

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1339 of 2016

- Jitendra Bise, aged about 35 years, son of Fulchand Bise, resident of 194, Dr Ambedkar Nagar, Indore (MP)

---- Petitioner (In jail)

Versus

- State of Chhattisgarh, Through Station House Officer PS Champa, district Janjgir-Champa (CG)

---- Respondent

For Petitioner	:	Ms Sharmila Singhai, Advocate
For Respondent/State	:	Shri Sanjeev Pandey, GA

Hon'ble Shri Justice Anil Kumar Shukla

Judgment reserved on 08.12.2016

Judgment delivered on 09.12.2016

1) This petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') is for quashment of the order dated 11.11.2016 passed by the Additional Sessions Judge (FTC), Janjgir, district Janjgir-Champa (CG) in Criminal Revision No. 68 of 2016, arising out of order dated 08.09.2016 passed in Criminal Case No. 551 of 2016 where by the Chief Judicial Magistrate Janjgir has rejected the application filed under Section 437(6) of the Code.

2) Order is challenged on the ground that without any reasoned order both the Courts below have dismissed the application for release of the petitioner and thereby committed illegality.

3) Brief facts giving rise to this petition are that the petitioner is facing trial for the offences punishable under Sections 420/34 & 4

and 5 A, B & C of the Prize Chits and Money Circulations Schemes (Banning) Act. The petitioner is in custody since 08.11.2015 and the case is before the Chief Judicial Magistrate, Janjgir, district Janjgir-Champa for trial and the CJM fixed the case first time for recording the evidence on 08.07.2016. Thereafter, though the case was fixed for evidence many a times, no evidence could be recorded and even after completion of 60 days, trial has not been concluded and the application for release of the petitioner filed under Section 437(6) of the Code was dismissed by the CJM on the ground that witnesses had not turned up though effort was being made by the prosecution, for recording the evidence.

4) The petitioner has preferred a revision against the aforesaid order and the same was also dismissed affirming the order of the trial Court vide the impugned order dated 11.11.2016 passed in Criminal Revision No.68 of 2016 by the Chief Judicial Magistrate, Janjgir.

5) I have heard learned counsel for the parties, perused the order impugned, order of the trial Court and copies of order sheets of the trial Court.

6) Learned counsel for the petitioner vehemently argued that the Chief Judicial Magistrate is under obligation to decide the case within 60 days from the first date fixed for taking evidence and if the case is not concluded within that period, the accused is entitled for bail in terms of Section 437(6) of the Code, but the Court below has illegally dismissed the bail application of the petitioner. Learned

counsel further submits that provision for bail under Section 437(6) of the Code is mandatory in nature and the right accrued in favour of the accused cannot be denied on trivial ground. Learned counsel further submits that the trial could not be concluded for various reasons which are not attributable to lapses on the part of the petitioner/accused and the case was adjourned on various dates fixed for recording evidence of the prosecution, because of failure of the prosecution in many ways. She finally submits that in these factual premises, the rejection of the application for bail only on the ground of gravity of offence is illegal and unsustainable in law. In support of her submission, learned counsel placed reliance on the decisions in the cases of **Chandraswami and another Vs Central Bureau of Investigation** {(1996) 6 SCC 751}, **Vakil Prasad Singh Vs State of Bihar** {(2009) 3 SCC 355} and **Inhuman Conditions in 1382 Prisons (II), In RE** {(2016) 10 SCC 17}

7) On the other hand, learned counsel appearing on behalf of the State/respondent opposed the petition and submits that the provisions of bail under Section 437(6) of the Code are mandatory in nature, but the Court has ample power to dismiss the application by a reasoned order. He relied on the decision in the case of **Atul Bagga Vs State of Chhattisgarh** (MANU/CG/0153/2009) in which it has been held that though the provisions under Section 437(6) of the Code are mandatory in nature, by a reasoned order the Court may reject the bail application in appropriate cases.

8) In the present case, application for release of the petitioner was filed before the trial Court after completion of 60 days from the first date fixed for taking evidence, which has been rejected by the Chief Judicial Magistrate vide order dated 08.09.2016 on the ground that prosecution was making every effort for recording the evidence, but witnesses had not turned up and there was no fault on the part of the prosecution. Therefore, examination of the witnesses within 60 days could not be completed by the trial Court. The petitioner is facing trial for the offences punishable under Sections 420/34 & 4 and 5 A, B & C of the Prize Chits and Money Circulations Schemes (Banning) Act and the case is before the Chief Judicial Magistrate, Janjgir-Champa.

9) Provision under Section 437(6) of the Code are mandatory in nature and bail should not be denied only on trivial ground, but the application for bail may be denied by reason to be recorded in writing. The ground for rejection of application is a question of fact and differs from case to case. No straitjacket formula would be possible to lay down the principles/guidelines for rejection or allowing the application under Section 437(6) of the Code, but the Courts are required to exercise the jurisdiction judicially and not in arbitrary manner.

10) In the case of **Atul Bagga** (supra), this Court considered the scope, extent and object of provisions contained in Section 437(6) of the Code and held :

10) *****

Sub-section (6) of Section 437 of the Code carves out an exception to the provision contained in clause (i) of sub-section (1) of Section 437 of the Code and reads as follows :

437. When bail may be taken in case of non-bailable offence--

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

It would, thus, appear that under the first limb of sub-section (6) of Section 437 of the Code where the trial of a person accused of any non-bailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence in case, the law mandates that such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate. The second limb of sub-section (6) of Section 437 of the Code carves out an exception and empowers the Magistrate to refuse bail for reasons to be recorded in writing. It is, therefore, open to a Magistrate to refuse bail under sub-section (6) of Section 437 of the Code where the Magistrate assigns reasons in writing which are amenable to scrutiny by a Superior Court for examining whether the Magistrate was

justified for reasons recorded by him in writing in refusing bail under sub-section (6) of Section 437 of the Code. If the reasons assigned by the Magistrate justify refusal of bail and cannot be termed arbitrary then the order refusing bail by the Magistrate under sub-section (6) of Section 437 of the Code would be in accordance with law and not open to interference in revision.

11) The question that arises for determination is as to what factors should weigh with the Magistrate while refusing grant of bail under sub-section (6) of Section 437 of the Code. In my considered opinion, apart from the gravity of offence and the quantum of punishment, one or more of the following factors, among others may weigh with the Magistrate while refusing bail :

- (a) the overall impact of the offence and the release of the person accused of such offence on the society,
- (b) the possibility of tampering of evidence by the accused,
- (c) the possibility of the accused absconding if released on bail, and lastly,
- (d) the delay in conclusion of the trial within a period of 60 days if attributable to the accused.

11) Thus, for proper and relevant reasons, the Magistrate has jurisdiction, not to release the accused undergoing trial only on the ground that the trial could not be concluded within a period of 60 days. The relevant considerations which should weigh in the mind of the Court have been laid down in the case of **Atul Bagga** (supra) mentioned hereinabove.

12) On perusal of the order sheets of the Court below, it appears that the trial Court fixed the case first time for recording the evidence on 08.07.2016. On the date no witness was present for evidence. Thereafter, on 21.07.2016, 04.08.2016, 17.08.2016 30.08.2016 and 13.09.2016, date had been fixed for recording the evidence, but prosecution witnesses had not turned up, except on 17.08.2016. Only on this day, prosecution witnesses Ajim Khan and Sameem Khan were present after issuing summons and on 18.10.2016 witness Deepak Kumar had been called for recording the evidence by arrest warrant and as he was present late on that day, the prosecution could not record his evidence. In these circumstances, disposal within the stipulated time is not possible there is no fault on the part of the prosecution and on the part of the CJM. It is also reflected from the order sheets of the Court below that the prosecution and the CJM had put in their best efforts for recording the evidence of the witnesses within the stipulated period of 60 days but could not succeed for the reasons aforementioned. Therefore, in the considered opinion of this Court, the reasons which have been assigned by the CJM are relevant in the light of the order passed in the case of **Atul Bagga** (supra) and thus, both the Courts below had not committed any illegality in dismissing the application filed by the petitioner for grant of bail under Section 437(6) of the Code.

13) Consequently, I do not find any ground for interference in exercise of inherent jurisdiction. The petition is, therefore, liable to

be dismissed and it is hereby dismissed. However, the trial Court is directed to expedite the trial and fix the case for evidence on day to day basis with interval of some weeks so that the case may be concluded as early as possible.

Sd/-

(Anil Kumar Shukla)
JUDGE

padma