

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 1137 of 2021**

- Rishi Dev S/o Alguram aged about 38 Years R/o At - B Type, Charcha Colony, P.S.- Charcha, District - Koriya, Chhattisgarh.

-----Applicant**VERSUS**

- State of Chhattisgarh through: SHO, P.S. Vishrampur, District Surguja, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Lukesh Kumar Mishra, Advocate
For Non-applicant- State	: Mr. Vimlesh Bajpai, Govt. Adv.

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****29/09/2021**

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. 100/2013 registered at Police Station Vishrampur, District Surjapur (C.G.) for the offence punishable under Sections 387, 507 of IPC.
2. Case of the prosecution in brief, is that, applicant from his mobile phone has given call on mobile phone of complainant and asked him to pay installments of Finance Company of Loader Machine and also to transfer the Loader machine in his name otherwise he would kill the complainant and his son. Complainant lodged a written report to the concerned police station on 27.04.2013. Based on the report, FIR was registered on 17.05.2013. Applicant did not participate in the investigation, hence challan was filed recording proceedings under Section 299 of CrPC. Bailable warrant was issued by the trial Court which also could not be served upon applicant and thereafter

permanent arrest warrant was issued on 06.09.2018. Application for grant of anticipatory bail on 09.04.2021 came to be rejected by the impugned order on the ground that the applicant is absconding from proceedings since long.

3. Mr. Lukesh Kumar Mishra, learned counsel for the applicant would submit that applicant and complainant were partners in the business of construction. There was some dispute between them with regard to money, hence, false complaint was registered against applicant. After registration of FIR, parties entered into the compromise and therefore the applicant was of the view that the matter reported against him might have been closed. No notice was served by the Investigating Agency nor bailable warrant issued by the trial Court was served upon him at any point of time. He further submits that apart from it, even if allegations levelled against applicant is to be taken into consideration as it is, no offence as alleged against applicant is made out as there was no transfer of any valuable security or any property to him. In the FIR and the statement of complainant, it is mentioned that there was business relationship between applicant and complainant. The complainant has executed an affidavit on 07.04.2021 before the Notary, Surajpur, which was placed before the trial Court in which the complainant has admitted that there was compromise between applicant and complainant, hence, applicant may be enlarged on anticipatory bail. He submits that applicant undertakes that he will appear before the trial Court on each and every date fixed before it. Learned counsel submits that the trial Court has not drawn any proceeding under Section 82 of CrPC, hence, applicant cannot be declared to proclaim absconder. Trial Court has dismissed the bail application holding applicant to be absconder which is not sustainable. In support of his contention, learned counsel

places his reliance on the judgment passed by Hon'ble Supreme Court in **Gian Singh v. State of Punjab and another**, LAWS(SC)-2012-9-50/CRLR(SC)-2012-0-883 and **State of Madhya Pradesh v. Pradeep Sharma** passed in Cri.Appeal No. 2049/2013; judgment of Hon'ble High Court of Chhattisgarh in **Suresh Chandra Khandelwal v. State of Chhattisgarh** passed in MCRCA No. 19/2020; judgment of High Court of Madhya Pradesh in **Balveer Singh Bundela v. State of Madhyapradesh**, passed in MCRC No. 5621/2020 and the verdict of Hon'ble High Court of Patna in **Ramjee Singh v. State of Bihar**, passed in Cri.Revn. No. 92/ 1981.

4. On the other hand, Mr. Vimlesh Bajpai, learned State counsel opposes the submissions made by learned counsel for the applicant and submits that in complaint and FIR there are specific allegations of extortion and threat to kill the complainant and his son. He further submits that the applicant was absconding and therefore charge-sheet has been filed by recording proceedings under Section 299 of CrPC. He submits that while recording proceedings under Section 299 CrPC, there is mention that for the purpose of recording proceedings under Section 82 of CrPC, details of property to be called through concerned patwari. It is reported that he was having no property in his name. He submits that looking to the period of his absconding and the recording of order sheet by the trial Court, applicant is not entitled for relief under Section 438 of CrPC.
5. I have heard learned counsel for the respective parties.
6. Taking into consideration, the nature of allegations, the fact that the complainant and the applicant were partners in the business and they were having commercial relationship. Complainant executed an affidavit on 07.04.2021 before the Notary and stated it to be submitted

before the Court below for its consideration wherein it is mentioned that complainant and applicant have entered into compromise, the submission of learned counsel for applicant that proceedings under Section 82 have not initiated by the Court, 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 (100/2013), 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