

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 778 of 2016**

1. Mausmi W/o Rajkumar Benerjee Aged About 30 Years R/o House No. 11, Dubey Colony, Raipur, P.S. Pandari, Mowa - Raipur, Distt. Raipur Chhattisgarh
2. Dollydas W/o Kaushik Das Aged About 40 Years R/o Daldal - Sivni, Behind Electric Office, Raipur, Distt. Raipur Chhattisgarh

---- Petitioners**Versus**

State Of Chhattisgarh Through, The District Magistrate Balod, Distt. Balod Chhattisgarh

-----Respondent

For Petitioner:	Shri Awadh Tripathi, Advocate.
For Respondent State:	Shri Anupam Dubey, Dy. Govt. Advlcate.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

26.7.2016

1. The present Petition under Section 482 Cr.P.C has been filed challenging the order passed by the Sessions Judge, Balod in Criminal Revision No.28/2016 whereby the Sessions Court had rejected the appeal preferred by the Petitioners affirming the order dated 18.3.2016 passed by the Chief Judicial Magistrate, Balod in Criminal case No.1538/2015 rejecting the application under Section 437(6) Cr.P.C filed the Petitioners.

2. Facts in brief are that the Petitioners are accused persons for the offence punishable under Section 420/34 IPC and also under Sections 3(4) & (5) of Prize Chit and Money Circulation Scheme (Prohibition) Act, 1978 and under Section 58(b) of the R.B.I. Act. The Petitioners were arrested on 13.11.2015. The charge sheet was filed on 17.11.2015 and the charges were framed on 9.12.2015. The matter was fixed for evidence of the prosecution for

the first time on 23.12.2015.

3. Learned Counsel for the Petitioners submits that it is a case where more than 7 months have passed and out of 45 witnesses cited by the prosecution, only 3 have been examined till now and therefore, the Petitioners deserve to be released on bail. To substantiate the contentions, learned Counsel for the Petitioners submits that it is a case where on the merits also, the Petitioners have a very good case as the entire documents available in the charge sheet would itself establish the fact that the Petitioners had not committed any sort of crime or an offence. Rather, it was a case where the Petitioners, because of certain orders passed by the SEBI, could not proceed further with their project and which can by no stretch of imagination, be deemed to be an offence or a crime. He further submits that there was no intention whatsoever on the part of the Petitioners of cheating the depositors. Likewise, learned Counsel for the Petitioners further submits that even otherwise, there is no requirement of the Petitioners to remain in custody more particularly for the reason that one of the Petitioners had two small children also. He relied upon 2004(4) M.P.H.T. 5 (CG) (Smt Godawari Bai and others vs. State of Chhattisgarh) so as to attract the provisions under Section 437 (6) Cr.P.C and on the basis of which, prays for release of the Petitioners.

4. Learned State Counsel opposes the Petition.

5. Having gone through the records and on perusal of the order passed by the Court below, what is apparent on the face of record is that charges in this case were framed on 9.12.2015 and the Petitioners were arrested only on 13.11.2015 and the matter was fixed for evidence for the first time on 23.12.2015 and since then, 3 witnesses have already been examined till 1.2.2016 which by itself would show that the matter is being fixed at regular

intervals and the evidences also are being recorded at regular intervals which by itself would prove that there is no inordinate delay in the course of conclusion of the trial except the fact that the trial could not be completed within 60 days.

6. Taking into consideration the fact that there are about 45 witnesses to be examined and it is also a case where the nature of allegation against the Petitioners is of very serious in nature, this Court is of the opinion that it may not be proper at this juncture for the Petitioners to be released on bail. The reason for this Court not to extend the benefit of Section 437(6) Cr.P.C to the present Petitioners is the fact that the Petitioners have not made out a strong case exercising the discretion in favour of the Petitioners for the reason that the records itself would show that there has been no inordinate delay which can be said to have taken place by the Trial Court.

7. Further, so far as the merits of the case are concerned, which has been stressed hard by the learned Counsel for the Petitioners the merits of the case have already been taken note of by the concerned Court while considering the application for grant of bail under Section 439 Cr.P.C, which has already been rejected as cited by learned Counsel for the Petitioners himself.

8. The parameters for consideration of an application under Section 437(6) Cr.P.C are entirely different as compared to the parameters required for consideration for grant of bail in an application under Section 439 Cr.P.C. The application under Section 437(6) Cr.P.C while being considered, all that this Court has to see as to whether any unjustified inordinate delay has taken place in the conclusion of the trial, which in the instant case, does not appear except the fact that the trial could not be concluded within a period of 60 days.

9. From the list of dates provided by Counsel for the Petitioners itself, it is

evidently clear that the last witness was examined on 1.2.2016 which shows that the evidence is being recorded in the instant case at regular intervals and therefore, there cannot be said to be any inordinate delay in the conclusion of the trial.

10. The instant Cr.M.P being devoid of merits, the same is accordingly rejected.

Sd/-

(P. Sam Koshy)

JUDGE

Priya