

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 452 of 2019

- Rajesh Sahu @ Golu S/o Rameshwar Sahu, Aged About 34 Years, R/o New Chandra Vihar Colony, Adarsh Nagar, Durg, Chowki Padmnabhpur, Police Station Durg, Tahsil and District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

- State of Chhattisgarh Through the District Magistrate, Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

For Petitioner – Shri Tarendra Kumar Jha, Advocate.

For State/respondent – Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-09-2019

Heard.

1. Instant petition has been brought under Article 226 of the Constitution of India praying for issuance of appropriate writ(s)/direction(s)/order(s) etc.
2. It is submitted by learned counsel for the petitioner that he is continuously in detention since the date of his arrest on 01-09-2018. Charge sheet was filed against him on 27-11-2018. Subsequent to that, after considerable delay the charges were framed on 20-02-2019. The first date for hearing was fixed on 05-03-2019, thereafter, the prosecution has not produced the witnesses and the trial has not been concluded within 60 days. Hence, on the basis of this entitlement, this petitioner filed an application under Section 437(6) of the Cr.P.C. before the trial Court and on 27-05-2019 which has been dismissed on the ground that the offences charged against the petitioner are of serious nature and his application was rejected. The petitioner then filed a revision against that order, Criminal Revision No.172/19 which has been decided by the First Additional Sessions Judge Durg on 29-06-2019 and the revision was dismissed on the technical ground that in MCRC No.2575 of 2019

this Court had directed on 17-06-2019 to the trial Court to conclude the trial within three months and that time had not expired on that date and there is no finding regarding legality and propriety, correctness of the order passed by the trial Court, therefore, it is prayed that this petition be allowed and appropriate order be passed directing the trial Court to release the petitioner on bail under the provisions of Section 437(6) of the Cr.P.C.

3. Learned counsel for the State opposes the petition and submission made in this respect. It is submitted that the Courts below have not committed any error. Further, the bail petition of this petitioner has been rejected by the Coordinate bench of this Court in MCRC No.9800 of 2018 by order dated 11-02-2019 and the subsequent bail petition of this petitioner has been dismissed as withdrawn on 17-06-2019. Therefore, the petition is filed on the pretext for grant of bail in his favour, hence, the petition does not deserve to be allowed

4. Entitlement under Section 437 (6) of the Cr.P.C. is totally under different footing. The trial Court has considered the application under this provision and passed order on 27-05-2019. The revisional Court has rejected the revision petition of this petitioner only on this ground that the time which was granted by the High Court for conclusion of the trial has not completed on the date that order was passed.

5. The revisional Court under the revisional jurisdiction has to consider on the legality, propriety and correctness of the order as it is mentioned under Section 397(1) of the Cr.P.C. On perusal of the order of the revisional Court it is apparent that the said Court has not given any consideration to the revision filed to find out the correctness, legality or propriety of the order passed by the trial Court. Therefore, the test for allowing or rejecting any revision petition is very clear with respect to correctness, legality and propriety of the order, which should be considered and a clear decision has to be given for coming to a conclusion. Hence, it is found that the revisional Court has not exercised its

jurisdiction under Section 397 of the Cr.P.C., therefore, the order of the revisional Court is not in accordance with law. In these circumstances, it cannot be said that the petitioner has exhausted all the reliefs available. After due consideration this petition is disposed off. The order passed by the revisional Court in Criminal Revision No.172/19 dated 29-06-2019 is set aside and the same Court is directed to reconsider and decide the revision petition of this petitioner in accordance with law, on the basis of the observation made hereinabove.

Sd/-

(Rajendra Chandra Singh Samant)
Judge