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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.978 of 2021**

- Santulal Sonkar, S/o Late Shri Taturam Sonkar, aged about 58 years, R/o Sonkar Plaza, Golbazar, Gandhi Ward, Mungeli, District Mungeli (CG)

Applicant**Versus**

- State of Chhattisgarh, through In-charge Police Station City Kotwali, Mungeli, District Mungeli (CG)

---- Non-applicant**MCRCA No.1009 of 2021**

- Vikash Patle, S/o Shri C.B. Patle, aged about 40 years, Chief Municipal Officer, Sargaon, R/o Ayodhya Nagar, Police Station Civil Line, Bilaspur, District Bilaspur (CG)

Applicant**Versus**

- State of Chhattisgarh, through Station House Officer, Police Station City Kotwali, Mungeli, District Mungeli (CG)

---- Non-applicant**MCRCA No.1054 of 2021**

- Wasim Khan, S/o Shahnawaj Khan, aged about 33 years, R/o Ward No.07, Akaltara, Tehsil Akaltara, District Janjgir Champa (CG)

Applicant**Versus**

- State of Chhattisgarh, through S.H.O., Police Station City Kotwali, Mungeli, District Mungeli (CG)

---- Non-applicant**&****MCRCA No.1059 of 2021**

- Siyaram Sahu, S/o Shri Milauram Sahu, aged about 48 years, R/o Maharana Pratap Ward, Pendarakapa, Mungeli, PS Mungeli, District Mungeli (CG)

Applicant**Versus**

- State of Chhattisgarh, through Station House Officer, Police Station City Kotwali, Mungeli, District Mungeli (CG)

---- Non-applicant

M.Cr.C. (A) No.978/2021

For Applicant	:	Mr. Anand Shukla, Advocate
For Non-applicant	:	Mr. D.P. Singh, Dy. Advocate General with Mr. V. Bajpai, Govt. Advocate
For Objector	:	Mr. Saurabh Sharma, Advocate.

MCRCA No.1009 of 2021

For Applicant : Mr. Achyut Tiwari, Advocate
 For Non-applicant : Mr. D.P. Singh, Dy. Advocate General
 with Mr. V. Bajpai, Govt. Advocate

MCRCA No.1054 of 2021

For Applicant : Mr. Manoj V Paranjpe, Advocate
 For Non-applicant : Mr. D.P. Singh, Dy. Advocate General
 with Mr. V. Bajpai, Govt. Advocate
 &

MCRCA No.1059 of 2021

For Applicant : Mr. Vivek Kumar Agrawal, Advocate
 For Non-applicant : Mr. D.P. Singh, Dy. Advocate General
 with Mr. V. Bajpai, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****7/9/2021**

1. Since above four anticipatory bail applications arise out of same crime number, they are being heard together and disposed of by this common order.
2. Applicants have preferred above applications under Section 438 of CrPC for grant of anticipatory bail to them as they apprehend their arrest in connection with Crime No.372/2021 registered at Police Station- City Kotwali, Mungeli, District Mungeli (CG) for commission of offence punishable under Sections 420, 120B, 409, 467, 468, 471, 34 of the Indian Penal Code.
3. Case of the prosecution, in brief, is that one complaint is made to the Collector, District Mungeli by some Councillors of Municipal Council, Mungeli making allegation of corruption in Municipal Council, Mungeli. It was alleged that without constructing RCC drain in Ward No.8, Mungeli from house of Horilal Sharma to the Stadium through boundary wall of garden (300 meter), amount of Rs.1321818/- was withdrawn. On this complaint, the Collector directed the Sub Divisional Officer (Revenue), Mungeli to conduct an enquiry and submit report. On receipt of report that for construction of CC drain contract was awarded to M/s Sofiya Constructions and Suppliers, Akaltara; amount has been withdrawn without carrying out construction work of CC drain in Ward No.8,

Mungeli from house of Horilal Sharma to the stadium through boundary wall of garden, the Collector directed for registration of FIR with the concerned police station against erring officials and persons. Accordingly, report is lodged based on which aforementioned crime is registered against the President, the then Chief Municipal Officer, Sub-Engineer; Assistant Revenue Inspector, Accountant of Municipal Council, Mungeli and also against M/s Sofia Construction & Suppliers, Akaltara to whom contract was awarded.

4. Mr. Anand Shukla, learned counsel for applicant Santulal Sonkar in M.Cr.C. (A) No.978/2021 would submit that applicant has been falsely implicated in crime in question due to political rivalry. Applicant has no role to play in inspection and measurement of work carried out by Contractor. He being the President of Municipal Council is joint signatory of cheques amounting to more than Rs.50,000/-. Referring to the Chhattisgarh Municipal Accounts Rules, 1971, particularly Rules 148 & 149, he pointed that as per Rule 149 a duty is cast upon the Municipal Engineer, in case Municipal Engineer is not posted, then it is Chief Municipal Officer who has to complete submission report. He further pointed out that under Rule 148 of the Chhattisgarh Municipal Accounts Rules, 1971, the bills are to be submitted by Contractor to the Officer-in-charge of work. After taking measurement and examination, the Officer-in-charge is required to forward the same through Municipal Public Works Department to the Chief Municipal Officer, who, in turn, will forward the same to the Accountant. After checking of bills with measurement book and other payments made as well as agreement and value of work, the bills are to be placed before the Chief Municipal Officer through Accounts Officer or directly. If amount of bill is more than limit of sanctioning authority of the Chief Municipal Officer, then, as per rule, the Chief Municipal Officer is required to forward bill to the President of Municipal Council with his recommendation. In case at hand, the then Chief

Municipal Officer forwarded file to applicant-President of Municipal Council, Mungeli for payment. Applicant has approved bill with a note that payment be made in accordance with law. Under the Rules of 1971 it is not the duty of President to inspect each and every work of Municipal Council. Considering the records placed before him along with measurement and value of work done, applicant has approved bill and signed cheque prepared by competent officer. He further submits that on receipt of show-cause notice issued by the Collector, District Mungeli, the irregularity came to knowledge of applicant. He submitted reply to show-cause notice mentioning that illegality and corruption committed was not within his knowledge. Relying upon proceedings forwarded to him by the then Chief Municipal Officer, he approved bill for payment. Looking to the nature of allegations and limited role of applicant, he may be extended benefit of anticipatory bail.

5. Mr. Achyut Tiwari, learned counsel for applicant Vikash Patle in M.Cr.C. (A) No.1009/2021 would submit that on 11.9.2020 applicant was posted as Chief Municipal Officer, Nagar Panchayat Sargaon. The Chief Municipal Officer, Municipal Council, Mungeli proceeded on long leave i.e. from 10.2.2021 to 1.3.2021, therefore, on 9.2.2021 applicant has been given additional charge of Chief Municipal Officer, Municipal Council, Mungeli. Award of contract and other proceedings were drawn prior to handing over of charge of Chief Municipal Officer by applicant. On submission of running bill before him for payment, he put a note on running bill that file be placed after physical verification. Thereafter file was forwarded to the President, Municipal Council, Mungeli on 19.2.2021. He contended that work was being supervised on spot by the Sub-Engineer and it is Sub-Engineer who prepared running bills and placed the file before him along with copy of running bills prepared by him. Applicant has no power to approve/allow running bills to the tune of Rs.13,21,818/-, therefore, the same

were forwarded to the President for approval. He submits that applicant is not involved in any manner in commission of crime in question. Applicant is a government servant, hence he may be extended benefit of anticipatory bail.

6. Mr. Manoj V Paranjpe, learned counsel for applicant Wasim Khan (Contractor) in M.Cr.C. (A) No.1054/2021 would submit that as per terms and conditions of agreement entered between applicant and Municipal Council, Mungeli, it is for the Municipal Council to hand over vacant and clear site / place of work. As the private land owner objected to construction of drain on his land, the work of construction of drain in Ward No.8 from house of Horilal Sharma to Stadium through boundary wall of garden could not be started. The officials of Municipal Council apprehending that delay in construction may lead to lapse of funds, asked the applicant to carry out construction work at some other place. Applicant carried out construction work at some other place, submitted bill for that work and accordingly payment of Rs.13,21,818/- was made to him. It is not that applicant has withdrawn amount without carrying out any construction work. He submits that offence under Sections 409, 467, 468, 471 of IPC would not be attracted against applicant as he has neither prepared any note sheet, nor manipulated record of Municipal Council and even he is not an employee of Municipal Council or government. He submits that the entire investigation is complete, custodial interrogation of applicant is not required, hence applicant may be extended benefit of anticipatory bail. He relied upon decision of Hon'ble Supreme Court dated 16.8.2021 in Cr.A. No.838/2021 arising out of SLP (Cr) No.5442/2021, parties being Siddharth vs. State of UP & another.
7. Mr. Vivek Agrawal, learned counsel for applicant Siyaram Sahu in M.Cr.C. (A) No.1059/2021 would submit that applicant was posted as Assistant Revenue Inspector in Municipal

Council, Munegli till 3.2.2021. On 4.2.2021, due to his transfer, the applicant was relieved from Municipal Council, Mungeli to join at the transferred place i.e. office of Nagar Panchayat Nawagarh, District Bemetara. On 5.2.2021 applicant handed over charge of Assistant Revenue Inspector and also entire records to one Shri Devendra Dewangan, Assistant Revenue Officer, Municipal Council Mungeli. Approval was accorded by the Chief Municipal Officer on 19.2.2021. There is nothing on record to show that applicant in any manner has prepared bills or recorded any note sheet. Even otherwise, role of Assistant Revenue Inspector is only to forward files. Hence, applicant may be released on anticipatory bail.

8. On the other hand, Mr. Devendra Pratap Singh, learned Deputy Advocate General with Mr. Vimlesh Bajpai, Government Advocate for the State submits that on receipt of complaint, the Collector ordered for preliminary enquiry to be conducted by the Sub-Divisional Officer (Revenue), Mungeli. In the course of preliminary enquiry, spot panchnama was prepared in presence of the Sub-Divisional Officer (Revenue), Tahsildar and local residents. The Sub-Divisional Officer (Revenue) has reported to the Collector that on spot inspection, it revealed that construction work of RCC drain in Ward No.8 from the house of Horilal Sharma to the Stadium through boundary wall of garden has not been done. He submits that total sanctioned value of work in question was Rs.17 Lakhs, out of which, amount of Rs.13,21,818/- is withdrawn based on first running bill. It is pointed out that in the proceedings / note sheets of placing file before the Chief Municipal Officer for payment of bills against construction work, blank space is left near Measurement Book No. and Page No. It is also pointed out that note sheets so far collected by Investigating Agency from the office of Municipal Council, Mungeli would show that on 14.1.2021 it is recorded that lay out of work be provided at the earliest to the

Contractor, as requested by Contractor. On the same day, it is further recorded that proposed site is a private land and that file be placed before the Municipal Council for change of site. Proceedings dated 14.1.2021 bear signature of Chief Municipal Officer and also of the President for placing file before Council. It also bears signature of Assistant Revenue Inspector. On 14.1.2021 it came to their knowledge that work could not be started. Without putting the file before the Members of Council, on 19.2.2021 approved for the payment of large amount of Rs.13,21,818/-. He submits that looking to fact that the offence is committed by all accused persons in connivance, offence under Section 120B of IPC is also registered against applicants. He submits that matter is still under investigation and further material are to be collected by the Investigating Agency. Hence, the applicants are not entitled for grant of anticipatory bail.

9. Mr. Saurabh Sharma, learned counsel for Objector in M.Cr.C. (A) No.978/2021 would submit that upon preliminary enquiry conducted by the Sub-Divisional Officer (Revenue) along with other State officials, as directed by Collector, the Enquiry Officer submitted report that subject work i.e. construction of CC drain in Ward No.8 from the house of Horilal Sharma to the Stadium through boundary wall of garden, was not done. He further submits that even the Contractor before this Court has made submission that construction of CC drain, as awarded to him under the contract, was not started because some private land is coming on the way and amount of Rs.13,21,818/- was paid to him against construction of CC drain which is subject in issue in these applications. Applicant Santuram Sonkar challenged the memo issued by the Collector for registration of FIR in WPC No.3055/2021, which was dismissed vide order dated 2.8.2021 and submissions made on behalf of petitioner therein referring to provisions of Accounts Rules 1971, were not accepted. He further pointed out that other criminal case is also pending consideration

against applicant Santuram Sonkar bearing Crime No.154/2017 for offence under Section 409, 420, 467, 120B of IPC. He submits that applicants in connivance have committed the crime, hence they are not entitled for grant of anticipatory bail.

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

11. The Councillors of Municipal Council, Mungeli made a complaint to the Collector that amount sanctioned for construction work of CC Drain in Ward No.8 from the house of Horilal Sharma to the Stadium through boundary wall of garden has been withdrawn without carrying out that work. The Collector directed the Sub-Divisional Officer (R) to enquire into allegation made in complaint and submit report. After conducting enquiry, the Sub-Divisional Officer (R), Mungeli submitted his report that upon spot inspection it is found that construction work of CC drain from the house of Horilal Sharma to the Stadium through boundary wall of garden has not been done, but payment of Rs.13,21,818/- has been made to the Contractor against that work. Allegation was found to be correct.

Statement of applicant-Contractor that construction work of contract awarded to him could not be started on account of objection raised by private land owner on whose land construction of drain was to be made. In view of oral directions of Municipal officials, applicant-contractor has done construction work at some other place for which he submitted bills and payment was made to him. But in support of this submission, learned counsel for applicant Contractor could not be able to place any material and evidence on record to show that any other work of Rs.13,21,818/- was done by him. From the submission made by learned counsel for applicant Contractor itself it is clear that construction work of CC drain for which contract was awarded to applicant contractor was

not done by him.

To make payment of more than Rs.50,000/-, as argued by Mr. Anand Shukla, learned counsel for appellant Santuram Sonkar, signature of Chief Municipal Officer and President of Municipal Council is required under the law. It is for the Chief Municipal Officer to verify proceedings placed before him. In the proceedings placed before him, as pointed by learned State Counsel, there is no mention of number of measurement book or page number. Thus, submission of learned counsel for applicant Vikas Patle, the then Chief Municipal Officer, cannot be accepted that applicant is not involved in crime as he has mentioned for placing the files after physical verification of spot and thereafter he forwarded file for approval to the President, Municipal Council.

Likewise, submission made by learned counsel for applicant Santulal Sonkar, President of Municipal Council, Mungeli that applicant was not aware about non-execution of work as he is not required to inspect site, is also not appearing to be correct from the note sheets available on record. On 20.1.2020 there is endorsement by President for placing file before Municipal Council as proposed site is a private land, after considering that work could not be started because proposed land is a private land. The Chief Municipal Officer and President were well aware of non-starting of construction of CC drain, but even then applicant Santuram Sonkar has approved payment of Rs.13,21,818/- to the contractor for that construction work and signed the cheque.

There is signature of applicant Assistant Revenue Inspector in the proceeding dated 14.1.2020 and also in the proceeding recorded for sanction of bill of Rs.13,21,818/-.

12. Considering the nature of allegations, material available in case diary and fact that upon enquiry by the Sub-Divisional Officer (Revenue), Mungeli on the direction of Collector,

Mungeli, it is found that payment of Rs.13,21,818/- is made without execution of any work of construction on spot, proceeding of order sheet for change of place of construction of drain dated 20.1.2020 bear signature of President, I am not inclined to grant anticipatory bail to applicants in above bail applications. Accordingly, all the bail applications are rejected.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-