

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1386 of 2020

1. Sanjay Kurre S/o Shri Sahdev Kurre, Aged About 34 Years By Caste Satnami, R/o Village Kapu, Thana Kapu, Civil And Revenue District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh
2. Ramadhin Kurre S/o Shri Gotiram Kurre, Aged About 54 Years By Caste-Satnami, Occupation Service, R/o Village Kumekela, Thana Patthalgaon, Civil And Revenue District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Applicants

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Patthalgaon, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Respondent

For Applicants	:	Shri Sunil Sahu, Advocate
For State	:	Shri Pawan Kesharwani, Panel Lawyer
For Complainant	:	Shri Samir Singh, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/03/2021

Heard.

1. The applicants have filed this application for grant of anticipatory bail under Section 438 Cr.P.C. as they are apprehending their arrest in connection with Crime No. 39/2016, registered at Police Station-Patthalgaon, District- Jashpur (C.G.) for the offence punishable under Section 420/34 IPC and Section 10 of the Chhattisgarh Protection of Depositors' Interest Act, 2005 (for short "*the Act of 2005*").
2. Case of the prosecution, in brief, is that motivated by applicants' advice, the complainant invested Rs.1 lakh in a chit-fund company which was later on

wound up its business and return, as assured, was not made and in this manner, the complainant was cheated by its agent, officers including the applicants also.

3. Learned counsel for the applicants would argue that though FIR was lodged way back in the year 2016, there is no document collected by the investigating agency to show that present applicants were working as an agent or involved in business of the company. Merely because the applicant extended some help, it cannot be said that the applicants are also responsible for commission of offence under Section 10 of the Act of 2005. The entire amount deposited by the complainant was returned way back in the year 2016 along with equal sum and there is no dispute left with the parties. Therefore, in these circumstances, despite bar created under Section 15 of the Act of 2005, the applicants may be granted benefit of anticipatory bail.
4. On the other hand, learned counsel for the State opposed the application by submitting that bar under Section 15 of the Act of 2005 would at once apply because the complainant has stated in his complaint that the applicants advised and they had also taken the complainant to the office of the concerned company where the complainant made investment, therefore, it prima facie shows that the applicants were engaged in affairs of the financial institution which was collecting funds from the public in the name of giving lucrative return.
5. Learned counsel for the complainant submits that he has received double the total amount invested and, therefore, he has no complaint or grievance remaining as on date against the applicants and therefore, he would not be opposing grant of anticipatory bail to the applicants.
6. I have heard learned counsel for the respective parties.
7. Though there is bar created under Section 15 of the Act of 2005 that anticipatory bail application shall not lie for an offence punishable under the Act of 2005, the allegation being prima facie not made out against the applicants, in view of provision contained in Section 10 of the Act of 2005, criminal liability is on the financial establishment including its Promoters,

Partners, Director, Manager or any other persons or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment. Even though FIR was lodged way back in the year 2016, even after almost five years, there is nothing in the case diary to show that present applicants were engaged either as an employee or agent and in that capacity, they had extended corporation to the complainant. In the absence of any such material, prima facie case does not appear to be made out against the present applicants and, therefore, applying the principles laid down in the case of **Prathvi Raj Chauhan Vs. Union of India & Ors.** (2020) 4 SCC 727 which is related to applicability of bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against grant of anticipatory bail, in the absence of prima facie case made out, bar under Section 15 of the Act of 2005 may not apply in this case against grant of anticipatory bail, particularly taking into consideration the stand taken by the complainant that he has received double the amount invested by him way back in the year 2016. Taking into consideration this, as an exceptional circumstance, I am inclined to grant anticipatory bail to the applicants.

8. Accordingly, this application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail on each of them furnishing a personal bond in the sum of Rs.15,000/- along with one local surety for the like amount to the satisfaction of the arresting officer, with following further conditions that: -

(i) the applicants shall make themselves available for interrogation by the police officer as and when required;

(ii) 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 from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge