

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M.P. No. 1113 of 2016**

- Shashikant Mishra S/o Tribhuwan Mishra Aged About 26 Years R/o E.W.S. 1786, Housing Board Jamul, Police Station Jamul, District Durg, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through District Magistrate, Durg, District Durg, Chhattisgarh.

---- Respondent

For Applicant

Shri Shivendu Bhardwaj, Advocate

For Respondents/State

Shri U.K.S. Chandel, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****05.10.2016**

1. The present Miscellaneous Petition has been preferred by the Petitioner seeking for grant of advantage under the provisions of Section 437(6) of the Cr.P.C.
2. Learned Counsel for the Petitioner submits that the present Petitioner is in jail since 03.10.2015 for the offence punishable under Sections 447, 379, 467, 468, 471, 120B and 34 of Indian Penal Code.
3. According to the Counsel for the Petitioner the matter for the first

time was listed for prosecution witness on 14.03.2016 and thereafter since more than 60 days have passed, the prosecution witnesses have not been examined. Taking into consideration the delay in the conclusion of the trial the present Petitioner ought to have been released on bail invoking the provisions of Section 437 (6) Cr.P.C.

4. He further submits that it is a case where Petitioner accused cannot be blamed for delay of trial and that calls the provisions of law that provides for grant of bail in case of non-completion of trial within 60 days. The Court below ought to have allowed the application moved by the present Petitioner. The two Courts below firstly the Magistrate Court and thereafter the Revisional court have committed an error of law in not appreciating the application in its correct perspective.
5. Learned State Counsel however opposing the Petition submits that it is the case where there was no lapse on part of the prosecution as it is evident from the order of the Trial Court itself wherein at paragraph 6 of the order dated 15.07.2016 the Court has specifically enumerated different dates on which the witnesses of the prosecution were present before the Court below but their evidence could not be recorded on account of the matter getting adjourned either for non availability of the record which was sent to the Revisional Court or non-availability of the original records before the prosecution, thus prays for rejection of the Petition.
6. Having considered the rival contentions put forth on either side and on perusal of the record, this Court does not think it fit to interfere

with the two orders passed by the Court below for the reasons that there does not appear lapse on part of the prosecution in adducing evidence but for some or other reasons on behest of the witnesses the present matter is getting adjourned. Even otherwise it is the case where recording of the evidence for the first time has started on 14.03.2016. As such it cannot be held that there was inordinate delay on part of the prosecution in concluding evidence.

7. In the opinion of this Court, no strong case has been made out calling for interference with the two orders.
8. Therefore, the present Cr.M.P. deserves to be and is accordingly rejected.
9. However, it is expected that the Trial Court shall make all endeavours for an early disposal of the case by ensuring; firstly the presence of the witnesses and secondly ensuring the witnesses who remain present are examined promptly on the same day on which they enter their appearance before the Court.

Sd/-

(P. Sam Koshy)
JUDGE