

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1250 of 2017****Order Reserved on 6.10.2017****Order Delivered on 25.10.2017**

Roop Chandmanhar @ Shiv Kumar Manhar S/o Hori Lal Manhar,
Aged About 28 Years R/o Village Sargandha, P.S. Masturi, District
Bilaspur, Chhattisgarh

---- Petitioner**Versus**

State Of Chhattisgarh Through The Station House Officer, Police
Station Out Post, C.S.E.B. Colony, Kotawali, Korba, District Korba,
Chhattisgarh

---- Respondent

For the Petitioner : Shri Awadh Tripathi, Advocate.
For the Respondent/ State : Shri Anil S. Pandey, G.A.

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

1. Heard.
2. This petition has been brought by the petitioner under Section 482 of the Code of Criminal Procedure challenging the order dated 17.8.2017 passed by the Chief Judicial Magistrate, Korba, District Korba, Chhattisgarh in Criminal Case No. 1812 of 2016 dismissing the application of 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 prosecution for the offences under Sections 420, 467, 468, 471 and 419 of the Indian Penal Code and Section 25 of the Arms Act. The petitioner is in jail since 15.5.2016. After filing of charge-sheet, the charges were framed on 7.9.2016. The date of first hearing was fixed on 21.9.2016. As the trial

could not be completed within a period of 60 days from the date of first hearing, an application was moved under Section 437(6) of the Cr.P.C. The application was decided on 10.2.2017 and it was dismissed. Subsequent to that, a repeat application under Section 437(6) of Cr.P.C. was moved again before the trial Court which has also been dismissed by the impugned order dated 17.8.2017. Hence, this petition.

4. Learned counsel for the petitioner submits that the second application for bail under Section 437(6) of the Cr.P.C. is maintainable. Reliance has been placed on the judgment of Allahabad High Court in the case of **Ashok Yadav vs. State of U.P. in Criminal Misc. Bail Application No.669 of 2011** dated 27.4.2011.

5. Learned State counsel opposes the petition and the submissions made in this respect. It is submitted by the State counsel that firstly, the second application under Section 437(6) is not maintainable and secondly, the petitioner is charged with grievous offences, and as such, he is not entitled for grant of bail.

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

7. The question of maintainability of second application under Section 437(6) of the Cr.P.C. has not been decided by the Allahabad High Court in **Ashok Yadav vs. State of U.P.** (supra).

8. On careful perusal of the proviso under Section 437(6) of the Cr.P.C., it is clear that the entitlement for grant of bail on account of default committed by the prosecution arises only when the prosecution fails to produce a complete recording of the prosecution evidence within 60 days, from the date of first hearing. Any entitlement based on default arises once at the stage when the default is committed and the entitlement of the petitioner for claiming bail under Section 437(6) of the Cr.P.C. is not absolute, which was claimed and rejected by the trial Court on 10.2.2017.

9. The order passed by the Court below could have been challenged by way of revision and further this has not been done in this case and no reason was given by the petitioner for not pursuing the claim for grant of bail under Section 437(6) of the Cr.P.C. after the rejection of first application. Under these circumstances, it can be held that due to non-pursuit of the petitioner, his claim for release under Section 437(6) of the Cr.P.C. has extinguished. Hence, for these reasons filing of any application subsequent to that by way of successive bail application under Section 437(6) of the Cr.P.C. cannot be entertained. The petitioner has a right to claim for grant of bail under the regular provisions of Cr.P.C and the same may be entertained by the Courts and decided. However, his claim under Section 437(6) of the Cr.P.C. was not alive when the subsequent application was filed and decided by the impugned order. Hence, there is no ground to allow this petition and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge