

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC (A) No.1232 of 2021**

- Hemlata Bansal, W/o Jagdish Bansal, aged about 55 years, Caste-Agrawal, R/o Bansal Apartment Ward No.11, Sakti, PS & Tahsil Sakti, Dist. Janjgir Champa (CG)

---- Applicant

Versus

- State of Chhattisgarh, Through: Dist. Magistrate, Janjgir Champa, District Janjgir Champa (CG)

---- Non-applicant

&

MCRC (A) No.1252 of 2021

- Kunj Bihari Baiswade, S/o Bisahu Lal, aged about 62 years, Caste Kurmi, R/o Ashok Nagar, Bilaspur, PS & Tahsil Bilaspur, Dist. Bilaspur (CG)

---- Applicant

Versus

- State of Chhattisgarh, Through: Dist. Magistrate, Janjgir Champa, District Janjgir Champa (CG)

---- Non-applicant

For Applicants	:	Mr. Praveen Das, Advocate with Mr. Ishwar Jaiswal, Advocate.
For Non-applicant	:	Mr. B.P. Banjare, Govt. Advocate.
For Objector	:	Mr. Hari Agrawal, Advocate.

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****06/10/2021**

1. As above two anticipatory bail applications arise out of same crime number, they are being heard together and disposed off by this common order.
2. These are first applications under Section 438 of CrPC for grant of anticipatory bail to applicants as they apprehend their arrest in connection with Crime No.282/2021 registered at Police Station Sakti, District Janjgir Champa (CG) for commission of offence punishable under Sections 420, 467, 468, 471/34 of IPC.
3. Case of prosecution, in brief, is that based on memo of Collector, District Janjgir Champa dated 6.4.2019, Sub-Divisional Officer (R), Sakti vide letter dated 4.5.2019 authorized Naib Tahsildar, Sakti to lodge report in concerned

police station and consequently FIR is registered on 4.9.2021 against applicants for commission of crime in question. It is mentioned in report that without there being any proper proceedings, name of applicant Hemlata Bansal is mutated by applicant Kunj Bihare, the then Patwari, in revenue records in respect of land bearing Khasra No.1316/34 area 0.03 decimal.

4. Mr. Praveen Das, learned counsel for both applicants would submit that in the year 1998 applicant Hemlata had purchased land bearing Khasra No.1316/7 area 0.12 acre from Kartik Ram and Pahalwan Singh through registered sale deed. After purchase of land, husband of applicant raised construction over it. On completion of construction, he realized that construction has been raised in excess of land owned by applicant Hemlata i.e. over an area of 0.15 acre in place of 0.12 acre. After realizing mistake, applicant's husband approached original owner of land i.e. Raja Surendra Bahadur Singh and requested him to sell 0.03 acre land also. On this request, a consent deed was executed by Raja Surendra Bahadur Singh on 4.5.2004 in favour of applicant Hemlata. This consent letter does not bear signature of applicant Hemlata. Based on this consent letter dated 4.5.2004, application was submitted before revenue authority concerned i.e. Patwari, for mutation of name of applicant Hemlata in revenue records and accordingly, 0.03 acre land of Khasra No.1316/4 was mutated in her name. After mutation of name of applicant Hemlata in revenue records, application for diversion of land was submitted before the competent authority and land stood diverted on 12.8.2004. Applicant Hemlata has not committed any offence as alleged against her. FIR is registered against applicant Hemlata on account of enmity between her husband and the then Sub-Divisional Officer (Revenue), Sakti by name Shri Inderjeet Sharma, who initiated several illegal proceedings against applicant's husband which were successfully challenged by him before appropriate forum and copies of some of the proceedings are

also placed on record. He submits that even after receipt of transfer order, the then SDO (R) has issued order of demolition of land, which was challenged before the High Court and order of demolition has been stayed. Applicant is a housewife, land in question was purchased in her name by her husband, she has only signed documents and she is not aware about the proceedings filed by her husband. Applicant will co-operate in investigation and appear before Investigating Officer as and when required.

So far as applicant Kunj Bihari Baiswade is concerned, Mr. Das submits that at the relevant point of time applicant was posted as Patwari, on the basis of application forwarded to him, he mutated name of applicant Hemlata in revenue records based on consent deed. He has not committed any offence as alleged against him. At the most, it can be said that applicant being Patwari was negligent in discharge of his official duty or committed irregularity. Loss of stamp duty, if any, because of mutation based on unregistered document can still be recovered from owner of land, hence applicant Kunj Bihari, who is aged about 62 years, be also enlarged on anticipatory bail.

5. Mr. B.P. Banjare, Deputy Government Advocate for the State and Mr. Hari Agrawal, learned counsel appearing on behalf of complainant oppose the submissions made by learned counsel for applicants and submit that based on complaint received by revenue authority concerned, an enquiry was conducted in which it was found that three decimal of disputed land is government land, which was illegally mutated in the name of applicant Hemlata by the then Patwari i.e. applicant Kunj Bihari Baiswade. They submit that not only three decimal government land was illegally got mutated by applicant Hemlata in her name, but there are allegations of encroachment upon other government lands against her husband. Referring to sale deed executed in favour of

applicant Hemlata, they submit that in this sale deed boundaries of land purchased by applicant Hemlata are specifically mentioned, according to which, three sides of land of applicant Hemlata are surrounded by government land and land of one Smt. Saraswati Devi is situated at one side. They submit that on 3.10.1986 Raja Surendra Bahadur Singh, landlord of Sakti, had sold land measuring 24 decimal to Kartikram & Pehalwan Singh, who in turn sold 12 decimal land each to applicant Hemlata & Saraswati Devi on same day i.e. 29.10.1990. After sale of entire land, no land was available with Raja Surendra Bahadur Singh either to give or sell. As reported by Naib Tahsildar, three decimal land, which was subsequently mutated in the name of applicant Hemlata, is government land and this fact is evident from boundaries of land sold by Kartikram and Pehalwan Singh. Earlier also applicant Kunjbihari was convicted on similar type of allegation by the competent Court. In these circumstances, both the applicants are not entitled for grant of anticipatory bail.

6. I have heard learned counsel for the parties.
7. Execution of sale deed in the year 1990 in favour of applicant Hemlata is not in dispute wherein it is specifically mentioned that three sides of disputed land are surrounded by government lands and one side is by private land. As argued by learned counsel for applicants, applicant Hemlata is a house wife, disputed land has been purchased in her name by her husband. Therefore, taking into consideration overall facts and circumstances of case, in particular status of applicant Hemlata, without commenting anything on merits of case, I am of the view that present is a fit case where benefit of anticipatory bail should be extended to applicant Hemlata.
8. So far as applicant Kunj Bihari Baiswade is concerned, at relevant point of time he was posted as Patwari and being so, he was in possession of entire revenue records and must be aware about status of land i.e. government or private land, and despite this, he allowed mutation of name of applicant

Hemlata in revenue records that too on the basis of an unregistered instrument i.e. consent deed. As per submission made by learned counsel for Objector, earlier also on the basis of allegation of manipulation in government records, applicant Kunj Bihari was charge sheeted, after conclusion of full fledged trial, he was convicted and sentenced by the Court of JMFC and the same was affirmed by the Court of Sessions in appeal preferred by him. In these circumstances, I am of the view that **applicant Kunj Bihari** does not deserve to be released on anticipatory bail.

9. Accordingly, **M.Cr.C. (A) No.1232/2021** filed on behalf of **applicant Hemlata Bansal** for grant of anticipatory bail is allowed. It is directed that in the event of arrest of **applicant Hemlata Bansal** in connection with crime in question, she shall be released on anticipatory bail by the officer arresting her on her executing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like sum to the satisfaction of the Arresting Officer. She shall also abide by following conditions :

- (i) that she shall make herself available for interrogation before Investigating Officer as and when required;
- (ii) that she shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of case so as to dissuade him /her from disclosing such facts to the Court or to any police officer;
- (iii) that she shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that she shall appear before the trial Court on each and every date given to her by the said Court till disposal of trial.

10. However, **M.Cr.C. (A) No.1252/2021** filed on behalf of **applicant Kunj Bihari Baiswade** for grant of anticipatory bail is rejected.

Sd/-
(Parth Prateem Sahu)
Judge