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HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 1433 of 2016

Lakhanlal Chauhan, S/o. Kiritram Chauhan, Aged About 43 Years, Fud Incharge, Sewa Sahakari Samiti, Kanakbira, Upkendra Kapartunga, R/o. Village Kanakbira Police Station -Sarangarh, District -Raigarh Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The District Magistrate, Raigarh, District- Raigarh, Chhattisgarh
2. State Of Chhattisgarh, Through : The Station House Officer, Police Station- Sarangarh, District -Raigarh, Chhattisgarh

-----Respondents

AND

CR.M.P. No. 204 of 2017

Nirmal Das Vaishnav, S/o. Shyamdas Vaishnav, Aged About 50 Years, Caste- Vaishnav, Manager, Sewa Sahkari Samiti- Kanakbira, Sub-Centre, Kapartunga, R/o. Village- Kanakbira, Police Station- Sarangarh, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through : The District Magistrate, Raigarh, District -Raigarh, Chhattisgarh.

---- Respondent

For Petitioners : Mr. Awadh Tripathi, Advocate

For Respondent/State : Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/09/2017

1. Both the petitions are heard together and decided by this common order, as the facts and issues involved are similar in nature.

2. Counsel for the petitioners submits that petitioners are being prosecuted before the Court of Judicial Magistrate First Class, Sarangarh, District – Raigarh (C.G.) in Criminal Case No.49/2015. Charges were framed against the petitioners on 13.04.2016 for offence under Section 409, 467, 468, 471, 420/34 of the Indian Penal Code and Section 3/7 of the Essential Commodities Act. The first date of evidence was fixed on 26.04.2016. Prosecution could not complete evidence within the period of 60 days and petitioners are in jail since 08.01.2016 and out of 19 witnesses mentioned in the charge-sheet, only two have been examined so far. Petitioners moved an application before the trial Court for release on bail under Section 437(6) of Cr.P.C. That application has been rejected vide order dated 19.07.2016. Revision was preferred against this order, which has been decided by the Court of Additional Sessions Judge, Sarangarh in Criminal Revision No.13/2016 on 05.11.2016 and the revision has been rejected. Hence this petition.
3. Counsel for the State has opposed the grounds raised in these petitions and the submission made on behalf of the petitioners. It is submitted that Court below have rightly rejected the application of the petitioners on the basis of the gravity of the offence. Hence these petitions may also be rejected. The State counsel has placed reliance on the judgment passed by the Delhi High Court in case of **Robert Lendi Vs. The Collector of Customs and another**, reported in **1987 Cri. L.J. 55** and submits that bail under Section 437(6) may be refused if there is likelihood of accused jumping bail. Reliance has also been placed on the judgment passed in case of **Gulab Singh Banjare & Anr. Vs. State of C.G.**, reported in **2010(1) C.G.L.J. 132** and in case of **Atul Bagga Vs. State of C.G.**, reported in **2009 (3) C.G.L.J. 448**

and ***Lal Sahu Vs. State of C.G.***, reported in ***2012 (3) C.G.L.J. 341*** of this High Court.

4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. Petitioner in Cr.M.P. No.1433/2016 was an employee of Sewa Sahakari Samiti Maryadit, Kanakbeera, Paddy Procurement Centre, Kapartunga and petitioner in Cr.M.P. No.204/2017 was the manager of the said Samiti, when they are said to have forged the record of the Samiti to affect the purchase from such farmers, who were not recorded as land owner and thereafter have defalcated and misappropriated the purchase amount of paddy of Rs.10,33,328/- and of gunni bags of price of Rs.1,66,496/-.
6. The trial Court has rejected the application of the petitioners in both the cases on the ground of gravity of offence and no other reason has been mentioned in the order passed. The revisional Court has similarly passed the impugned order without mentioning any other specific reason.
7. Section 437 (6) of Cr.P.C. is meant for grant of bail on the basis of the default committed by the prosecution. It has been held and settled in the order passed by this Court in Cr.M.P. No.1447/2016, dated 10.03.2017 in case of Suneshwar Singh Thakur Vs. State of C.G., the grounds on which an application under Section 437(6) Cr.P.C. can be rejected. Considering all the facts and circumstances of this case, it appears that there are no such grounds as mentioned in the judgment passed in case of Suneshwar Singh Thakur to be taken in account in this case for rejecting the application of the petitioners. The ratio of law laid down by this Court in case of Atul Bagga (supra) shall not apply in

this case and it can not be said that offence committed is of very high magnitude and it affects public at large.

8. Hence, the grounds on which the application of the petitioners have been rejected by the trial Court and it has been upheld by the revisional Court, are not sustainable. Accordingly, both the petitions are allowed and the orders passed by both the Courts below are hereby set-aside. It is directed that petitioners shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.
9. C.C. as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram