

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.1142 of 2021**

1. Manab Paul, S/o Shri Satyendra Nath Paul, aged about 54 years, R/o D-5/21, Gayatri Nagar, Shankar Nagar, Raipur, District Raipur (CG)
2. Manoj Mishra, S/o Shri Vijay Kumar Mishra, aged about 58 years, R/o Gayatri Nagar, Raipur, District Raipur (CG)

---- Applicants**Versus**

- State of Chhattisgarh, through Police Station Incharge Thana Koni, District Bilaspur (CG)

---- Non-applicant

For Applicant	:	Mr. B.P. Sharma, Advocate
For Non-applicant	:	Mr. B.P. Banjare, Dy. Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****22/9/2021**

1. Applicants have preferred this second bail application under Section 438 of CrPC for grant of anticipatory bail as they apprehend their arrest in connection with Crime No.70/21 registered at Police Station Koni, Bilaspur for commission of offence punishable under Section 420, 34 of IPC.
2. Earlier these applicants have filed two separate anticipatory bail applications bearing M.Cr.C. (A) Nos.752/2021 & 753/2021 and the same were dismissed on merits vide common order dated 27.7.2021.
3. Case of the prosecution, in brief, is that on 7.4.2021 complainant Sanjay Kumar Patle lodged complaint stating therein that he was employed as 'Security Guard' by M/s Ideas Inc Management Private Limited Company. Applicants are Directors of that Company. It is further alleged that

complainant is working as Security Guard since 2016. Monthly salary of Rs.10,500/- was being deposited in his bank account. Amount towards GPF and GIS are deducted at times and at times the same are not deducted. This fact was brought to the notice of the Management of Guru Ghasidas University, Koni, Bilaspur on several occasions but no action was taken. Complainant also contacted Shri Anil Kumar Baghel, newly inducted Director of the Company, who informed complainant that thousands of rupees are being deducted towards advance and PF which they have not received at any point of time. A chart of PF & ESIC shown to be deposited occasionally by the Company and deduction of advance amount from salary mentioned in the register shown to them by said Anil Kumar Baghel bears their forged signature. Based on said complaint, instant crime is registered against present applicants.

4. Mr. B.P. Sharma, learned counsel for the applicants would submit that after rejection of first application for grant of anticipatory bail to applicants, this application has been filed only on the ground that some material facts could not be placed before this Court during the course of hearing of previous bail applications i.e. M.Cr.C. (A) Nos.752 & 753 of 2021. He submits that prior to filing of aforementioned applications, applicants have preferred writ petition before the High Court along with relevant documents, which came to be registered as WP(Cr) No.288/2021, a copy whereof is

annexed along with this bail application as Annexure A-3. Considering the grounds raised in writ petition (criminal), notices are issued to respondents therein vide order dated 17.5.2021. Complaint was lodged by Sanjay Patle, an employee of Company working as Security Guard, stating that he was not paid salary in time and salary is being paid to him after deducting amount. Applicants' company is engaged in the business of providing security guards and other manpower to different institutions. Applicants' company is required to deduct amount from salary towards Provident Fund & ESIC. Hence, allegations levelled in complaint are absolutely false and baseless. Initially, in the year 2016, complainant and other employees were recruited by applicants' company and thereafter they were deployed in Guru Ghasidas University, Koni, Bilaspur as Security Guard, House-Keeper, Supervisor, Sanitary Officer, Maali (Gardener) on the agreed payment of wages of Rs.6,396/-, 6,656/-, 7,982/-, 6,396/- respectively. Wages are paid to complainant accordingly, which has been increased with the passage of time. Complainant was getting salary of Rs.10,500/-, as is evident from documents annexed at Page No.116 of this bail application. Complaint was lodged at the instance of one Anil Kumar Baghel, who was inducted as Director in applicants' Company on the assurance that he will invest in the company as at relevant point of time Company was facing financial crisis. When Anil Kumar Baghel did not invest single penny in Company, he was terminated from the post of Director, therefore, he was keeping grudge

against applicants and subsequently he succeeded in getting false complaint lodged through complainant. He submits that complaint is lodged by only one employee of the Company. Allegation of non-payment of provident fund would not attract offence punishable under Section 420 of IPC. If applicants being Directors of Company have committed any violation of any provision of applicable law, then the authority competent under the law can initiate proceeding against applicants. He submits that there is no allegation in FIR as observed in Para-7 of order dated 27.7.2021 (bail rejection order). A bare reading of FIR would make it clear that offence as alleged against applicant would not be made out. Contract with Guru Ghasidas University is already terminated. Applicants have also lodged report in concerned police station against said Anil Kumar Baghel. He further submits that dismissal of first anticipatory bail application on merit will not apply as bar in considering second application for grant of anticipatory bail. In support of aforementioned contention, he places his reliance on the judgements of Hon'ble Supreme Court in **Ravindra Saxena vs. State of Rajasthan** reported in (2010) 1 SCC 684; **Siddharam Satlingappa Mhetre vs. State of Maharashtra & ors** reported in (2011) 1 SCC 694; **Bhaskar Mishra vs. State of Madhya Pradesh** reported in (2011) 14 SCC 765; **Bhadresh Bipinbhai Sheth vs. State of Gujarat & anr** reported in (2016) 1 SCC 152. Reliance is also placed on decision of High Court of Rajasthan (Jaipur Bench) dated 1.4.2005 in Criminal Misc. Second Bail Application

No.783/2005, parties being Ganesh Raj vs. State of Rajasthan & ors.

5. Mr. B.P. Banjare, learned Deputy Government Advocate for the State opposes the submissions made by learned counsel for applicants and submits that first application for grant of anticipatory bail was rejected on merits vide order dated 27.7.2021 and a glance of which would show that counsel representing applicants therein has raised all the grounds, as urged by learned counsel representing applicants in this bail application. He pointed out that prior to filing of first anticipatory bail application, applicants have preferred writ petition (criminal) along with an application for grant of ad-interim relief. Writ petition was admitted for consideration but no order is passed on application for grant of ad-interim relief. He submits that complainant was working as Security Guard in the Company of which applicants are Directors; he lodged complaint levelling specific allegation that amount of salary is deposited in his bank account after deducting huge amount. It is also mentioned in complaint that when complainant met with newly inducted Director of Company namely Anil Kumar Baghel for redressal of his grievance with regard to salary, he was informed by said Anil Kumar Baghel that thousands of rupees is deducted from his salary towards advance and provident fund. Learned counsel also pointed out that during the course of investigation, the police collected certain documents from Guru Ghasidas University which show that

management of Guru Ghasidas University has also raised objection saying that deduction, as shown in the list submitted by applicants' company, towards advance recovery from salary of almost all the employees recruited by company of applicants is not proper. It has been further mentioned that deduction towards provident fund and ESIC will only be considered. He referred to letter dated 8.7.2020 written by the University to applicants as also letter written by the University to the Police Station Koni dated 4.6.2021 in support of his contention. He submits that learned counsel for applicants has not been able to point out as to what material could not be placed before the Court at the time of consideration of first anticipatory bail application filed on behalf of applicants. Second application is not maintainable.

6. I have heard learned counsel for both sides and perused the case diary.
7. As per submissions made by learned counsel for applicants, this second anticipatory bail application is filed only because certain facts could not be brought into notice of this Court at the time of consideration of first application of both applicants for grant of anticipatory bail to them. But, even today learned counsel for applicants has not been able to point out as to which material fact/document could not be brought into notice or was left out of consideration in previous anticipatory bail applications. Submission made by learned counsel for applicants that writ petition (criminal) filed by applicants prior

to passing of order dated 27.7.2021 (bail rejection order) is admitted for consideration, in the opinion of this Court, cannot be a ground for consideration of repeat anticipatory bail application. Documents of payment of wages, as pointed out by learned counsel for applicants, filed along with writ petition were on record at the time of consideration of previous anticipatory bail applications. Despite this factual position, this Court perused record of previous anticipatory bail application. Allegation contained in FIR is with respect to entries in register of deduction of advance amount from salary of complainant and other employees on the strength of forged signature. Document showing deduction of advance amount from salary of workmen recruited by applicants is further forwarded to Guru Ghasidas University where complainant and others were deployed. Letter pointed out by learned State Counsel also demonstrates that deduction of advance amount from the salaries of complainant and other employees deployed by applicants was objected by the University. Thus, no new ground / circumstance has been put raised by learned counsel for applicants in this anticipatory bail application based on which this subsequent anticipatory bail application can be entertained.

8. So far as reliance placed by learned counsel for applicants on the decision of Full Bench of Rajasthan High Court in **Ganesh Raj's case (supra)** is concerned, in Paragraph-25 of said judgment it was held as under:-

“25. In the ultimate analysis, placing reliance on the ratio indicated in Kalyan Chandra Sarkar's case (supra), we hold that second or subsequent bail application under Section 438 Cr.P.C. can be filed if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Section Judge / Additional Sessions Judge.”

In case at hand also, learned counsel for applicants has not been able to point out before this Court any change in fact situation or in law warranting interference with earlier view.

9. In case of **Bhaskar Mishra (supra)** it was held by Hon'ble Supreme Court that repeated applications under Section 438 of CrPC are gross misuse of process of Court.
10. In view of above, I am of the opinion that there is no new ground to reconsider prayer of applicants for grant of anticipatory bail and accordingly, this application is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

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