

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.1163 of 2021**

1. Pramod Kumar Sharma S/o Late Rajaram Sharma, Aged About 63 Years, R/o Sarkanda, Police Station Sarkanda, District Bilaspur Chhattisgarh.
2. Ganga Prasad Tamrakar S/o Late Saheb Lal Tamrakar, Aged About 63 Years, R/o Housing Board Colony, District Raipur Chhattisgarh.

---- Applicants**Versus**

State of Chhattisgarh Through Police Station ACB, Bilaspur District Bilaspur Chhattisgarh.

---- Non-applicant

For Applicants : Shri Rajeev Shrivastava, Sr. Advocate with
Shri Saumya Sharma, Advocate

For Non-applicant/State : Shri Vimlesh Bajpai, Govt. Advocate

For Intervenors : Shri Rahul Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****05.10.2021**

1. The applicants have preferred this first bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as they are apprehending their arrest in connection with Crime No.40 of 1998, registered at Police Station A.C.B. District Bilaspur, Chhattisgarh for offence punishable under Sections 420, 120(B), 467, 468, 471, 419, 421 and 34 of Indian Penal Code and Section 13(1)(d) and 13(2) of Prevention of Corruption Act.
2. Case of the prosecution in brief, is that, on 26.05.1995, Manik Chand lodged a complaint to Collector stating therein that photocopy machine has been obtained by Vinod Jaiswal in name of Manik Chand and Bajilal under the Madhya Pradesh Swa

Rojgar Yojna. For some time, complainant has been kept under employment by Vinod Jaiswal in his shop and thereafter, he was ousted. He came to know from mechanic of photocopy machine that photocopy machine possessed by Vinod Jaiswal is obtained in his name from Madhya Pradesh Swa Rojgar Yojna. Based on report forwarded by Managing Director Antyavyavasayi Sahkari Vikas Nigam, Anti Corruption Bureau ('ACB') registered crime bearing No.40 of 1998 against the applicants.

3. Shri Rajeev Shrivastava, learned senior counsel for the applicants would submit that applicants have not committed any offence as alleged against them and false and frivolous complaint was forwarded in the name of Manik Chand and Bajilal. Applicants are continuously working on their place of posting. Applicants since 1998 till September 2021 have not issued any notice to applicants for interrogation or have not made any attempt for investigation of crime registered with them. Based on report initially lodged by Manik Chand to Collector, Collector conducted inquiry and found allegation/complaint to be false and fabricated and had recommended for its closure. Vide Annexure A/3, letter to Superintendent of Police, Lokayukt recommending for closure of report as early as on 27.04.1998. When applicants came to know that ACB is intending to proceed with complaint, they have approached before the competent Court by way of filing an application for grant of anticipatory bail in the month of August 2021, which came to be rejected by impugned order and it is only thereafter ACB came in action and allegedly recorded *Farari*

Panchnama on 07.09.2021. Applicants at no point of time have absconded or avoided any proceeding, if drawn by respondent/ACB against them. Applicant No.1 has already retired from service after attaining the age of superannuation in July 2020 and applicant No.2 is aged about 59 years and verge of retirement of service. It is contended that till 1998 to 2021, ACB has not taken any steps of investigation against the applicants in the instant crime. Applicants will co-operate in investigation, hence, they may be enlarged on anticipatory bail.

4. Per contra, Shri Vimlesh Bajpai, learned Government Advocate representing the State opposing the submissions made by learned counsel for the applicants, would submit that in report lodged by Manik Chand, there are specific allegations that applicants in connivance with Vinod Jaiswal have sanctioned photocopy machine in the name of Manik Chand. Proceeding of sanction of photocopy machine has been recorded by applicant No.2. Based on report lodged by Managing Director, offence was registered. Sanction for prosecution of applicants have been obtained in the year 2004, but that was not in accordance with law, hence, second sanction order was obtained in the year 2007. The order of sanction of prosecution was not put to challenge by applicants. It is contended that looking to the nature of allegation and report lodged by Managing Director, applicants are not entitled for benefit of anticipatory bail.
5. At this stage, Shri Rajeev Shrivastava, learned senior counsel for the applicants submits that admittedly, ACB has not drawn any

proceeding against the applicants, they were in service at their respective place of postings and for the first time, ACB drawn proceeding of preparing *Farari Panchnama* on 07.09.2021 just after dismissal of application for grant of anticipatory bail by Court below. He relied upon the verdict of Hon'ble Supreme Court in case of **Bhadresh Bipinbhai Sheth v. State of Gujarat and Another** reported in **(2016) 1 SCC 152** (paragraph 25.4) in support of his contention. He submits that once applicants have approached before the Court by filing an application under Section 438 of Cr.P.C., they cannot said to be absconded from the investigation or proceeding. Applicants will co-operate in proceeding, they will make themselves available whenever they will be asked to appear before any authority and Court.

6. I have heard learned counsel for the parties.
7. Taking into consideration entire facts and circumstances of the case, nature of allegations levelled against the applicants, documents placed on record along with application, submission made by learned counsel for the parties and further observation made by the Court below that after investigation, order of sanction for prosecution was procured on 03.03.2007 and on 08.03.2007; ACB Bilaspur was ordered for submission of charge-sheet from ACB Raipur, but is not submitted till 2021 and there is no mention in case diary that non-submission of charge-sheet is on account of any act of the appellants, without commenting anything into the merits of the case, I am inclined to release the present applicants on anticipatory bail.

8. Accordingly, bail application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on anticipatory bail on their furnishing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety in the like sum to the satisfaction of the arresting officer and they shall be abide by the following conditions :-

(i) they shall make themselves available for interrogation by a police officer as and when required;

(ii) 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 them from disclosing such facts to the Court or to any police officer.

(iii) they shall not influence the witnesses during pendency of the trial.

Certified copy as per Rules.

Sd/-
(Parth Prateem Sahu)
Judge