

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.543 of 2016**

Prasit Kumar Basak S/o late Vinay Krishna Basak, aged about 54 years, R/o 32, Ram Manohar Lohiya Negar, Behind Govt. High School, Mova Kapa, Raipur (CG).

---- Petitioner

Versus

State of Chhattisgarh Through Station House Officer, Police Station, Civil Lines, Raipur, District Raipur (Chhattisgarh).

---- Respondent

For Petitioner	Shri Amrito Das, Advocate.
For respondent/State	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2016

1. The present petition under Section 482 CrPC has been preferred seeking for grant of bail under Section 437 (6) CrPC on account of delay in trial.
2. A perusal of record would clearly reflect that the charge sheet in the instant case was filed on 11.09.2015. The matter was fixed for evidence of prosecution for the first time on 23.09.2015 and the first witness was examined on 15.12.2015. The second witness was examined as late as in the month of November, 2016.
3. Counsel for the petitioner submits that it is a case where the prosecution has cited 36 witnesses and out of 36 witnesses till now only two witnesses have been examined and therefore, there a strong apprehension of there being delay in trial and therefore, the petitioner

would be entitled for grant of bail under Section 437(6) CrPC.

4. However, a perusal of the records what is revealed is the fact that the bail application under Section 439 CrPC was first rejected on 03.03.2015 in MCrC No.294 of 2015. Repeat application i.e. MCrC No.2955 of 2015 was also filed. The said repeat application came up for hearing on 17.08.2015. The order dated 17.08.2015 passed in repeat application are reproduced as under :

“Learned counsel appearing for the applicant seeks permission of this court to withdraw this application with liberty to file bail application upon the change in the circumstances of the case.

Permission is granted.

Accordingly, the application is dismissed as withdrawn with the liberty as aforesaid.”

5. Thus, the second bail application was dismissed as withdrawn however, liberty was reserved to the applicant to revive the said application in the event of there being change in circumstances.
6. Though the order was passed on 17.08.2015, it appears that the applicant has not revived his application under Section 439 CrPC again before the same court in the light of liberty granted by the court while hearing the application under Section 439 CrPC.
7. In the opinion of this court, once when the court has considered the regular bail application and had refused to entertain the application on merits and had granted liberty to the applicant to revive the same in the changed circumstances and the present facts not being brought to the notice of the same court, it would be more appropriate for the applicant to have again approached the same court for reviving his application for grant of bail under Section 439 CrPC.

8. In the given facts and circumstances of the case, this court is not inclined to entertain this petition filed under Section 482 CrPC reserving the right of the petitioner to approach the court under Section 439 CrPC.
9. The petition is accordingly rejected with the aforesaid liberty.

Sd/-
(P. Sam Koshy)
Judge

inder