

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 424 of 2017**

- Shivkumar Miri S/o Shri P.R. Miri, Aged About 45 Years R/o Bhatgaon, Police Station Bilaigarh, Tahsil & District Baloda Bazar Bhatapara, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through District Magistrate, Baloda Bazar District Baloda Bazar Bhatapara, Chhattisgarh.

---- Respondent

For Petitioner : Shri Sandeep Dubey, Advocate.

For Respondent/State : Shri Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****23/08/2017**

Heard.

1. Learned counsel for the petitioner submits that petitioner is facing trial for offence under Section 420/34 of Indian Penal Code (for short 'IPC') in Criminal Case No.161/2016 pending in the Court of Judicial Magistrate First Class, Bhatgaon, Balodazar. Charge was framed on 5.7.2016 by the trial Court and case was listed for examination of prosecution witnesses, which could not be completed within a period of 60 days and the trial against the petitioner is pending till date. Petitioner moved an application under Section 437(6) of Cr.P.C. before the trial Court which was rejected by order dated 20.9.2016 against which Criminal Revision No.77/2016 was preferred and the same has also been dismissed by the First Additional Sessions Judge, Balodabazar by order dated 30.11.2016.

Hence, this petition.

2. It is submitted by the counsel for the petitioner that petitioner is in jail since 1.4.2016, his entitlement to be released on bail under Section 437(6) has been refuted by the Courts below arbitrarily and illegally taking into consideration the amount received by petitioner and others in the offence of cheating that was Rs.10,90,000/-. It is clearly held in various cases that gravity of offence cannot be taken into consideration while considering the application under Section 437 (6) CrPC. Hence, petitioner is entitled for bail.
3. Learned counsel for the State has opposed the application and submitted that petitioner and one another have committed the offence of cheating by inducing the complainant and others and obtaining from them huge amount on the pretext of providing employment to them, which is an offence of gravity and affecting the society at large. Hence, the application does not deserve to be allowed.
4. Both the parties are heard and perused the material on record.
5. Section 437(6) of Cr.P.C. does not provide absolute entitlement if there are reasons to be recorded in writing, mentioning such reasons the application for bail can be rejected by the trial Court. Petitioner has placed reliance on the judgment of this Court in Sumeshwar Singh Thakur Vs. State of C.G. in Cr.M.P. No.1447/2016 in which case the charge of defalcation, embezzlement, forgery and cheating was against the petitioner and the amount misappropriated was Rs.80 lakhs. Relying on the judgment of Lal Sahu Vs. State of C.G. in (2012) 1 MPHT 67, it was held that apart from the gravity of offence and the quantum of punishment, overall impact of the offence on the society and the release

of the person accused of such offence, the possibility of tampering of evidence by the accused, the possibility of accused absconding if released on bail and if the delay in conclusion of the trial is attributed by the accused, may be one of the reasons which can be taken into consideration for refusing bail. Otherwise, the grant of bail under Section 437(6) of Cr.P.C. cannot be denied.

6. In the order passed by the trial Court and in the order passed by revisional Court, no such specific reason has been assigned. From the perusal of the order-sheets, it cannot be made out that the evidence of prosecution, which has not been concluded, is attributable only to the petitioner/accused. In this case numerous dates have been fixed for recording of evidence by the trial Court and still the case is pending for adjudication, hence, the reason assigned by the trial Court and the revisional Court cannot be upheld.
7. Accordingly, the petition is allowed and consequent thereto the application filed by the petitioner under Section 437(6) of Cr.P.C. is allowed and the order passed by the trial Court and by the revisional 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.
8. Accordingly, the petition stands disposed off.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE