

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1055 of 2016**

- Kamlesh Suryawanshi S/o Shiv Kumar Suryawanshi Aged About 24 Years R/o Village Madai P.S. Seepat Tahsil Seepat Rev. And Civil Distt. Bilaspur Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Seepat And Collector District Bilaspur Chhattisgarh.

---- Respondent

For Applicant
For State

Mr. P.K. Tulsyan, Advocate
Mr. Lav Sharma, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****25.10.2016**

1. The present Petition has been preferred under Section 482 CrPC assailing the order dated 30.08.2016 passed by the Sessions Judge, Bilaspur in Criminal Revision No. 122/2016 as also the order dated 19.07.2016 passed by the Special Railway Magistrate. Bilaspur in Criminal Case No. 3544/2015 whereby an application under Section 437 (6) Cr.P.C. has been rejected in the Trial Court as well as Revisional Court.
2. Learned Counsel for the Applicant submits that it is the case where the present Applicant has been prosecuted for the offence punishable under Section 34(2), 36 and 59(A) of the C.G. Excise Act as per the FIR and he was arrested on 21.03.2015 for carrying 54 bulk liters of country made liquor.
3. Learned Counsel for the Applicant further submits that the Court below has framed charge on 04.05.2015 against the Applicant and ordered for

evidence of the prosecution for the first time on 18.5.2015. According to the Applicant prosecution cited as many as 13 witnesses of which only two witnesses have been examined and they were also seizure witnesses who have been examined on 29.06.2015 and both the witnesses have turned hostile. Subsequently, no further witnesses have been appeared before the Court below. The trial is being unnecessarily prolonged for no fault of the Petitioner. The Petitioner is in jail since 21.03.2015 as such he has already remained in custody for more than 1½ years. He further submits that the witnesses have been examined almost about 15 months back and for the last 15 months no other witness has been examined. Therefore, the Applicant deserves to be released on bail invoking the provisions of Section 437(6) of the Cr.P.C.

4. Learned State Counsel however opposing the Petition submits that the charges levelled against the Applicant are serious and therefore, he shall not be released on bail invoking provisions of Section 437(6) of the Cr.P.C.
5. Having considered the submissions made by the Counsel on either side and on perusal of the record what clearly reflects from the proceedings which are undisputed is the fact that there being as many as 13 witnesses cited by the prosecution of which only 2 witnesses till now have been examined and both these witnesses were also examined 15 months back. It is also pertinent to mention that these witnesses have also not supported the case of prosecution thereafter none of the witnesses appeared before the Court below for further examination of the prosecution evidence.
6. Taking into consideration facts and circumstance of the case particularly nature of the offence and also taking note of the fact that more than 15 months have passed since witnesses have been examined and the fact that the Applicant is not responsible for non appearance of the prosecution witnesses in any manner or for delay in the trial. Further the applicant has already remained in custody for a period of 1 year and 7 months. Thus

this Court is of the opinion that the present is a fit case where the Applicant is entitled for the benefit of the provision under Section 437(6) of the Cr.P.C.

7. Accordingly the Cr.M.P. deserves to be and is allowed.
8. The Applicant herein is ordered to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with two sureties in the like sum to the satisfaction of the concerned trial Court for his appearance as and when directed.

Sd/-

(P. Sam Koshy)
JUDGE