

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 977 OF 2016

Irfan Khan S/o Mukhtar Khan, aged about 23 years, R/o Kolai Bahal, Jamgaon, Police Station, Chakradharnagar, Raigarh, Tehsil and District Raigarh (CG).

... Petitioner

Versus

State of Chhattisgarh through the District Magistrate, Raigarh, through Officer in charge of Police Station, Chakradharnagar, District Raigarh (CG).

... Respondent

For Petitioner.	:	Shri Roop Naik, Advocate.
For Respondent/State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/09/2016

1. This petition under Section 482 Cr.PC has been filed challenging the order dated 01.07.2016 passed by the First Additional Sessions Judge, Raigarh, in Criminal Revision No.101 of 2016 whereby the revisional court has rejected the revision petition preferred against the order dated 21.06.2016 passed by the Chief Judicial Magistrate, Raigarh in Criminal Case No.1073 of 2015.
2. The two courts below have rejected the application and the revision of the petitioner filed under Section 437(6) Cr.P.C.
3. Learned counsel appearing for the petitioner submits that present is a case where the petitioner has been implicated in Crime No.179/2015 registered at Police Station, Chakradhar Nagar for the offence under Sections 457,380 and 414 IPC. He submits that the

petitioner was arrested on 12.09.2015 and the matter was put to trial before the court of CJM, Raigarh in Criminal Case No.1073 of 2015. Charge in the case has been framed on 01.03.2016 and the petitioner has been charged for the offence under Sections 457/34 and 380/34 IPC. Thereafter, the matter was fixed for the evidence of the prosecution for the first time on 15.03.2016, and thereafter it has been fixed on various dates subsequently, however, trial is being unnecessarily delayed on behalf of the prosecution as till now only 7 witnesses have been examined out of 18 witnesses cited by the prosecution. For the last many dates of hearing there has been no witness appearing on behalf of the prosecution inspite ofailable warrants being issued against these witnesses. The petitioner is languishing in jail for almost one year for no fault on his part. He further submits that taking into consideration the pace at which the trial is going on, it may take a considerable long period for its conclusion, and therefore, the present petitioner may be granted advantage of provisions under Section 437(6) Cr.P.C.

4. Reliance has been placed in cases of Chandraswami and Another Vs. Central Bureau of Investigation, reported in AIR 1997 SC 2575, judgments of this High Court in cases of Mohit Ram Kaushik Vs. State of Chhattisgarh, reported in 2010(5)MPHT 70(CG) and Victor Minj & Another Vs. State of Chhattisgarh (CrMP No.560 of 2014, decided on 22.07.2014).
5. On the other hand, learned counsel appearing for the State opposes the petition on the ground that no strong case is made out for invoking extraordinary jurisdiction of this court under Section

482 CrPC for granting bail to the petitioner invoking the provisions of Section 437(6) CrPC.

6. The evidence in the instant case has started on behalf of the prosecution on 15.03.2016 and it is only just about six months time by now that the evidence has started and within these six months the prosecution has already examined 7 witnesses out of total 18 witnesses. This itself is sufficient indication that prosecution is progressing fast. So far as, the witnesses not being present on the last couple of occasion is concerned, the trial court is directed to ensure the presence of those witnesses by invoking all the powers conferred upon the court under the provisions of Cr.P.C..It is further directed that in case if the court feels that some of the departmental witnesses are deliberately avoiding appearance, the court may issue suitable instructions in this regard to the concerned Superintendent of Police seeking assistance for the presence of those witnesses.
7. So far as judgment cited by the counsel for the petitioner is concerned, the facts of those cases are entirely different when compared to the facts of the present case. Therefore, the principles/guidelines/ratio of law laid down in those cases would not apply in the factual background of the present case, and as such, those cases are distinguishable.
8. Taking into consideration the facts and circumstances of the case, particularly the nature of offence committed by the applicant, this court is not inclined to grant bail to the petitioner invoking Section 437(6) Cr.P.C. at this juncture.

9. Accordingly, the petition deserves to be and is hereby dismissed.

However, it is directed that the court below shall ensure the presence of witnesses and conclude the trial as expeditiously as possible by invoking the powers conferred on it under the provisions of CrPC.

**Sd/-
(P. Sam Koshy)
Judge**

inder