

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1060 of 2018**

Gulam Bhai @ Rasul Shah son of Shri Sukrat Shah, aged about 66 years, R/o. EWS 688, near Old Shiv Mandir, Vaishali Nagar, Bhilai, Distt. Durg (CG)

---- Petitioner**Versus**

State of Chhattisgarh through the District Magistrate, Distt. Durg (CG)

---- Respondent

For petitioner	:	Mr. Vipin Tiwari, Adv.
For Respondent	:	Mr. Vinod Tekam, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****30-7-2019**

Heard on admission.

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the order dated 13-4-2018 passed by Addl. Sessions Judge, Durg in Criminal Revision No. 000048/2018 and order dated 6-3-2018 passed by JMFC, Durg in Criminal Case No. 11/2017 and his application filed under Section 437(6) of Cr.P.C. may be allowed.

2. In brief petitioner's case is that he is facing trial for the offences punishable under Sections 420, 467, 468, 409 read with Section 34 of IPC. Charges were framed on 7-11-2017. The trial is not concluded within a period of 60 days from the 1st date fixed for taking evidence i.e. 21-11-2017. His application filed under Section 437(6) of Cr.P.C. was rejected by JMFC Durg. He preferred revision which was also rejected by Addl. Sessions Judge, Durg. Both orders are illegal and arbitrary, thus, they may be set aside and he may be released on bail as per the provisions of Section 437 (6) of the Cr.P.C.

3. In brief, the case of the respondent is that petitioner and co-

accused had induced investors to deposit amounts in Sahyog Bachat avm Sakh Sahkari Samiti Maryadit, they will get 3% interest. Petitioner and co-accused got deposited Rs. 1,04,51,216/- from 71 investors. They did not return back the amount along with interest to said depositors, they prepared forged valuable documents. Both impugned orders are just and proper and did not suffer from any infirmity. Thus, the instant petition may be dismissed.

4. Counsel for the petitioner argued that provisions of Section 437(6) of the Cr.P.C. are mandatory and the Court can reject such application only where the delay in trial is attributed to accused. In the case in hand, petitioner is not responsible for delay in trial. Both the Courts have committed illegality and acted arbitrarily while passing the impugned orders.

5. Govt. Advocate submitted that the orders passed by both the Courts do not suffer from any illegality or material irregularity which called for interference by this court exercising the powers vested under Section 482 of the Cr.P.C.

6. It would be pertinent to mention the provisions of Section 437(6) of the Cr.P.C. which reads as under :-

“437. When bail may be taken in case of non-bailable offence- (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. In the matter of **Atul Bagga -v- State of Chhattisgarh** reported in 2010 (1) MPHT 65 this Court held in para 11 that :-

“11. The question that arises for determination is as to what factors should weigh with the Magistrate while refusing grant of bail under sub-section (6) of Section 437 of the Code. In my considered opinion, apart from the gravity of offence and the quantum of punishment, one or more of the following factors, among others may weigh with the Magistrate while refusing bail :-

- (a) the overall impact of the offence and the release of the person accused of such offence on the society,
- (b) the possibility of tempering of evidence by the accused,
- (c) the possibility of the accused absconding if released on bail and lastly,
- (d) the delay in conclusion of the trial within a period of 60 days if attributable to the accused.”

8. Looking to the aforesaid judicial precedent laid down by this Court, in the matter of **Atul Bagga** (supra), this Court finds that the provisions of Section 437(6) of the Cr.P.C. are not mandatory but they are directory in nature.

9. In the case in hand, some witnesses have been examined by the prosecution.

10. Trial Court has rejected the said application of petitioner on the grounds that offence is grievous in nature, there is the possibility of absconding or tempering of the evidence. These grounds are just and proper and in consonance with the judicial precedent laid down by this Court in the matter of **Atul Bagga** (supra).

11. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

- (5) xxx xxx xxx
- (6) xxx xxx xxx
- (7) xxx xxx xxx
- (8) xxx xxx xxx
- (9) xxx xxx xxx
- (10) xxx xxx xxx”

12. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**,[(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.”

13. In the case in hand, it does not appear that there is an abuse of process in the proceedings of JMFC, Durg and Addl. Sessions Judge,

Durg or intervention is necessary to secure ends of justice. Thus, looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Parbatbhai Aahir** (supra) and **Narinder Singh** (supra), this court finds that on the ground of abuse of process and to secure ends of justice, this Court cannot intervene in the orders of JMFC, Durg and Addl. Sessions Judge, Durg.

14. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Consequently, the instant CRMP is dismissed at motion stage without entertaining it for final hearing.

15. Consequently, application for grant of interim bail is also rejected.

Sd/-
Sharad Kumar Gupta
Judge