

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1134 of 2021**

Kamal Tamboli S/o Late Dhaniram Tamboli, Aged About 68 Years, R/o Ward No. 18, Tahsil and Police Station Mahasamund, District Mahasamund, Chhattisgarh.

---- Applicant**Versus**

The State of Chhattisgarh, through Station House Officer, Police Station Mahasamund, District Mahasamund Chhattisgarh.

---- Non-applicant

For Applicant : Shri Rishikant Mahobia, Advocate

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

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****17.09.2021**

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.239 of 2019, registered at Police Station Mahasamund District Mahasamund (C.G.), for offence punishable under Sections 420, 34 of Indian Penal Code.
2. Case of the prosecution in brief, is that, based on power of attorney executed by owners of land in favour of applicant, applicant executed sale deed on 23.09.2017 in favour of one Arjun Das Wasvani. The Tasildar, Mahasamund vide its order dated 10.01.2018 passed an order stating that Khasra No.532/1 was acquired for the purpose of construction of canal in the year 1991-92 and therefore, name of State Government be recorded in

revenue record of Khasra No.532/1 as owner. This order was challenged by Arjun Das Wasvani (purchaser of the land) before the Sub Divisional Officer (Revenue). Sub Divisional Officer (Revenue) while dismissing the appeal, further directed for registration of First Information Report against the ailing persons. Based upon which, Tahsildar lodged a report to the concerned Police Station on 15.05.2019 and First Information Report was registered on 17.05.2019 against the present applicant and seven other co-accused persons, who are owners of the land.

3. Shri Rishikant Mahobia, learned counsel for the applicant would submit that name of applicant and other co-owners were recorded in the revenue records as owner of the land of Khasra No. 532/1. Applicant sold the land by registered sale deed on 23.09.2017. He further submits that First Information Report is registered based on the order passed by Sub Divisional Officer (Revenue), which was challenged before the Commissioner by the purchaser of land and Commissioner upon considering the entirety of the facts and circumstances of the case and evidence available on record, has set aside the order of Sub Divisional Officer (Revenue) and remitted back the case to the Tahsildar for passing fresh orders. It is contended that once the order of Sub Divisional Officer (Revenue) affirming order of Tahsildar and directing for registering First Information Report is set aside, it cannot be said at present that applicant has committed any cheating or fraud by selling the land recorded in his name and other owners. It is further contended that order of Commissioner was further

challenged before the Board of Revenue by one Bharat Lal and Board of Revenue upheld the order passed by Commissioner. He argued that in view of aforementioned facts of the case where orders of Tahsilar and Sub Divisional Officer (Revenue) itself have been set aside, applicant may be enlarged on anticipatory bail. It has been argued that co-accused persons have already been enlarged on bail in MCRCA No.1065 of 2019 and MCRCA No.168 of 2018 vide order dated 09.08.2019 and 03.05.2018 respectively. He further pointed out that other three co-accused persons have been enlarged on bail in MCRCA No.1722 of 2019 vide order dated 16.01.2020.

4. Per contra, Shri B.P. Banjare, Deputy Govt. Advocate for the State opposing the submissions made by learned counsel for the applicant, would submit that as per case of prosecution, applicant after accepting the compensation of land in acquisition proceedings, further sold the land to private persons knowing that he is not owner of the land, hence, he is not entitled for the benefit under Section 438 of Cr.P.C.
5. I have heard learned counsel for the parties.
6. Taking into consideration entire facts and circumstances of the case, nature of allegations, age of the applicant to be 68 years, orders passed by Tahsildar and Sub Divisional Officer (Revenue), on the basis of which, First Information Report was lodged, are set aside by the Commissioner and order of Commissioner has been upheld by Board of Revenue and further considering the fact that other co-accused persons have been enlarged on anticipatory

bail, without commenting anything into the merits of the case, I am inclined to release the present applicant on anticipatory bail.

7. 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