

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1682 of 2019**

Tamaskant Chatterjee, aged about 48 years, S/o late Shri V.K. Chatterjee, R/o Quarter No.12-F, Street No.28, Sector 4 Bhilai Nagar, Tahsil and District Durg (CG).

-----PETITIONER**VERSUS**

State of Chhattisgarh, through District Magistrate, Durg 491001, Tahsil and District Durg (CG).

----RESPONDENT

For Petitioner	:	Mr. V.G. Tamaskar, Advocate
For Respondent	:	Mr. H.S. Ahluwalia, Dy.A.G.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****26.09.2019**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the impugned order dated 23-05-2019 passed by JMFC, Durg (CG) in Cri. Case No. 35595/2018 and impugned order dated 26-6-2019 passed by the 1st Addl. Sessions Judge, Durg in Criminal Revision No. 175/2019 and for releasing him on bail under Section 437(6) of the Cr.P.C.

2. In brief petitioner's case is that he and other co-accused are facing trial for the offences punishable under Sections 409, 420, read with Section 34 of the Indian Penal Code (for short, 'IPC'). Charges were framed against him on 1-3-2019. The trial is not concluded within a period of 60 days from 1st date fixed for taking evidence i.e. 15-3-2019. Only one prosecution witness has been examined. He had filed an application under Section 437(6) of the Cr.P.C. which was rejected by the JMFC, Durg. Being aggrieved he preferred a revision which was also rejected by 1st Addl. Sessions Judge, Durg. 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 Director of Angela Agrotech and Msons, promoter. He and other co-accused induced the public at large to invest the money in that company, they

will get handsome return. They cheated the persons and committed criminal breach of trust. A huge amount is involved in the case in hand.

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.

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 **Santosh Dubey Vs. State of Chhattisgarh** reported in **2017(2) C.G.L.J.1** wherein following judicial precedent has been laid down :-

“The factors which should be kept in mind while considering an application under Section 437(6) of CrPC would be different from the factors that are to be taken into consideration while deciding an application for regular bail. Rejecting the bail application filed under Section 436 of CrPC on the grounds of gravity of offence, offence is not compoundable, possibility of the accused tempering with the evidence or appreciation of absconding of him, would not only amount to doing violence to the statute but would defeat the very object of introducing such a provision and reduced it to a mere dead letter.

8. Counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Rakesh Kumar Paul Vs. State of Assam** reported in **AIR 2017 Supreme Court 3948** wherein following judicial precedent has been laid down :-

“Words 'Not less than' occurring in Clause (i) to proviso (a) of Section 167(2) of CrPC relates to an offence punishable with a minimum of 10

years' imprisonment. Section 13(1) of P.C. Act punishable with imprisonment which may extend to 10 years i.e. minimum sentence is less than 10 years. Non submission of charge sheet within statutory period of 60 days, shall entitle accused to be released on bail."

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 the matter of **Rameshwar Singh Kurre -v- State of CG** (2006 CRLJ 4107) in paras 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 that alleged offences are serious in nature, the total number of prosecution witnesses is 25 and practically it is not possible

to conclude the trial within said prescribed period.

12. In the case in hand, looking to the nature of the offences, looking to the allegedly huge amount involved in the case in hand, this Court prima facie finds that alleged offences are grievous in nature.

13. In the case in hand, prosecution has cited 25 witnesses. Thus, it is very difficult to conclude the trial within 60 days from the 1st date of taking evidence.

14. In the case in hand, controversy is not regarding the default bail under Section 167 (2) (1) proviso (a) of CrPC. Thus, petitioner does not get any help from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Rakesh Kumar Paul** (Supra).

15. Looking to the above mentioned facts and circumstances of the case, this Court finds that petitioner does not get any help from the aforesaid order of co-ordinate bench in the matter of **Santosh Dubey** (supra) and aforesaid grounds are just and proper, and in conformity with the judicial precedents laid down by co-ordinate bench of this Court in the matter of **Atul Bagga** (supra) and **Rameshwar Singh Kurre** (supra). Moreover, in the case in hand about six months have passed from the 1st date of taking evidence i.e. 15-3-2019. 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.

16. In the matter of **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”

17. 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.**”

18. In the case in hand, it does not appear that there is an abuse of process of law in the proceedings of JMFC, Durg and 1st Addl. Sessions Judge, Durg 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, Durg and 1st Additional Sessions Judge, Durg.

19. 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.

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

Sd/-

Sharad Kumar Gupta
Judge