

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 1264 of 2021**

- Upendra Wahini Panthi S/o Wahini Panthi Prasad Rao aged about 53 Years R/o MIG- 11/07, Nootan Chowk, Indira Vihar, Sarkanda, Police Station- Sarkanda, District- Bilaspur (Wrongly Mentioned as District- Balodabazar- Bhatapara), Chhattisgarh, District : Bilaspur, Chhattisgarh.

-----Applicant**VERSUS**

- State of Chhattisgarh through: Station House Officer, Police Station- Simga, District- Balodabazar- Bhatapara, Chhattisgarh, District : Balodabazar-Bhatapara, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Goutam Khetrapal, Advocate
For Non-applicant- State	: Mr. B.P. Banjare, Dy. G.A.
For objector	: Mr. Manoj Pranjpe, Advocate & Mr. Amit Soni, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****07/10/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No. 409/2021 registered at Police Station Simga, District Baloda Bazar-Bhatapara (C.G.) for the offence punishable under Section 420 of IPC.
2. Case of the prosecution in brief, is that, written report was lodged by one Rajendra Agrawal, one of the partners of M/s Uma & Associates, out of the five partners, stating therein that the complainant along with four others including applicant have established partnership firm with an object for carrying agricultural and pisciculture activities over the land. The capital of the firm was contributed in the share as agreed between the partners. Partnership deed bears clause that execution

of documents is to be by party no. 1 in the joint signature of any one of the other partners amongst parties 2 to 5 in the partnership deed. Partnership firm after registration on 21.03.2007, have purchased several parcels of agricultural land within the territorial jurisdiction of Simga district, Raipur (now district Baloda Bazar-Bhatapara). Total 17 pieces of land admeasuring 14 acres of land were purchased, twelve pieces of land have been purchased in the name of partnership firm through the applicant and 5 pieces of land has been purchased in the name of partnership firm through complainant party no. 1. Applicant sold the entire 17 pieces of land to one Rajkumar Sharma vide registered sale deed dated 28.03.2013 under his single signature. When the complainant, one of the partners, came to know that sale of entire property of partnership firm to Rajkumar Sharma through paper publication in February 2021 he lodged report to the concerned police station based on which aforementioned crime is registered against applicant.

3. Mr. Goutam Khetrapal, learned counsel for the applicant would submit that the applicant has not committed any offence as alleged against him. He submits that applicant being one of the partners in the partnership firm, 12 pieces of land of partnership firm was purchased through his name. Applicant has sold the land being one of the partners hence, he has not committed any offence. As per agreement between the purchaser and seller, amount of sale consideration was paid in cash to applicant. He submits that the execution of sale deed for sale of property of partnership firm was with the consent of partners. After execution of sale deed entire sale consideration was distributed amongst the partners in accordance with the share mentioned in the partnership deed. After lapse of 8 years, report is lodged against applicant with some ulterior motive. Report is lodged

only by one partner out of four. Except applicant, none of the other partners have lodged report objecting the action of applicant. The report lodged against applicant by complainant is false and frivolous, hence, he may be enlarged on anticipatory bail.

4. On the other hand, Mr. B.P. Banjare, learned State counsel as well as Mr. Manoj Pranjpe, Advocate for complainant oppose the submissions made by learned counsel for the applicant and submit that the partnership firm is a registered partnership firm in which there is specific clause that the capital of partnership firm is from contribution made by the respective partners in accordance with the share mentioned therein. Applicant is having share of only 10% in the firm. As per clause 11, none of the partner alone can execute the document under his own signature, but it is to be executed jointly with party no. 1 and anyone of the partners from party number 2 to 5. Applicant has not brought to the notice of other partners about sale of land to Rajkumar Sharma, neither intimated to party no. 1. It is also submitted that amongst the other four partners, complainant is residing within the State of Chhattisgarh and other three partners are residing out of the State of Chhattisgarh and they were not aware about illegal transfer of land of partnership firm by applicant alone. Complainant who is alone residing in the Chhattisgarh after getting knowledge of transfer of entire land of partnership firm by the applicant, immediately lodged report. Mr. Pranjpe submits that other partners are also having objection with regard to transfer of land of partnership firm by the applicant through registered sale deed under his single signature. He submits that the applicant could not have sold the entire land and accepted money in person that too in cash. If the transfer of land is with the consent of other partners then it would have been

executed according to clause mentioned in partnership deed and applicant should have accepted sale consideration in the account of partnership firm which is not there, this itself shows the intention of applicant. He submits that looking to the conduct of applicant as well as clauses of registered partnership deed, applicant is prima facie involved in commission of crime and is not entitled for benefit under Section 438 of CrPC.

5. I have heard learned counsel for the respective parties.
6. The sale of entire land (land purchased through his name and land purchased through the name of party no. 1 in partnership deed) by applicant is not in dispute. No material is placed on record to show that other partners have also consented to transfer of land by way of registered sale deed under the signature of applicant. Clause 11 of deed mentions about, joint signature of party no. 1 to the partnership firm and one another out of rest of the other partners to be essential.
7. Considering the entire facts and circumstances of the case, documents placed on record and submissions made by learned counsel for the parties, I do not find it a fit case to enlarge the applicant on anticipatory bail.
8. Accordingly, application is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge