

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 800 of 2017

Sarafraj Khan, S/o. Ayaz Khan, aged about 20 years, R/o. Chourasiya Colony, Police Station – Tikrapara, Raipur, District – Raipur (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through : Police Station- Tikrapara, Raipur, District – Raipur (C.G.)

-----Respondent

For Petitioner	: Ms. Smita Jha, Advocate
For Respondent/State	: Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

30/08/2017

Heard.

1. Counsel for the petitioner submits that petitioner is being prosecuted before the Court of Judicial Magistrate First Class, Raipur, District – Raipur for the offence under Section 454, 380 of Indian Penal Code. Charge was framed against the petitioner on 10.02.2017 and the case was fixed for recording of prosecution evidence on 20.02.2017. The evidence of the prosecution could not be completed within 60 days from the first date of hearing, hence, petitioner moved application under Section 437 (6) of Cr.P.C, before the trial Court, which has been rejected vide order dated 17.05.2017 merely on this ground that offence charged against the petitioner is of grievous in nature. Criminal revision No.235/2017, preferred before the Sessions Court, Raipur has

been decided by Fourth Additional Sessions Judge, Raipur on 21.06.2017 and rejected.

2. It is submitted that orders passed by the Court below are erroneous, arbitrary and have been passed mechanically without considering the provisions under Section 437(6) of Cr.P.C., hence prayed that the order passed by the Court below be set-aside and the petitioner be benefited with grant of bail under Section 437(6) of Cr.P.C.
3. Counsel for the State has opposed the grounds raised in this petition and the submission made. It is submitted that offence charged against the petitioner is grievous in nature as it is not a case of ordinary theft but it is case of theft of fire arm from gun shop, hence the petition be dismissed.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. Counsel for the petitioner has relied on the judgment passed in case of **Santosh Dubey Vs. State of C.G.**, reported in **2017 (2) C.G.L.J. 1** and in case of **Haricharan Ramteke Vs. State of C.G.**, reported in **(2001) 2 C.G.L.J. 363** of this Court and the judgment passed by the M.P. High Court in case of **Ram Kumar @ Raj Kumar Rathore Vs. State of M.P.**, reported in **(2000) Cri.L.J. 2644**.
6. Petitioner stands charged for offence under Section 454 and 380 of the Indian Penal Code along with co-accused person and it is a fact that co-accused person has been released on bail by order of this Court. It is well settled that gravity of offence alone shall not be a fact to be taken into consideration while considering grant of bail under Section 437(6) of Cr.P.C., this provision gives entitlement to the person in

custody during trial on the basis of the default on the part of the prosecution, which has failed to complete the recording of evidence against the accused persons within stipulated time of 60 days. Although the provisions under Section 437(6) of Cr.P.C. is not absolute, if there are reasons to be recorded in writing and mentioning those reasons, the Magistrate is empowered to refuse grant of bail.

7. It has been held and settled in the order passed by this Court in Cr.M.P. No.1447/2016, dated 10.03.2017 in case of Suneshwar Singh Thakur Vs. State of C.G., the grounds on which an application under Section 437(6) Cr.P.C. can be rejected. Considering all the facts and circumstances of this case, it appears that there are no such grounds as mentioned in the judgment passed in case of Suneshwar Singh Thakur to be taken in account in this case for rejecting the application of the petitioner. 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, hence for these reasons, this petition is allowed at the motion stage.
8. 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.
9. C.C. today.

Sd/-
(Rajendra Chandra Singh Samant)
Judge