

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6948 of 2020**

- Raju Khan, S/o Late Afak Hussain, aged about 45 Years, R/o Sunder Nagar, Sadak No. 03, Kohka, Bhilai, District Durg Chhattisgarh.

----Applicant

Versus

- State of Chhattisgarh, Through the Station House Officer, Police Station Supela, District Durg Chhattisgarh.

---- Respondent

MCRC No. 7236 of 2020

- Baldev Singh Bhamara, Son of Late Trilok Singh, aged about 55 Years, R/o Bhatapara Jevara, Sirsa Road, Junwani, Bhilai, Chowki Smriti Nagar, Police Station Supela, District Durg (Chhattisgarh).

----Applicant

Versus

- State of Chhattisgarh, Through the Station House Officer, Police Chowki Smriti Nagar, Police Station Supela, District Durg (Chhattisgarh).

---- Respondent

For Applicants	Mr. T.K. Jha, Advocate.
For State	Dr. (Ms.) Veena Nair, Deputy A.G.
For Objector	Mr. Anadi Sharma, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

07/01/2021

1. As both these applications filed under Section 439 of Cr.P.C. arise out of the same Crime No.629/2020 registered at Police Chowki Smriti Nagar, Police Station Supela, District Durg, C.G.

for the offence punishable under Section 420, 34 of Indian Penal Code, they are being disposed of by this common order.

2. Case of the prosecution, in brief, is that in the year 2018 complainant Ajay Singh contacted applicant Raju Khan for purchase of a residential plot for construction of house, on which applicant Raju Khan executed an agreement with the complainant for sale of land bearing Khasra No. 1639, area 0.030 hectare i.e. 3000 square feet at the rate of Rs.600/- per square feet registered in the name of Uma Devi and obtained Rs.2 lakhs cash and Rs.1 lakh through cheque. When the owner of the said land refused to sell the above plot, applicant Raju Khan got an agreement executed between the complainant and applicant Baldev Singh Bhamara for sale of another land situated at village Kohha bearing Khasra Nos. 3616, 3617, area 2400 square feet recorded in the joint account of land owners Mukund Ram, Than Singh and Sharda Charan for a sale consideration of Rs.12 lakhs on 08.06.2018 and obtained Rs.3 lakhs cash and Rs.1 lakh cheque in the name of applicant Baldev Singh Bhamara and got the said plot registered in the name of Sonali Singh, wife of complainant Ajay Singh and Smt. Nidhi Singh, wife of Vijay Singh through general of power of attorney of the said land namely Mukund Ram. When the complainant reached the spot for starting construction of his house, the residents of the locality objected to it on the ground that it is an open space and, therefore, the construction work was stopped. When the complainant informed about the same to the applicants, they

executed an agreement in respect of another piece of land bearing Khasra No. 1704/1, area 2400 square feet of Subechand for sale of the same in the favour of the complainant and obtained Rs.8 lakhs from him on 15.02.2019. Further, when the complainant came to know that the above land is in fact registered in the name of Vijay Laxmi Sharma, he contacted the applicants and demanded Rs.20 lakhs as well as the expenses incurred in execution of the agreements at the Registry Office amounting to Rs.4 lakhs i.e. total Rs.24 lakhs back from the applicants, on which the applicants gave Rs.4 lakhs cash and four cheques, each of Rs.5 lakhs to the complainant which were subsequently dishonoured. On report being lodged to the above effect, the aforesaid offence has been registered against the applicants.

3. Learned counsel for the applicants submits that the complainant is working in police department and in favour of the complainant an agreement was executed for a particular piece of land belonging to Mukund Ram, Than Singh and Sharda Charan jointly as is evident from the Khasra Panchshala, Form B-1 as also the map available in the revenue record. As per agreement with the complainant, the land owner and general power of attorney Mukund Ram executed a sale deed on the request of complainant Ajay Singh in favour of his wife Smt. Sonali Singh and his sister-in-law Smt. Nidhi Singh. When the complainant reached the said plot for construction of his house, the residents of the locality raised objection on the ground that it is an open

space. In this case, the complainant has already made a complaint to the police and after due inquiry, the police found that present dispute between the parties is of civil nature and accordingly reported that the offence alleged is non-cognizable under Section 155 of Cr.P.C. The said report has been accepted by the concerned SHO and that document was obtained by the present applicants under RTI. It is argued that the complainant taking undue advantage of his official position is trying to falsely implicate the applicants. *Prima-facie*, the dispute between the parties is of civil nature, charge sheet has already been filed in this case, nothing is required to be seized from the applicants and they are languishing in jail since 18.09.2020. In this case, the applicants are not the land owner, the applicant Raju Khan is only the broker whereas applicant Baldev Singh Bhamara is the power of attorney holder. The prosecution has cited as many as 18 witnesses in support of its case but till date trial has not yet commenced and as such there is every likelihood that the conclusion of the trial will take some time. In these circumstances, the applicants be released on bail on the terms and conditions as may be deemed fit by this Court.

4. Learned counsel for the State and Objector vehemently oppose the bail applications and submit that four cheques given to the complainant by the applicants stood dishonoured and that Rs.4 lakhs was also given to the complainant.
5. Heard learned counsel for the parties and perused the case diary.

6. Admittedly, the complainant is working in the police department, charge sheet has already been filed in this case and total 18 witnesses have been cited by the prosecution in the charge sheet but due to COVID-19 Pandemic trial has not yet commenced. It is not disputed by the parties that the sale deed was executed by the person who is owner of the land in question as per revenue record in favour of the wife and sister-in-law of the complainant. Though, learned counsel for the objector submits that he has no knowledge whether any inquiry was conducted into the dispute prior to registration of FIR under Section 155 of Cr.P.C. but as contended by learned counsel for the applicants as well as from perusal of the document obtained by the applicants under RTI, it is clear that before registration of FIR an inquiry was conducted by the police into the dispute and it was found that the offence alleged against the applicants is non-cognizable and the dispute between the parties is of civil nature. It is also not in dispute that the applicants had given four cheques to the complainant each amounting to Rs.5 lakhs and the same stood dishonoured on being presented for encashment.
7. In the totality of facts and circumstances of the case, the nature of dispute between the parties, the detention period of the applicants, the number of witnesses mentioned in the charge sheet and that trial has not yet commenced, without commenting anything on the merits of the case, this Court is of the opinion that present is a fit case for releasing the applicants on bail. Accordingly, the applications are allowed. It is directed that in the

event of each of the applicants executing a personal bond for a sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the concerned trial Court, they shall be released on bail on the following conditions:-

- (i) They 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 fact to the Court,
- (ii) They shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) They shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.
- (iv) They shall not involve themselves in any offence of similar nature in future.

Sd/-
Gautam Chourdiya
Judge

Akhilesh