

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 3-9-2019****DELIVERED ON 4-9-2019****CRMP No. 1571 of 2019**

Chitrakant Baghel S/o Gurudev Baghel Aged About 36 Years R/o
House No. 51, Arjun Valley, Saddu, Police Station- Vidhansabha,
Raipur, District- Raipur, CG,

Permanent Address- Village Vanvimori, Police Station- Tilda, District-
Raipur, CG

---- Petitioner**Versus**

The State Of Chhattisgarh Through District Magistrate, Raipur, District-
Raipur, CG

---- Respondent

For petitioner	:	Mr. Rajat Agrawal, Adv.
For Respondent	:	Mr. D.C. Verma, Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

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 26-4-2019 passed by JMFC, Raipur (CG) in Cri. Case No. 4522/2018 and order dated 6-6-2019 passed by the 1st Addl. Sessions Judge, Raipur in Criminal Revision No. 300/2019 and for releasing him on bail under Section 437(6) of the Cr.P.C. and also direction for expediting the trial.

2. In brief petitioner's case is that on the complaint of D.S. Construction Firm, he and other co-accused are facing trial for the offences punishable under Section 409, 420, 467, 468, 471/34 of the Indian Penal Code (for short, 'IPC'). Charge was framed against him on 30-1-2019. The trial is not concluded within a period of 60 days from 1st date fixed for taking evidence i.e. 13-2-2019. He had filed an application under Section 437(6) of the Cr.P.C. which was rejected by the JMFC, Raipur. Being aggrieved he preferred a revision which was also rejected

by 1st Addl. Sessions Judge, Raipur. Being aggrieved he preferred this CRMP. Both the subordinate Courts have committed an error of law. Delay in trial is not attributable to him. A statutory right has accrued in his favour.

3. In brief, respondent's case is that both the subordinate Courts have passed just and proper orders. The petitioner was working in the post of Accountant in the complainant's firm. He and co-accused are facing the trial involving a sum of Rs. 1,72,73,977/-.

4. Counsel for the petitioner argued that petitioner is not responsible for delay in trial. Both the Courts have committed illegality and acted arbitrarily while passing the impugned orders. Out of 92 witnesses only 12 have been examined. He is in jail since 18-5-2018.

5. The State Counsel submitted that the orders passed by both the Courts do not suffer from any illegality or material irregularity which call 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. Counsel for the petitioner placed reliance on the order of coordinate bench of this Court in the matter of **Manohar Lal -v- State of CG** [2018 LawSuit (Chh) 1358] wherein following judicial precedent has been laid down :-

“The provisions of sub-section (6) of Section 437 are 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 trial has not been concluded within a period of 60 days from the 1st 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 reasons 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.

8. 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.”

9. In the order passed in **Rameshwar Singh Kurre -v- State of CG** (2006 CRLJ 4107) in para 9 and 11, this Court observed as under:-

“9. A bare reading of the above provision makes it clear that the provision is mandatory in nature, but also provides discretion to the Court to refuse bail on special reasons to be recorded by it in writing. The Court is busy or Court is over burdened with work are not reasons which can be accepted for refusal of the bail but refusal of the bail on merit by the High Court can certainly be considered by the trial Court as also non-production of the applicant due to his illness or for any other reasons which caused hindrance in proceeding the trial can also be taken into consideration for refusal of the bail.

11. Right of liberty does not mean to infringe the right of others, therefore, if the provision shall be construed liberally by applying its benefit without due consideration it will amount to provide tool in the hand of hardened and habitual criminals.”

10. Looking to the aforesaid judicial precedents laid down by this Court in the matters of **Atul Bagga** (supra) and **Rameshwar Singh Kurre** (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.

11. The Trial Court has rejected the said application of petitioner on the grounds of gravity of the offence, his release may adversely affect on the society, there is possibility of his absconding.

12. Counsel for the petitioner placed reliance on the order of coordinate bench of this Court in the matter of **Suneshwar Singh Thakur -v- State of CG** [2017(3) MPJR 19] wherein following judicial precedent has been laid down :-

“If the gravity of the allegation against the applicant and the period of detention without any progress in the trial are weighed against each other, the fulcrum of justice would lie towards the accused who is in jail, keeping in mind that personal liberty of individual cannot be put to peril except for very strong grounds.”

13. Counsel for the petitioner also placed reliance on the order of coordinate bench of this Court in the matter of **Ghasiram Yadu -v- State of CG** [2019 LawSuit (Chh) 178] and in the matter of **Gulshan Sahu -v- State of CG** [2019 LawSuit(Chh) 315] wherein following judicial precedent has been laid down :-

“Long detention of the accused in jail, non-examination of maximum witnesses, non-conclusion of trial, delay is not attributed to accused, nature of allegations, position of accused are considerable factor to decide the application filed under Section 437(6) of the Cr.P.C.”

14. In the case in hand, looking to the nature of the offence, looking to the allegedly huge amount of Rs. 1,72,73,977/-, this Court prima

facie finds that alleged offences are grievous in nature.

15. In the case in hand, 12 witnesses have been examined, thus it cannot be said that there is no progress in trial. Moreover, in the case in hand, prosecution has cited 92 witnesses. Number of the documents have to be proved. Thus, it is very difficult to conclude the trial within 60 days from the 1st date of taking evidence.

16. Looking to the above mentioned facts and circumstances of the case, this Court finds that petitioner does not get any help from the aforesaid orders in the matters of **Manohar Lal** (supra) **Suneshwar Singh Thakur** (supra), **Ghasiram Yadu** (supra) and **Gulshan Sahu** (supra), and aforesaid grounds are just and proper, and in conformity with the judicial precedents laid down by this Court in the matter of **Atul Bagga** (supra) and **Rameshwar Singh Kurre** (supra). Moreover, in the case in hand only about seven months have passed from the 1st date of taking evidence i.e. 13-2-2019. Moreover, in the case in hand, there is a practical difficulty to conclude the trial within 60 days from the 1st date of taking evidence.

17. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], 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”

18. 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.**”

19. In the case in hand, it does not appear that there is an abuse of process of law in the proceedings of JMFC, Raipur and 1st Addl. Sessions Judge, Raipur or intervention is necessary to secure ends of justice. Thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Parbatbhai Aahir** (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, Raipur and 1st Additional Sessions Judge, Raipur.

20. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid judicial precedent laid-down by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) 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.

21. Consequently, the instant CRMP is dismissed at motion stage without entertaining it for final hearing.

22. In view of above, I.A. No. 1 is also disposed of.

Sd/-
Sharad Kumar Gupta
Judge

P_{athak}/-