

K.P. Singh Chouhan vs The State Of Madhya Pradesh on 22 February, 2022

Author: Rajendra Kumar Verma

Bench: Rajendra Kumar Verma

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IN THE HIGH COURT OF MADHYA PRADESH AT
BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KU
ON THE 22nd OF FEBRUAR

MISC. CRIMINAL CASE No. 505

Between: -
K.P. SINGH CHOUHAN S/O SHRI DEVENDRA
CHOUHAN OCCUPATION: BUSINESS
SHEETAL NAGAR, RING ROAD (MADHYA
PRADESH)

(BY SHRI A.S. GARG, LEARNED SENIOR C
BHUWAN GAUTAM, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH P.S. VIJAY NAG
(MADHYA PRADESH)

(BY SHRI HEMANT SHARMA FOR STATE
SHRI P.R. BHATNAGAR FOR OBJECTOR SUB
SHRI K.K. TIWARI, ADVOCATE FOR ON BE
CHRAYU AND ANKIT BASER
SHRI VISHAL SANOTHIYA, ADVOCATE FOR

This MCRC coming on for ADMISSION this
the following:

ORDER

This is the first application filed by the applicant under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.

The applicant is apprehending his arrest in connection with Crime No.914/2021 registered at Police Station Vijay Nagar District Indore for the offences punishable under Sections 420, 406, 409/34 of IPC, 1860.

As per prosecution story, the allegations against the applicant are that he, being a director of Glorious Triumph India Pvt. Ltd, Oxygen lifeline Retail Pvt. Ltd. and Shouryaditya Advertise, alongwith other other co-accused induced the complainants namely (1) Sagar Corporate, Indore (2) Shubham Bhandari and Raja Patel Indore (3) Nit Priya Medicose AMIT KUMAR Date: 2022.02.24 18:45:27 IST Indore (4) Chirayu Jain through Tiyaar Goyal and Associates, Indore (5) Ankit Baser Indore in the name of giving franchisee of different companies and to earn more profit collected a total amount of Rs.65,72,989/- from the aforementioned complainants by cheating and criminal breach of trust. On the basis of the aforesaid complaint given by the complainants, the police has registered the case against the applicant and other co-accused persons.

Learned Senior counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the present case, there is no iota of evidence against the applicant which shows any criminal intent/mensrea of applicant could constitute any offence against him, in the entire record of the case, there is no evidence against the applicant and there is no single ingredient which would constitute a crime under Sections 420, 406 and 409 of IPC. It is further submitted that initial the prosecution has filed the case under Section 420 and 409/34 of IPC and when the applicant filed the application before the trial court, thereafter, the prosecution without any further investigation and only to justify its earlier legal action, Section 409 of IPC has been added and prima facie, there is no ingredient to made out the case under section 409 of IPC. The prosecution has itself alleged that it is evident that the complainant either supplied grocery item in the company, or done some fabrication work or hold franchisee and against the said work they received the amount also from the company, if this was the situation, no ingredient of cheating, fraud or criminal breach of trust is made out and for any balance, the complainants need to approach appropriate forum i.e. civil Court for adjudication of their claims. The dispute between the parties is purely of civil in nature and the complainants forcefully, mala fide with ill intention to make illegal recovery from the accused, have filed the totally SAN AMIT KUMAR Date: 2022.02.24 18:45:27 IST false and fabricated case. Earlier also, the complainants tried to file a FIR against the applicant, but the police after enquiry, did not register the case.

It is also submitted that the applicant himself has also filed a complaint on CM Helpline also on 15.09.2021 against the complainants. The prosecution has not followed the settled principles laid down by Hon'ble Apex Court in the case of Arnes Kuar vs. State of Bihar passed in SLP (Cri.) 9127/2013. The prosecution has also not followed the procedure under Section 41-A of Cr.P.C and not notice has been given to the applicant. It is also submitted that all the complainants had entered into the business/corporate terms with the applicant and other co-accused persons and they are binding under the contractual liability. The complainants have impleaded the name of the applicant as the director of Oxygen Lifeline Retail Pvt. Ltd and Shouryaditya Advertise, however, he is director of only Glorious Triumph India Pvt. Ltd neither the Director of Oxygen Lifeline Retail Pvt. Ltd and Shouryaditya Advertise nor office bearers of these companies, hence, there is no role of the applicant in the present case. Initially, the complainant Ankit Baser joined Glorious Triumph India Pvt. Ltd as General Manager which was running a brand/food chain under the guise of "Cup And Puff" at Indore, thereafter, a power of attorney has been executed in his name whereby the company gave him the sole rights for managing and running the business related to the company, during his tenure, a woman employee of the company has made a complaint against him under Section 354

and 354 (D) of IPC and he was arrested by the police and due to which, in vengeance and personal vendetta, alongwith other complainants, the applicant has been implicated falsely by them. The applicant is ready to co-operate with the investigation and to abide by all the conditions enumerated by this Court. There is no likelihood of his absconding or tampering with the prosecution evidence.

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Date: 2022.02.24

On these grounds, the applicant may be enlarged on anticipatory bail. 18:45:27 IST Learned Counsel for the State as well learned counsel for the complainants have opposed by prayer by submitting that the applicant is habitual person for cheating with the persons and the applicant has committed fraud with the complainants as well as other various persons also and there are number of cases of similar nature have been registered against the applicant throughout the State of Madhya Pradesh., hence, he is not entitled for bail.

Learned counsel for the complainants further objected the application by submitting various complaints and FIR of same nature which have been lodged/registered against the applicant in various districts of Madhya Pradesh i.e. Crime No.503/21 registered at Police Station Madan Mahal (Jabalpur) under section 409 and 420, Crime No.011/2022 registered at Police Station Kampu under Section 420, 406, 405/34, Crime No.509/2021 registered at police station Ongti (Jabalpur) under Section 409 and 420 of IPC, crime No.652/2021 registered at Police Station Dhar under Section 420 & Crime No.1422/2021 registered at Police Station Lasudiya under Section 420, 406 and 506 of IPC etc. It is also submitted that as per the Memorandum of Associations of Oxygen lifeline Retail Pvt. Ltd., the present applicant is having 89% shares of the company and this company shall continue to carry on and carry, inter alia the businesses hitherto before carried on in the said partnership firm in the name and style of "M/S Shouryaditya Advertise". Hence, it can not be said that the applicant has no relation with the Oxygen lifeline Retail Pvt. Ltd. and Shouryaditya Advertise and the fraud has been committed by the applicant in the name of companies named above with the various persons. Hence, he is not entitled for benefit of anticipatory bail.

I have heard the counsel for the parties and perused the record. Considering the facts and circumstances of the case and the fact that SAN AMIT KUMAR Date: 2022.02.24 18:45:27 IST the applicant alongwith other co-accused persons have committed fraud with the complainants and various persons, seriousness of the offence and considering the implication of the applicant in the various FIRs/Complaints, filed by other persons throughout the State of M.P., the application stands rejected.

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