**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**
**MCRCA No. 1263 of 2021**

1. Ramavatar Agrawal S/o Late Satyapal Agrawal, Aged About 66 Years (wrongly typed in the impugned order as 62 years), Director M/s. Ramavatar Agrawal Road Construction Pvt. Ltd., 13, Chinar Complex, Link Road, Bilaspur, R/o Hansa Vihar, Shrikant Verma Marg, Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh.
2. Bajranglal Agrawal S/o Late Satyapal Agrawal, Aged About 64 Years (wrongly typed in the impugned order as 59 years), Director M/s. Ramavatar Agrawal Road Construction Pvt. Ltd. 13, Chinar Complex, Link Road, Bilaspur, R/o Hansa Vihar, Shrikant Verma Marg, Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh.
3. Pawan Agrawal S/o Late Satyapal Agrawal, Aged About 58 Years (wrongly typed in the impugned order as 55 years), Director M/s. Ramavatar Agrawal Road Construction Pvt. Ltd.,13 Chinar Complex, Link Road, Bilaspur, R/o Hansa Vihar, Shrikant Verma Marg, Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh.

**---- Applicants**

**Versus**

State of Chhattisgarh Through Incharge Officer, Police Station Surajpur, District Surajpur, Chhattisgarh.

**---- Non-applicant**

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For Applicants : Shri Manoj Paranjpe, Advocate
For Non-applicant/State : Shri B.P. Banjare, Dy. Govt. Advocate

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

**07.10.2021**

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.457 of

2015, registered at Police Station Surajpur, District Surajpur (C.G.), for offence punishable under Sections 420, 467, 468, 409, 471, 477(a), 120B and read with Section 34 of Indian Penal Code.

2. Case of the prosecution in brief, is that, based on the information received under Right to Information Act, 2005 ('RTI') by one Virendra Pandey from the office of Senior Joint Commissioner, Commercial Tax and State Public Information Officer, report was lodged to concerned Police Station stating that there is embezzlement of amount by submitting forged tax invoice. When Police has not taken any action on the complaint, an application under Section 156(3) of Cr.P.C. was filed before the Court of competent jurisdiction. Judicial Magistrate First Class ('JMFC') after considering the application filed under Section 156(3) of Cr.P.C. along with supporting documents, directed for registration of First Information Report ('FIR') against the persons named in application as also to register FIR against others, if during the course of investigation, involvement of any other person/official appearing to have involved in commission of crime. Based on direction of JMFC, instant FIR is registered against applicants along with 18 others initially for alleged offences mentioned above. Registration of FIR was challenged by way of filing petition under Section 482 of Cr.P.C. challenging the order of JMFC directing registration of FIR by all accused persons. The petition filed by applicants along with other family members being CRMP No.1150 of 2015 was allowed in part and registration of FIR so far as it relates to petitioners No.5 to 7 therein were quashed vide

order dated 07.09.2021. After dismissal of petition under Section 482 of Cr.P.C. against the applicants, they have moved an application under Section 438 of Cr.P.C. before the Court below, which came to be dismissed by impugned order.

3. Shri Manoj Paranjpe, learned counsel for the applicants would submit that applicants are Directors of M/s Ramavatar Agrawal Road Construction Pvt. Ltd. They succeeded in securing contract of construction of road within the territorial jurisdiction of Surajpur district under Pradhan Mantri Gram Sadak Yojna in the year 2008. Based on award of contract, work was completed on 15.12.2010 and work completion certificate was also issued without objecting to quality of work. During the period of construction of work, applicants who are contractors submitted running bills as also final bills, which was allowed and respective payments have been made to road construction company. After about more than 4 years of completion of construction work and issuance of work completion certificate by the Department in favour of applicants' construction company, complaint was lodged by one Virendra Pandey before the concerned Police Station based on information received under RTI from the office of Senior Joint Commissioner, Commercial Tax mentioning that Department has made query (based on the application) with M/s Mascot Industries, Kolkata with regard to sale of goods to companies mentioned therein including company of applicants wherein information has been supplied that they have not sold any goods to applicants and other companies named therein. It is this information on the basis of

which complaint was lodged stating that applicants' company have misappropriated the amount of Rs.40,76,800/- by placing forged bills said to be issued from M/s Mascot Industries for supply of bitumen. He further submits that allegations levelled against the applicants are absolutely false and baseless. The allegation of placing forged tax invoice of M/s Mascot Industries bearing No.MI/89/09-10, MI/90/09-10, MI/93/09-10, MI/94/09-10, MI/101/09-10 and MI/102/09-10 is not correct. It is contended that tax invoice issued by M/s Mascot Industries of Kolkata is placed on record as Annexure A/4. Applicants' company has made payment through online transfer in the account of M/s Mascot Industries from bank account of M/s Ramavatar Agrawal Road Construction Pvt. Ltd. of Axis Bank. Copy of statement of account of Axis Bank is placed on record as Annexure A/5. He pointed out that in the statement of account, payment through transfer is shown on 09.06.2009 and 19.06.2009, total of which comes to Rs.40,76,800/-. Ledger account of M/s Mascot Industries is also placed on record maintained by applicants' company for purchase of bitumen from M/s Mascot Industries. Axis Bank has further issued certificate of payments of aforementioned amount to M/s Mascot Industries and further deposit/payment of amount of Rs.40,76,800/- is confirmed by M/s Mascot Industries vide its letter dated 01.04.2010 (Annexure A/6). Statement of bank account of M/s Mascot Industries from whom applicants' company purchased bitumen of IndusInd Bank is also placed on record showing deposit of amount from applicants' company on the said dates. He argued that all the payments made in lieu of purchase of bitumen from M/s Mascot Industries has been transferred online and there is no cash payment. Apart from which deposit of amount of applicants' company has also been acknowledged by M/s Mascot Industries for supply of bitumen. He submits that when applicants came to know that some complaint has been filed against them based on the information received from Commercial Tax Department, applicants have approached partners of M/s Mascot Industries, upon which, one of the partners of M/s Mascot Industries who was second partner has issued letter to the Joint Commercial/Sales Tax Officer, Bureau of Investigation stating that business of M/s Mascot Industries is being managed by one of the partners by Late Bajrang Lal Saraogi, who died in the year 2010-11 and other partner thereafter retired from partnership firm on 28.09.2012. When he came to know with regard to complaint as intimated by applicants' company, he again inquired into the Books of Account of M/s Mascot Industries and wrote a letter that they have supplied bitumen to applicants' company, but inadvertently, tax could not be deposited and they are ready to make payments towards tax due against him. It is further argued that this letter was issued on 21.09.2015 (Annexure A/7). When there is acceptance of mistakes by one of the parties to transaction of sell and purchase that too seller and liability to sales tax is on seller of goods, applicants cannot be said to have committed any offence as alleged against them. Allegation against the applicants is based solely on information supplied to complainant by Commercial Tax Department. In view of documents placed on record showing transfer of amount to company who has supplied bitumen directly online and further the letter issued by one of the partners of M/s Mascot Industries mentioning that due to their mistake, they have not deposited Sales Tax, present applicants may be enlarged on anticipatory bail.

4. Per contra, Shri B.P. Banjare, learned Deputy Government Advocate representing the State opposing submissions made by learned counsel for the applicants, would submit that complainant has lodged report supported with documents issued by the Government Department i.e. Commercial Tax Department of Kolkata mentioning that M/s Mascot Industries has not supplied bitumen/goods to companies named therein including applicants' company, which shows *prima facie* involvement of applicants in commission of aforementioned crime. When Police has not taken any action, complainant filed an application under Section 156(3) of Cr.P.C. and JMFC after application of mind, has issued direction for registration of case. He further submits that vide circular dated 21.08.2021, Chhattisgarh Gramin Sadak Vikas Adhikaran was constituted and vide letter dated 14.11.2006, powers of making payment has been given to Executive Engineer of Department. It is contended that report was submitted by Superintendent Engineer of Chhattisgarh Gramin Sadak Vikas Adhikaran, in which, it has come that payments have been made by Executive Engineer in accordance with letter dated 14.11.2006 after spot verification of construction work and no irregularity has been found by him.

5. I have heard learned counsel for the parties.

6. Taking into consideration entire facts and circumstances of the case, nature of allegations, document/information, based upon which, report was lodged and FIR was registered against the applicants and other accused persons, documents placed along with memo of application for grant of anticipatory bail wherein it is appearing that supply of bitumen during the period as alleged against the complaint is not disputed by M/s Mascot Industries, of which, bills have been supplied to applicants, corresponding payments were made by applicants' company through bank account to bank account of M/s Mascot Industries and further letter of one of the partners of M/s Mascot Industries accepting supply of bitumen during this period and his letter to Commercial/Sales Tax Department, without commenting anything into merits of the case, I am inclined to release the present applicants on anticipatory bail.

7. 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**

Yogesh