

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC (A) No.1270 of 2021**

1. Madhur Agrawal, son of Shri Suresh Agrawal, aged about 35 years.
2. Suresh Agrawal, son of Shri Ramchandra Agrawal, aged about 60 years.

Both R/o SADA Colony, Jamnipali, Korba, District Korba (CG)

---- Applicants**Versus**

- State of Chhattisgarh, Through: The Station House Officer, Police Station Chakradhar Nagar, District Raigarh (CG)

---- Non-applicant

For Applicant	:	Mr. Shashank Thakur, Advocate
For Non-applicant	:	Mr. B.P. Banjare, Govt. Advocate.

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****7/10/2021**

1. This is first application under Section 438 of CrPC for grant of anticipatory bail to applicants as they apprehend their arrest in connection with Crime No.380/2021 registered at Police Station Chakradhar Nagar, Distt. Raigarh (CG) for commission of offence punishable under Section 420/34 of IPC.
2. Case of prosecution, in brief, is that complainant, owner of pay-loader machine (JCB) bearing registration number CG04-DT-0174, lodged report in Police Station Chakradhar Nagar stating that one Sachin Singh, representative of firm of applicant No.2, contacted complainant for hiring his pay loader machine (JCB). Complainant agreed to give his pay-loader machine (JCB) on monthly rent of Rs.80,000/-. Initially, for couple of months applicants have paid monthly rent of pay-loader machine to complainant, but from September, 2018 they stopped making payment of rent of pay loader machine. When complainant asked for arrears of rent, neither rent was paid nor JCB machine (pay loader) was returned to him. Based on report of complainant, FIR is registered against

applicants.

3. Mr. Shashank Thakur, learned counsel for applicants would submit that applicant No.1 is sole proprietor of M/s Bundelkhand Engineering, Korba, which is engaged in civil construction work. Applicant No.1 has been awarded contract for construction work of building and road in the project site of Lara Super Thermal Power Project of NTPC, Pussour. Sachin Singh, representative of applicant No.1, contacted complainant for taking pay-loader machine of complainant on rent. Complainant agreed to give his pay-loader machine (JCB) on monthly rent of Rs.80,000/-. After using machine for couple of months, the applicants do not realize its necessity, therefore, they asked complainant to take back his pay-loader machine, which he has not taken back. After some time complainant filed an application before the Court of Sub Divisional Magistrate, Raigarh for issuance of search warrant under Sections 94, 97 & 98 of CrPC. The SDM took cognizance on application vide order dated 29.1.2019, which was put to challenge by applicants by filing Criminal Revision N.26/2019 before the Court of Additional Sessions Judge, Raigarh. This revision was allowed vide order dated 27.8.2019 and order dated 29.1.2019 passed by the SDM was set aside. Instead of challenging order dated 27.8.2019 before higher Court, complainant chose to submit complaint in the office of Additional Superintendent of Police, Raigarh on 23.10.2019. Thereafter complainant lodged report in Police Station Pussour mentioning therein that pay-loader machine of complainant was hired by Sachin Singh, representative of applicant No.1, but rent is not being paid to him. In this report location of pay-loader machine has been specifically mentioned as 'project site of Lara Thermal Power Project, NTPC, Pussor'. On the date of filing of application before the Sub Divisional Magistrate, Raigarh, the complainant was well aware about location of his pay-loading machine, but even then suppressing all material facts, he filed an application

under Section 94, 97 & 98 of CrPC with ulterior motive, which is apparent from contents of report. Report was considered by the Station House Officer concerned, who in turn drawn proceeding under Section 151 CrPC mentioning that dispute is with regard to payment of rent of hired pay-loader machine (JCB). This proceeding under Section 155 of CrPC is dated 1.12.2019. He further submits that complainant suppressing all earlier proceedings filed another report with Police Station Chakradhar Nagar based upon which FIR is registered against applicants. Perusal of all previous proceedings drawn on the basis of report/complaint/application of complainant would show that applicants have not committed any offence as alleged against them. They have not forcefully kept machine of complainant in their custody. It is applicant No.1 who had asked complainant to take back his pay-loader machine from the site of Lara Thermal Power Project, NTPC, Pussor, but for the reasons best known to complainant, he did not take back his pay-loader machine, which is still lying there in idle condition. Applicant No.1 is still working as Contractor with NTPC. Hence, applicants may be extended benefit of anticipatory bail.

4. Mr. B.P. Banjare, learned State Counsel opposes submissions made by learned counsel for applicants and referring to complaint and FIR submits that specific allegations have been levelled against applicants that after taking pay-loader machine of complainant on rent, they have neither paid rent nor returned vehicle to complainant. Hence, applicants are not entitled for grant of benefit under Section 438 of CrPC.
5. I have heard learned counsel for the parties.
6. Taking into consideration nature of allegations; documents placed on record i.e. application filed by complainant before the Sub-Divisional Magistrate, Raigarh; report lodged in Police Station Pussor on 13.9.2019 (copy of which is obtained under Right to Information Act); proceedings drawn under Section

155 of CrPC (copies of which are also obtained under the Right to Information Act, 2005); and further considering the fact that complainant has suppressed all earlier proceedings drawn on the basis of complaint/report lodged by him before Police Station Pussour, without commenting anything on merits of case, I am inclined to enlarge applicants on anticipatory bail.

7. 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 applicants in connection with crime in question, they shall be released on anticipatory bail by the officer arresting them on their executing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety in the like sum to the satisfaction of the Arresting Officer. Applicants shall also abide by following conditions :

- (i) that they shall make themselves available for interrogation before Investigating Officer as and when required;
- (ii) that they 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 they shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that they shall appear before the trial Court on each and every date given to him by the said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-