

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 1-10-2019****DELIVERED ON 3-10-2019****CRMP No. 2176 of 2019**

1. Md. Sameer Khan @ Amit Soni S/o Saleem Khan Aged About 30 Years
2. Raju Khan @ Raja Khan @ Kasmuddin S/o Bahadur Khan, Aged About 22 Years
3. Chhote Miya @ Chhote Khan S/o Bahadur Khan Aged About 28 Years
R/o Village - Khapri, Police Station - Rajim, District - Gariyaband CG

---- Petitioner**Versus**

- State of Chhattisgarh Through S. H. O. Police Station - Dhamdha, District - Durg Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Saumitra Kesharwani, Advocate
For Respondent	:	Mr. H.S. Ahluwalia, Dy.A.G.

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

1. Petitioners have preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the impugned order dated 9-8-2019 passed by JMFC, Durg (CG) in Cri. Case No. 33245/2018 and impugned order dated 17-9-2019 passed by the 4th Addl. Sessions Judge, Durg in Criminal Revision No. 248/2019 and for releasing them on bail under Section 437(6) of the Cr.P.C.

2. In brief petitioners' case is that they are facing the trial for the offences punishable under Sections 384, 420 read with Section 34 of the Indian Penal Code (for short, 'IPC'). The trial is not concluded within a period of 60 days from 1st date fixed for taking evidence i.e. 4-6-2019. No prosecution witness has been examined. They had filed an application under Section 437(6) of the Cr.P.C. which was rejected by the JMFC, Durg. Being aggrieved they preferred a revision which was also rejected by 4th Addl. Sessions Judge, Durg. Being aggrieved they preferred this CRMP. Both the subordinate Courts have committed an error of law. Delay in trial is not attributable to them. A statutory right has accrued in their favour.

3. In brief, respondent's case is that both the subordinate Courts

have passed just and proper orders. The petitioners had cheated the complainant Bhushan Sahu and putting him on fear of sacrifice of his girl obtained from him Rs. 1 crore and five lacs.

4. Counsel for the petitioners argued that petitioners are 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 calls 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 petitioners placed reliance on the order of coordinate bench of this Court in the matter of **Haricharan Ramteke Vs. State of Chhattisgarh** reported in **2001 (2) C.G.L.J. 363** wherein following judicial precedent has been laid down :-

“If a court is loaded with the work then too it has to discharge its judicial function, while rejecting the bail application under Section 437(6), Cr.P.C. Court must record a reason that for a particular reason the accused is not entitled to be released.”

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 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 petitioners on the ground of the gravity of the offences.

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. Looking to the above mentioned facts and circumstances of the case, this Court finds that petitioners does not get any help from the aforesaid order of co-ordinate bench in the matter of **Haricharan Ramteke** (supra) and aforesaid ground is 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).

14. 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”

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 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 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.

19. In view of above, I.A. No. 1 stands disposed of.

Sd/-
Sharad Kumar Gupta
Judge