

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1450 of 2016**

- Vishnu Patel S/o Ranchore Patel Aged About 40 Years Caste- Ghati, R/o Jagmal Pipaiya, Post Office & Police Station Khudel, Tahsil & District Indore, Madhya Pradesh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through District Magistrate Officer, District-Dhamtari , Chhattisgarh.

---- Respondent

For Petitioner

Dr. Shailesh Ahuja, Advocate along with Mr.
Uday Shadani, Advocate

For State

Mr. Bhaskar Pyasi, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****03.01.2017**

1. The present Petition under Section 482 Cr.P.C. has been filed invoking the provisions of Section 437(6) Cr.P.C. for grant of bail to the present Petitioner.
2. The facts in brief is that the Petitioner along with other accused persons have been tried before the Court of Judicial Magistrate, First Class, Dhamtari in Criminal Case No. 1301/2015 for the offence punishable under Sections 420 and 409/34 IPC.
3. According to the Counsel for the Petitioner it is the case where the charge-sheet was originally filed on 15.12.2015 and the Petitioner herein has been arrested on 22.02.2016. In due course of time the

matter for the first time was listed for evidence of the prosecution on 03.08.2016. According to the averments made by the Petitioner in all 37 witnesses has been cited by the prosecution however only 5 witnesses have been examined till now. According to the Counsel for the Petitioner since the trial could not be concluded within a period of 60 days, therefore, the Petitioner was entitled to be released on bail invoking the provisions of Section 437(6) of the Cr.P.C. According to the Counsel for the Petitioner he is also entitled for bail on account of the fact that all the other co-accused have already been released on bail. Only the present Petitioner alone is languishing in jail for no fault of his. The prosecution witnesses are also not appearing before the Court below to adduce evidence and the trial therefore is getting prolonged without any sufficient and plausible reasons. Hence, prayed for grant of bail to the Petitioner invoking provisions of Section 437(6) of the Cr.P.C.

4. Learned State Counsel however opposing the Petition submits that from the pleading of the Petitioner itself it is evidently clear that there is no inordinate delay on part of the prosecution in adducing evidence. According to the State Counsel the prosecution in fact is regularly producing witnesses. In due course of time 5 witnesses have already been examined. Therefore, for this reason the Petitioner would not be entitled for any benefit under Section 437(6) of the Cr.P.C. taking into consideration the nature of the allegation levelled against the present Petitioner.
5. Learned State Counsel also submits that the other accused persons have been granted bail under the provisions of Section 439 of the

Cr.P.C. and Petitioner also should have availed the said remedy instead of moving application for grant of bail under Section 437(6) of the Cr.P.C.

6. Having considered the rival contentions put forth on either side and on perusal of the record what is reflected is the fact that charge-sheet in the instant case was filed on 15.12.2015 and charges were framed on 20.06.2016. Thereafter, the matter was fixed for evidence for the first time on 03.08.2016. Between 03.08.2016 to 23.12.2016 i.e. the date when the present Petition has been filed, the prosecution has already led evidence of 5 of the witnesses which itself is sufficient indication of the fact that the trial in fact is progressing at a good pace. It can not be said that there is an inordinate delay on part of the prosecution in adducing evidence before the Court below.
7. Taking into consideration the totality of the facts and circumstances of the case particularly the period within which 5 witnesses have already been examined, this Court does not find it proper to grant relief to the Petitioner.
8. The Petition therefore deserves to be and is accordingly rejected.
9. However, taking into consideration the fact that the Petitioner has already remained in custody for more than 10 months and the fact that a large number of witnesses have been cited by the prosecution it is expected that the Court below shall make all endeavours ensuring the presence of the witnesses before the Court by using all the powers which are conferred upon the Court for keeping the witnesses present and dispose off the matter as expeditiously as

possible.

10. With the aforesaid observation the present Petition stands dismissed.

11. Needless to mention that the rejection of this Petition would not preclude the Petitioner from availing other remedies available to him under the Cr.P.C.

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