

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1276 of 2021**

- Seema Agrawal W/o Shri Sanjay Agrawal Aged About 48 Years Vocation-Housewife, R/o School Para Baikunthpur, Tahsil- Baikunthpur, District- Koriya, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station-Baikunthpur, District- Koriya, Chhattisgarh

---- Respondent

For Applicant : Shri R.K. Gupta, Advocate

For Respondents/State : Shri Ishwar Jaiswal, PL

Hon'ble Shri Justice Goutam Bhaduri**Order****15/11/2021**

1. Heard.
2. This is the second bail application. This application under Section 438 of the Code of Criminal Procedure has been filed by the applicant apprehending her arrest in connection with Crime No.36/2021 registered at Police Station Baikunthpur, District Koriya (C.G.) for the offence punishable under Sections 420, 120 (B) and 24 of the Indian Penal Code.
3. The first bail application bearing M.Cr.C.A. No.447 of 2021 was dismissed on 04.08.2021.
4. As per the prosecution case, the applicant along with the other co-accused has

sold certain part of land which was acquired by the Water Resources Department in the year 1997 bearing Khasra Nos. 99, 108, 109 and 110/1 to four different persons by destroying the canal and converted into road. The inspection was carried out by the State authorities on 27th November, 2020 and it was found that the canal was destroyed and road has been constructed.

5. Learned counsel for the applicant would submit that in the instant case the police officer has committed forgery for the reason that he has added the word in the FIR about the fraud, criminal conspiracy and of selling of the land which was not the case of the Water Resources Department in its report. He refers to the letters dated 28.11.2020 and 08.02.2021 and would submit that only the case of the Water Resources Department was about the encroachment by destroying the canal, whereas in the FIR, fraud has been added by the police officer for the reason that illegal gratification was made which was not fulfilled. He would further submit that the affidavit of the persons to whom the alleged land of the water resources department was sold have been filed which would show that no notice for demarcation was ever given. It is stated in absence of demarcation it cannot be stated that land/canal of water resources department is encroached or sold. He further refers to the document of inspection dated 27.01.2021 and would submit that those documents too do not disclose that the demarcation was carried out and date of it was manipulated. He would further submit that in order to save the police officer, the word conspiracy, fraud and sale of the land was added in the subsequent letter dated 09.02.2021 which is filed as Annexure A/13. He therefore, submits that on the basis of the forged documents, the case has been registered, therefore, that is the change of circumstances to reconsider this bail application.

6. Per contra, learned State counsel opposes the prayer for grant of anticipatory bail and would submit that on the earlier occasion anticipatory bail application was considered and rejected. He would further submit that as many as 5 cases were to the credit of the present applicant along with the husband of the applicant against whom 5 to 8 cases are registered. He would further submit that the documents would show that the land of the water resources department was encroached and sold and the investigation is in the nascent stage, therefore, the bail if is granted, the applicant may tamper the evidence.
7. Perused the documents and the earlier order. For the sake of brevity to understand the issue the submission of the State counsel and finding of this Court passed in order dated 04.08.2021 in M.Cr.C.A No.447 of 2021 is reproduced hereinbelow:-

“5. Per contra, learned State counsel would submit that the part joint inspection on 27th November, 2020 it is part of the case diary, it shows that the applicants have sold part of khasra No. 99, 108, 109, 110/1 to four persons namely Rupa Shriwas, Rambha, Mohd. Rashid and Mohd. Shahid and the inspection report would reveal that the canal which was existing has been completely destroyed and the land of the canal too was sold to the different purchasers by carving of plots. Further it is pointed out that against applicant Sanjay Agrawal in 2007, 2009, 2012, 2015 cases under Section 186, 353, 294, 506, 188, 193, 420, 467, 468, 471 of IPC were registered. Further in the year 2017 three cases were registered against Sanjay Agrawal one under section 294, 506 of IPC, second under Section 294, 323, 506, 353, 332 of IPC and third under section 294, 506, 323, 395, 427, 447, 448 of IPC, in year 2019 case was registered under Section 294, 323 and 506 IPC and in the year 2020 case was registered against Sanjay Agrawal and Seema Agrawal under section 467, 468, 471, 120-B of IPC and in the year 2020 another case was registered against Sanjay Agrawal u/s 243, 294, 506, 342, 365, 420, 467 of IPC and again in 2020 similar offence is registered u/s 420, 120-B, 34, 294, 506, 34 IPC this offence is registered against Seema Agrawal also and in 2021 further cases are registered against both the applicants

6. Learned counsel for the applicants submits that though the State claims that certain cases are registered but then the applicants have been enlarged on bail in all the cases.

7. After considering the submission of the State counsel and the nature of allegation that the applicants in connivance with each other have sold the land which was acquired by the government to the different beneficiaries and received huge sum, thereafter coupled with the fact that number of cases are to the credit of applicants Sanjay Agrawal and Seema Agrawal over almost every year, I am of the opinion that it is not a case where benefit of section 438 of Cr.P.C. can be extended to the applicants.”

8. The documents dated 28.11.2020 (Annexure A-3) and 08.02.2021 (Annexure A-4) are about the encroachment wherein the allegation of encroachment has been made and the subsequent document says about the sale of the land. The case-diary document contains the memo of the Tehsildar also, wherein the destroy of the canal land and sale of the land has been stated. The case-diary also contains a demarcation report and the authenticity of the same cannot be adjudged at this stage to be wrong which is a matter of investigation. Considering the same and the fact that there are other criminal cases to the credit of the present applicant and also considering the nature of offence, I do not find any change of circumstances to reconsider this repeat anticipatory bail application.
9. Accordingly, the anticipatory bail application is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu