

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1695 of 2020**

- T. R. Kunjam S/o Late A. G. Shankar Kunjam Age 50 Years Posted As Executive Engineer, Public Works Department, Bilaspur R/o E/4, Nutan Colony, Sarkanda Bilaspur Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station In-Charge, Police House Anti Corruption Bureau, District Raipur Chhattisgarh

---- Respondent

For Applicant	Ms. Naushina Ali, Advocate
For Respondent/State	Mr. Alok Bakshi, Additional Advocate General and Mr. Ayaz Naved, Government Advocate

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Order On Board by Prashant Kumar Mishra, J.****11/1/2021**

1. Heard.

2. This is the second application filed under Section 438 of the

Code of Criminal Procedure for grant of anticipatory bail to the applicant, who is apprehending his arrest in connection with Crime No.5/2016 registered at Police Station Anti Corruption Bureau, District Raipur (CG) for the offence punishable under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act").

3. The first bail application was filed directly before this Court, therefore, in view of the decision rendered by the Single Bench of this Court in **Ratnesh Singh Chouhan Vs. State of Chhattisgarh** (MCRCA No.918 of 2019) decided on 23.7.2019, holding that the bail applications can be filed directly before this Court, the matter was referred to a larger Bench and upon hearing the parties, the Division Bench dismissed the bail application holding that anticipatory bail applications cannot be filed directly before the High Court unless there exists exceptional, rare or unusual reasons in the case. The applicant thereafter moved before the Sessions Court and upon rejection of the prayer by the Special Judge (PC Act), Bilaspur, the present second bail application has been preferred.
4. As per the prosecution case, the ACB police received secret information that the applicant has amassed hefty properties, which is more than his known sources of income, therefore, he being a public servant, an FIR was registered on 15.1.2016 for the offence under Sections 13(1) (e) and 13(2) of the Act and a raid was conducted in his official accommodation at Nutan Colony, Sarkanda and at his residence at Muskan Residency,

Bungalow No.23, Lalpur, Raipur. At the relevant point of time, the applicant was working as Executive Engineer in the Public Works Department. From his Bilaspur residence, cash amount of Rs.2,80,000/- was found, out of which, Rs.40,000/- was returned to the applicant for his sustenance and Rs.2,40,000 was seized. Similarly, from his residence at Muskan Residency, Lalpur, Raipur, an amount of Rs.45,63,900/- was recovered. As per the charge sheet contained in the case diary, which is kept ready to be filed against the applicant, for the period under review (आलोच्य अवधि), the applicant's total income was found to be Rs.89,24,173/-, whereas, the total assets/expenditure for the said period stood at Rs.2,78,31,968/-. Thus, the applicant was found to have disproportionate assets to the extent of Rs.1,89,07,795/-.

5. Ms Naushina Ali, learned counsel appearing for the applicant, would submit that the house at Muskan Residency, Lalpur, Raipur, belongs to the co-brother (साढ़ू भाई) of the applicant namely; Ramesh Gulati, who is a businessman. The entire cash belongs to Ramesh Gulati, who has filed CRMP No.1147 of 2017 for interim custody of ornaments and cash recovered from his house. Learned counsel would further submit that apart from the official accommodation of the applicant at Bilaspur, the other house situated at Nutan Colony, Bilaspur has been treated to be that of the applicant despite the fact that in the assessment order Annexure A-4 passed by the Department of Income Tax, the said house has been held to be belonging to his

mother-in-law Smt. Indu Bedi. According to learned counsel, his late wife was a Homeopathy Practitioner and was assessed to income tax from the year 1995-96 to 2014-15 before she died an untimely death. Referring to the decision rendered by the Supreme Court in **DSP, Chennai v K. Inbasagaran**¹, learned counsel would submit that the property which has been assessed to be belonging to his mother-in-law cannot be counted as disproportionate asset of the applicant. Learned counsel would next submit that the applicant is a Government servant holding the post of Executive Engineer in the PWD and has been attending the duties throughout for the last about five years and was further allowed interim bail by this Court in the first bail application, which has never violated or misused, therefore, there is no possibility of his absconding and, as such, he is entitled for anticipatory bail.

6. On the other hand, Mr. Alok Bakshi, learned Addl. Advocate General appearing with Mr. Ayaz Naved, learned Govt. Advocate, would oppose the bail application. Learned counsel would submit that the applicant has amassed whopping disproportionate asset which is more than his known sources of income, therefore, in such serious offence, he should not be extended the benefit of Section 438 of the Cr.P.C. Learned counsel would also argue that the measurement book of different works undertaken by the PWD has been found in the house of co-brother (साढ़ू भाई) of the applicant along with cash of

¹ (2006) 1 SCC 420

Rs.45,63,900/-. It is, therefore, presumed that the cash belongs to the applicant. Learned counsel would next submit that the house in the name of his mother-in-law was purchased by the applicant as informed to the police in the statement of vendor Manjit Singh Vora and the Stamp Vendor Santosh Kesharwani.

7. Having heard learned counsel for the parties at length, we are of the opinion that the applicant deserves to be released on anticipatory bail for the reason that the house belonging to his mother-in-law has already been assessed and found to be belonging to her in her income tax assessment. Similarly, the cash found in the house of his co-brother (साठू भाई) Ramesh Gulati may not be treated to be belonging to the applicant. Once a property has been assessed and not been found to be benami in his/her hands, the same cannot be treated to be belonging to the applicant.
8. Albeit both the parties have tried to make out a case on merits, but the same would be considered by the trial Judge. At this stage, we are required to bestow our consideration on the issue of grant of anticipatory bail only. If the applicant was found to be possessed of disproportionate asset, it is surprising as to why he was not arrested by the concerned police for the last about five years and was allowed to attend duties in the capacity of Executive Engineer, PWD. It is not the case of the respondents that the applicant is trying to destroy the evidence or is not cooperating with the police or investigation. If his custodial

interrogation is required, the concerned police should have arrested the applicant at once, but that having not been done, it appears to us that his custodial interrogation is not required. Even otherwise, the charge sheet is already prepared and is available in the case diary, therefore, the investigation appears to be complete. The applicant being a senior officer of the rank of Executive Engineer, PWD, there is no chance of his absconding and not appearing before the trial Judge. Moreover, the interim bail was granted in his favour in the first bail application and there is no allegation that he has misused the interim bail.

9. Considering the entire facts situation of the case, this Court is inclined to extend the benefit of Section 438 of Cr.P.C. to the applicant.

10. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond for a sum of Rs.50,000/- with one surety in the like sum to the satisfaction of the Arresting Officer with the following conditions :-

- (i) he shall make himself available for interrogation by a Police Officer as and when required;
- (ii) he 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 him for disclosing such facts to the Court or to any Police Officer.

- (iii) he shall not influence the witnesses during pendency of the trial.

Certified copy as per rules.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge