

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 937 of 2018**

1. Manohar Lal, S/o Nakul Suryawanshi, Aged About 52 Years, R/o Ranjna, Tahsil Katghora, Distt. Korba Chhattisgarh,
2. Ramnath, S/o Budhram, Aged About 45 Years, R/o Mudhali, P. S. Deepka, Tahsil Katghora, Distt. Korba Chhattisgarh,
3. Phoolsai, S/o Ramnath, Aged About 56 Years, R/o Sendripali, P. S. Pali, Tahsil Pali, Distt. Korba Chhattisgarh,
4. Prahlad Yadav, S/o Mayaram, Aged About 60 Years, R/o Sendripali, P. S. Pali, Tahsil Pali, Distt. Korba Chhattisgarh,

---- Petitioners

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Pali, Distt. Korba Chhattisgarh,

---- Respondent

For Petitioners	:	Shri Vivek Kumar Tripathi, Advocate
For Respondent/State	:	Shri Raj Kumar Gupta, Deputy A.G.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****19.11.2018**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) questioning the order dated 16.03.2018 passed by the Court of Additional Sessions Judge to the Court of Additional Judge, Katghora, Dist. Korba in Criminal Revision No.06/2018, by which, the Revisional Court, while affirming the order dated 04.01.2018 passed by the Judicial Magistrate First Class, Pali, District Korba in Criminal Case No. 185/2017, has rejected the Petitioners' application filed under Section 437 (6) of the Cr.P.C. for grant of bail.
2. Briefly stated the facts of the case are that the Petitioners, after obtaining the

revenue papers recorded in their names with regard to the Government land, have sold it to someone else without any authority and have thus committed an offence. On account of the alleged crime, the Petitioners were arrested on 09.04.2017 in connection with Crime No.03/2017 registered at Police Station Kusmunda, District Korba for the offence punishable under Sections 420, 467, 468, 471, 474, 477-A and 120-B of the Indian Penal Code. After completion of investigation, the charge sheet was submitted by the concerned Police Station on 29.04.2017 before the learned Judicial Magistrate First Class, Pali, who in turn, has registered the case as Criminal Case No. 185/2017 against the Petitioners. The trial Court, based upon the materials available on record, has framed charges on 22.06.2017 against the Petitioners under Sections 420, 467, 468, 471 and 120-B while fixing the case for evidence on 05.07.2017. As the trial could not be completed within the period of 60 days from the date of evidence, the Petitioners have moved an application for grant of bail while invoking the provision prescribed under sub-section (6) of Section 437 of Cr.P.C.

3. The aforesaid application so made was rejected by the trial Court vide order dated 04.01.2018 observing inter alia that although the case was fixed for evidence on 05.07.2017 after framing charges on 22.06.2017 but the record was summoned by the Revisional Court on 14.07.2017 in a revision preferred by the Petitioners against the framing of charges and, record was thereafter received back from the concerned Revisional Court on 12.10.2017 and matter was continuously fixed for recording prosecution witnesses and requisite summons/warrants in order to secure their presence were issued promptly and, in consequence, while observing as such has rejected the said application for grant of bail affirmed further by the Revisional Court vide its order impugned dated 16.03.2018 in a revision preferred by the Petitioners.
4. Shri Vivek Kumar Tripathi, learned counsel for the Petitioners submits that the

order impugned as passed by the Courts below, without considering the provision prescribed under sub-section (6) of Section 437 of the Cr.P.C. in its proper manner, is apparently contrary to law. He submits further that despite passing of requisite period of 60 days, as provided under the said provision, the trial has not concluded, therefore, the Petitioners are entitled to get the benefit of the said provision. However, the Courts below, in a cursory manner, have erred in rejecting the said application.

5. On the other hand, Shri Raj Kumar Gupta, learned counsel for the State, while supporting the order impugned submits that the trial Court has continuously made its efforts in calling the prosecution witnesses right from the first date of fixing the evidence. While referring to all the material order sheets commencing with effect from 05.07.2017 upto 14.07.2017 and then from 12.10.2017 upto 22.12.2017, it is contended by him that the trial Court is trying its level best to examine all the prosecution witnesses, therefore, the Courts below have rightly exercised its power by refusing the said application filed under sub-section (6) of Section 437 of Cr.P.C. In such an eventuality, the petition as framed, deserves to be dismissed.
6. I have heard learned counsel for the parties and have perused the entire record carefully.
7. The Petitioners are facing trial in connection with Crime No.03/2017 registered at P.S. Kusmunda, District Korba for offences punishable under Sections 420, 467, 468, 471 and 120-B of IPC. The concerned Investigating Officer has submitted the charge sheet on 29.04.2017 before the learned Judicial Magistrate First Class, Pali, while arresting the Petitioners on 09.04.2017. After considering the materials available on record, the trial Court has framed the charges in relation to the aforesaid offences on 22.06.2017 while fixing the case for prosecution evidence on 05.07.2017 and then also on 19.07.2017. However,

in the meantime, as reflected from the order sheets, the record of the trial Court was summoned by the learned Revisional Court on 14.07.2017 as the Petitioners had questioned the propriety of the order dated 22.06.2017 whereby the charges were framed against them. The matter was thereafter adjourned by the trial Court from time to time awaiting the record from the said Revisional Court. Further perusal of the order sheets would reveal that the concerned record was received back by the trial Court on 12.10.2017 and on the said date, the matter was directed to be listed for prosecution witnesses on 24.10.2017. On 24.10.2017, the Petitioners were present from the judicial custody, however, no one was present from prosecution side. The matter was, therefore, directed to be listed on 07.11.2017 while issuing summons to prosecution witness No.1. However, same is the position on 07.11.2017, 14.11.2017 and also on 28.11.2017. On 28.11.2017, the matter was directed to be listed again for prosecution witnesses on 08.12.2017 and on the said date one of the prosecution witnesses, namely Suresh Kumar was examined and for examination of rest of the witnesses, the matter was directed to be listed on 22.12.2017. On 22.12.2017, the Petitioners were present through judicial custody but again no one was present on behalf of the prosecution nor any of its witnesses were present and the matter was accordingly directed to be listed again for prosecution witnesses on 04.01.2018. Again, no one was present on 04.01.2018 on prosecution side. Surprisingly to be noted here that one of the prosecution witnesses, namely Suresh Kumar's presence was shown in the said order sheet though he was already released after recording his statement on 08.12.2017.

8. Be that as it may, since the prosecution has failed to conclude its trial within the period of 60 days, therefore, an application enumerated under Section 437 (6) of Cr.P.C. was moved by the Petitioners for their release on bail. The application as made by the Petitioners has been rejected by the Courts below by observing,

inter alia, that since the effective steps are being taken for securing the presence of prosecution witnesses, therefore, the Petitioners are not entitled to be released on bail.

9. In order to ascertain as to whether the order impugned has rightly been passed or not, it is necessary to examine the provision prescribed under sub-section (6) of Section 437 of Cr.P.C., which reads as under:-

“437. When bail may be taken in case of non-bailable offence.---

- (1) xxxx xxxx xxxx xxxx xxxx
- (2) xxxx xxxx xxxx xxxx xxxx
- (3) xxxx xxxx xxxx xxxx xxxx
- (4) xxxx xxxx xxxx xxxx xxxx
- (5) xxxx xxxx xxxx xxxx xxxx

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

- (7) xxxx xxxx xxxx xxxx xxxx”

10. On a plain reading of the aforesaid provision, it is clear that the intention underlying the said provision is that the trial of a criminal case should be concluded within 60 days from the first date fixed for taking evidence in the case. If the trial is not so concluded within this time, the under trial prisoner should be released on bail unless the Magistrate thinks that he should not be so released for reasons to be recorded in writing. The provisions of sub-section (6) are, therefore, mandatory in nature and mandate of it is that if the Magistrate is trying a case, in which, the accused has been charged for a non-bailable offence and the trial has not concluded within a period of 60 days from the first day of recording evidence in the case and the accused has been in custody during this

entire period, then the accused becomes entitled to be released on bail unless the Court thinks otherwise for reason to be recorded in writing. The Court is, however, not precluded from considering the nature of the allegations levelled against the accused while dealing with a case under this provision.

11. In the present case, the reasons assigned by the trial Court vide order dated 04.01.2018 rejecting the application filed under Section 437 (6) of Cr.P.C., affirmed further by the Revisional Court vide order impugned are wholly improper and cannot be held to be sustainable as in all the earlier occasions, as observed herein above while examining the order sheets of the trial Court, the matter was just adjourned from time to time because of non-appearance of the prosecution and its witnesses. Besides, the prosecution has submitted the list of witnesses for examination of as many as 51 witnesses in order to bring home the guilt of the Petitioners, however, till 11.08.2018, the prosecution has succeeded to examine 8 witnesses only.
12. Thus, in the facts and circumstances of the case and that by keeping in mind the object of sub-section (6) of Section 437 of Cr.P.C., I am of the view that present is a fit case where the Petitioners are entitled to be released on bail. Accordingly, the orders passed by the trial Court and the Revisional Court are hereby set aside. The Petitioners are directed to be released on bail on their furnishing personal bond in sum of Rs.1 lac with two solvent sureties each of the like amount to the satisfaction of the concerned trial Court, on the following conditions:
 - i) that the Petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

- ii) that the Petitioners shall appear before the concerned trial Court on each and every date given to them; and
- iii) that the Petitioners shall not leave the State without previous permission of the trial Court.

13. The petition is allowed with the aforesaid conditions. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge