

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 13.12.2021****Order Delivered on : 20.12.2021****MCRCA No. 1331 of 2021**

1. Hiten Pradyumna Mehta, (wrongly mentioned as Hiten Pradhyumna Mishra in rejection order), S/o Mr Pradyumna Mehta, Aged About 56 Years,
2. Smt. Sejal Hiten Mehta, W/o Hiten Pradyumna Mehta, Aged About 52 Years,

Both R/o Flat Number 401 Varun (Amin Villa), Dattatray Road, Opposite Sarla Nursing Home, Santacruz (West), Mumbai, Maharashtra.
3. Sudhir Narayan Narkar, S/o Mr. Narayan Narkar, Aged About 60 Years R/o I-404, Regal Heights, Sector 8, Achole Vasant Nagari, Greater Achole, Nalasopara (East), Vasai - Palghar, Maharashtra.
4. Mr. Ravindra Genu More, S/o Mr. Genu More, Aged About 45 Years R/o Plot No. 158/C, Behind Yadav Dairy, Lumbini Baug, Govandi, Shivaji Nagar, Mumbai, Maharashtra.
5. Rakesh Vasantlal Parmar, S/o Mr, Vasantlal Parmar, Aged About 40 Years R/o Flat No. 702, B-Wing, NL Aaryavarta, Off Link Road, Opposite N.L. Complex, Dahisar (East), Mumbai, Maharashtra.

---- Applicants**Versus**

State of Chhattisgarh Through Police Station, Sipat, District Bilaspur Chhattisgarh.

---- Non-applicant

For Applicants : Shri Maneesh Sharma, Advocate

For Non-applicant/State : Shri Amit Kumar Verma, Panel Lawyer

For Objector/complainant : Shri Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

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.406 of 2021, registered at Police Station Sipat District Bilaspur (C.G.), for offence punishable under Section 420, 34 of Indian Penal Code.
2. Case of prosecution in brief, is that, complainant entered into an agreement for purchase of Flexi Printing Press - Six Color - 1300 M.M. (Machine) for total consideration of Rs.2,01,78,000/- vide agreement dated 26.05.2018. As per conditions of agreement, complainant deposited 35% of advance amount. The machine was installed in premises of complainant. Thereafter, complainant has paid further 35% after installation of machine. Since the date of installation of machine, it was not working properly and certain defects were found continuously in the machine, complainant made several correspondences through e-mail pointing out the defects and non-proper performance of machine. When even after several complaints, defects could not be cured, complainant asked for return of money and asked to take back machine. When request for return of money was not given any heed to, report was lodged to concerned police station, based upon which, aforementioned crime was registered against the applicants. Application for grant of anticipatory bail filed before the Court below was dismissed by impugned order.
3. Shri Maneesh Sharma, learned counsel for the applicants would submit that the applicants are partners of Perfect Printgraph

Engineers, a Limited Liability Partnership Firm. After negotiation between complainant and applicants firm, complainant agreed to purchase Flexi Printing Press - Six Color - 1300 M.M. (Machine) for total consideration of Rs.2,01,78,000/-. Agreement of purchase of printing machine was written as 'deed of agreement' dated 26.05.2018 mentioning agreed conditions between the parties. Deed of agreement was signed by both the parties. As per conditions of agreement, after receiving advance amount of 35% of total cost of machine, applicants have delivered machine, get it installed in premises of complainant. After satisfying with delivery and installation of printing machine, complainant disbursed 35% cost of machine, making total payment of 70% against cost of machine. Rest of 30% of cost of machine was to be paid after six months of installation of printing machine. Applicants given best of service to complainant whenever information by way of letter or e-mail has been forwarded with respect to some technical error in machine during its use. Applicants have sent Engineers and resolved the defects as pointed out by complainant, but major defects was non use of appropriate measurement of cloth, which is required for running of machine in proper manner. This was also informed to complainant. Complainant after use of machine for considerable long period sent a letter for refund of money mentioning that printing machine sold by applicants was not giving satisfactory performance and there is continuously some defects on it. There is no allegation upon applicants that applicants have not supplied machine as per agreed specification. Contents of First Information Report and complaint would show that complainant was dissatisfied with performance of printing

machine. The grievance raised by complainant is arising out of contract, deed of which, is executed in the form of agreement dated 26.05.2018. The dispute, if any, between complainant and applicants is only of civil nature. Complainant by way of filing a report to concerned police station is only with an intent to create pressure upon applicants to act according to their will. Complainant cannot take recourse from criminal proceedings to redress his grievance, which primarily is of civil nature. Applicants are partners of firm and looking to the nature of complaint and allegations, applicants may be granted benefit of anticipatory bail under Section 438 of Cr.PC.

4. Per contra, Shri Amit Kumar Verma, learned Panel Lawyer for the State/non-applicant opposing the submissions made by learned counsel for the applicants, would submit that in the contents of complaint, complainant purchased Flexi Printing Press - Six Color - 1300 M.M. (Machine) from applicants' firm. Allegations levelled in complaint is that machine purchased by complainant from applicants' firm was not working properly, it frequently stopped working and it was not working effectively with full capacity. Complainant has paid 70% of agreed consideration and as per agreement, if machine is not working properly, then complainant is entitled for refund of amount. He submits that in the complaint, it has been further alleged that even after several complaints through e-mail and phone, defects have not been cured, nor amount is refunded, hence, there is involvement of applicants in commission of aforementioned crime.
5. Shri Anumeh Shrivastava, learned counsel for complainant/ objector would submit that as per agreement entered into between

complainant and applicants for purchase of printing machine, there is specific clause that "in case, if machine is found not working/running properly as per satisfaction of purchaser, advance amount paid is to be reimbursed". From the date of installation, machine was not running properly. There was defect. Initially in reply to e-mails of complaint, they have admitted that there is some defect and sent Mechanics/Engineers for its repairing, but subsequently, they have turn down of their words and levelled allegations against complainant that they are not using proper cloth, therefore, machine is not giving effective performance with its full capacity. Reverting from their words is sufficient to show that applicants from the inception of deal wanted to cheat complainant. He referred to contents of e-mail placed on record along with copy of objection. He submits that earlier when complaint is made of not functioning of machine properly, applicants have not mentioned non-use of proper cloth, hence, subsequent stand taken by complainant shows criminal intent of applicants and they are not entitled for benefit of Section 438 of Cr.PC.

6. I have heard learned counsel for the parties and perused the copy of First Information Report and copy of complaint dated 03.06.2021 submitted by complainant Jai Prakash Agrawal, Director of Bilaspur Mining Industries Private Limited.
7. The grievance as appearing from contents of complaint is that complainant had purchased Flexi Printing Press - Six Color - 1300 M.M. (Machine) under agreement. He deposited amount in installment as agreed and deposited 70% of total cost of machine. In the complaint, it is mentioned that machine was not supplied as

agreed, it is working very badly and unsatisfactorily. Applicants have not taken any steps for getting printing press run with full capacity and effectively. Copy of agreement placed along with application for grant of bail is not disputed by counsel for respondent. In the agreement, it is mentioned that "In case if the machine is found not working/running properly as per our satisfaction then the advance amount paid, including Transportation charges, etc. will be reimbursed by you."

8. Perusal of agreement entered into between the parties for supply of machine would show that there is no mention of any specification of machine. In clause 1 of agreement deed, it is mentioned as after installation, commissioning and successful trial of machine, 35% of cost of machine is to be paid making it total payment of 70%. Balance 30% is to be paid after 6 months of installation. Payment of 35% after installation is admitted by complainant based on agreement, from which presumption can be drawn of payment after successful trial of machine for purpose of considering this bail application.
9. Considering the entirety of facts and circumstances of the case, submissions of learned counsel for the parties and conditions of agreement (Annexure A/2), which is not disputed by either party, I am inclined to release the present applicants on anticipatory bail.
10. 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