NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MCRCA No. 1007 of 2021

- Anil Kumar Sahu S/o Late Shri Man Singh Sahu aged about 49 Years R/o Gram and Post Tedesara, Tahsil Rajnandgaon, District Rajnandgaon Chhattisgarh.
- Mahendra Sahu S/o Shri Nakul Sahu aged about 42 Years R/o Gram and Post Tedesara, Tahsil Rajnandgaon District Rajnandgaon Chhattisgarh.
- Rajeshwar Prasad Dwivedi S/o Late Shri Daya Shankar Dwivedi aged about 60 Years R/o Gram and Post Tedesara, Tahsil Rajnandgaon District Rajnandgaon Chhattisgarh.
- Ahsutosh Dwivedi S/o Shri Rajeshwar Prasad Dwivedi aged about 30 Years R/o 22/16, Nehru Nagar West Bhilai District Durg Chhattisgarh.
- Latlu Ram Sahu S/o Late Shri Khedu Ram Sahu aged about 40 Years R/o Gram Bundela Post - Mungaon, Tehsil Dongargaon District Rajnandgaon Chhattisgarh.

------Applicants

VERSUS

- State of Chhattisgarh through: SHO, PS Ambikapur Dehat (Gandhinagar), District Ambikapur, Chhattisgarh

-------**Non-applicant**

For Applicants : Mr. Awadh Tripathi, Advocate
For Non-applicant- State : Mr. Vimlesh Bajpai, Govt. Adv.

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

27/09/2021

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. 302/2021 registered at Police Station Ambikapur Dehat (Gandhinagar), District- Ambikapur (C.G.) for the offence punishable under Section 420/ 34 of IPC and Section 4, 5, 6 of Chhattisgarh Protection of Depositors Interest Act, 2005 (for short “Act of 2005” and Section 10 of Prize Chit-fund and Money Circulation Scheme (Pabandi Act).

2. As per the case of prosecution, written report was lodged on 15.07.2021 by complainant Chain Say Rajwade mentioning therein that non-applicants, mentioned therein, have opened Branch Office of A.V.M. Real Estate & Allied Ltd. in the house of Arun Kumar Singh near electricity office Gandhinagar, Ambikapur. Latlu Ram Sahu was the Regional Director of the Company, he visited different villages, appointed agents for collection of money on commission of which he also became one of the agents and after collecting money deposited Rs. 20 Lakhs. The maturity period as per the statement of Regional Director was of five years and thereafter it was to be returned along with interest. After completion of period of five years when complainant demanded back money deposited along with others they were asked to submit bond paper in the office at Rajnandgaon. On instructions of officials of Company, about 18-20 persons along with complainant submitted their bond papers but even then, money deposited by them was not transferred in their account. Later on, it revealed that all the non-applicants, mentioned in complaint, closed their office and fled away. Based on the written report, aforementioned crime was registered against applicants for aforementioned offence.

3. Mr. Awadh Tripathi, learned counsel for applicants would submit that the applicants have started the business of finance after incorporation of company in the name and style as A.V.M. Real Estate & Allied Ltd. He submits that the Company accepted deposits from various depositors and later on due to some difficulty they decided to close the Company for which notice was published in newspaper *vide* Annexure A-3 stating that all the investors/ share holders may appear before the registered office of the Company and get their KYC updated so that the amounts can be paid. The applicants have repaid the amount to the persons approached to Registered office and submitted relevant documents. Ram Kumar Rajwade s/o complainant Chain Say Rajwade

accepted amount of Rs. 16,76,500/- of about 20 depositors and executed affidavit for the same on 10.08.2017. Copy of affidavit is filed as Annexure A-5, cash voucher is also placed on record of making payment to other depositors along with Annexure A-5. He further submits that the registered office of company is at Rajnandgaon and not at Ambikapur, hence, the allegation of complainant that Company was having its office at Ambikapur and one of the Directors visited to rural area of Ambikapur and appointed agents for collection of money is not correct. Company before closing has returned entire amount. Complaint is lodged with ulterior motive; hence, the applicants may be enlarged on anticipatory bail. Learned counsel further submits that under the Act of 2005, it is for the District Magistrate to take cognizance and initiate proceedings under Section 7 of the Act of 2005 and not for the police authority.

4. Vimlesh Bajpai, learned State counsel, opposing the submissions made by learned counsel for applicants would submit that the company is not having any office at Ambikapur is not correct. He submits that one of the Directors of the Company by name Mahendra Sahu, wrote letter to Collector/ District Magistrate, Ambikapur mentioning that the office of Company at Ambikapur is in the house of Arun Kumar Singh at Gandhinagar, Ambikapur. Copy of letter is available in the case diary along with all enclosed documents. He further contended that the submission of learned counsel for applicants that the police cannot take any action under the Act of 2005, except the District Magistrate who is competent authority under the Act 2005 is also not correct. Provision of Section 7 of the Act of 2005, referred by the learned counsel for the applicants, is with regard to attachment of property of the Company. He submits that the offence under the provisions of Act of 2005 is also registered against the applicants along with other offence and the application for grant of anticipatory bail is barred under Section 15 of the Act of 2005; hence, application for grant of

anticipatory bail is not maintainable. Learned counsel further submits that Ram Kumar Rajwade submitted affidavit dated 19.08.2021 through counsel for the objector stating that the affidavit submitted along with application for anticipatory bail is forged, he has not signed any affidavit.

5. I have heard learned counsel for the parties and also perused the case diary.

6. The allegations levelled against applicants are that they collected money in the name of A.V.M. Company giving assurance to the depositors that their amount will be returned after five years with interest but the amount has not been returned. The affidavit on which learned counsel for applicants placed reliance stating that the amount has been returned to the son of complainant is denied by the deponent therein through counsel stating that the affidavit is forged. The offence registered against the applicant is also under the Act of 2005. Under Section 15 of the Act of 2005, application for grant of anticipatory bail in offence punishable under the Act of 2005 is not maintainable.

7. Taking into consideration entirety of the facts and circumstances of the case, nature of allegations and undisputed fact that the applicants have opened the Company, accepted the money from depositors with assurance of returning back the amount with interest; in view of bar under Section 15 of the Act of 2005, application for grant of anticipatory bail is not maintainable and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan