

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 841 of 2016**

Sunil Kumar Ojha S/o Shri Girja Shanker Ojha Aged About 43 Years R/o. Kukripara, Subhash Nagar, Police Station Purani Basti, Raipur Distt. Raipur Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through The District Magistrate, Balodabazar, District Balodabazar Bhatapara Chhattisgarh.

---- Respondent

For Applicant	:	Shri YC Sharma, Advocate.
For Respondent/State	:	Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/11/2016**

1. This petition under Section 482 Cr.PC has been filed challenging the order dated 23.06.2016 passed by the 1st Additional Sessions Judge, Balodabazar, in Criminal Revision No.28/2016 and the order dated 24.05.2016 passed by the Chief Judicial Magistrate Balodabazar in Criminal Case No.1638 of 2012.
2. The two courts below have rejected the application of the applicant filed under Section 437(6) Cr.P.C. as well as the revision petition.
3. Learned counsel appearing for the applicant submits present applicant is an accused in Crime No.1638/2012 where he is being prosecuted for the offence under Sections 420, 409 and 120-B IPC and Sections 4 & 5 of Prize Cheats and Money Circulation Schemes (Banning) Act, 1978. Counsel for the applicant submits that in all there are five accused

persons involved in the case out of which four accused persons have already been granted either anticipatory or regular bail and the main accused in the instant case namely M.Velayuth Kumar has already been released on bail by the trial court as early as on 28.08.2012 invoking the provisions of Section 437(6) CrPC.

4. It is further submitted that in the instant case also in addition to the applicant being entitled for the release of bail under the provisions of Section 437 (6) CrPC on the ground of parity with the case of main accused M. Velayuth Kumar, the fact still remains that in the present case the charge sheet was framed on 03.03.2016 and the matter was fixed for the first time for recording evidence of prosecution witnesses on 16.03.2016 and in all the prosecution has cited 27 witnesses but till date not a single witness has been produced by the prosecution for recording their evidence. Therefore, there is no likelihood of early disposal of the case and the applicant is unnecessarily languishing in jail for no fault of his and under the said factual matrix of the case, the applicant may be granted advantage of provisions under Section 437(6) Cr.P.C.
5. The State counsel on perusal of record does not dispute the factual matrix of the case as narrated by the counsel for the applicant, however, opposes the petition on the ground that the allegations levelled against the applicant are serious in nature, and therefore, he does not deserve for being released under Section 437(6) CrPC.
6. Having considered the contentions put forth on either side and on perusal of record, what clearly reflects is the fact that there are five accused persons in the present case out of which four accused persons including the main accused namely M. Velayuth have already been released on bail

under the provisions of Section 437(6) CrPC as early as four years back on 28.08.2012, whereas the applicant is languishing in jail for last 11 months. In addition, what is also pertinent to note is that in spite of 27 witnesses cited by the prosecution, till date not a single witness has been examined by the court below, and therefore, 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.

7. For the foregoing reasons and in view of the fact that the applicant is not to be blamed for not producing the witness before the court below for the early disposal of the trial, 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.
8. Accordingly, the present petition filed under Section 482 Cr.P.C. is allowed.
9. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/-with two sureties in the like sum to the satisfaction of the concerned Court for his appearance as and when directed. However, the trial court is directed to ensure that trial 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