

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 19-8-2019****Delivered on 20-8-2019****CRMP No. 1743 of 2019**

Prince Gupta S/o Dhruv Gupta Aged About 23 Years R/o Q.No.
4/14, Chauhan Town, Nehru Nagar, Thana- Bhilai, Tahsil/ Distt.-
Durg (C.G.), District : Durg, Chhattisgarh

---- Petitioner**Versus**

The State Of Chhattisgarh Through District Magistrate, Bhilai,
Distt.- Durg (C.G.), District : Durg, Chhattisgarh

---- Respondent

For petitioner	:	Mr. Sameer Singh, Adv.
For Respondent	:	Mr. H.S. Ahluwalia, Dy. Adv. Gen.

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 impugned order dated 22-6-2019 passed by 4th Addl. Sessions Judge, Durg in Criminal Revision No. 159/2019 and for releasing him on bail under Section 437(6) of the Cr.P.C.

2. In brief petitioner's case is that he is facing criminal trial of the complaint of complainant Rajendra Dewangan for the offence punishable under Sections 420 of IPC in the Court of JMFC, Durg. The criminal case No. is 54/2019. The allegation on him is that he had obtained Rs. 24 lacs from said complainant promising that he will get admission of his son Yogendra Dewangan in the Medical College of Karnataka, Bangalore. On 22-2-2019 charge under Section 420 IPC was framed against him. The trial is not concluded within a period of 60 days from 1st date fixed for taking evidence i.e. 6-3-2019. 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 4th Addl. Sessions Judge, Durg on 22-6-2019. Being aggrieved he preferred this CRMP. Both the subordinate courts have committed an error of law. Not a single prosecution witness has been examined. Delay is not attributed to him.

3. The respondent has not filed reply.

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. Govt. Advocate 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 in the matter of **Suneshwar Singh Thakur -v- State of CG** in CRMP no. 1447/2016 in which a coordinate bench of this Court in para 11 observed that :-

“11. Out of considerations, which have been enumerated as aforesaid, as far as possibility of tampering of prosecution evidence by the accused, possibility of the accused absconding if released on bail, any role attributable to the applicant in delay in conclusion of trial is concerned, I do not find any ground to hold otherwise against the applicant. There is no material considered by the Court below that in the event of grant of bail, the applicant is likely to flee away from justice or likely to tamper with the

prosecution witnesses for any reason whatsoever. The other two considerations which have been stated to be relevant are that the gravity of offence and the overall impact of the offence and the release of the person accused of such offence on the society. On this count also, the allegation against the applicant being that he misappropriated amount of some other person, by itself, cannot be said to be an allegation of such a grave nature as comparable to offences like murder, attempt to murder, rape, decoity that grant of bail to the applicant may have an adverse affect or that grant of bail would not be a conducive to societal interest. However, there the allegation is that by such act about Rs.70 lacs has been defalcated. At this stage, this is the allegation against the applicant and that will require the prosecution to lead evidence to prove this fact. The gravity of allegation, at one stage, has to yield to consideration of individual liberty and cannot be allowed to deny bail to an accused even in a case where despite he having completed almost 1½ years in jail, not a single prosecution witness is examined. If the reasons for delay are not attributable to the accused, it would be amounting to punishing accused even before his conviction upon proof of allegation against him for reason which is not because of any fault on his part. Period of 1 ½ years is quite a long period of an individual detention during trial. It becomes a matter of more concern when the Court finds that the prosecution has not been able to take off despite lapse of such a long time inasmuch as not a single witness has been examined. It has to be noted that the prosecution has cited as many as 141 witnesses and the open ended manner, in which, trial is going on, there is no likelihood of the trial being concluded early. Therefore, 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 lean 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.

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 & 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 looking to the gravity of the offence. Revisional Court gave additional finding that possibility of tempering of evidence by the accused cannot be ruled out.

12. In the case in hand, looking to the nature of the offence, looking to the allegedly huge amount of Rs. 24 lacs, this Court prima facie finds that offence is grievous in nature.

13. 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 five months have passed from the 1st date of taking evidence i.e. 06.03.2019. In these circumstances petitioner does not get any help from the aforesaid observations made by co-ordinate Bench of this Court in the matter of **Suneshwar Singh** (supra).

14. 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”

15. 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.**”

16. 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 4th 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 matters 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 4th Additional Sessions Judge, Durg.

17. 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.

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

Sd/-
Sharad Kumar Gupta
Judge