

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 599 of 2020

Panchu Ram Dhritlahare, S/o Shri Sonuram Dhritlahare, Aged About 36 Years, R/o Chherkapur, Palari, Baloda Bazar, Taluka Palari, District- Baloda Bazar (C.G.)
---- **Petitioner**

Versus

State of Chhattisgarh, through the Station House Officer, Police Station- Palari, District- Baloda Bazar- Bhatapara (C.G.)
---- **Respondent**

For Petitioner : Mr. Pragalbha Sharma, Advocate.

For State/Respondent : Mr. Rakesh Sahu, Dy. Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

11/08/2021

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. challenging legality and propriety of the order dated 02.12.2019 (Annexure P/1) passed by Sessions Judge, Blodabazar, District- Baloda Bazar (C.G.) in Criminal Revision No. 55/2019 affirming the order dated 18.11.2019 passed by Chief Judicial Magistrate, Baloda Bazar, District- Bloda Bazar (C.G.) in Criminal Case No. 77/2019, whereby the application of the petitioner filed under Section 437 (6) of the Cr.P.C. for grant of bail has been rejected.
2. The brief facts as projected by the petitioner are that the petitioner who is Guard and Bardana Supervisor and one Yaadram Fekar who is Computer Operator at Krishi Sakh Sahkari Samiti Maryadit, Village- Chherkapur, have misappropriated money of the society. It has been alleged that the petitioner has sold 7.772 bag Bardana of the society and has caused loss to the society to the tune of Rs. 4,58,548/-. On 29.01.2018, Yaadram issued 400 bag of rice in favour one Mantram Sahu, but he has not brought paddy to the society and irregularities have been committed by him, therefore, they have been prosecuted for the offence punishable under Sections 406, 420/34 of I.P.C.

and arrested on 19.12.2018 in connection with Crime No. 632/2018 registered at Police Station- Palari, District- Balodabazar- Bhatapara (C.G.). After completion of investigation, the charge-sheet has been filed on 04.1.2019 and charges have been framed against the petitioner and the co-accused on 27.04.2019.

3. Learned counsel for the petitioner would submit that both the Courts below have failed to realize the rights accrued in favour of the petitioner as provided under Section 437 (6) of the Cr.P.C. for grant of bail to the petitioner on the count that trial has not been concluded within 60 days from the date of fixing the case for recording of evidence. Only two witnesses have been examined and 23 witnesses have to be examined as per the charge-sheet and the co-accused person namely Yaadram Fekar has already granted bail by this Court. Hence, it is prayed that this petitioner may also be granted bail.
4. On the other hand, learned State Counsel opposes the prayer for releasing the petitioner on bail and would submit the order passed by both the courts below are legal and justified and need not required interference by this Court.
5. I have heard learned counsel for the parties and perused the case diary.
6. The issue required for consideration before this Court is whether grant of bail as per provision of Section 437(6) of the Cr.P.C. is mandatory for the Judicial Magistrate or not.
7. The Coordinate Bench of this Court in **Suneshwar Singh Thakur Vs. State of Chhattisgarh**¹, has also examined the provision of Section 437 (6) of the Cr.P.C. and held as under:-

“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

¹ CRMP No. 1447 of 2016 (decided on 10.03.2017)

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 in as much 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. The Division Bench of High Court of Madhya Pradesh in case of **Devraj Maratha @ Dillu Vs. State of M.P.**², considered the question whether the provisions contained in Section 437 (6) of

² 2018 (2) MPLJ (Cri) 386 : M.Cr.C. No. 2668 of 2018

the Cr.P.C. is mandatory for the Magistrate to release the accused on bail when the trial is not concluded within a period of sixty days from the date fixed for taking evidence in the case and answered the question as under:-

“21. In view of preceding analysis and enunciation of law governing the field, the reference is answered as under:

(a) Provision envisaged in sub-section (6) of Section 437 of the Code is mandatory in the sense that the Magistrate is required to exercise his power of granting bail after the statutory period, if the trial is not concluded within that, however, passing of an order under Section 437(6) of the Code is mandatory, but not grant of bail.

(b) The Magistrate is vested with full power to take into consideration - (i) the nature of allegations; (ii) whether the delay is attributable to the accused or to the prosecution; and (iii) criminal antecedents of the accused or any other justifiable reason, while refusing to grant bail.”

9. Considering the above stated legal position, it is quite clear that it is mandatory for the Magistrate to consider the application filed by the accused under Section 437 (6) of the Cr.P.C. in case the trial is not concluded within 60 days from the date of fixing of case for recording of evidence, but it does not give any indefeasible right of the accused to be released on bail. The facts and circumstances of each case has to be examined particularly the nature of allegation, whether delay is attributable to the accused or to the prosecution and criminal antecedent of the accused or any other justifiable reason while refusing or grant of bail. In view of the above parameter, now the facts of the present case have to be examined.
10. The petitioner is in jail since 19.12.2018 as such, he has completed 2 years and 9 months of jail custody. The maximum punishment provided for the offence committed by the petitioner is 7 years. The Magistrate First Class has been empowered to impose jail sentence upto 3 years, as such, it can be said that the petitioner has suffered maximum punishment which can be imposed by the trial Court upon the petitioner, if the petitioner has

committed the alleged offence. This Court cannot lost a sight on the fact that co-accused namely Yaadram Fekar has been granted regular bail by the Coordinate Bench of this Court vide order dated 27.02.2019 in MCRC No. 1131/2019 and now the petitioner has completed 2 years 9 months in jail custody.

11. The Revisional Court has passed the order on 02.12.2019 and the petitioner was in jail from 19.12.2018, as such, at that time, the petitioner has completed jail detention of about a year. Now, he has completed 2 years and 9 months, there is no delay on the part of the petitioner for completion of trial. Learned counsel for the petitioner would submit that only 4 witnesses have been examined and it will take more time to complete the trial. Considering the totality of the facts situation and considering the law laid down by Coordinate Bench of this Court as well as judgment passed by Division Bench of High Court of Madhya Pradesh, I am of the considered view that the present petition deserves to be allowed by this Court.
12. Accordingly, the instant petition filed under Section 482 of the Cr.P.C. is allowed and order passed by both the Courts below are set aside. The petitioner is granted bail in following conditions :
 - (a) The applicant shall furnish personal bond of Rs.50,000/- before the trial Court;
 - (b) The applicant shall furnish two solvent sureties each of Rs. 50,000/- to the satisfaction of the trial Court to ensure his presence throughout the trial;
 - (c) The petitioner shall not leave State of Chhattisgarh without the leave of the Court;
 - (d) The applicant shall appear before the trial Court on each and every date unless he is exempted.

Certified copy as per rules.

Sd/-
(Narendra Kumar Vyas)
Judge