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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.1335 of 2021**

- Gagan Choudhary S/o Lt. Kaushal Choudhary, aged about 20 years, village Bansinya, Tehsil and Distt. Raigarh (CG)

---- Applicant**Versus**

- State of Chhattisgarh, through Police-in-charge of PS-Chakradhar Nagar, Raigarh, District Raigarh (CG)

---- Non-applicant

For Applicant	:	Mr. Mohit Verma, Advocate
For Non-applicant	:	Mr. Vaibhav Singh, Panel Lawyer.

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****9/12/2021**

- This is an application under Section 438 of CrPC for grant of anticipatory bail to applicant as he apprehends his arrest in connection with Crime No.456/2021 registered at Police Station Chakradhar Nagar, Raigarh (CG) for commission of offence punishable under Sections 420, 34 of IPC.
- Case of prosecution is that complainant received Rs.47,62,436/- as compensation towards acquisition of his land, out of which, he deposited Rs.37,64,436/- in his saving bank account and Rs.10,00,000/- in fixed deposit scheme of bank. Bank officials handed over ATM card with pin code, which was also known to co-accused Vikas Patel, son of complainant. After some time, on coming to know about withdrawal of Rs.10 Lakh from his bank account by applicant and his son Vikas Patel, complainant contacted applicant and also made query to his son Vikas Patel, whereupon they admitted to have withdrawn Rs.10 Lakh and thereafter deposited said amount in bank account of complainant. In the month of August, 2021 when complainant approached bank, he came to know that only Rs.254/-, out of total Rs.37,64,436/-, is remaining in his bank account. Thereafter complainant lodged report in concerned police station making allegation against his son Vikas Patel and applicant that they

fraudulently withdrew amount from his bank account, based upon which aforementioned crime is registered against applicant and co-accused Vikas Patel.

3. Mr. Mohit Kumar, learned counsel for applicant would submit that applicant is only having friendship with complainant's son. In final report/charge sheet filed against co-accused Vikas Patel in connection with offence registered under Section 376 of IPC, wherein prosecutrix made statement that co-accused Vikas Patel kept her in a separate place, making expenses on her and when cash amount finished, he went back to bring Rs.4-5 Lakhs. Hence, it is apparent from statement of prosecutrix that it is co-accused Vikas Patel who was spending money of his father after withdrawing the same from his bank account. There is no material showing involvement of applicant in commission of instant crime or that any amount is transferred to bank account of applicant or he himself used ATM card at any point of time. Applicant is only 20 years old, hence he may be granted anticipatory bail.
4. Per contra, Mr. Vaibhav Singh, learned Panel Lawyer for the State opposes the submissions of learned counsel for applicant and submits that applicant and co-accused both have fraudulently withdrawn money from bank account of complainant, as appearing in allegation levelled by complainant in report. Co-accused Vikas Patel, son of complainant, narrating wrong facts to complainant obtained his signature on application Form for issuance of ATM card and procured another ATM in the name of complainant. Details of transaction done through ATM were received in mobile phone of co-accused Vikas, therefore, complainant was not aware about commission of offence by applicant and his son. Allegation levelled against applicant is serious in nature as he along with co-accused withdrew Rs.37,64,436/- from bank account of complainant. Hence, applicant is not entitled to benefit under Section 438 of CrPC.

However, on putting specific query with regard to material collected against applicant during the course of investigation, he submits that except averments made by complainant in written report, there is no material to show that any amount was withdrawn by applicant or transferred to his bank account.

5. I have heard learned counsel for the parties.
6. Having regard to facts and circumstances of case; nature of allegations and submissions made by learned counsel for parties, without commenting anything on merits of case, I am inclined to extend benefit of anticipatory bail to applicant.
7. Accordingly, anticipatory bail application is allowed and 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/- with one surety in the like sum to the satisfaction of 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 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 trial Court on each and every date given to him by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-