

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 331 of 2017**

Rohit Kumar Patel S/o Shri Jagatram Patel Aged About 38 Years R/o Gram Post Pirda, Police Station Basna, Tahsil- Pithora, District- Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh Through Collector, District- Mahasamund, Chhattisgarh.

---- Respondent

For the Petitioner : Shri Pawan Kesharwani, Advocate.
For the respondent/ State : Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****25.07.2017**

1. Heard.

2. Learned counsel for the petitioner submits that the petitioner has been arrested on 28.3.2016 in connection with Crime Number 182 of 2015, registered at police station Basna, District Mahasamund for the offence under Sections 409 and 420 of the Indian Penal Code. After filing of charge-sheet, charges were framed against the petitioner on 2.11.2016. The evidence of the prosecution could not be completed by the end of two months. Hence, the petitioner made a prayer for his release on bail under the provisions of Section 437 (6) of the Code of Criminal Procedure. This application was rejected by the trial Court on 18.1.2017 and revision preferred by the petitioner against the said order has been decided by the Additional Sessions Judge, Saraipali, District Mahasamund on 9.2.2017 by rejecting the prayer of the petitioner.

3. Learned counsel for the petitioner submits that both the Courts below have given the reason for rejecting the application of the petitioner that the offence is of grievous nature as the charge against the petitioner shows the value of the property for which breach of trust has been charged is worth Rs.1,29,13,760/-. Learned counsel submitted that the petitioner had been entitled to be released on bail under the provisions of Section 437(6) of the Cr.P.C. and for this merits of the case are not relevant and prayer has been made to allow the petition.

4. Learned State counsel has opposed the petition and submitted that the impugned order does not suffer from any infirmity and needs no interference.

5. As submitted, the petitioner was incharge of the paddy purchase. On an inspection made by M.S. Lal, Senior Inspector, a defalcation and embezzlement worth Rs.1,29,13,760/- was found. After completion of enquiry, one FIR was registered against the petitioner and co-accused persons. After conducting the investigation, the appellant has been charge-sheeted and put to trial, which has not been concluded till date.

6. Section 437 (6) of the Cr.P.C. provides for release of the accused in detention on account of default committed by the prosecution. Hence, in such a case the merits of the offences charged need not be looked into and the reasons given in the order rejecting the application of the petitioner by the trial court and by the Revisional Court are not proper reasons. It is provided under Section 437(6) of the Cr.P.C. that it is only for special reason

be recorded in writing that the prayer of bail under Section 436 of the Cr.P.C. shall be refused. Hence, this provision provides that the bail is a rule whereas keeping in detention is exception. To pass an order on the exceptional side, special and specific reasons are to be given, which have not been given by the trial court or by the Revisional Court. Hence, this petition is allowed and both the orders deserves to be set aside. The impugned order and the order passed by the trial Court rejecting the application of the petitioner under Section 436(6) of the Cr.P.C. are hereby set aside. It is directed that the petitioner shall be released on bail on his furnishing a personal bond of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, with condition to give regular appearance in trial before the trial court and in case of any default committed by the petitioner this order shall automatically be vacated.

Sd/-

(Rajendra Chandra Singh Samant)
Judge