

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 189 of 2016**

1. Rayat @ Rahet Ali Irani S/o Shamim Ali Irani Aged About 28 Years R/o Behind Collector Office Sattipara Ambikapur (Chhattisgarh)
2. Shahjan Ali S/o Jafar Ali Irani Aged About 45 Years R/o Village Gorakhpur P.S. Gaurela Distt. Bilaspur Chhattisgarh
3. Jakir Ali S/o Shaukat Ali (Wrongli Mention In Impugned Order Shekkat Ali) Aged About 34 Years R/o Irani Mohalla Chatidih P.S. Sarkanda Distt. Bilaspur Chhattisgarh
4. Babar Ali S/o Liyakat Ali Irani Aged About 38 Years A-3 & A-4 R/o Irani Mohalla Chatidih P.S. Sarkanda Distt. Bilaspur, Chhattisgarh

---- Applicants

Versus

State of Chhattisgarh Through District Magistrate, District Balodabazar, Bhatapara (CG).

---- Respondent

For applicants

Shri Dheerendra Pandey, Advocate.

For Respondent/State

Shri Anupam Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****12/07/2016**

1. This petition under Section 482 Cr.PC has been filed challenging the order dated 29.01.2016 passed by the Additional Sessions Judge, Bhatapara, in Criminal Revision No.H-3/2016 whereby the revisional court has rejected the revision preferred against the order dated 28.12.2015 passed by the Judicial Magistrate First Class, Bhatapara in Criminal Case No.S-515/2015 rejecting an application under Section 437 (6) Cr.P.C.
2. The two courts below have rejected the application of the applicants filed under Section 437(6) Cr.P.C. as well as the revision petition.
3. Learned counsel appearing for the applicants submits that in the instant case

there are five accused persons and the applicants had initially been charged for the offence under Sections 409 and 109 IPC and the matter was pending before the court of JMFC Bhatapara in Crime Case No.S-515 of 2015. He further submits that in the instant case the matter was fixed for the first time for recording evidence of prosecution witness on 28.09.2015. In all the prosecution has cited 47 witnesses out of which initially six witnesses were produced by the prosecution and whose statements were recorded on 06.10.2015 and thereafter, till date inspite of fact that almost nine months have passed not a single witness has been produced by the prosecution. He further submits that, the prosecution, in order to further delay the proceedings has moved another application under Section 216 Cr.P.C. and on the basis of which an additional charge under Section 414 IPC has also been framed against the applicants.

4. As the additional charge has been framed, the witnesses who were examined earlier were ordered to be recalled. After recalling the witnesses who were examined earlier, the prosecution has since shown no interest whatsoever for the early disposal of the trial. The trial is getting delayed for no fault of the applicants for almost 14 months now. It is further submitted that subsequently when the witnesses did appear, the prosecution and the witness did not produce the original records and on the basis of which again the matter got adjourned and since then it is adjourned on various occasions and the trial is still pending at the same stage without recording evidence of a single witness as the witnesses earlier examined were recalled due to framing of additional charge. The petitioners are in jail since 12.06.2015 and trial is being unnecessarily delayed on behalf of the prosecution, therefore, the present applicants may be granted advantage of provisions under Section 437(6)

Cr.P.C.

5. It is pertinent to note that counsel appearing for the State on 17.06.2014 made a statement that she is not ready with the case and prayed for adjournment. Accordingly, the case was adjourned for 20.06.2016. On 20.06.2016 also the State counsel prayed for time to file reply/objection to the petition and at the request of counsel for the State, the matter was adjourned for two days, however, it was made clear that on the next date if the State does not file, the matter shall be heard. Today also the State counsel submits that they have not filed the reply/objection, but is willing to argue the case on merit.
6. The State counsel submits that taking into consideration the allegation levelled against the main accused person i.e. Amrit Lal, the then, CEO, Janpad Panchayat, Bhatapara, the present applicants do not deserve for being released under Section 437(6) CrPC. Apart from this contention, counsel for the State has not given any explanation so far as the delay of trial is concerned.
7. Taking into consideration the overall factual matrix of the case, if we look into the manner, in which the prosecution has delayed the trial, the same is not appreciable. It is a clear case where the prosecution has taken a lethargic approach in conducting the trial, inasmuch as, the prosecution has not shown any interest for the early disposal of trial or for that matter in conducting the trial as is otherwise required.
8. For the foregoing reasons and in view of the fact that the applicants are not to be blamed for not producing the witness before the court below for the early disposal of the trial and there being no justifiable reasons submitted by the State, both before the court below as well as before this court in present CrMP for not calling the witnesses for examination after the additional charge was

framed and since the State themselves are uncertain of the time they may take in the conclusion of the evidence, this court is of the opinion that it is a fit case to grant bail to the applicants under Section 437(6) Cr.P.C.

9. Accordingly, the present petition filed under Section 482 Cr.P.C. is allowed.

10. It is directed that the applicants shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/-each with two sureties in the like sum to the satisfaction of the concerned Court for their appearance as and when directed.

11. However, the trial court is directed to ensure that trial itself is concluded at the earliest by invoking all the provisions of Cr.P.C. within its power and jurisdiction for calling upon the witnesses and to decide the matter as early as possible.

Sd/-
(P.Sam Koshy)
JUDGE

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