

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1123 of 2015

1. Deepak Gupta S/o Rakesh Gupta, aged about 27 years, R/o Ganjpara, Thana - Ganj, Distt. - Raipur Chhattisgarh (Father's name wrongly mentioned as Rajesh Gupta in order sheet)

---- Petitioner

Versus

1. State of Chhattisgarh Through : - District Magistrate, Police Station Ganj, Distt. Raipur Chhattisgarh

---- Respondent

For Petitioner – Mr. Samir Singh, Advocate.

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

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

24/02/2016

1. With the consent of the parties, the matter heard finally at the motion stage.
2. Brief facts required for adjudication of the instant Cr.M.P. are that the petitioner has been arrested in connection with offence under Section 34(2) of the C.G. Excise Act 1915 in crime No.80/15 on 22-05-2015. As per the allegation, the petitioner was having 28 liters liquor illegally. Charges were framed in Criminal Case No.7665/15 by the Additional Chief Judicial Magistrate, Raipur, C.G. on 02-07-2015. Thereafter, the matter was listed for recording of evidence on 16-07-2015. The trial is not concluded within a period of 60 days from the first day fixed for taking the evidence in the case. The petitioner had filed an application under Section 437(6) of the Code of Criminal Procedure, 1973 (in short 'the Code') before the trial Court. The trial Court vide order dated 14-10-2015 dismissed the said application mentioning the facts regarding delay and further held that as the provisions are not mandatory and the Magistrate may refuse to enlarge the accused on bail. Looking to the nature of the offence, character of the accused and the effect of the said crime

over society and also possibility of absconding, upon consideration of the entire facts the trial Court refused the prayer. Against the said order, the petitioner preferred a Criminal Revision No.401/2015. The Special/Additional Sessions Judge, Raipur, C.G. vide order dated 02-11-2015 held that on the basis of the law laid down by this Court in **Atul Bagga Vs. State of Chhattisgarh**¹ and **Lal Sahu Vs. C.G.State**² as the provision is not of mandatory nature; in the order passed by the trial Court any mistake committed cannot be said, hence, dismissed the criminal revision filed by the petitioner. Against the said order the petitioner filed the instant Cr.M.P. invoking the inherent jurisdiction of this Court under Section 482 of the Code wherein the petitioner had taken the grounds that the impugned order dated 14-10-2015 and 02-11-2015 are illegal and bad in the eyes of law. The orders have been passed without proper appreciation of materials available on record. Only two witnesses were examined by the prosecution even after expiration of 60 days. Therefore, the petitioner is entitled to benefit of bail in light of the provision given in Section 437(6) of the Code. It is prayed that the petition may be allowed and the impugned order passed by the trial Court as well as by the revisional Court may be set aside and the application under Section 437(6) filed by the petitioner may be allowed.

3. On behalf of the respondent/State the reply has been filed wherein it is stated that statement of two witnesses were recorded and the statement of the important witness of the prosecution have not been recorded. There is possibility to affect the evidence by the petitioner. As per settled law, the provision is not mandatory. Therefore, application in this behalf may be rejected if sufficient grounds available as there is no illegality or impropriety for rejecting the prayer and the instant petition under Section 482 of the Code is not maintainable. Hence, it is prayed that the petition may be dismissed as the inherent jurisdiction can only be invoked in the exceptional circumstances to

¹ 2010(1) M.P.S.T. 65 (C.G.)

² 2012 (3) CGLJ 341

prevent the abuse of process of law or Court, or to otherwise secure the ends of justice.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner submits that the petitioner is languishing in jail since 22-05-2015. Looking to the allegation against him and as the trial is not concluded within a period of 60 days from the first day for taking evidence in the case, the petitioner may be given relief by allowing the application as the prosecution failed to demonstrate the reason for such refusal. The petitioner is entitled for bail, hence, he may be given bail under the provision of Section 437(6) of the Code.

6. On the other hand, learned counsel for the State/respondent supported the grounds taken in the reply and submitted that on the basis of the grounds taken and the case law cited, the order of the Court below for rejecting the petition is a reasoned order. There is no illegality or impropriety. Hence, the petition may be dismissed.

7. From perusal of the law settled by this Court, it goes to show that the provision of Section 437 (6) of the Code is not mandatory, is merely directory. From perusal of the order dated 14-10-2015, it goes to show that on account of transfer of the presiding officer, the witnesses were not summoned and at the later stage again witnesses were summoned. In addition to this fact, the Court below appreciated regarding nature of the offence, conduct of the accused, the effect of the society for the offence and the possibility of the accused to abscond. On due consideration, the Court held that there are sufficient reason for denial of the bail under the provision of Section 437(6) of the Code. The revisional Court also while appreciating the entire facts and the case law cited held that the provision is not mandatory also the reasons as required were shown in the order sheet.

8. On due consideration, since the provision itself is not mandatory, the learned trial Court gave reasons for such refusal in writing, in view of this Court, the trial Court as well as the revisional Court has not committed any illegality or impropriety; as such, this is not a case where the inherent jurisdiction of this Court requires to be invoked. Consequently, as the petition has no substance, the same is dismissed at the motion stage itself.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE