

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 1141 of 2015**

1. Riyaj Mohmad S/o Taj Mohamad, aged about 33 years, R/o Ward No. 14, Silyari, Police Station - Dharsinva, Raipur, Chhattisgarh.

**---- Petitioner**

**Versus**

1. State of Chhattisgarh through District Magistrate, Distt. Raipur, Chhattisgarh.

**---- Respondent**

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For Petitioner – Shri Vikram Singh, Advocate.  
For Respondent – Shri Lav Sharma, Panel Lawyer.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**  
**Order on Board**

**12/02/2016**

1. The instant petition has been filed on behalf of the petitioner under Section 482 of the Cr.P.C. against the order passed by the trial Court in Criminal Case No.10420/15 (State Vs. Natthu Yadu and another) under Section 34(2) of the C.G. Excise Act 1915 whereby and whereunder the application filed under Section 437(6) of the Cr.P.C. was dismissed by the trial Court after hearing the parties and holding that looking to the facts, entire circumstances, heinousness of the offence, it is not a case for grant of bail to accused Riyaj. Against the said order, the accused preferred a criminal revision before the Special Judge/Additional Sessions Judge, Raipur, C.G. The Special Judge/Additional Sessions Judge, Raipur, C.G. vide order dated 23-11-2015 in Criminal Revision No.413/15 dismissed the revision filed by the accused/petitioner and directed the trial Court to take necessary steps for appearance of the witnesses and also for early disposal of the matter. The petitioner has prayed by filing the instant Cr.M.P. that offence is not of heinous nature, reasons are not justified, the trial has to be concluded within 60 days; the offence is as such wherein rigorous imprisonment for 3 years is provided; there was no delay on account of the petitioner, hence, the petition may be

allowed and the order passed by the trial Court and affirmed by the revisional Court be set aside and the petitioner may be granted bail under Section 437(6) of the Cr.P.C.

2. On behalf of the respondent/State, it is submitted that as per settled law, provision of Section 437(6) of the Cr.P.C. is not mandatory provision and Magistrate may deny if sufficient grounds are available. The Magistrate has rightly rejected the application considering the nature of the offence. The Cr.M.P. filed under Section 482 of the Cr.P.C. is not maintainable in the matter. Hence, the petition may be dismissed as not maintainable.

3. Heard both the counsel and perused the case.

4. Learned counsel for the petitioner submitted that offence is not of heinous nature, only 18.00 bulk liter (100 quarters) of duty paid country made liquor have been seized from the petitioner as alleged. The reason for rejection of the application is not proper. The trial has to be concluded within 60 days. Looking to the entire facts and circumstances, the petition may be allowed and the petitioner may be directed to be released on bail.

5. On the other hand, learned counsel appearing for the State/respondent opposed the petition and submitted that the provision is not mandatory rather directory, the Magistrate gave reason for rejection of the application and the other forums are available. Application of inherent jurisdiction provided under Section 482 of the Cr.P.C. is not applicable since the other forums are available for praying bail in the matter under Section 439 of the Cr.P.C. Hence, the petition may be dismissed.

6. For the purpose of appreciation of the arguments advanced by the parties, I have perused the impugned order, order sheets and the documents annexed.

7. As per settled law reiterated in the matter of **Atul Bagga Vs. State of Chhattisgarh**<sup>1</sup> and many other matters disposed of by this Court, provision of

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<sup>1</sup> 2010(1) M.P.S.T. 65 (C.G.)

Section 437(6) of the Cr.P.C. is not mandatory rather directory and as per the provision, for the reasons mentioned in writing concerned Magistrate may refuse to release the accused on bail. In the present case, first date for recording of evidence is fixed on 12-08-2015; undisputedly, within 60 days the trial is not concluded. After perusal of the entire order sheets, it goes to show that attempt is made for disposal of the said criminal case. As per allegation, 100 quarters duty paid country made liquor have been seized from illegal possession of the present petitioner, looking to the entire facts, it cannot be said that the offence is not of a heinous nature and as the Court below recorded the facts in writing regarding rejection of the application, it cannot be said that the Magistrate acted arbitrarily and denied the bail without assigning any reason. Also there is opportunity of bail under the provision of Section 439 of the Cr.P.C. available to the petitioner for his release during trial. Looking to the entire facts and circumstances, in the considered view of this Court, this is not a case where inherent jurisdiction of the Court be invoked. Consequently, the petition is hereby dismissed as not maintainable.

Sd/-

(Chandra Bhushan Bajpai)  
JUDGE