

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1089 of 2021**

Jaipal Singh Gulati S/o Shri Preetam Singh Gulati, aged about 44 years, R/o Purana Bus Stand, Korba District Korba Chhattisgarh (Director of Paynet Brandband Services Private Limited).

---- Applicant

Versus

State of Chhattisgarh through the Station House Officer, Police Station Manendragarh, District Koriya Chhattisgarh.

---- Non-applicant

 For Applicant : Shri Abhisek Sinha, Senior Advocate
 with Shri Aditya Pandey, Advocate

For Non-applicant/State : Shri B.P. Banjare, Dy. Govt. Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****16.09.2021**

1. The applicant has preferred this first bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as he is apprehending his arrest in connection with Crime No.230 of 2020, registered at Police Station Manendragarh, District Koriya, Chhattisgarh for offence punishable under Sections 409, 420, 120-B with 34 of Indian Penal Code.
2. Case of the prosecution in brief, is that, complainant lodged a written report on 04.07.2020 stating therein that complainant entered into an oral contract with Paynet Broadband Services Private Limited (Party No.2) for supply of 25,000 set-up box. Each set-up box having the value of Rs.1,560/-. Contract was oral. Based on the order of contract, he deposited Rs.1 Lac vide

cheque No.0039/18 with Party No.2. thereafter, as stated by other co-accused Manoj Ubweja and Santosh Pandey, he has deposited the amount with Party No.2 and other Company i.e. Vande Matram Cable Netwrok Company (Party No.3). He has deposited total amount of Rs.3,86,31,000/- with Party No.2 and Party No.3. Party No.2 supplied 12,000 set-up box having its value of Rs.1,87,20,000/-, but have not supplied rest of 13,000 set-up box as agreed even when amount of Rs.1,99,11,000/- is deposited with Party No.2 and Party No.3. When complainant asked them to supply the balance set-up box, they gave evasive reply. He has also contacted with the officials of the Company at Delhi but they also gave evasive reply to complainant. Complainant was cheated by applicant and other co-accused persons, neither supplied the remaining set-up box nor refunded Rs.1,99,11,000/- to the complainant. Based on the complaint, First Information Report was registered on 06.07.2020 for the aforementioned offences against the applicant and other six co-accused persons.

3. Shri Abhishek Sinha, learned senior counsel for the applicant would submit that from perusal of contents of First Information Report itself, it is apparent that allegation levelled against the applicant and other co-accused persons is that applicant entered into oral contract with Party No.2. As per oral contract, complainant deposited certain amount and part of agreed contract has been complied with by supplying 12,000 set-up box to the complainant. He further submits that apart from the set-up box,

Party No.2 has supplied other articles like cable, remote etc. and total material supplied by the Company is more than the amount as allegedly deposited by the complainant and Company has made demand of balance of amount outstanding on the complainant, which was not paid to the Company. He pointed out that complainant has not filed complaint with clean hands, he has suppressed material facts that complainant himself is one of the partner of Party No.3. Complainant entered into new partnership and executed partnership deed along with three other partners including applicant as Partner No.4 on 16.04.2019, which is after the period of commission of alleged crime as stated by the complainant against the accused persons therein including the applicant. It is contended that there was no occasion for the complainant to enter into the fresh partnership deed with the applicant when in any manner applicant has cheated the complainant. It is further contended that in the new partnership deed executed on 16.04.2019, applicant No.4 is the major share holder of 40% and other three partners are having the share of 20% each, which itself shows that allegation levelled against the applicant is false and frivolous. He argued that dispute is a business dispute between the complainant and applicant of settling of accounts. From the contents of complaint itself, it is apparent that the dispute is of civil nature. There is no criminality attached on the action of applicant even there is no specific allegation levelled against the applicant that he has transferred any amount to applicant in person and applicant has misappropriated any amount deposited by complainant with the

Company. He further argued that to constitute the offences alleged against him, there should be some individual act of applicant, in the complaint which is lacking. For commission of cheating, there should be an intention of person against whom the allegation of cheating is alleged that he has the intention to cheat the person from inception of the entering into the contract, which is also not there. Allegations are that complainant deposited money with Company for supply of goods part of which he received. Goods supplied to the complainant is of more value than the amount deposited by him. Amount is outstanding against complainant. He places reliance upon the judgment rendered by Hon'ble Supreme Court in case of **Uma Shankar Gopalika v. State of Bihar and Another** reported in **(2005) 10 SCC 336**. He further submits that as per the allegations levelled in the complaint and First Information Report, all the deposits are being made in the account of the Party No.2 and further contract is also with Party No.2, hence, applicant cannot be prosecuted in individual capacity. He places reliance upon the judgment passed by Hon'ble Supreme Court in case of **Sushil Sethi and Another v. State of Arunachal Pradesh and Others** reported in **(2020) 3 SCC 240** in support of his submission. He lastly pointed out that one of the co-accused, by name, Randhir Pandey has been enlarged on regular bail by co-ordinate Bench of this Court in MCRC No.632 of 2021 vide order dated 02.06.2021.

4. Per contra, Shri B.P. Banjare, learned Deputy Government Advocate representing the State opposing the submissions made

by learned senior counsel for the applicant, would submit that period of commission of offence is from 01.01.2015 to 03.06.2018. Complainant in view of oral contract between complainant with Party No.2 has deposited huge amount of Rs.3,86,31,000/- and complainant has supplied the set-up box having value of Rs.1,87,20,000/- only. Major portion of amount is still lying with Party No.2, of which, applicant is one of the Director. He further submits that Party No.2 neither supplied remaining 13,000 set-up box, nor refunded the money.

5. Upon putting specific query with regard to nature of contract, cost of material to be supplied and total quantity of material to be supplied is written and signed by the parties and available in the case diary or not, learned State counsel submits that no such document is available in the case diary at present.
6. I have heard learned counsel for the parties.
7. Taking into consideration entire facts and circumstances of the case, nature of allegations against the applicant, particularly the fact that as per case of the complainant himself, out of amount deposited by him, Party No.2 has supplied 12,000 set-up box and for balance amount of Rs.1,99,11,000/-, Party No.2 has not supplied the set-up box as orally agreed, whereas case of the applicant projected is that they have supplied the articles/products of value more than the amount deposited by the complainant. Except oral allegation there is no material to show that applicant has not supplied the articles of the value alleged, further considering that Party No.2 has supplied the products. In

complaint it is mentioned that part of goods was supplied to complainant, without commenting anything into the merits of the case, I am inclined to release the present applicant on anticipatory bail.

8. Accordingly, bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on anticipatory bail on his furnishing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like sum to the satisfaction of the arresting officer and he shall be abide by the following conditions :-

(i) he shall make himself available for interrogation by a police officer as and when required;

(ii) he 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.

(iii) he shall not influence the witnesses during pendency of the trial.

Certified copy as per Rules.

Sd/-
(Parth Prateem Sahu)
Judge