

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 58 of 2016**

Lalaram Patel S/o Shri Makaru Patel Aged About 57 Years R/o Village Darra, Thana - Gidhouri, Civil And Rev. Distt. Baloda Bazar Bhatapara Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through District Magistrate Baloda Bazar, Distt. Baloda Bazar Bhatapara Chhattisgarh.

---- Respondent

For applicant	:	Mr. Sunil Sahu, Advocate
For Respondent/State	:	Ms. M. Asha, PL.

Order On Board**01/03/2016**

Learned counsel for the State prays for time to file reply to the petition.

2. Above prayer seeking time is heavily opposed by learned counsel for the applicant submitting that vide order dated 14-1-2016, State was granted an opportunity to file reply but the same has not been filed till date. Therefore, court may dispose of the petition without granting further time to State.

3. In view of above, since the applicant is pressing hard, the matter is heard finally at this stage.

4. Learned counsel for the applicant submits that the applicant was arrested on 4-11-2015. Charge sheet has been filed along with other co-accused persons. On 19-5-2015, charges were framed under Sections 409, 420 read with Section 34 of the Indian Penal Code and Section 3/7 of the Essention Commodities Act. The court below listed the matter for recording of evidence on 19-8-2015 for the first time. On 17-8-2015 for hearing a bail application of co-accused persons by the Court of Session, record was requisitioned by the court of Session and the Court below sent the record. The said record was returned on 2-9-2015. Thereafter the matter was again listed for evidence on 16-9-2015, 30-9-2015, 14-10-2015, 28-10-2015, 10-11-2015, 24-11-2015 but no witnesses appeared to record their statements. On 24-11-2015, the applicant and other co-accused persons filed separate applications under sub-section (6) of Section 437 of the Cr.P.C. and the matter was listed on 26-11-2015. On 26-11-2015, after hearing the matter, the trial Court dismissed the application looking to the serious nature of allegations levelled against the accused and observed that looking to the facts, circumstances and seriousness of the offence, it would not be proper to release the applicant on bail.

Against the said order, the applicant had preferred a revision bearing Cr.Revision No. 83/2015 and the 1st Additional Sessions Judge, Baloda Bazar vide order dated 30-12-2015 held that Section 409 of the IPC is punishable with imprisonment of life hence despite the matter is triable by Magistrate First Class, the accused is not entitled for bail under Section 437(6) of the Cr.P.C. and also held that as the trial court rejected the application considering the seriousness of the offence, thereby the trial Court has not committed any impropriety or illegality hence the revisional court dismissed the revision and affirmed the order passed by the court below. Learned counsel for the applicant submits that under the provisions of Section 437(6) of the Cr.P.C., if the case is triable by Magistrate, then he is entitled for bail if the trial is not concluded within 60 days from the first date fixed for recording evidence. The order of the court below suffers with illegality and therefore, bail may be granted to the applicant and the orders of the court below be quashed.

5. For the purpose of appreciation of the arguments advanced, the instant CRMP, the impugned order passed in Cr. Revision No. 83/2015 and the order dated 26-11-2015 passed by the trial Court are perused.

6. As per settled law, provisions of Section 437(6) of the Cr.P.C. are not mandatory but directory only. For the reasons recorded in writing the Magistrate may direct otherwise. Upon perusal of the order passed by the concerned trial Court, it goes to show that there are allegations against the present applicant and other co-accused for embezzlement of property worth Rs. 7,55,415/- by making forged signature. The trial Court upon considering the facts, circumstances, and seriousness of the offence finds that the applicant and other co-accused are not liable to be released on bail under the provisions thereby rejected the applications made in this behalf by them. As per settled law if the offence is punishable for life but triable by the Magistrate First Class, the provisions of Section 437(6) are attracted. But in the present case, immediately before the first date fixed for recording of evidence, the original record was requisitioned by the Sessions Court and remained with the court of sessions till 2-9-2015. Apart from this fact, looking to other facts appreciated by the Magistrate, in the considered opinion of this Court, it is not a fit case for exercise of the inherent jurisdiction of this Court to grant bail to the petitioner.

7. Consequently, instant petition being sans substance deserves to be and is hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge