

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 1113 of 2021**

- Gurumukh Singh S/o Shri Gurucharan Singh, aged about 51 years, R/o House No. 34/ 1555, Gurunannak Nagar, Raipur, Office-Goyal Complex, Opp. Minocha Petrol Pump, GE Road, Telibandha, Raipur Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: SHO, P.S. Pandari Mowa Raipur, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Ashish Shrivastava, Sr. Adv. with Mr. Rohishek Verma, Adv.
For Non-applicant- State	: Mr. B.L. Sahu, Panel Lawyer.

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****15/09/2021**

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. 278/2017 registered at Police Station Pandri Mowa, District- Raipur (C.G.) for the offence punishable under Section 420/34 of IPC.
2. As per the case of prosecution, one Suryakant Tiwari, Director of M/s Ganga Construction has lodged a written report on 20.09.2017 making allegations that the complainant is engaged in the business of construction, he has engaged one Jatashankar Singh @ Pappu Singh as petty contractor for completion of work taken by him. Complainant has handed over five cheques bearing number 034226, 034227, 034228, 034229 and 034230 of Punjab National Bank. Jatashankar then left the work incomplete and fled away, when complainant asked Jatashankar Singh about the cheques given by him, it is stated by Jatashankar Singh that cheques have been lost. Complainant has closed his bank account of Punjab National Bank on 07.12.2016. When complainant received notice of the complaint filed under Section 138 of Negotiable Instrument Act from the Court, it revealed

that the cheques given by complainant to Jatashankar have been misused by Jatashankar Singh and two others ie. present applicant and Nandkishor, proprietor of Pooja Traders, thereafter, report was lodged to the concerned police station.

3. Mr. Ashish Shrivastava, learned senior counsel for the applicant would submit that from the pleading of complaint itself it is clear that the complainant is engaged in business of construction. He has engaged petty contractor to complete the work taken by him on contract for the purpose of execution of work. He handed over five cheques to Jatashankar. Applicant is engaged in the business of material supplier. Applicant has supplied material in the name of Ganga construction on 21.04.2016, 30.04.2016 and 07.05.2016. Bills of the same are placed on record as Annexure A-2. In lieu of material supplied by applicant a cheque was issued in favour of Cheema Local Carrier construction owned by applicant on 15.11.2016. The said cheque was submitted in his bank account for its clearance which was dishonored and returned back on 18.01.2017. Thereafter, applicant issued legal notice addressing Ganga Construction's proprietor Suryakant Tiwari (complainant). When the demand of amount of cheque was not satisfied, complaint under Section 138 of Negotiable Instrument Act was filed. Complainant only after receiving of notice of complaint case from the Court has lodged report with ill motive only to pressurize applicant. He further submits that the applicant has not committed any offence as alleged against him, hence, he may be enlarged on anticipatory bail. However, upon putting specific query to learned senior counsel with regard to status of proceedings in the crime number 278/2017, he submits that after getting the knowledge of registration of case against him, applicant immediately filed application for grant of anticipatory bail before the court below which came to be dismissed by impugned order. Learned counsel further submits that similar allegation is made in the FIR. One Nandkishor, proprietor of Pooja Traders material supplier who also filed proceedings under Section 138 of Negotiable Instrument Act before the court of competent jurisdiction but on account of compromise took place between complainant and Nandkishor, the said proceedings was withdrawn by Nandkishor vide order dated 12.08.2021.

4. On the other hand, Mr. B.L. Sahu, learned State counsel opposes the submissions made by learned counsel for the applicant and submits that applicant along with two other co-accused persons have misused the cheques. He submits that the complainant has not issued the cheque to the applicant. Five cheques as per the complaint were handed over to petty contractor engaged by him by name Jatashankar Singh and applicant in connivance with Jatashankar has misused the cheques. FIR was lodged against the applicant and two other persons way back on 20.05.2017. Applicant approached the court for the first time by way of filing anticipatory bail application in the year 2021, hence, applicant is not entitled for benefit under Section 438 of CrPC. However upon putting specific query with regard to proceedings drawn by police after registration of FIR on 20.09.2017, he submits that from the case diary there is no mention of any action taken by police against applicant prior to 2021.
5. I have heard learned counsel for the respective parties.
6. Taking into consideration, the nature of allegations levelled in the complaint against applicant and two other persons. Applicant has placed on record Annexure A-2 which are the bills towards supply of material to Ganga Construction. After dishonoring the cheques on 18.1.2017 legal notice was issued thereafter the complaint case under Section 138 of Negotiable Instrument Act was filed before the court of competent jurisdiction. The fact that co-accused Nandkishor on 12.08.2021 withdrawn proceedings filed under Negotiable Instrument Act by him against complainant mentioning that settlement has been arrived between the parties, 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 (278/2017), 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

Pawan