HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 1231 of 2017

Aabeda Begam @ Jubbi W/o Nawab Hussain, Aged About 48 Years R/o Ward No. 8, Mahrapara, Gandai, Police Station Gandai, Civil & Revenue District Rajnandgaon Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer Police Station Gandai, Civil & Revenue District Rajnandgaon Chhattisgarh.

---- Respondent

For applicant - Shri Mirza Hafeez Baig, Advocate.
For Respondent/State –Shri Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

25/10/2017

Heard.

1. Instant petition is against the rejection of the application for bail under Section 437 (6) of Cr.P.C on 25/08/2017 passed by the Additional Chief Judicial Magistrate, Khairagarh, District Rajnandgaon.

2. As per the case of the prosecution, on 2/04/2017 on a raid being conducted by the Police Station Gandai from the possession of the applicant 120.960 bulk liters of liquor was seized. Thereafter after investigation charge sheet was filed before JMFC, Khairagarh. During pendency of this on 30/05/2017 charges were framed and the case was fixed for evidence on 8/06/2017.

3. It is contended by learned counsel for the applicant that till date the trial is not concluded and as per provisions of 437 (6) of Cr.P.C. the applicant was entitled for bail as she is in custody since 2/04/2017, however same is refused. He further submits that there is no delay is caused at the behest of the applicant instead the delay has been attributed to the prosecution. He further submits that few of the seizure

witness namely Pintu Baghel and Vijay Yadav have been examined, they have not supported the case of the prosecution, therefore in view of the statutory mandate applicant may be enlarged on bail.

4. Learned State counsel opposes the prayer for grant of bail.

5. Perused the documents and the order. The documents would show that two of the seizure witness namely Pintu Baghel and Vijay Yadav have been examined on 3/07/2017, they have not supported the case of the prosecution. The order sheet which is filed in this case would show that on 30/05/2017 charges were framed and the case was fixed for evidence on 8/06/2017. Witnesses though were served but they did not appear. Subsequently, the date was adjourned and on two occasion on 3/07/2017 two of the seizure witness were examined, however they appear to have not supported the case of the prosecution. Thereafter on 28/07/2017 one more witness Vikalp Yadu was examined. Rest of the order sheet would show that till date trial has not concluded. Perusal of the record shows nature of the case and as per mandate of sub-section 6 of section 437 Cr.P.C. when the trial of the accused is not concluded who has been arrested in non-bailable offence within period of 60 days from the date fixed for taking evidence in the case he may be released on bail to the satisfaction of the court unless reasons are assigned otherwise. In this case facts would show that two of the seizure witness have not supported the case of the prosecution and nature of the allegation do not show that release of the applicant would defeat ends of justice or will cause serious prejudice to the society.

6. In the result, taking into fact that applicant is a lady and is in jail since 2/04/2017 instant petition is allowed and the order dated 25/08/2017 passed by the Additional Chief Judicial Magistrate, Khairagarh, District Rajnandgaon is set aside. It is directed that the applicant shall be released

on her furnishing personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of concerned trial court for her regular appearance before it as and when directed.

Sd/-

(Goutam Bhaduri)

JUDGE

gouri