

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr. M.P. No. 1110 of 2016**

- Mahendra Banjare S/o Amardas Aged About 27 Years R/o Village Garra, District Bemetara Chhattisgarh

**---- Applicant****Versus**

- The State Of Chhattisgarh Through : District Magistrate District Bemetara Chhattisgarh

**---- Respondent**

For Applicant

Shri Parag Kotecha, Advocate

For Respondents/State

Shri Rajendra Tripathi, Panel Lawyer

**SB: Hon'ble Shri Justice P.Sam Koshy****Order On Board****05.10.2016**

1. The present Miscellaneous Petition has been preferred against the order dated 03.09.2016 passed by the Sessions Judge, Bemetara in Criminal Revision No. 41/2016.
2. Vide the said impugned judgment the Revisional Court has rejected the Revision upholding the order of the Trial court rejecting the Application under Section 437 (6) Cr.P.C. preferred by the Applicant accused.
3. Learned Counsel for the Applicant submits that it is the case where the charge was framed on 26.08.2015 and the first date for leading

evidence on behalf of the prosecution was fixed for 09.09.2015. According to the Applicant 60 days have lapsed from the day which was fixed for recording of the evidence but till now the witnesses have not been examined. There are in all 23 witnesses to be examined, therefore, there is likelihood of considerable time to be consumed in process of concluding the evidence. Therefore, under the provisions of Section 437 (6) Cr.P.C. the Applicant may be released on bail.

4. Learned Counsel for the Applicant further submits that the present Applicant is in jail since 02.07.2015 and the offence for which he has been charged are only Section 420 and 120-B IPC, therefore, he is entitled to be released on bail invoking the provisions of Section 437(6) Cr.P.C.
5. Learned State Counsel however opposing the Petition tried to emphasize on the fact that the prosecution has been producing its witnesses but on the date of hearing on some pretext or other the prosecution witnesses could not be examined and it was being adjourned. Therefore it is not the case where Section 437 (6) Cr.P.C. be invoked as there is no lapse on part of the prosecution in adducing the prosecution witnesses.
6. Considering the rival submissions put forth on either side and on perusal of the record particularly the order of the Trial Court dated 29.06.2016 wherein the Court has specifically mentioned the details of the dates on which the prosecution witnesses were present and

on some pretext or others either at the behest of the witness Mohan Kumar Jaisawal on the ground that a compromise being arrived at or on the ground of paucity of time the matter was getting adjourned. This Court is of the opinion that it is not the case where the prosecution has committed any sort of default in producing the witnesses promptly and it is not the case where the prosecution can be blamed for not concluding the evidence within the stipulated period under the provisions of Cr.P.C.. Thus, in the opinion of this Court advantage of provisions under Section 437 (6) CrPC can not be granted to the Applicant.

7. Therefore, the present Cr.M.P. deserves to be and is accordingly rejected.
8. However, it is observed that taking into consideration the number of dates on which the witnesses remained present, it is expected that the Trial Court shall make all endeavours for an early disposal of the case by ensuring; firstly the presence of the witnesses and secondly ensuring the witnesses who remains present are examined promptly on the same day on which they enter their appearance before the Court.

**Sd/-**

**(P. Sam Koshy)**  
**JUDGE**