HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 393 of 2017

- Akhileshwaroop Sharma (wrongly mentioned as Akhilesh Sharma) S/o Late S.P. Sharma, aged about 42 years, R/o Shop No.735, Sector-6, C-Market, Bhilai Nagar, Tahsil and District Durg, Chhattisgarh.

---- Petitioner

Versus

- State of Chhattisgarh, through the District Magistrate, Durg, District Durg, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri B.P. Singh, Advocate.
For Respondent/State	:	Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/07/2017

1. Heard.

2. This petition under Section 482 of Cr.P.C. has been brought with a prayer to exercise the inherent powers of this Court for granting bail to the petitioner by setting aside the impugned order dated 19.10.2016 passed by learned Additional Sessions Judge, Durg, District-Durg, Chhattisgarh in Criminal Revision No.0000223/2016 by which the order passed by the trial Court rejecting the application of the petitioner under Section 437(6) of Cr.P.C has been affirmed.

3. The petitioner is facing trial before the Court of Judicial Magistrate First Class, Durg for offence under Sections 420, 468, 470 and 471/34 of IPC. It is alleged that co-accused Laxman and N. Rama Rao gave assurance to complainants - Soman Lal, Firoj, Chetanlal, Budeshwar Gandre and Nikhil Chandrakar to get employment for the concerned persons. On their asking, complainants have paid to the petitioner and co-accused persons in total Rs.13 lacs and thus, the petitioner and the co-accused persons cheated the complainants. Thereafter, the petitioner and the co-accused persons also provided the forged appointment

letters to the complainants.

4. Charges were framed on 15.07.16 and the evidence could not be completed before 15.09.2016, and as such, an application has been moved under Section 437 (6) of Cr.P.C. before the trial Court, which was rejected vide order dated 26.09.2016. Against the said order, Criminal Revision No.223 of 2016 has been preferred before the Court of Additional Sessions Judge, Durg, which was also rejected vide order dated 19.10.2016.

5. The grounds taken in this petition are that the petitioner has become entitled on the basis of default committed by the prosecution. The prosecution against the petitioner is baseless and without any substance, hence, this petition may be allowed.

6. It is submitted by counsel for the petitioner that the grounds mentioned for rejection of the prayer made by the petitioner, are not sustainable. Reliance has been placed on the judgments passed by this Court in **Godawari Bai Vs. State of Chhattisgarh** in which the charges against the petitioner were under Sections 420, 468, 471 and 120-B of IPC and it was held that the provision under Section 437(6) of Cr.P.C. is mandatory in nature which has to be complied with. Reliance has also been placed on the order of this Court in the cases of **Baby Khan @ Firoz Khan Vs. State of Chhattisgarh** passed in Cr.M.P. No.1324 of 2016 dated 23.12.2016 and **Suneshwar Singh Thakur Vs. State of Chhattisgarh** passed in Cr.M.P. No.1447 of 2016 dated 10.03.2017. It is submitted that the amount of default in Suneshwar Singh Thakur was Rs.80 lacs in which this Court has allowed the petition and granted bail to the petitioner.

7. Learned counsel for the State has opposed the petition and arguments submitted on behalf of the petitioner.

8. The case against the petitioner and others is pending before the Court since 25.04.2016. Petitioner was arrested on 02.03.2016 and since then he is continuously in jail. As per the details given, he appears to be resident of Bhilai. The offences that are charged against the petitioner need not be taken into consideration. The principle laid down by this Court in **Atul Bagga Vs. State of Chhattisgarh, 2009 (3) CGLJ 448** is that in case economic offences alleged against the petitioner being of serious magnitude and that his release is likely to affect the society at large, in such circumstances, the bail should not be allowed.

9. Section 437 (6) of Cr.P.C. gives entitlement to an accused person who is in custody, on the ground of default of the prosecution which fails to complete the recording of evidence within a period of 60 days from the date the trial begins. In this case no specific reason has been recorded by the trial Court except that the offences charged against the petitioner are of grave in nature, hence, it is not a fit case to release him on bail. The revisional Court has followed the same and relied upon **Atul Bagga** (supra) for rejecting the revision petition.

10. The direction in **Atul Bagga** (supra) has to be understood and a clear observation is required to make out as to in what manner the case against the petitioner is of such serious magnitude and that his release on bail shall affect the society at large. It is a case in which the petitioner and two others have been charged for the offences of cheating and forgery and for offence of cheating the complainant in this case. It cannot be specifically made out that the directions in **Atul Bagga's** case are applicable to this case, hence, for these reasons the petition deserves to be allowed. The impugned order passed by the Court below is set aside.

11. Accordingly, the petition is allowed. The impugned order passed by the Sessions Court in Criminal Revision No. 0000223 of 2016 is set aside. Consequently, the petitioner's application under Section 437(6) of Cr.P.C. stands allowed and he is directed to be released on bail on his executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court/ remand Court. He is directed to appear before the said Court on each and every date given by the said Court.

Sd/-

(**Rajendra Chandra Singh Samant**)
JUDGE

Nimmi