

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1127 of 2017**

Durgesh Prasad Gupta S/o Krishna Prasad Gupta, Aged About 28 Years R/o Village Nawadihkala, Police Station Chando, District Balrampur Ramanujganj, Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh through District Magistrate, Balrampur, District Balrampur Ramanujganj, Chhattisgarh.

---- Respondent

For the Petitioner	:	Shri Manoj Paranjpe, Advocate.
For Respondent No.1/State	:	Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****18.09.2017**

1. Heard.
2. Learned counsel for the petitioner submits that the petitioner is facing trial before the Court of Judicial Magistrate First Class, Balrampur in Criminal Case No. 272 of 2016 for the offences charged under Section 409 of the Indian Penal Code. It is also submitted that the petitioner is in jail since 26.9.2016. The charge sheet has been filed on 24.12.2016. The first date of recording of evidence was fixed on 23.3.2017. The prosecution has failed to complete the recording of the evidence of the prosecution witnesses within 60 days from the date of first hearing. The petitioner cannot be held responsible for the pendency of the trial and till date the case is pending because of the failure of the prosecution to produce witnesses before the Court below.

3. An application under Section 437(6) of the Cr.P.C. was filed which was rejected on 19.6.2017. Criminal Revision No. 21 of 2017 preferred before the Session Court, Ramanujganj has also been dismissed vide order dated 7.7.2017. Hence, this petition.

4. Learned State counsel has opposed the arguments submitted on behalf of the petitioner. It is submitted that the offence charged against the petitioner is of grave nature, hence, the orders passed by the Courts below do not suffer from any infirmity.

5. Heard counsel for both the parties and perused the documents on record.

6. Learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of **Suneshwar Singh Thakur vs. State of Chhattisgarh** in **Cr.M.P. No. 1447 of 2016** decided vide order dated 10.3.2017, in which the specific guidelines have been laid down by this Court as to on what grounds the application under Section 437(6) of the Cr.P.C. can be rejected by the Court. The grounds have been enumerated in paragraph 10 of the order which have to be appreciated before deciding any application under Section 437(6) of the Cr.P.C. In this case, in particular, the trial Court has not taken any pain to give the reasoning on the basis of these guidelines and the Revisional Court has also confirmed the same mechanically.

7. The entitlement for bail under Section 437 (6) of the Cr.P.C. is not an absolute entitlement, even then the rejection of any such prayer has

to be made on the grounds and reasons which should be recorded in writing by the trial Court as per the guidelines laid down in **Suneshwar Singh Thakur vs. State of Chhattisgarh** (supra). No such ground is found to be available in this case.

8. Accordingly, this petition is allowed and consequent thereto the application filed by the petitioner under Section 437(6) of the Cr.P.C. is allowed and the order passed by the trial Court and by the Revisional Court are hereby set aside. It is directed that the petitioner shall be released on bail on furnishing a personal bond for a 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. In case any default is committed by the petitioner in appearing before the Court, this order granting bail shall stand cancelled automatically.

9. Accordingly, this petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge