Kaushal also gave Rs.1,35,000/- to present applicant, thereby total amount of

Rs.5,35,000/- was paid to present applicant and co-accused Zulfikaar. After declaration of results when the complainant did not get employment, they asked present applicant and co-accused for return of their money but money has not been returned. They were continuously making requests, orally and through whatsapp messages, for return of money, but present applicant and co-accused have not returned money. Based on this complaint, instant crime is registered against present applicants and one another.

3. Mrs. Fouzia Mirza, learned Senior Counsel for applicant submits that allegations levelled against present applicant are absolutely false and baseless. Applicant never studied in Kalyan College, therefore, the allegation that complainants' coming into contact of present applicant while studying in Kalyaan College is incorrect. Applicant has obtained degree of Bachelor in Computer Application (BCA) from Bhilai Nayar Samajam College, Bhilai in the year 2011. Applicant joined politics in the year 2018-19 and became member of Indian National Congress party, which is evident from the photographs etc. filed along with this bail application. For the purpose of legislative assembly elections, 2019 in the State of Jharkhand, he was given the post of National Co-ordinator of Indian Youth Congress. She further submits that except oral allegation that applicant along with co-accused has obtained money from complainants on the pretext of providing them government job, there is no material to connect him with instant crime. Allegations have been made only to ruin political career and tarnish fair image of applicant in public. Allegation of giving money pertains to the year 2016 and report of the same is lodged in the year 2021 i.e. after lapse of about five years, and during this period the complainants have not made any complaint to any authority. In support of her submissions, she places reliance on decisions of Hon'ble Supreme Court in cases of **Arnesh Kumar vs. State of Bihar & another** reported in **(2014) 8 SCC 273** and **Sushila Agrawal & ors vs.**

State (NCT of Delhi) & another reported in **(2020) 5 SCC 1**.

4. Per contra, Mr. B.L. Sahu, learned Panel Lawyer for the State opposes the submissions made by learned Senior Counsel for applicant and submits that present applicant has obtained total sum of Rs.5,35,000/- from the complainants and one another on the pretext of providing them government job. Applicant and co-accused neither arranged government job for complainants nor returned money to them and thereby cheated them. He further submits that allegations levelled against present applicant are serious in nature, hence he is not entitled to get benefit of anticipatory bail under Section 438 of CrPC.
5. Mr. Ishan Verma, learned counsel appearing on behalf of complainant/objector opposes the prayer for grant of anticipatory bail to present applicant and submits that the complainants and one another gave their hard earned money to present applicant on the assurance given by present applicant and co-accused that they will arrange government job for them. When the complainants did not get appointment on any of the posts as advertised by the CG Professional Examination Board, on number of occasions they orally as also by sending messages on mobile of present applicant requested him for return of their money, but the money is not returned. He also pointed out that present applicant is a politically influential person, he is not residing in Bhilai, the complainants could not be able to contact him and even the police are not making any attempt to arrest present application only on account of his high approach. He read out text messages placed on record along with application for taking additional documents on record. However, on being asked about any material showing payment of amount to present applicant or document for return of money, learned counsel for the objector submits that the complainants are not in possession of any such document.
6. I have heard learned counsel for the parties. Perused the documents placed on record by respective parties as well as

case diary.

7. Instant crime is registered based on written complaint submitted by complainant Ashwini Kumar Kaushal and Bupendra Kumar Dewangan. In written complaint the date of incident is mentioned as 'year 2016'; it is alleged that demand for return of money was continuously made by complainants by visiting house of present applicant and sending text messages on whatsapp, but the same was not returned to them. Except text messages sent from January, 2021, the complainants have not placed on record any document showing making demand or connecting present applicant with commission of crime in question.
8. Taking into consideration the nature of allegations levelled against present applicant that the complainants have paid amount to him in the year 2016; the complaint is filed only in the month of July, 2021; statements of complainants and their fathers recorded under Section 161 of CrPC; and further considering that at present in case diary there is no *prima facie* material available to show that present applicant had accepted money from complainants for providing them government job, without commenting anything on merits, I am inclined to grant benefit of anticipatory bail to applicant.
9. Accordingly, this anticipatory bail application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, he shall be released on anticipatory bail by the officer arresting him on his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Arresting Officer. Applicant shall also abide by following conditions:
 - (i) that he shall make himself available for interrogation before Investigating Officer as and when required;
 - (ii) that he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him/her from

disclosing such facts to Court or to any police officer;

- (iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each & every date given to him by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-