

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1447 of 2016

Suneshwar Singh Thakur S/o Laxman Singh Thakur, Aged About 40
Years R/o Village Surdug, Police Station Bhilai- 3, District Durg,
Chhattisgarh. **---- Applicant /Petitioner**

Versus

State Of Chhattisgarh Through The District Magistrate, Durg,
Chhattisgarh. & Also Station House Officer Police Station Jamul,
District Durg, Chhattisgarh. **---- Respondent**

For Applicant	:	Mr. Y.C. Sharma, Advocate
For State	:	Mr. R.K. Mishra, Dy. A.G.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/03/2017

Heard.

1. The petitioner has filed this petition aggrieved by order dated 05.11.2016 passed by the Additional Sessions Judge, Durg by which, the revision against order dated 21.09.2016 of the Magistrate rejecting application for bail under Section 437 (6) of Cr.P.C., has been affirmed.

2. The petitioner was arrested on 17.08.2015 on the allegation of having committed offences under Section 420, 406, 467, 468, 471, 409 of IPC. The allegation against the applicant is that the applicant was Assistant Manager of the Cooperative Society and it is alleged that various fraudulent withdrawal from the account of Cooperative Society were made and the allegation is that the applicant is involved in these fraudulent withdrawal in the name of various depositors. It is also alleged that in many cases, the amount to be deposited by the depositors was not actually deposited in the accounts of the Cooperative society. Upon completion of investigation, charge-sheet has filed and the charges were also framed against the applicant on 30.04.2016. However, when despite framing of charges, not a single witness, out of 141 witnesses, was examined in the Trial Court, the

applicant moved an application for grant of bail under Section 437(6) of Cr.P.C. on the ground that the trial has not been concluded within the time stipulated under Section 437(6) of Cr.P.C. and much time has elapsed without there being a single prosecution witness examined. The learned trial Court, however, rejected the application taking into consideration the gravity of the allegation and that huge amount is alleged to have been defalcated by the applicant. Aggrieved by order of the trial Court, revision was preferred by the applicant which has also been dismissed giving rise to this petition.

3. Learned counsel for the applicant argued that the applicant was arrested way back on 17.08.2015 and even after 1 ½ years of his detention, till date, the criminal proceedings have not gained the desired pace with which it ought to have proceeded. According to him, except framing of charge, no material progress has taken place before the Court below. Till date, not a single witness has been examined. The prosecution has cited as many as 141 witnesses and the pace with which the trial is proceeding and the progress so far made, a case for release of bail is made out. Learned counsel for the applicant relied upon the decisions in the cases of **Tarsem Lal Singla vs. U.T. Chandigarh**¹, **Hari Singh Vs. State of M.P.**², **Amit Sharma vs. State of Haryana**³, **Sunil Kumar Ojha vs. State of Chhattisgarh**⁴.

4. On the other hand, learned State counsel submits that the allegations against the applicant are grave in nature. He was working as an Assistant Manager in the Cooperative Society and he played fraud with the depositors. There are serious allegation that amounts were either withdrawn from the accounts of the depositors or the amounts which were to be deposited in respective accounts were not deposited. At that time, the applicant was holding a crucial and important position in the Bank and these fraudulent activity, could not take place without the active involvement of the applicant himself. He submits that Rs.80 lacs is alleged to have been defalcated by the applicant affecting large number of investors/ depositors of the Bank. This factor was taken into consideration by the Court below to reject the applicant's application for grant of bail under Section 437(6) of Cr.P.C. because gravity of allegation is one of the relevant consideration while

1 2014 CJ (P&H) 1194

2 (2011) 3 MPWN 74

3 (2014) 2 LawHerald 1291

4 Order dated 15.11.2016 passed in CRMP No.841 of 2016

considering an application for grant of bail under Section 437(6) of Cr.P.C.. The reasons which have been recorded by the Court below to reject the application are relevant and sufficient to reject the application. Therefore, the applicant is not entitled to any relief.

5. It is not in dispute that the applicant is languishing in jail since 17.08.2015. It is also not in dispute that till date, except framing of charges, no other material of progress has taken place during trial.

6. The prosecution has cited as many as 141 witnesses against the applicant but till date, not a single witness has been examined.

7. First of all, I would examine the records of the case to find out whether the delay in trial is substantially or materially attributable to the applicant himself. For this purpose, I have perused the order-sheets of the criminal proceeding from dated 13.11.2015 up to 15.11.2016. Charges were framed by the learned trial Court on 30.04.2016. After that the case was first fixed for recording evidence on 13.05.2016 since then, till date, no prosecution witnesses has been examined. There is only one date of hearing i.e. on 03.06.2016, when both the accused applicant and the prosecution sought adjournment on the ground that the records which are to be proved before the Court by the prosecution witnesses are not available. The applicant also prayed adjournment. Except this, there is nothing in the order sheets, which reflects that the evidence could not be recorded because of the reason attributable to the applicant.

8. Learned counsel for the State submits that the petitioner had also raised objection with regard to examination of witnesses on the ground that the records were not produced. Therefore, two witnesses could not be examined because of non-production of the records and on the request of the prosecution, case was adjourned. At this stage, the petitioner moved an application for grant of bail under Section 437(6) of Cr.P.C. It is relevant to note that at this stage, when the application was moved, almost one year had elapsed since the applicant was languishing in jail. The application was eventually rejected on 21.09.2016 mainly taking into consideration the gravity of allegation against the applicant.

9. It would, thus, be seen that for delay in trial, the applicant is not

responsible at all. The applicant was arrested on 17.08.2015 and when this matter is being decided before the Court, it is informed that even till date, not a single witness has been examined by the prosecution. In any case, even after almost 1 year when the application for grant of bail under Section 437(6) of Cr.P.C. was made, out of 141 witnesses, not a single witness was examined and this delay, could not be attributed to any lapse on the part of the accused. The question, therefore, which arises for consideration is whether in a case where a person has remained in jail for more than 1 year without any material progress in trial and without even a single prosecution witness examined, the Courts below were justified in rejecting his application for grant of bail under Section 437(6) of Cr.P.C. only on the ground of gravity of allegation.

10. In a series of decisions including decision of this Court in the case of **Lal Sahu Vs. State of Chhattisgarh**⁵, **Haricharan Ramteke v. State of Chhattisgarh**⁶, **Smt. Godawari Bai and Others vs. State of Chhattisgarh**⁷ and decision of other High Courts cited before this Court, the scope and ambit of provision contained under Section 437(6) of Cr.P.C. has been considered. Broadly speaking while considering application for grant of bail under Section 437(6) of Cr.P.C., the considerations are those which have been laid down by this Court in the case of **Lal Sahu (supra)** in para 11 which is reproduced herein below :

“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.”

5 2012(1) MPHT 67

6 2001 (2) MPHT 51 (CG) : 2002 Cri. LR 46 (MP)

7 2004 (4) MPHT 5 (CG) : 2004(2) CGLJ 135

11. Out of considerations, which have been enumerated as aforesaid, as far as possibility of tampering of prosecution evidence by the accused, possibility of the accused absconding if released on bail, any role attributable to the applicant in delay in conclusion of trial is concerned, I do not find any ground to hold otherwise against the applicant. There is no material considered by the Court below that in the event of grant of bail, the applicant is likely to flee away from justice or likely to tamper with the prosecution witnesses for any reason whatsoever. The other two considerations which have been stated to be relevant are that the gravity of offence and the overall impact of the offence and the release of the person accused of such offence on the society. On this count also, the allegation against the applicant being that he misappropriated amount of some other person, by itself, cannot be said to be an allegation of such a grave nature as comparable to offences like murder, attempt to murder, rape, decoity that grant of bail to the applicant may have an adverse affect or that grant of bail would not be a conducive to societal interest. However, there the allegation is that by such act about Rs.70 lacs has been defalcated. At this stage, this is the allegation against the applicant and that will require the prosecution to lead evidence to prove this fact. The gravity of allegation, at one stage, has to yield to consideration of individual liberty and cannot be allowed to deny bail to an accused even in a case where despite he having completed almost 1½ years in jail, not a single prosecution witness is examined. If the reasons for delay are not attributable to the accused, it would be amounting to punishing accused even before his conviction upon proof of allegation against him for reason which is not because of any fault on his part. Period of 1 ½ years is quite a long period of an individual detention during trial. It becomes a matter of more concern when the Court finds that the prosecution has not been able to take off despite lapse of such a long time inasmuch as not a single witness has been examined. It has to be noted that the prosecution has cited as many as 141 witnesses and the open ended manner, in which, trial is going on, there is no likelihood of the trial being concluded early. Therefore, if the gravity of the allegation against the applicant and the period of detention without any progress in the trial are weighed against each other, the fulcrum of justice would lean towards the accused who is in jail, keeping in mind that personal liberty of individual

cannot be put to peril except for very strong grounds.

12. In the cases of **Haricharan Ramteke (supra)**, **Smt. Godawari Bai and others (supra)** and **Sunil Kumar Ojha (supra)**, this Court held that non completion of magisterial trial within the stipulated period, would entitle the accused grant of bail, taking into consideration long period of detention for similar kind of offences. In the case of **Sunil Kumar Ojha (supra)**, the accused was alleged to have collected huge amount under a scheme of investment. When the trial was not concluded within one year, the Court found that application for grant of bail under Section 437 (6) Cr.P.C. could not be denied. Similar is the view taken by other High Courts in the cases of **Tarsem Lal Singla (supra)**, **Amit Sharma (supra)** and **Hari Singh (supra)**. I find myself in agreement with the view taken in those cases. Therefore, in these circumstances, I am of the view that now the applicant should be released on bail, however, by imposing appropriate conditions to ensure his presence during trial.

13. In the result, the petition is allowed and the order passed by the Court below are set aside. The applicant is granted bail in following conditions :

- (a) The applicant shall furnish personal bond of Rs.50,000/- before the trial Court;
- (b) The applicant shall furnish two solvent sureties each of Rs.50,000/- to the satisfaction of the trial Court to ensure his presence throughout the trial;
- (c) The applicant shall not leave the State of Chhattisgarh without the leave of the Court;
- (d) The applicant shall appear before the trial Court on each and every date unless he is exempted.

Sd/-
(Manindra Mohan Shrivastava)
Judge