

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 872 of 2017**

Rajesh Agrawal S/o Late Vijay Agrawal Aged About 48 Years R/o
Village-Kotba, Tahsil- Patthalgaon, District- Jashpur, C.G.

---- Petitioner**Versus**

State Of Chhattisgarh Through District Magistrate, Jashpur
(Chhattisgarh).

---- Respondent

For the Petitioner	: Shri Rajkumar Pali, Advocate.
For the Respondent/State	: Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****07.09.2017**

1. Heard.
2. This petition has been brought under Section 482 of the Code of Criminal Procedure with a prayer to quash the impugned order passed by the Learned Additional Sessions Judge, Kunkuri, District Jashpur, Chhattisgarh in Criminal Revision No. 6 of 2017 dated 29.3.2017, upholding the order of Judicial Magistrate First Class, Patthalgaon in Criminal Case No. 260 of 2015 refusing to grant bail to the petitioner under Section 437(6) of the Cr.P.C.
3. It is submitted by counsel for the petitioner that the petitioner is facing trial for the offences under Sections 409, 420, 120-B read with Section 34 of the Indian Penal Code. The petitioner was charged for the offences on 5.10.2015 and the first date of hearing was fixed on 14.10.2015 thereafter, the evidence of the prosecution could not be

completed within a period of 60 days from 14.10.2015. An application was filed by the petitioner on 28.11.2015 under Sections 437(6) of the Cr.P.C. which was dismissed by the trial Court and a revision preferred against this order of dismissal i.e. Criminal Revision No. 16 of 2015, was also dismissed on 18.12.2015. It is also submitted that the first application of the petitioner was rejected on the ground that a period of 60 days was not completed when the application was filed. Cr.M.P. No.132 of 2016 brought before this Court against the order passed by the Sessions Court was dismissed accordingly as the application filed by the petitioner was premature, the petition was dismissed and the petitioner was granted liberty to file a fresh application under Section 437(6) of the Cr.P.C. before the trial Court.

4. The petitioner filed second application under Section 437(6) of the Cr.P.C. before the trial Court, which was dismissed by order dated 2.1.2016, against which Criminal Revision No. 1 of 2016 was filed before the Court of Sessions Judge, Jashpur and by order dated 18.1.2016 the revision was dismissed. Subsequent to these orders passed by the trial Court and the Revisional Court, another application was filed by the petitioner under Section 437(6) of the Cr.P.C. before the trial Court which was decided on 29.3.2017 by the trial Court vide Annexure-P/2 and rejected the same. The revision preferred against this order i.e. Criminal Revision No. 6 of 2017 was decided by the Court of Additional Sessions Judge, Kunkuri, District Jashpur on 19.7.2017 and it was dismissed. Hence, this petition.

5. It is submitted by counsel for the petitioner that the provision

under Section 437(6) mandates that if the prosecution case is not completed within a period of 60 days from the first date of hearing, in that case accused becomes entitled for grant of bail. The orders passed by the trial Court and the Revisional Court below are bad in law and arbitrary. The petitioner is in jail since 11.5.2015 i.e. more than two years has passed even then the trial before the Court below has not been completed. For these reasons, the petitioner is entitled to be enlarged on bail.

6. Reliance has been placed in the case of **Santosh Dubey vs. State of Chhattisgarh** reported in **2017(2) C.G.L.J.1** and the judgment of Allahabad High Court in the case of **Arvind Kumar vs. State of U.P.** reported in Criminal Misc. Bail Application No. 31262 of 2009 dated 8.1.2010.

7. Learned State counsel has opposed the main petition and the submissions made in this respect. It is submitted that the petitioner is charged with offences which have gravity and the trial is proceeding satisfactorily, hence, he is not entitled for grant of bail.

8. Heard both the parties and perused the documents on record.

9. On the basis of the submissions made, it appears that the first application under Section 437(6) of the Cr.P.C. was filed by the petitioner at an immature stage and as such, he had an entitlement to file an application after passing of 60 days from the first date of hearing and he did so but the same was rejected by the trial Court as well as by the Revisional Court against which no petition was brought before the High Court.

10. Subsequent to this development, the petitioner has again moved an application after passing of more than one year under the same provision i.e. Section 437(6) of the Cr.P.C. which has been rejected by the trial Court as well as by the Revisional Court. The question arises is whether an application under Section 437(6) of the Cr.P.C. can be moved repeatedly, which needs consideration.

11. Section 437(6) of the Cr.P.C. is as under:

'If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.'

12. From bare reading of the provision, it is apparent that the entitlement for bail in case of trial against an accused of any non-bailable offence arises on completion of 60 days from the first date of hearing when the evidence of the prosecution could not be completed. This provision nowhere speaks that an application under this provision can be made repeatedly. It is clear that a person accused of any non-bailable offence shall have the entitlement to file an application under this provision after completion of 60 days from the first date of hearing. If the accused in such case, files an application under Section 437(6) of the Cr.P.C. which is decided and rejected by the trial Court and the order is upheld by the Revisional Court, then the accused has an option to pursue the same matter before the High Court. In this case, the

petitioner refrained from pursuing the matter before this Court after the order of dismissal of revision was passed by the Sessions Court on 18.1.2016. In the fact situation, it is not that the petitioner cannot move an application for bail subsequently but in case if he moves any such application for bail that shall be considered by the Courts not under the provisions of Section 437(6) of the Cr.P.C. but under the provisions of Section 437 or 439 of the Cr.P.C. as may be applicable.

13. In view of the discussions made above, it is found that the petitioner had no entitlement to claim the benefit of Section 437(6) of the Cr.P.C. again, the repeat application though entertained and rejected by the trial Court vide order dated 29.3.2017 and the revisional Court also dismissed the revision on 19.7.2017. It is held that on the basis of the entitlement by default under Section 437(6) of the Cr.P.C. grant of bail can be prayed for only once and on rejection of such application and failure to get relief in accordance with the remedy available under the law, there shall be no entitlement for filing repeat application under Section 437(6) of the Cr.P.C. On the contrary, the petitioner/ accused shall have entitlement and liberty to file an application for regular bail for which there is no bar to file subsequent applications.

14. After due consideration, it is found that this petition is devoid of merits and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge