

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 464 of 2015**

1. Satyam Manikpuri, S/o. Purandas Manikpuri, Aged About 19 Years, R/o. Village Dhandhani, P.O. & P.S. Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
2. Chudamani Manikpuri, S/o. Paltudas Manikpuri, Aged About 20 Years, R/o. Village Marseli, P.O. & P.S. Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)

---- Petitioners

Versus

State Of Chhattisgarh, Through The District Magistrate, Raipur, District-Raipur (Chhattisgarh)

---- Respondent

For Petitioners : Mr. Shivendu Pandya, Advocate.

For Respondent : Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****28/08/2015**

1. This petition is against the order dated 07.04.2015, passed by the learned Eighth Additional Sessions Judge, Raipur, in Criminal Revision No.123/2015. By such order, the order dated 16.03.2015 passed by the learned Judicial Magistrate First Class, Raipur, in Criminal Case No.12598/2014 in between *State v. Satyam Manikpuri & Anr.* was affirmed. The order pertains to rejection of application under Section 437(6) of Cr.P.C.
2. It is contended by the petitioner that the application under Section 437(6) of Cr.P.C. was filed before the Judicial Magistrate First Class, which was rejected. It is stated that on 06.09.2014 the charges were framed and thereafter the case was fixed on 19.09.2014 and subsequently the case was fixed for evidence and out of 12 witnesses only 3 witnesses have been

examined. It is therefore stated that after first date of evidence on 19.09.2014 within 60 days, the case has not been concluded, therefore, the petitioners may be enlarged on bail under Section 437(6) of Cr.P.C.

3. Learned State counsel opposes the bail and would submit that the prosecution was not negligent on its part to adduce evidence and the efforts were continuously made to procure the witnesses and further considering the nature of gravity of offence, petitioners are not entitled for bail.
4. I have heard learned counsel appearing for the parties, perused the pleadings and documents placed.
5. Perusal of the order sheets shows that on 06.09.2014 the charges were framed thereafter the case was fixed on 19.09.2014. On 19.09.2014 the prosecution witness were absent and they were summoned subsequently and the case was fixed on 29.09.2014. On that date also, the prosecution witness were absent. Despite the service of summons, the prosecution witness were absent on 27.10.2014, therefore, the bailable warrant was issued and the case was fixed for 07.11.2014. On 07.11.2014 the witness were absent. Subsequently on 21.11.2014 three witnesses were examined and the rest of the witness were summoned for evidence on 19.12.2014 but despite the service of summons the other witness also remained absent on 19.12.2014. Subsequently, the case was fixed on 02.01.2015 and 30.01.2015. On 30.01.2015 one witness was present who was not examined and was left and the other witness have not been examined till date. The order sheet further shows when the case was fixed on 13.03.2015 for evidence, on that date, one witness was present but the prosecution had given up and subsequently, the case was fixed for 27.03.2015.
6. In the case of ***Atul Bagga versus State of Chhattisgarh, 2010 Cr.L.J. 508***, this Court considered the scope, extent and object of provisions contained in Section 437 (6) of the Code and held:-

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among others may weigh with the Magistrate while refusing bail:

- (a) the overall impact of the offence and the release of the person accused of such offence on the society,
- (b) the possibility of tampering of evidence by the accused,
- (c) the possibility of the accused absconding if released on bail, and lastly,
- (d) the delay in conclusion of the trial within a period of 60 days if attributable to the accused.”

7. Perusal of the order shows that though the case was fixed for evidence on 19.09.2014 initially but it could not be concluded however in the intermediate date the witness was present and few witness though was served did not keep themselves present and the bailable warrant was issued. The order sheets records that against the petitioners another case bearing crime No.318/2014 under Section 379 of IPC and crime No.32/2014 under Section 392, 379, 34 of IPC is registered apart from the instant case which is of crime No.78/2014. Therefore reading of the order shows that the petitioners have involved in criminal cases at the different point of time, therefore, the Court cannot be oblivious of the fact that when series of criminal cases are registered against the person then certainly if he is enlarged on bail, it will have an impact in the society.
8. If the provisions of Section 437(6) of Cr.P.C. are closely perused, it appears that enough care has been taken by the legislature. There is an in-built exception. The words “unless for the reasons to be recorded in writing”, carves out exception to the rule which is referred in Section 437(6) of Cr.P.C. It is obligatory on the part of the Magistrate to record reasons in writing for the accused not being released on bail. Thus, it is not mandatory or obligatory on the part of the Magistrate that once period of sixty days from the first date fixed for taking evidence is over, the applicant must be enlarged on bail. There is no such mathematical consequences. All that depends upon the facts and circumstances of the case and the gravity of the offence.

9. Here in the instant case, taking the gravity of the offence and considering the fact that other two criminal cases are registered against the petitioners, I am not inclined to allow the petition and release the accused/ petitioners on bail.
10. In a result, the petition has no merit and is accordingly dismissed.

Sd/-

(Goutam Bhaduri)
JUDGE

Ashok