

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 721 of 2017

Gajanand Kurrey, S/o. Gajadhar Kurrey, Aged About 66 Years, R/o. Village Dighora, Police Station & Tahsil Patharia, District Mungeli. Present R/o. Sony Complex Karhi Colony Mungeli, Police Station & Tahsil Mungeli, District Mungeli, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through : District Magistrate, District Mungeli, Chhattisgarh.

-----Respondent

For Petitioner : Mr. Dharendra Pandey, Advocate
For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/09/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought against the impugned order dated 09.06.2017, passed in Criminal Revision No.21/2017, by the learned Additional Sessions Judge, Mungeli, District – Mungeli affirming the order dated 21.04.2017, passed by the learned Judicial Magistrate First Class, Mungeli, in Criminal Case No.1495/2016, whereby the application of the petitioner under Section 437 (6) of the Code of Criminal Procedure, has been rejected.
2. It is submitted by the learned counsel for the petitioner that petitioner is facing prosecution for offences under Section 420/34, 467/34, 468/34,

471/34, 473/34 and 120-B of Indian Penal Code. He is in jail since 31.08.2016. The charges were framed against the petitioner on 27.01.2017 and the first date for recording of prosecution evidence was fixed on 10.02.2017. The prosecution evidence could not be completed within 60 days from first date of hearing. Petitioner preferred application under Section 437(6) of Cr.P.C., which has been dismissed by the trial Court by order dated 21.04.2017 on the ground that charge of offence against the petitioner is of grievous nature. Criminal revision number 21/2017 was preferred, which has been dismissed vide order dated 09.06.2017 by the Court of Additional Sessions Judge, Mungeli relying on the judgment of this Court in case of Atul Bagga Vs. State of C.G., reported in 2009 (3) C.G.L.J. 448.

3. Counsel for the petitioner submits that petitioner is senior citizen and he is in jail for almost more than one year and no progress has been made in the trial against him. Provisions under Section 437 (6) of Cr.P.C. is mandatory, hence petitioner is entitled for grant of bail. Counsel for the petitioner placed reliance on the judgment of this Court in case of *Santosh Dubey Vs. State of C.G.*, reported in 2017 (2) C.G.L.J. -1, in which it was held that the factors which should be kept in mind while considering an application under Section 437 (6) would be different from the factors that are to be taken into consideration while deciding an application for regular bail. Reliance has also been placed in the order dated 08.09.2017, passed by this Court in Cr.M.P. No.841/2017, *Rahul Singh @ Rambabu @ Ashwani Kumar Singh Vs. State of C.G.*
4. Counsel for the State opposed the petition and the submission made on behalf of the petitioner.

5. I have heard the learned counsel for the parties and perused all the documents placed on record.
6. The case against the petitioner is that he along with the other co-accused persons induced the complainant and others that he can get employment for the persons concerned and received amount from the complainant and others and thereafter, was instrumental in preparing forged documents like forged appointment letters. All the charge of offence against the petitioner has gravity but it is a fact that trial against the petitioner has not progressed in any respect and this has given him entitlement to pray for bail under Section 437 (6) of Cr.P.C..
7. This Court in case of Suneshwar Singh Thakur Vs. State of C.G. vide order dated 10.03.2017, in Cr.M.P. No.1447/2016 has held that for refusing bail under Section 437 (6) of Cr.P.C., the Magistrate shall consider on the gravity of offence, quantum of punishment, over all impact of the offence on the society on release of persons accused, possibility of tampering of evidence by the accused, the possibility of abscondance of accused, or if the delay in trial is attributable to the accused.
8. Though the gravity of offence charged against the petitioner has appeared in this case, but there is no specific submission or averments against the petitioner to take into consideration the other grounds as mentioned above.
9. Revisional Court below has referred to the judgment passed by this Court in case of Atul Bagga Vs. State of C.G. reported in 2009 (3) CGLJ 448 and dismissed the revision petition on the ground that offence alleged against the petitioner is of grievous nature.

10. Clearly, the entitlement under Section 437 (6) to pray for bail is there in favour of the applicant. No progress have been made in recording of prosecution witnesses so far. Under these circumstances, it appears that petitioner can not be allowed to languish in jail for whole period of trial. The gravity of offence appears on the basis of the allegation against him but as regards other points to be considered for grant of bail under Section 437 (6), there is nothing specific against the petitioner to hold that his bail should be refused on any of the other grounds enumerated in case of Suneshwar Singh Thakur (Supra). Hence, the grounds on which the application of the petitioner has been rejected by the trial Court and it has been upheld by the revisional Court, are not sustainable.
11. Accordingly, the petition is allowed and the orders passed by both the Courts below are hereby set-aside. It is directed that applicant shall be released on bail on his furnishing a personal bond in the 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.
12. Certified copy as per rules

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram