

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 1028 of 2017

Domar Das Vaishnav, S/o. Late Harishchandra, Aged About 55 Years, R/o. Village Panigaon, Post Office, Police Station -Amlipadar, District- Gariyaband, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through: The District Magistrate, Gariyaband, District- Gariyaband, Chhattisgarh.

-----Respondent

For Petitioner : Mr. Shivendu Pandya, Advocate
For Respondent/State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/09/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought against the order dated 23.05.2017, passed in Criminal Revision No.18/2017, by the learned Additional Sessions Judge, Gariyaband, District – Gariyaband affirming the order passed by the learned Judicial Magistrate First Class, Rajim, District – Gariyaband dated 11.04.2017, 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, 421, 408, 409, 467, 468, 120-B,

read with Section 34 of Indian Penal Code. Charge was framed against him on 28.11.2016 for offences under Section 420, 421, 408, 409, 467, 471, 468, 120-B, 34 of Indian Penal Code. The date of first hearing was 13.12.2016. The evidence of the prosecution could not be completed before the completion of 60 days. On the basis of the entitlement for bail under Section 437 (6) of Cr.P.C., petitioner moved an application before the trial Court, which was rejected by order dated 11.04.2017. Criminal revision No.18/2017 was preferred before the Court of Additional Sessions Judge, Gariyaband, which was decided on 23.05.2017 and revision petition was dismissed. Hence this petition.

3. It is submitted by the counsel for the petitioner that provisions under Section 437 (6) of Cr.P.C. is mandatory, which has not been complied with by the Courts below and the prayer of the petitioner has been rejected arbitrarily. All the co-accused in the case have been benefited with grant of bail. It is only the petitioner, who is still languishing in jail since the date of his arrest on 15.04.2015. It is also submitted that learned Magistrate has power to award sentence of imprisonment for a period of 3 years only and petitioner has undergone more than two and half years in jail, hence prayed that petition be allowed and the petitioner be enlarged on bail.
4. Counsel for the State opposed the petition and the submission made on behalf of the learned counsel for the petitioner. It is submitted that the petitioner in the capacity of Manager of Prathmik Krishi Sakh Sahakari Samiti Maryadit, Kondkera was responsible for all the amount that was defalcated.

It was found in the enquiry conducted that petitioner is personally responsible for misappropriation of Rs.70,80,919/- and the total amount that was defalcated was to the tune of Rs.2,59,01,792/-. Rest of the accused persons, who have been benefited with bail were employed as subordinates to the petitioner. Hence looking to the gravity of offence against the petitioner, he is not entitled for bail under Section 437 (6) of Cr.P.C.

5. Counsel for the petitioner placed his reliance on the judgment passed by this Court in Cr.M.P. No.800/2017, dated 30.08.2017, in Cr.M.P. No.346/2015 dated 13.08.2015, in Cr.M.P. No. 543/2015 dated 17.08.2015, in Cr.M.P. No.526/2014, dated 19.06.2014, in Cr.M.P. No.169/2010, dated 30.07.2010 and in case of Santosh Dubey Vs. State of C.G., reported in 2017 (2) C.G.L.J.-1, Smt. Godawari Bai & Ors. Vs. State of C.G. reported in 2004 (2) C.G.L.J. 1355, Haricharan Ramteke Vs. State of C.G. reported in 2002 Cr.L.R. (M.P.) 46, Ram Kumar @ Raj Kumar Vs. State of M.P., reported in 2000 (I) M.P. Weekly Notes 160 and the judgment passed by the Supreme Court in case of Sanjay Chandra Vs. C.B.I., reported in (2012) 1 SCC 40.
6. I have heard the learned counsel for the parties and perused all the documents placed on record.
7. This Court by order dated 10.03.2017, in Cr.M.P. No.1447/2016 in case of Suneshwar Singh Thakur Vs. State of C.G. 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. 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 and his release on bail shall affect the society at large.
9. Clearly, the entitlement under Section 437 (6) to pray for bail is there in favour of the applicant. As it is mentioned that a number of accused persons are arrayed in this case, being the Manager of said Samiti, had responsibility on his behalf and on behalf of the persons employed under him. 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 amount defalcated 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.
10. 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.

11. Certified copy as per rules

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram