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HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 1074 of 2021**

- Rakesh Kumar Mishra S/o late Shri Harish Mishra, aged about 44 years, occupation private service R/o Namnakala Ambikapur PS and Tahsil Ambikapur District Surajpur, Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: SHO police station Jainagar, District Surajpur, Chhattisgarh

-----Non-applicant

For Applicant : Mr. Salim Kazi, Advocate.
For Non-applicant- State : Ms. Anjali Singh Chouhan, P.L.

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****08/09/2021**

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. 22/2019 registered at Police Station Jainagar, District- Surajpur (C.G.) for the offence punishable under Section 409 of IPC.
2. As per the case of prosecution, complainant sent her truck-trailer to Shivam Motors garage for its service. When the truck was taken by its driver to Shivam Motors, employees present there have asked the driver that in the garage, only engine part (horse) is permitted to enter and not dala (trailer) part. Upon which driver of truck have detached the dala from horse outside the garage and left the horse in the garage for its repair/ service. Upon inspection of horse fault of sensor has been intimated to driver, upon which he intimated the same to owner of truck that repairing will take some time as the part which was damaged was not available. Driver stayed there for 3-4 days and thereafter went back to the house of owner of truck to intimate him that repairing will take some time and thereafter driver was engaged in driving another truck. After sometime when complainant was crossing Shivam Motors found that their dala

which was parked outside the garage was not there. Complainant enquired with employees of Shivam Motors on which they said that they are not aware of whereabouts of dala. Thereafter, complaint was filed before the Superintendent of Police on 23.10.2018 and subsequently FIR was registered on 29.01.2019 against applicant.

3. Mr. Salim Kazi, learned counsel for the applicant would submit that the company where the applicant is an employee is of sales and service of Tata motors trucks. When engine and the body of truck is separable then it is only the engine which is to be taken into garage for its service/ repair. It is the driver of truck and owner who left the body of truck outside garage on their own risk for which applicant being employee of Tata Motors or other employees are not responsible. The fact of time to be taken for repairing due to unavailability of part which was damaged was intimated to driver as well as it was also in the notice of complainant but they have not taken care of dala parked outside garage. He submits that it is the allegation in the FIR and the complaint that they have parked body or truck/ dala outside the garage. It was not taken by Shivam Motors along with engine, hence, the offence as alleged would not be made out. He further submits that complainant has also filed an application under Section 35 of the Consumer Protection Act which is pending consideration and the offence is alleged only to mount pressure upon applicant and employer to get some money.
4. On the other hand, Ms. Anjali Singh Chouhan, learned State counsel opposes the submissions made by learned counsel for the applicant and submits that when the truck trailer/ body is taken for its repair/ service to Shivam Motors, driver of truck was asked to detach the body from horse and therefore body of trailer was parked outside the garage and after 3-4 days it was found missing from outside the garage. She read-over the statement of Sukhdev/ driver of truck and argued that driver of truck was there for few days but thereafter he left the place and returned to house of owner as the part which was damaged was not available at that time and it would take some time. After that dala of the truck was found missing which was parked outside the Shivam Motors, hence, there is involvement of applicant in the crime.
5. I have heard learned counsel for the respective parties.

6. Taking into consideration, the nature of allegations, material available in the case diary and the fact that it is a case of complainant herself that dala was parked outside the garage of Shivam Motors in the open public place, without commenting anything on merits of the case, I am inclined to allow the bail application.
7. Accordingly, application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question (22/2019), 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 concerned arresting Officer. Applicant shall also abide by the following conditions:
- (i) that the applicant shall make himself available for interrogation before the Investigation Officer as and when required;
 - (ii) that the applicant 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 applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge