

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1326 of 2016

- Santosh Dubey S/o Hukum Chand Dubey Aged About 36 Years Resident Of Village Santra, Police Station Patan, District - Durg Chhattisgarh

---- Petitioner

(In Jail)

Versus

- State Of Chhattisgarh Through District Magistrate Raipur, District - Raipur Chhattisgarh.

---- Respondent

For Petitioner	:	Smt. Ranjana Jaiswal, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

14/02/2017

With the consent of the parties, the matter is heard finally.

02. The instant petition has been filed against the order dated 18.11.2016 passed by Additional Sessions Judge, Raipur in Criminal Revision No.342/2016 affirming the order dated 19.10.2016 of the Judicial Magistrate First Class, Raipur passed in Criminal Case No.20145/14 whereby application filed by the petitioner under Section 437(6) of Cr.P.C. has been rejected.

03. Facts of the case, in brief, are that the petitioner is facing criminal case No.20145/14 in relation to offence under Sections 420, 467, 468, 471 of IPC in the Court of Judicial Magistrate First Class, Raipur. He is alleged to have given a forged appointment letter on 15.7.2014 to one Alakhram Sahu and thereby grabbed Rs.1.10 lacs from him. On 20.11.2014 showing the petitioner absconder, Challan was filed before the trial Magistrate and on 25.2.2016 he was formally arrested when he

was found in jail in connection with another case of like nature. On 3.8.2016 the trial Court framed charges against him under Sections 420, 467, 468 & 471 of IPC and the first date for recording evidence was fixed as 17.8.2016. However, as the trial could not be concluded within 60 days from 17.8.2016, the petitioner filed an application under Section 437(6) of Cr.P.C. for releasing him on bail, which was rejected by the trial Court vide order dated 19.10.2016. Against the said order the petitioner preferred a revision, however, by the impugned order dated 18.11.2016 the revision has also been dismissed.

04. Counsel for the petitioner submits that 17.8.2016 was the first date for recording evidence, however, on that date neither the petitioner was produced from jail nor any witness was present and even the presiding officer was not available on account of being transferred and therefore, next date was given as 31.8.2016. On 31.8.2016 also the petitioner was not produced from jail, no witness was present and the presiding officer was also not there and consequently, the case was fixed on 14.9.2016. On 14.9.2016 yet again the petitioner was not produced from jail and no witness was there for examination and hence the case was adjourned for 27.9.2016. On 27.9.2016 the presiding officer was on leave, the petitioner was not produced from jail, the witness also remained absent and the case was then adjourned for 7.10.2016. On 7.10.2016 also the petitioner was not produced from jail, only one witness was present, however, due to time constraint the case was adjourned without examination of the witness for 21.10.2016.

05. Counsel for the petitioner submits that in the meanwhile the petitioner filed an application under Section 437(6) of Cr.P.C. for releasing him on bail, which was rejected by the trial Court on 19.10.2016. Even on 21.10.2016 the petitioner was not produced from jail, nor any witness was present and therefore, the case was adjourned for 5.11.2016. She submits that thereafter, the case was fixed on 28.12.2016, 11.1.2017, 25.1.2017 and 8.2.2017 but recording of evidence of the prosecution witnesses has still not been completed and the case is now fixed for 21.2.2017.

She submits that considering the fact that the petitioner is

languishing in jail since 25.2.2016, there is absolutely no progress in the trial and that there is no fault on the part of the petitioner for delay in conclusion of trial, he ought to have been extended the benefits of Section 437(6) of Cr.P.C. She submits that the application under Section 437(6) could not have been rejected merely on the ground of seriousness of the crime, the possibility of the accused tampering with the evidence or absconding, in particular when the prosecution has been throughout negligent in producing the petitioner from jail and the witnesses for recording their evidence. She submits that in another case involving offences under Sections 420, 467, 468 & 471 of IPC, the revisional Court considering the fact that there is no progress in trial, evidence of none of the witnesses could be recorded on six occasions and that the petitioner was not at fault at any point of time, has granted him bail vide order dated 17.11.2016. However, the said order has been passed by some other presiding officer.

06. On the other hand, counsel for the State opposes the petition and submits that considering the gravity of the offence and the possibility of the petitioner influencing the witnesses including the complainant, the Courts below were fully justified in denying the benefits of bail under Section 437(6) of Cr.P.C. to the petitioner.

07. From the order sheets of the trial Court annexed with the petition, it is apparent that the prosecution has been lethargic right from the first date fixed for recording the evidence of the witnesses. From the first date of recording evidence i.e. 17.8.2016 till 21.10.2016, on none of the occasions the petitioner/accused was produced from jail and the witnesses were also not present, except on 7.10.2016 when one witness was present, however, this witness also could not be examined due to time constraint and next date was fixed as 21.10.2016.

08. On a plain reading of the provision of Section 437(6) of Cr.P.C. as well as considering the object behind enacting the said provision if the reasons assigned by the trial Court for rejecting the application viz. the gravity of offence, the offence being non-compoundable, possibility of the accused influencing the witnesses or absconding, are taken to be the factors while deciding the application under Section 437(6) of the

Code, the same would render the said provision nugatory and the very purpose of making such a provision would be defeated. In the opinion of this Court, the factors which should be kept in mind while considering an application under Section 437(6) would be different from the factors that are to be taken into consideration while deciding an application for regular bail. Section 437(6) of the Code while on one side provides an absolute right in favour of the applicant to secure bail, at the same time puts a check on the said right by conferring jurisdiction upon the Magistrate to reject the application for the reasons to be recorded in writing. In the present case, the reasons assigned by the trial Court for rejecting the application under Section 437(6) of the Code may be good for denying regular bail to the accused but denial of bail under Section 437(6) on such grounds would not only amount to doing violence to the statute but would defeat the very object of introducing such a provision and reduce it to a mere dead letter.

09. Thus, in the facts and circumstances of the case, keeping in mind the object of sub-section (6) of Section 437 of the Code, the settled legal position governing the field, the reasons assigned by the Courts below for denying bail, the fact that the petitioner is languishing in jail for the last one year, there is absolutely no progress in trial and the delay being exclusively attributable to the prosecution, I am of the opinion that present is a fit case to release the petitioner/accused on bail. Accordingly, the orders passed by the trial Court and the revisional Court are hereby set aside. The petitioner is directed to be released on bail on his furnishing a personal bond of Rs.1 lac with two solvent sureties of the like amount to the satisfaction of the concerned Court, on the following conditions:

- (i) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him/her from disclosing such facts to the Court or to any police officer,
- (ii) that the applicant shall appear before the trial Court on each and every date given to him;

(iii) that the applicant shall not leave India without previous permission of the trial Court.

It is made clear that violation of any of the conditions mentioned above may give rise to the prosecution to seek cancellation of bail of the petitioner.

10. Let a copy of this order be forwarded to the concerned District Judge, who, in turn, shall ensure that in all the cases where the accused is required to be produced from jail, he/she is produced from the jail unless there are sufficient reasons for his/her non-production to the satisfaction of the Magistrate. A copy of this order be also sent to the concerned Superintendent of Police as well as the Jail Superintendent.

Sd/

(Pritinker Diwaker)

Judge

Khan