

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 311 of 2017

- Sant Kumar Pradhan S/o Shri Agin Kumar Pradhan, aged about 42 years, R/o Village Saldih, Thana-Sankra, Civil & Revenue Distt. Mahasamund, Chhattisgarh

---- Petitioner

Versus

- State of Chhattisgarh Through the District Magistrate Mahasamund, Distt.- Mahasamund, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Sunil Sahu, Advocate.
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

25/07/2017

1. Heard.
2. Petition under Section 482 of Cr.P.C. has been brought with a prayer to set aside the impugned order dated 30.1.2017 passed by the Second Additional Sessions Judge, Mahasamund in Criminal Revision No.H-66/2016 in which the order passed by the trial Court rejecting the application of petitioner under Section 437(6) of Cr.P.C., was upheld.
3. It is submitted by counsel for the petitioner that petitioner is in jail since 30.12.2015. Petitioner was charged with the offence under Section 420 of IPC on 21.3.2016. After completion of 60 days the recording of evidence could not be completed by the prosecution, hence, on the basis of entitlement in accordance with Section 437(6) of Cr.P.C., counsel for petitioner filed an application for release the petitioner on bail. The trial Court rejected his application vide order dated 7.11.2016. The revision was preferred in the Sessions Court which has been dismissed vide order dated 30.1.2017.
4. It is submitted that petitioner/accused and the complainant in this case have entered into a compromise according to which application for compromise was

presented before the trial Court which was dismissed on 8.7.2016. On the ground that the order impugned and the order passed by the trial Court are bad in law, inherent power should be exercised to set aside the impugned order and prayer has been made to pass order for releasing the petitioner on bail.

5. Learned counsel for the State has opposed the petition and arguments submitted on behalf of the petitioner.
6. In this case charges were framed against the petitioner on 21.3.2016 for trial of offence under Section 420 of IPC. The case was fixed for evidence but the prosecution evidence could not be completed within 60 days from the date of first hearing. Petitioner brought an application under Section 437(6) of Cr.P.C. before the trial Court which was dismissed only on the ground that the charge of offence against the petitioner is of grave nature.
7. This order was challenged in Revision Petition No.H-66/2016 in which order of trial Court was upheld.
8. Petitioner is in jail since 30.12.2015 under Section 437 of Cr.P.C. clearly provides that 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 60 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.
9. Section 437(6) of Cr.P.C. is clearly a default clause because under this provision an accused person in custody becomes entitled to be released on bail because of the default committed by the prosecution. It is a similar case in which default has been committed by the prosecution and the examination of prosecution witnesses could not be completed within 60 days from the date of hearing. As per the requirement of the provision, the entitlement of petitioner seems to be apparent but the reason for rejection was that the offence charged against the petitioner is of heinous in nature. This kind of reasoning indicates that the trial Court has decided the application on the basis of merit and not on the basis of default.
10. As per the provision of Section 437(6) of Cr.P.C. only by recording special reasons the bail made by accused in custody shall be refused, which implies that in such a situation bail is a rule and rejection of prayer is an exception.

Cogent and substantial reason for sending or can be in custody of accused is always a requirement. This provision does not speak of the gravity of the offence charged against any of the accused person, hence, it implies that despite the gravity of offence the person shall be entitled to be enlarged on bail if, the circumstances exists in his favour.

11. Hence, for these reasons the order impugned and the order passed by the trial Court are deserve to be interfered with.

12. With the aforesaid observations, this petition is allowed at the motion stage. The impugned order and the order passed by the trial Court are hereby set aside. It is directed that the petitioner shall be released on bail on furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed, in case any default is committed by the petitioner in appearing before the Court this order granting bail shall stand cancelled automatically.

13. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha