

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 579 of 2017**

1. Dwarika Sahu, S/o Makhan Lal, aged about 50 years,
2. Tejes Sahu, S/o Dwarika Sahu, aged about 22 years.

Both are R/o PS Lalbagh, Tahsil & District Rajnandgaon
(C.G.)

---- **Petitioner****Versus**

State of Chhattisgarh, through the District Magistrate,
Rajnandgaon (C.G.)

---- **Respondent**

For Petitioners: Mr. B.D. Guru, Advocate.
For Respondent/State: Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****12/05/2017**

(1) This petition is directed against the order dated 19.04.2017 passed by the sessions Judge, Rajnandgaon by which the petitioners' application under Section 437 (6) of the Code of Criminal Procedure (for short 'Cr.P.C.') has been allowed subject to depositing Rs.3,60,000/- to the complainant or his mother.

(2) Learned counsel for the petitioner would submit that though the petitioner has been granted bail by learned Sessions Judge in exercise of power under Sections 437(6) of the Cr.P.C. but while granting bail application, a stringent and unreasonable condition has been imposed, which amounts to denial of his right conferred to the petitioner under Section 437(6) Cr.P.C. and, therefore, condition No. 1 imposed

in the revisional order while granting bail is liable to be set aside.

(3) On the other hand, counsel for the state would support the order impugned.

(4) I have heard counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) It is well settled law that while granting bail, the condition to be imposed must be reasonable and it should be imposed to effectuate the object of imposing condition having regard to facts and circumstances and it should not be onerous.

(6) In the matter of **Sumit Mehta Vs. State (NCT of Delhi)**¹, their Lordships of the Supreme Court while considering the conditions imposed to the order granting anticipatory bail to deposit Rs.1,00,00,000/- for a period of six months in the name of the complainant and to keep the FDR with the Investigating Officer, held that it is onerous and unreasonable and set aside the said condition.

Paragraphs 13,14 & 15 state as under: -

“13. We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under sub-section (2) of section 438 of the Code.

14. Thus, in the case on hand, fixed deposit of

1 (2013) 15 SCC 570

Rs.1,00,00,000/- for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in case of cheating, electricity pilferage, while -coller crimes of chit fund scams, etc.

15. The words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that in choose to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

(7) Keeping in view the principle of law laid down by the Apex Court in **Sumit Mehta case** (supra); and further taking into account the fact that allegations made by the complainant against the petitioners are true or not, that can only be ascertained during course of trial, the condition imposed by the Sessions Judge to deposit ₹ 3,60,000/- in advance before commencement of trial appears to be stringent and onerous, which, in the considered opinion of this Court, should not have been imposed by the Session Judge while granting bail to the petitioner.

(8) Accordingly, the condition No.1 directing to deposit ₹ 3,60,000/- in favour of complaint or his mother is liable to be and is hereby set aside. However, condition No. 2 shall remain intact i.e. the petitioner

shall regularly appear before the trial Court and he will not tamper the prosecution witnesses and keep himself available as directed by learned trial Court.

(9) Accordingly, the criminal misc. petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-