

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1879 of 2019**

- Prashant Kumar Karad S/o Shri Kumant Karad Aged About 28 Years R/o Illigard, Police Station Udaygiri, District Gajpati, Udissa

---- Petitioner**Versus**

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

---- Respondent

For petitioner	:	Mr. C.R. Sahu, Adv.
For Respondent	:	Mr. H.S. Ahluwalia, Dy. Adv. General.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****23-8-2019**

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 25-7-2019 passed by Addl. Sessions Judge, (Special Judge of Special Court for trial of CBI cases), Raipur, (CG) in Criminal Revision No. 462/2019 and for releasing him on bail under Section 437(6) of the Cr.P.C.

2. In brief petitioner's case is that petitioner is facing trial of complaint of complainant Saurabh Singh Thakur for the offences punishable under Sections 457, 380, IPC in the Court of ACJM, Raipur. The criminal case no. is 1292/2019. The allegations on him are that he entered in the house of complainant in the night and stole some golden ornaments and cash Rs. 5,000/-. On 3-4-2019 charges punishable under Section 457, 380, IPC were framed against him. The trial is not concluded within a period of 60 days from 1st date fixed for taking evidence i.e. 12-4-2019. He had filed an application under Section 437(6) of the Cr.P.C. which was rejected by the ACJM, Raipur. Being

aggrieved he preferred a revision which was also rejected by Addl. Sessions Judge (Spl. Judge), Raipur. Being aggrieved he preferred this CRMP. Both the subordinate courts have committed an error of law. 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. 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. 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. In the order passed in **Rameshwar Singh Kurre -v- State of CG**

(2006 CRLJ 4107) in para 9, 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.”

9. 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.

10. The Trial Court has rejected the said application of petitioner on the grounds of gravity of the offence, releasing of him is not in the interest of healthy society, there is possibility of influencing and inducing the prosecution witnesses.

11. In the case in hand, looking to the nature of the offence, looking to the alleged stolen property, this Court prima facie finds that trial Court has committed illegality by giving the finding that offences are grievous in nature, releasing of petitioner is not in the interest of healthy society.

12. In the impugned order of trial Court it has not been mentioned that what are the materials on strength of which it can be said that there are possibilities of influencing and inducing the prosecution witnesses. Thus, the trial Court has also committed illegality in giving the finding in this reference.

13. Aforesaid grounds are not just and not proper and both the

subordinate courts have not applied the ratio laid down by this Court in the matter of **Atul Bagga** (supra).

14. 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”

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 appears that there is an abuse of process of law in the proceedings of ACJM, Raipur and Addl. Sessions Judge (Special Judge), Raipur and 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 must intervene in the orders of ACJM, Raipur and Additional Sessions Judge, (Special Judge,) Raipur.

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 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 allowed. The impugned orders passed by both the subordinate Courts are set aside. It is ordered that if the applicant furnishes one solvent surety for a sum of Rs. 25,000/- along with one personal bond of the like sum to the satisfaction of the concerned Court with the condition that he will not involve himself in any of the crime in future, and will appear before the concerned Court at 11.00 am as and when directed by the said Court, he be released on bail.

19. CC as per rules.

Sd/-
Sharad Kumar Gupta
Judge