

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC (A) No.1242 of 2021**

- Anand Bafna, S/o Kasturchand Bafna, aged about 48 years,
R/o Sakin S.M. 28, Padmanabhpur, Durg, District Durg (CG)

---- Applicant**Versus**

- State of Chhattisgarh, Through: District Magistrate, Durg (CG)

---- Non-applicant

For Applicant	:	Mr. Kishore Bhaduri, Sr. Advocate with Mr. Pankaj Singh, Advocate.
For Non-applicant	:	Mr. Vaibhav Singh, Panel Lawyer
For Complainant/ Objector	:	Mr. Rajeev Shrivastava, Sr. Advocate with Mr. Malay Shrivastava & Mr. Yashwant Shrivastava, Advocates.

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

- This is first application under Section 438 of CrPC for grant of anticipatory bail to applicant as he apprehends his arrest in connection with Crime No.418/2021 registered at Police Station Bhilai Nagar, District Durg (CG) for commission of offence punishable under Section 420 of IPC.
- Case of prosecution, in brief, is that report was lodged by complainant in concerned police station mentioning that applicant, who is known to him, after taking him in confidence called him at Bhilai Club, Civic Centre, Bhilai and told that he wanted to sell land bearing Khasra Nos.266/2 & 266/3. Complainant agreed to purchase aforementioned land for Rs.1 Crore. In the year 2013, complainant paid cash of Rs.20 Lakhs to applicant in presence of witnesses and thereafter paid several lakhs of rupees to applicant at different intervals. Even after payment of Rs.1 Crore, applicant has not executed sale deed in favour of complainant and thereby cheated him. Based on this report, FIR is registered against applicant.
- Mr. Kishore Bhaduri, learned Senior Counsel for applicant would submit that allegations levelled against applicant are absolutely false and baseless. Applicant, complainant and one

Narendra Rathi were partners of M/s Green Top Developers, Bhilai, a partnership firm registered on 1.11.2013. This partnership firm was constituted for carrying out business of sale and purchase of lands, plots, agriculture fields as also to construct and sell buildings and complexes. Applicant retired from aforementioned partnership firm in the year 2020, thereafter partnership firm was reconstituted and one Surendra Rathi was inducted as Partner in place of applicant. Reconstitution of partnership deed was done on 20.5.2020. Till retirement of applicant from partnership firm, there was no dispute, therefore, reconstitution of partnership was smoothly done. This complaint containing allegations against applicant is made only in the month of September, 2021 with ulterior motive. As per allegations in FIR, complainant agreed to purchase land in the year 2013 and paid entire sale consideration till January, 2014, then why complainant has not made any attempt during these seven years to get sale deed executed in his favour. He submits that promissory note, which has been made basis to show acceptance of advance amount towards disputed land, is also a concocted ground. Two promissory notes and some other documents were lost by applicant in the year 2012 and report regarding which was lodged in concerned police station in the year 2012 itself, police drawn proceeding under Section 155 of CrPC, which is placed on record. Body of promissory note is not filled-up by applicant though it bears signature of applicant. False report has been lodged giving colour of committing criminal offence by applicant. Applicant has reputation in society, hence he may enlarged on anticipatory bail.

4. Mr. Vaibhav Singh, learned counsel for the State and Mr. Rajeev Shrivastava, learned Senior Counsel for complainant / objector oppose the submissions made by learned Senior Counsel for applicant and submit that in support of report complainant has placed before police promissory note executed between applicant and complainant, signature on

which is not disputed, revenue stamp is also affixed thereon. Applicant has accepted money mentioned in promissory note for selling land as mentioned therein.

Mr. Singh, learned State Counsel submits that payment of money to applicant is witnessed by independent persons, who have stated in their statements recorded under Section 161 of CrPC that complainant paid money to applicant. He read out contents of FIR and statements of complainant and witnesses in support of his contention.

Mr. Rajeev Shrivastava, learned Senior Counsel for complainant/objector would submit that land offered for sale to complainant was not owned by applicant, it is recorded in the name of some other persons in land records. Applicant and complainant are known to each other, therefore, reposing trust on applicant and believing the offer to be genuine, complainant gave money to applicant. Act of applicant of giving description of land, which is not owned by him, in promissory note with a promise that he will sell land to complainant, comes within the purview of offence of 'cheating'. There are other criminal cases registered against applicant, hence, he is not entitled for benefit under Section 438 of CrPC.

5. At this stage, Mr. Bhaduri, learned Senior Counsel for applicant submits that applicant is denying entire allegations levelled against him. He submits that partnership firm was incorporated in the year 2013 for carrying on business of sale, purchase and development of land etc. Complainant is also engaged in the business of sale and purchase of land, but as per allegation, complainant has paid such a huge amount of Rs.1 Crore without looking into revenue documents is itself suspicious. Hence, allegations *prima facie* appear to be false and frivolous.
6. I have heard learned counsel for the parties and perused case diary.
7. It is not in dispute that complainant is engaged in the business

of sale and purchase of land. Applicant, complainant and one Narendra Rathi were partners of M/s Green Top Developers, Bhilai. Partnership firm continued till 2020 and thereafter it was reconstituted after retiring applicant. In past more than six years, complainant has not made any effort to get sale deed executed in lieu of oral agreement of sale of land, as alleged, for which entire sale consideration was paid. Thus, considering nature of allegations, contents of FIR, statements recorded under Section 161 of CrPC, without commenting anything on merits of case, I am inclined to enlarge applicant on anticipatory bail.

8. Accordingly, application filed under Section 438 of CrPC for grant of anticipatory bail is allowed. It is directed that in the event of arrest of applicant in connection with crime in question, 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/- (Rupees Twenty Five Thousand) with one surety in the like sum to the satisfaction of the Arresting Officer. Applicant shall also abide by following conditions :

- (i) that he shall make himself available for interrogation before Investigating Officer as and when required;
- (ii) that he 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 he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that he 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

roshan/-