

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1085 of 2015**

Jivan Lakda S/o Tejram Lakda, Aged About 25 Years R/o Village Raimer,
Police Station Kapu, Tahsil- Dharamjaigarh, District Raigarh,
Chhattisgarh

---- Petitioner

Versus

State of Chhattisgarh through District Magistrate Raigarh District
Raigarh, Chhattisgarh

---- Respondent

For Petitioners	: Mr. Shivendu Bhardwaj, Adv.
For Respondent /State	: Ms. M. Asha, PL.

Order on Board**29/03/2016**

Heard the matter finally at the motion stage itself.

2. Facts of the case in brief necessary for disposal of the case are that Cr. Case no. 63/2015 is pending before the Judicial Magistrate First Class, Dharamjaigarh, Distt. Raigarh against present petitioner. On 20-4-2015, the trial Court has framed charges under Sections 354, 323 and 448 of the IPC against the petitioner and the matter was listed for examination of prosecution witnesses on 2-5-2015. As the trial Court has not concluded trial within 60 days from the first date fixed for taking evidence in the case, the applicant filed an application under sub-section (6) of Section 437 of the Cr.P.C. on 20-8-2015. Said application was heard on the same day and the trial Court held that statements of two witnesses have been recorded. For evidence of other witnesses summons and bailable warrants were issued. The court is making every attempt for expeditious trial. As the offence is non-bailable and heinous in nature, the trial court rejected the said application. Against the order dated 20-8-2015, the petitioner preferred a criminal revision No. 86/2015 before the Additional sessions Judge, (FTC), Raigarh. Learned revisional court vide order dated 13-10-2015 held that there is no error in rejecting the said application hence affirmed the order passed by the trial Court, dismissed the criminal

revision and directed the trial Court to dispose of the matter on priority basis as expeditiously as possible. Against said order, the petitioner has filed instant CRMP on the ground that as per settled law as the petitioner is in jail since 21-12-2014 and after fixing of date of recording evidence for the first time on 2-5-2015, trial is not concluded within 60 days and delay is not attributed to him, the cited case law is of no help for the prosecution. Hence instant CRMP under the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. be allowed and the order passed by trial Court be quashed. The trial Court be directed to release the petitioner as per provisions of sub-section (6) of Section 437 of the Cr.P.C.

3. Learned counsel for the State has filed reply wherein it is submitted that the trial Court while appreciating the settled law and other facts dismissed the application which is affirmed by the revisional court. The provision is not mandatory rather directory. Attempts are made for recording of evidence hence there is no illegality or impropriety or incorrectness in the impugned order. Hence the petition may be dismissed.
4. Heard learned counsel for both the parties and perused the material available on record.
5. Learned counsel for the petitioner entirely supported the instant CRMP and submitted that looking to the cited case law in the petition (Atul Bagga -v- State of CG reported in 2010 CRLJ 508), the trial Court committed error. The revisional court also committed error by not releasing the petitioner under the relevant provisions of sub-section (6) of Section 437 of the Cr.P.C. Hence the petition may be allowed and the impugned order may be quashed.
6. Learned counsel for the State supported the reply to the petition filed by them and submitted that as the trial Court passed a reasoned order and the provisions are not mandatory therefore, the trial Court and the revisional court have not committed any illegality or impropriety. Hence there is hardly any scope for exercise of inherent jurisdiction of this Court.
7. From perusal of the entire material it goes to show that the provisions

of sub-section (6) of Section 437 of the Cr.P.C. are not mandatory and the trial Court may for reasons to be recorded in writing reject the prayer to release the accused on bail despite the trial is not concluded within a period of 60 days from the first date fixed for evidence. The trial Court vide order dated 20-8-2015 gave reasons for not allowing the said petition. The revisional court also after detailed appreciation held that since there is no error committed by the trial Court for rejecting the said application, thereby affirmed the order passed by the trial Court.

8. On due consideration, as the said provision is not mandatory, merely directory, the reasons given by the trial court for not allowing the prayer made in this behalf by the petitioner, in the considered view of this Court, the same does not require any interference by this Court in exercise of inherent jurisdiction under Section 482 of the Cr.P.C.
9. Consequently, the instant CRMP is dismissed being sans substance.

Sd/-
(Chandra Bhushan Bajpai)
Judge