

**(2020) 09 CHH CK 0011**

**Chhattisgarh High Court**

**Case No:** M.Cr.C.(A) No. 647 Of 2020

Ashok Kumar Swarnkar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

**Date of Decision:** Sept. 25, 2020

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 119, 120B, 182, 211, 409, 420, 467, 468, 471, 472
- Information Technology Act, 2000 - Section 66(B)(C)(D)

**Hon'ble Judges:** Arvind Singh Chandel, J

**Bench:** Single Bench

**Advocate:** Goutam Khetrapal, Alok Nigam

### **Judgement**

Arvind Singh Chandel, J

1. The present is first application for grant of anticipatory bail to the Applicant. He is apprehending his arrest in connection with Crime No.360 of

2014 registered at Police Station Bodhghat, District Bastar for offences punishable under Sections 467, 468, 471, 472, 420, 120B/34 of the Indian

Penal Code and Section 66(B)(C)(D) of the Information Technology Act.

2. According to the case of the prosecution, First Information Report was lodged by one Executive Engineer Narayan Singh Bisht on 26.11.2014

against the present Applicant and other 9 co-accused persons. The alleged offence is said to have been committed between 5.9.2013 and March,

2014. During that period, the present Applicant and other co-accused persons, namely, Albinus Tirky and Helarius Kujur were posted as Accountants

in the Regional Accounts Office of the Chhattisgarh State Power Distribution Company Limited (CSPDCL). In the FIR, it has been alleged that other

co-accused persons, namely, Pintu alias Pritam Thakur, Pankaj Kumar Kela, Raghvendra Jaiswal, Sahara Das, Sunit Kadse, Sanjay Naidu and Amit

Kumar Jaiswal (all electric contractors) got prepared forged work orders relating to 63 works and without execution and completion of any of the said

works they prepared and submitted forged bills for total amounting to Rs.1,43,99,311/- and with the connivance of the present Applicant and other co-

accused persons, namely, Albinus Tirky and Helarius Kujur, the above-named 7 electric contractors received the said amount of Rs.1,43,99,311/-.

Allegedly, the present Applicant, co-accused persons Albinus Tirky and Helarius Kujur and the other co-accused persons, without following the

prescribed procedure and norms for passing the said bills, with the connivance of the above-named 7 electric contractors, passed the bills for payment

of total Rs.1,43,99,311/- to the said electric contractors. The FIR was registered and the matter was investigated into. After completion of the

investigation, charge-sheet was filed on 19.9.2015 declaring the present Applicant to be absconded.

3. Learned Counsel appearing for the Applicant submits that the Applicant has been falsely implicated in the case. Initially, after registration of the

FIR, the present Applicant was suspended from service on 28.10.2015 and his headquarter was directed to be at Jagdalpur. He retired from service

on 31.12.2015. A departmental inquiry was also initiated against him. In the said inquiry, his negligence was found to be proved. Resultantly, his 25%

amount of pension was permanently withheld. Presently, he is a retired person and is a senior citizen. He never remained absconded. Referring to the

charge-sheet, Learned Counsel appearing for the Applicant further submits that the guilt of Complainant Executive Engineer Narayan Singh Bisht and

that of other Executive Engineers, namely, Bhupal Singh and V.K. Malya was found by the investigating agency and against them offence under

Sections 409, 119, 182 and 211 of the Indian Penal Code was also registered. According to the Learned Counsel for the Applicant, the above-named

7 electric contractors have committed the offence in question in which the aforesaid 3 Executive Engineers are also involved. The present Applicant,

being an Accountant, had only forwarded the bills for their passing for payment. In the departmental inquiry also, his act was found to be negligent

one only. Investigation has already been completed and charge-sheet has also been filed. No custodial interrogation of the Applicant is required.

Therefore, Learned Counsel prayed that the Applicant may be granted benefit of anticipatory bail.

4. Learned Counsel appearing for the State/Respondent opposes the bail application. He submits that the allegations are of serious nature and the present Applicant has remained absconded since beginning. Therefore, he is not entitled to get benefit of anticipatory bail.

5. I have heard Learned Counsel appearing for the parties and perused the FIR, charge-sheet, documents annexed with the bail application and other material available with due care.

6. From perusal of the charge-sheet, it appears that involvement of the aforesaid 3 Executive Engineers has been found in the investigation. The allegation of preparation of forged bills amounting to Rs.1,43,99,311/- and receiving the said amount is against the above-named 7 electric contractors.

It also appears that the charge-sheet has already been filed on 19.9.2015. The present Applicant has retired from service on 31.12.2015, i.e., after filing of the charge-sheet. Therefore, the allegation made in the charge-sheet that the present Applicant remained absconded is incorrect. The charge-sheet has been filed in the year 2015. Now, the Applicant is a retired person and is a senior citizen. It also appears that custodial interrogation of the Applicant is not required. Therefore, considering the facts and circumstances, I am inclined to grant benefit of anticipatory bail to the Applicant.

7. Accordingly, the anticipatory bail application is allowed.

8. It is directed that in the event of arrest of the Applicant in connection with the aforesaid crime, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rupees One Lakh with one solvent surety for the like sum to the satisfaction of the Arresting

Officer/Presiding Officer of the concerned Trial Court. The Applicant shall also abide by all the following terms and conditions:

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 from disclosing such fact to the Court,

2. He shall not act in any manner which will be prejudicial to fair and expeditious trial, and

He shall appear before the Trial Court on each and every date given to him by the said Court till disposal of the trial.

9. From perusal of the charge-sheet, it appears that it was filed on 19.9.2015 and finding involvement of the aforesaid 3 Executive Engineers an

offence was also registered against them and the charge-sheet was filed showing that further investigation is pending against them. It has been

brought to the notice of this Court by Learned Government Advocate appearing for the State/Respondent that the said investigation against the

aforesaid 3 Executive Engineers is still pending. The investigation is pending for the last 5 years and no progress is shown which extremely surprises

this Court. An anticipatory bail application, i.e., M.Cr.C.(A) No.1298 of 2014 moved by co-accused persons Albinus Tirky and Helarius Kujur was

rejected by this Court vide order dated 8.4.2015. As submitted by Learned Counsel appearing for the Applicant, co-accused Albinus Tirky has retired

from service in the year 2019 and co-accused Helarius Kujur is still in service. Surprisingly, in the charge-sheet dated 19.9.2015, co-accused persons

Albinus Tirky and Helarius Kujur were declared to be absconded, but the fact, as stated, is that they were serving at the place of their duties. Despite

that, they have not yet been arrested. As regards the above-named 7 electric contractors, as submitted by Learned Government Advocate appearing

for the State/Respondent, only Pankaj Kumar Kela, Pintu Thakur and Sunit Kadse have been granted regular bail and rest of the said electric

contractors have not yet been arrested. Probably, the non-arrested 4 electric contractors will still be working in the concerned area. But, despite that,

they have not yet been arrested even when the government money of Rs.1,43,99,311/- is involved in this matter. Therefore, in the considered opinion

of this Court, a detailed inquiry is required to be done into this matter. The Director General of Police, Chhattisgarh State is directed that he himself

shall inquire into the matter or he shall get the inquiry done by a responsible senior police officer within a period of three months from the date of

receipt of a copy of this order. Whatever negligence of any of the concerned police officer is found in the inquiry, a report thereof shall be prepared

and placed before this Court within the stipulated period of three months. It is also made clear that the said inquiry shall include all the police officers who have remained posted at the relevant place from the date of filing of the charge-sheet, i.e., 19.9.2015 till date.