

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1193 of 2015**

1. Nathelu Kurre S/o Narayan Aged About 56 Years R/o Village Ganoud, Police Station Rakhi, Distt. Raipur, Chhattisgarh.
2. Annu Kurre S/o Nathelu Aged About 23 Years R/o Village Ganoud, Police Station Rakhi, Distt. Raipur, Chhattisgarh.
3. Durga Prasad S/o Narayan Kurre Aged About 42 Years R/o Village Ganoud, Police Station Rakhi, Distt. Raipur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through District Magistrate Raipur, Distt. Raipur, Chhattisgarh.

---- Respondent

Shri Kishore Narayan, counsel for the petitioners.
Shri Lav Sharma, Panel Lawyer for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17.3.2016.**

Heard.

2. Brief facts required for adjudication of the instant petition are that in Criminal Case No.9990/2015 (State Vs. Nathelu & Anr.) pending before Additional Chief Judicial Magistrate, Raipur the petitioners have been charged for the offence under Sections 420, 467, 468, 471/34 of the Indian Penal Code on 04.8.2015 and the trial Court listed the matter for evidence on 17.8.2015 as the first date fixed for taking evidence in the case. But the trial Court has not concluded the trial within a period of 60 days from the date for taking evidence in the case. On behalf of the petitioner Durga Prasad Kurre (P/3) an application under Section 437(6) of the Code of Criminal Procedure, 1973 (for short 'the Code') has been filed before

the trial Court and the trial Court rejected the prayer of the petitioner (P/3) for his release on bail under Section 437(6) of the Code. Thereafter petitioners Nathelu Kurre (P/1) and Annu Kurre (P/2) also prayed for their release under Section 437(6) of the Code. The Court below after hearing, rejected the said application on 26.10.2015. Against both the aforesaid orders, the petitioners have preferred criminal revision before Special/Additional Sessions Judge Raipur. The learned revisional Court vide order dated 05.12.2015 in Criminal Revision No.471/15 dismissed the revision and affirmed the orders passed by the trial Court dated 19.10.2015 and 26.10.2015. Against the said order, the petitioners have filed the instant petition invoking the jurisdiction under Section 482 of the Code wherein the ground taken that the order passed by the Court below is contrary to Section 437(6) of the Code as the trial Court has failed to conclude the trial within the stipulated period of 60 days. For this, the petitioners are not at fault and without assigning any specific reason, the trial Court has rejected both the applications filed by the petitioners which cannot be held as proper hence, it is prayed that order passed in the revision and also orders passed by the Court below as aforementioned be set aside and the order in relation with release of the petitioners extending them the benefit of bail under Section 437(6) of the Code may be passed.

3. On behalf of respondent/State, reply has been filed wherein it is submitted that the trial Court took all necessary steps to secure the presence of the prosecution witnesses and when the summons and warrants were not served upon the prosecution witnesses, summons were issued through senior police officers. The Court

below while appreciating the case law as reported in **(2010) 1MP HT 65 (CG), Atul Bagga vs. State of Chhattisgarh**, both the Courts held that provisions are not mandatory they are directory and the trial Court was well within its authority to reject the application on mentioning the reasons in writing and thereby rejected the application as there was no illegality or impropriety. Jurisdiction of Section 482 of the Code may be used very sparingly, carefully and with caution under the exceptional circumstances to prevent the abuse of process of law or court or to otherwise secure the ends of justice. The petition is devoid of merits and the same may be dismissed.

4. Heard learned counsel for the parties and perused the documents annexed along with the instant petition.

5. Learned counsel for the petitioners duly supported the ground taken in the instant petition and submitted that no specific reason was mentioned for the denial of the bail under Section 437(6) of the Code, the trial was not concluded within 60 days hence, the petition may be allowed and relief as sought may be granted.

6. On the other hand, Counsel for the State submits that the Magistrate in both the orders dated 19.10.2015 and 26.10.2015 has mentioned the reasons properly for the denial of the bail under the provisions and the revisional court also appreciated the facts hence, the petition is devoid of merits and the same may be dismissed.

7. As per the case law cited on behalf of the respondent/State Atula Bagga (supra) and also **2012 (3) CGLJ 341 Lal Sahu vs. State of CG** which goes to show that provisions of Section 437 (6) of

the Code is not directory and Magistrate can very well deny for the release under the provisions for the reasons recorded in writing. After perusal of the aforesaid orders and the order of the revisional Court goes to show that after appreciating the facts and circumstances and seriousness to the offence and the efforts made for the speedy trial by the trial Court, the trial Judge dismissed the said application. Though within 60 days from the first date fixed for taking evidence in the case, the matter was not concluded but as the provisions are not mandatory they are directive and for the reasons mentioned in writing, the trial Court may deny for the bail. On due consideration, I do not see any illegality or impropriety in the orders passed by the trial Court and also by the revisional court to invoke the jurisdiction given under Section 482 of the code regarding inherent power to secure the ends of justice. In the considered view of this Court, as the concerned magistrate gave reasons in writing for the denial and with this as the reasons are appropriate, the petition is devoid of merits regarding issuance of any order with inherent jurisdiction. Consequently, the instant petition is dismissed as not maintainable.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE