

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 688 of 2017**

- Ishthaq Ansari S/o Majru Ansari, Aged About 30 Years R/o Village Dadgaon, Police Station Jashpur, District Jashpur, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Ramanujganj, District Balrampur, Chhattisgarh.

---- Respondent

For Petitioner

Shri S.C. Verma, Advocate

For Respondent

Shri Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****13/07/2017**

1. The case is listed for orders on default pointed out by the Registry that this petition is directed against rejection of bail application under Section 439 of the Code of Criminal Procedure, 1973 (henceforth 'the Cr.P.C.') by the Court below.
2. After hearing the learned counsel appearing for both the parties, it is manifest that the technical and legal question is involved in this matter, which can be dealt with by this Court only under the

provisions of Section 482 of the Cr.P.C and hence there is no default as such.

3. Accordingly, the default pointed out by the Registry is overruled.
4. With the consent of learned counsel appearing for the parties, the petition is heard finally.
5. Learned counsel appearing for the petitioner would submit that the petitioner was arrested in crime No.96/2009 registered at Police Station Ramanujganj for offence punishable under Sections 364A, 365, 386, 397, 120B, 302 & 201 of the Indian Penal Code.
6. After rejection of the bail application from the Sessions Court, the petitioner preferred an application before this Court under Section 439 of the Cr.P.C., bearing M.Cr.C.No.3560 of 2010 (**Istihak @ Nageshwar alias Asalam v. The State of Chhattisgarh**). The said bail application was decided by this Court on 3-1-2011 in which the application for grant of bail was allowed with a direction to furnish bail bonds and release the petitioner along with other conditions. The period of bail was till disposal of the trial.
7. Learned counsel would further submit that the petitioner could not furnish the bail bonds, as he was in custody at Gumla Jail

(Jharkhand) in respect of another criminal case. On issuance of warrant of arrest, the petitioner was produced before the trial Court. The petitioner again moved an application under Section 439 of the Cr.P.C. before the trial Court, which has been rejected by the impugned order dated 28-4-2017. Learned counsel would next submit that the effect & operation of the order of this Court passed on 3-1-2011 was never terminated. Under these circumstances, the Court below had no authority to entertain and decide the application under Section 439 of the Cr.P.C. The only course open was to comply with the order dated 3-1-2011 passed by this Court in M.Cr.C.No.3560 of 2010.

8. Learned Govt. Advocate appearing for the State, *per contra*, would oppose the contention made by the petitioner.
9. The order dated 3-1-2011 passed by this Court in M.Cr.C.No.3560 of 2010 clearly speaks that the bail granted to the petitioner in connection with crime No.96/2009 registered at Police Station Ramanujganj, was to continue till disposal of the case. No condition was laid down in the order itself that in case of any contravention of the conditions imposed, the bail order was to terminate automatically. Due to non-appearance of the petitioner before the trial Court no request was made by it to this

Court to cancel the bail granted to the petitioner. Under these conditions there was no scope for entertaining any application under Section 439 and passing orders on the same. The only course open to the trial Court was to ask the petitioner to furnish the bail bonds in compliance of the order dated 3-1-2011 passed by this Court in M.Cr.C.No.3560 of 2010.

10. For the reasons mentioned hereinabove, the impugned order dated 28-4-2017 passed by the trial Court is technically an incorrect order, which cannot be upheld. Thus, by exercising the inherent powers under Section 482 of the Cr.P.C., the impugned order dated 28-4-2017 is set aside. The petitioner is directed to make a prayer before the trial Court in compliance with the order passed by this Court.
11. As a sequel, the petition is allowed to the extent indicated above.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Gowri