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(Proceedings through video conferencing)
HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 11 of 2021

- R. K. Nagapure @ Rajendra Kumar Nagapure S/o Shri Moti Ram Nagapure Aged About 58 Years R/o Shiv Nagar Colony, Damoh Naka, Baldeobagh, Near Sansar Dhani Gas Company, Jabalpur District Jabalpur (M.P.)

---- Applicant

Versus

- Central Bureau of Investigation A.C.B. Chhattisgarh, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

MCRCA No. 58 of 2021

- P. K. Bhuwal @ Pawan Kumar Bhuwal S/o Late Shri Mohan Singh Bhuwal Aged About 62 Years R/o 17,18 Aadarsh Nagar, In Front of Chopda Petrol Pump, Durg, District Durg (CG)

---- Applicant

Versus

- State of Chhattisgarh Through S.H.O. P.S. C.B.I. A.C.B., Raipur, District Raipur Chhattisgarh.

---- Non-applicant

MCRCA No. 119 of 2021

1. Narayan Sahu S/o Lalit Sahu Aged About 37 Years R/o House No. 626, Kotba Tilgoda Para, Ward No. 11, Pathalgaon, District Jashpur (CG)
2. Vinay Agrawal S/o Laxminarayan Agrawal Aged About 34 Years R/o AWS 33, Circuit House, District Raigarh (CG)

---- Applicant

Versus

1. State of Chhattisgarh Through P.S. C.B.I. ACB, District Raipur (CG)
2. Union of India, through Central Bureau of Investigation Raipur (CG)

---- Non-applicants

MCRCA No. 192 of 2021

1. Ram Singh, S/o Shri Bhajpal Singh, Aged About 60 Years R/o Village Jalmala Police Station Pusour District Raigarh (CG)
2. Amalal Dansena @ Aama Lal Dansena, S/o Shri Raghunandan Dansena, Aged About 44 Years R/o Village Baisapalli Post - Navapara, Police Station Kotra Road, District Raigarh (CG)
3. Babulal Dansena, S/o Shri Dhoba Ram (Wrongly Mentioned As Ghoba Ram), Aged About 48 Years R/o Village Chhapora, Police Station Pusour District Raigarh (CG)
4. Rajendra Kumar Sarthi @ Raja Ram, S/o Shri Hari Ram Sarthi, (Wrongly Mentioned As Rajendra Kumar Sarthi S/o Raja Ram) Aged About 32 Years R/o Village Regada, Post - Sambaipuri Police Station Chakradhar Nagar, District - Raigarh (CG)

---- Applicants**Versus**

- Union of India, Through Superintendent of Police, Central Bureau of Investigation, ACB, District Raipur (CG)

---- Non-applicant**MCRCA No. 246 of 2021**

- Rajesh Kumar Sahu @ Rajesh Sahu S/o Shoukilal Sahu, Aged About 42 Years R/o House No. 31, School Para, Dumarpali, Usrol, Raigarh District Raigarh (CG)

---- Applicant**Versus**

1. State of Chhattisgarh Through P.S. ACB, District Raipur (CG)
2. Union of India Through C.B.I., Raipur (CG)

---- Non-applicants

MCRCA No. 368 of 2021

- Deepak Kumar Mali @ Deepak Mali S/o Ramkrishna Mali Aged About 45 Years R/o House No.116 Old Police Ground Gaushala Para Raigarh Tahsil And District Raigarh (CG)

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer Police Station C.B.I. A.C.B. Raipur District Raipur (CG)

---- Non-applicant**MCRCA No. 372 of 2021**

- Sanjay Kumar Singh S/o Shri Shatrughan Singh Aged About 38 Years R/o Village Dayalpur Mathuapur Kishandaspur District Bhagalpur (Bihar).

---- Applicant**Versus**

- Union of India Through Superintendent of Police Central Bureau of Investigation ACB District Raipur (CG)

---- Non-applicant**M.Cr.C. (A) No.11/2021**

For Applicant : Dr. Shiv K Shrivastava, Advocate
 For Non-applicant : Mr. Ramakant Mishra, Assistant
 Solicitor General

M.Cr.C. (A) No.58/2021

For Applicant : Mr. Vaibhav A Goverdhan, Advocate
 For Non-applicant : Mr. Ramakant Mishra, Assistant
 Solicitor General

M.Cr.C. (A) No.119/2021

For Applicants : Mr. Rahil Arun Kochar, Advocate
 For Non-applicant : Mr. Ramakant Mishra, Assistant
 Solicitor General

M.Cr.C. (A) No.192/2021

For Applicants : Mr. Pragalbha Sharma, Advocate
 For Non-applicant : Mr. Ramakant Mishra, Assistant
 Solicitor General

M.Cr.C. (A) No.246/2021

For Applicant : Mr. Rahil Arun Kochar, Advocate
 For Non-applicant No.1 : Mr. B.P. Banjare, Dy. Govt. Advocate
 For Non-applicant No.2 : Mr. Ramakant Mishra, Assistant
 Solicitor General

M.Cr.C. (A) No.368/2021

For Applicant : Mr. Vineet Kumar Pandey, Advocate
 For Non-applicant : Mr. B.P. Banjare, Dy. Govt. Advocate

M.Cr.C. (A) No.372/2021

For Applicant : Mr. Pragalbha Sharma, Advocate
For Non-applicant : Mr. Ramakant Mishra, Assistant
Solicitor General

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board**24/8/2021**

1. As all the above anticipatory bail applications arise out of the same crime, they are being heard together and disposed of by this common order.
2. Applicants have preferred above applications under Section 438 CrPC for grant of anticipatory bail to them as they apprehend their arrest in connection with Crime No. RC1242017A0002 dated 24.1.2017 registered at Police Station- CBI, ACB, Raipur for commission of offence punishable under Sections 419, 120(B), 420, 467, 468, 471 of IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.
3. Case of prosecution in brief is that applicants in above bail applications in connivance with others and on the strength of forged documents, got sanctioned loan from the bank officials of UCO Bank, Raigarh (some of them are applicant herein) and thereby caused loss of Rs.5 Crores to UCO Bank. On the basis of written complaint dated 24.1.2017 submitted by the Zonal Head, UCO Bank, Zonal Office, Telibandha, Raipur, FIR is registered against applicants. As per allegations, the officials and employees of bank along with other persons have withdrawn Kisan Credit Card Loan (KCC) during the period January, 2011 to October, 2015. In the aforesaid period, loan amount of Rs.5,24,00,000/- was disbursed to borrowers on the basis of

forged documents. Based on the complaint, a case was registered by CBI, ACB, Raipur. On completion of investigation, charge sheet was filed on 28.11.2020 before the Court of Special Judge of Special Court for trial of CBI cases, Raipur. The Court below concerned issued summons to the applicants upon which they apprehending their arrest have preferred separate applications under Section 438 of CrPC before the Court below concerned for grant of anticipatory bail and the same were rejected by the Court below.

4. Mr. V.A. Goverdhan, learned counsel for applicant in M.Cr.C. (A) No.58/2021 would submit that applicant was posted as Senior Manager in UCO Bank, Raigarh Branch, Raigarh from 30.11.2013 to 27.10.2015. On attaining age of superannuation, he retired from services on 30.6.2018. In the course of investigation, applicant participated and co-operated with the Investigating Agency. After completion of investigation, the prosecution has filed charge sheet before the Court below concerned and now custodial interrogation of applicant is not required. He submits that applicant undertakes to appear before the Court below on each and every date of hearing and he will not make any attempt to delay trial. He further argued that merely the offences alleged against applicant are cognizable and non-bailable, he should not be arrested, particularly when investigation is over and custodial interrogation of applicant is not needed. He further submits that no document is to be seized

from the possession of applicant and now applicant has to face trial as per programme fixed by the trial Court.

He further submits that complaint was lodged in the year 2015, crime was registered in the year 2017 and after completion of investigation, charge sheet has already been filed before the competent Court below. Applicant cooperated with CBI during the course of entire investigation.

He submits that Hon'ble Supreme Court in its decision dated 16.8.2021 in Cr.A. No.838/2021 arising out of SLP (Cr) No.5442/2021, parties being Siddharth vs. State of UP & another, apart from other issues, has considered the issue with regard to prayer of grant of anticipatory bail to appellant therein at the time of filing of charge sheet and held that arrest of accused before charge sheet is taken on record is not required in all cases when accused has already joined investigation; investigation has completed and accused has been roped in after long time of registration of FIR. He also referred to decision of Hon'ble Supreme Court dated 28.7.2021 rendered in SLP (Cr.) No.5191/2021 between Satyendra Kumar Antil vs. CBI & anr.

5. Dr. Shiv Kumar Shrivastava, Advocate for applicant in M.Cr.C. (A) No.11/2021 and Mr. Pragalbha Sharma, Advocate for applicants in M.Cr.C. (A) No.372/2021, who were working as Assistant Manager, have adopted arguments advanced by Mr. V.A. Goverdhan, Advocate. In addition, they submit that the Court below rejected anticipatory bail applications of these applicants observing that their involvement in commission of

crime in question is reflecting and benefit of anticipatory bail is to be granted only in exceptional cases. It was also observed that applicants have filed applications for grant of anticipatory bail prior to their appearance in compliance of summons issued by the trial Court and dismissed bail applications recording that the applicants have not appeared before the court below even after issuance of summons. Learned Counsel submit that the applicants apprehending their arrest pursuant to issuance of summons have preferred applications under Section 438 of CrPC before the Court below for grant of anticipatory bail but the same have been rejected without considering the facts and circumstances of case, particularly the fact that applicants have participated and co-operated in the entire investigation and after completion of investigation, charge sheet has already been filed.

6. Mr. Pragalbha Sharma, learned counsel for applicants in M.Cr.C. (A) No.192/2021 submits that these applicants are farmers in whose name KCC loan was sanctioned. They have also participated in the investigation. Hence, they may be enlarged on anticipatory bail.
7. While adopting arguments advanced by Mr. V.A. Goverdhan, Advocate in M.Cr.C. (A) No.58/2021, Mr. Vineet Kumar Pandey and Mr. Rahil Arun Kochar, Advocates for respective applicants in M.Cr.C. (A) Nos.368/2021, 119/2021 & 246/2021 contended that as charge sheet has already been filed and these applicants have co-operated in the entire investigation, there is no

apprehension of absconding of applicants. hence they may be enlarged on anticipatory bail.

8. Mr. Ramakant Mishra, Assistant Solicitor General for non-applicant CBI / ACB opposes the submissions made by learned counsel for respective applicants and submits that there are serious allegations against applicants. He submits that these anticipatory bail applications of applicants are not maintainable for the reason that there is no apprehension of arrest of applicants. The applicants in connivance with others got disbursed KCC loan amount of Rs.5,24,00,000/- on the strength of forged documents and thereby caused huge loss to UCO Bank, Raigarh. The trial Court has only issued summons to the applicants and not warrant of arrest, however, instead of appearing before the trial Court they have chosen to file separate applications under Section 438 of CrPC for grant of anticipatory bail to them. He further submits that applicants are trying to delay the process of trial by not following direction issued by the trial Court, hence they are not entitled to benefit under Section 438 of CrPC. He would further submit that decision of Hon'ble Supreme Court in case of Siddharth (supra), which has been relied upon by learned counsel for applicants, is on different footing. In that case, the Hon'ble Supreme Court was not considering the issue with regard to grant of anticipatory bail to appellant therein after filing of charge sheet, but the issue for consideration was whether arrest at the time of filing of charge sheet is necessary or not. Hence, aforementioned decision of

Hon'ble Supreme Court is of no help to the applicants. However, learned counsel for respondent does not dispute the fact that there is no allegation against any of the applicants that they have not cooperated in the investigation and that after investigation, custodial interrogation is not required, charge sheet has been filed before the court below concerned.

9. I have heard learned counsel for the parties and perused the record placed before me.
10. From perusal of pleadings it is apparent that period of commission of offence is from July, 2011 to October, 2015. Written complaint was lodged by the Zonal Head of UCO Bank on 24.1.2017 based on which FIR was registered by the non-applicant CBI. During the course of investigation, applicants have not been arrested and they co-operated with the Investigating Agency in investigation.
11. So far as submission of learned counsel for respondent that only summons have been issued to applicants and not arrest warrant, as such, these anticipatory bail applications are not maintainable is concerned, perusal of bail rejection orders would show that the Court below has observed in the order that involvement of applicants in commission of crime is reflecting. An application under Section 438 of CrPC would be maintainable if a person complains off apprehension of arrest and approaches for orders based on concrete facts relatable to one or other specific offence. Hon'ble Supreme Court in case of **Sushila Agrawal vs. State (NCT of Delhi) and another** reported in (2020) 5 SCC 1

has considered this issue and referring to its earlier decision in **Gurubaksh Singh Sibbia vs State of Punjab** reported in (2011)

1 SCC 694 has held thus:-

“92.1.(1) Consistent with the judgment in Gurubaksh Singh Sibbia v. State of Punjab¹, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.”

12. In the light of above ruling of Hon'ble Supreme Court and the observation made by trial Court in bail rejection order that prima facie commission of offence by applicants is reflecting and anticipatory bail should be granted only in exceptional circumstance, this Court is of the considered opinion that there is no force in the objection raised by learned counsel for respondent with respect to maintainability of these bail application. There is *prima facie* material to show that applicants have reasonable apprehension of their arrest.

13. As regards the submission of learned for respondent that the order passed by Hon'ble Supreme Court in case of Siddharth (supra) has no application in the facts of present case as it does not deal with grant of anticipatory bail, perusal of opening paragraph of the order passed by Hon'ble Supreme Court in case of Siddharth (supra) would show that one of the issues under consideration was **'whether the anticipatory bail application of the appellant ought to have been allowed'** Thus it is apparent that Hon'ble Supreme Court has considered the issue with regard to grant of anticipatory bail to appellant therein. Hon'ble Supreme Court has further considered necessity of arrest of accused therein even after completion of investigation at the time of filing of charge and held thus:-

“.....We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yon the charge sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word “custody” appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the

presentation of the accused by the Investigating Officer before the court while filing the charge sheet.

We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arise when the custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar's case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the chargesheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven years of registration of the FIR, we can think of no reason why at this stage he must be arrested before the charge sheet is taken on record. We may note that learned counsel for the appellant has already being stated issued the before us

that appellant will on summons put the appearance before the trial court.....”

Hon’ble Supreme Court in the above order has considered requirement of arrest of accused persons at the time of filing of charge sheet and has concluded that no reason as to why at this stage he must be arrested before charge sheet is taken on record.

14. If the facts of present case are considered in the light of aforementioned order passed by the Hon’ble Supreme Court, the offence said to have been committed from July, 2011 to October, 2015; complaint was lodged on 24.1.2017; FIR was registered in the year 2017 and after completion of investigation, charge sheet was filed on 20.11.2020 i.e. after about more than three years, from the date of registration of FIR, the applicants have participated in investigation. Learned counsel for the respective applicants have also submitted that the applicants have not appeared before the trial Court after issuance of summons only on account of apprehension of their arrest. However, they undertake to appear before the Court below on each and every date of hearing as fixed by the trial Court till final disposal of trial.
15. In the said circumstances, I am of the opinion that present are fit cases where the applicants deserve to be enlarged on anticipatory bail. Accordingly, all the applications are allowed and 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/- 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 facts of case so as to dissuade him/her from disclosing such facts to 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 & every date given to him by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-