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Prabir Kumar Das Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Jul-03-2017

Appellant : Prabir Kumar Das

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M.P. No. 1306 of 2017 -- Prabir Kumar Das .... Petitioner Versus The State of Jharkhand Opposite Party --- CORAM: HONBLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : Mr. P.S. Dayal, Advocate For the State : Mr. Shekhar Sinha, APP --- Order No. 03 Dated 03rd July, 2017 Heard Mr. P.S. Dayal, learned counsel appearing for the petitioner and Mr. Shekhar Sinha, learned A.P.P. appearing for the State . In this application, the petitioner has prayed for quashing the order dated 02.05.2007 passed by learned Judicial Magistrate, Jamshedpur in connection with G.R. No. 1425 of 2015 arising out of Parsudih (Sundernagar) P.S. Case No. 129 of 2015, whereby and whereunder, the application filed by petitioner u/s 437(6) of the Code of Criminal Procedure (Cr.P.C.) for grant of bail has been rejected. It is alleged in the complaint case which was initially instituted that the accused No. 4 and 5 named in the complaint petition introduced themselves as Branch Head and Agent respectively of M/s. ICORE Jewellery and Gems Pvt. Ltd. and advised complainant to invest in the said company. After expiry of the period of one year the amount was never returned. Subsequently it was detected that the office was closed. The complainant went to Kolkata where he also found that the

office of the company was closed. Based on the aforesaid allegation, a complaint case was lodged which was subsequently sent to the police u/s 156(3) Cr.P.C. which led to institution of Parsudih P.S. Case No. 129 of 2015. The investigation culminated into submission of charge- sheet u/s 406, 420, 323,120B and 34 of the Indian Penal Code. Thereafter charge was framed on 08.06.2016. The first date fixed for evidence was 22.06.2016. Since the trial did not conclude within the stipulated time, an application u/s 437(6) Cr.P.C. was preferred by the petitioner for bail which however was rejected by order dated 02.05.2017 by learned Magistrate, which is impugned in this application. It has been submitted by learned counsel for the petitioner that the learned Magistrate did not give any reasons with respect to 2. rejection of the application filed u/s 437(6) Cr.P.C. It has been stated that vague reasons cannot lead to rejection of bail u/s 437(6) Cr.P.C. Learned counsel relied on a decision in the case of Deepak Das v. The State of Jharkhand reported in 2017(2) JLJR43 Mr. Shekhar Sinha, learned A.P.P., appearing for the State has opposed the prayer of the petitioner. It appears from the impugned order dated 02.05.2017 that on 29.07.2016 two witnesses were present, but they could not be examined. The learned trial court primarily dealt with the allegation against the petitioner and while rejecting an application u/s 437(6) Cr.P.C. has merely considered the gravity of the offence without considering the purports of Section 437(6) of the Cr.P.C. The case of Nehul Prakashbhai Shah v State of Gujarat has been referred in to in the case relied upon by the learned Counsel for the petitioner, in which at Para 11 it has been held as follows:-

"1. As has been stated above, refusal to grant benefit of bail under section 437(6) of the Code of Criminal Procedure seems to be on the ground that if the petitioner is released on bail when the trial is midway, there is every likelihood that he may tamper with the evidence. Such vague ground cannot be a basis for rejection of an application under section 437(6) of Cr.P.C. In fact in the case of Nehul Prakashbhai Shah (supra), a note of caution has been added to the effect that the reasons for rejection of the application under section 437(6) of the Cr.P.C. need to be more weighty than the routine grounds of rejection. The impugned order does not justify the rejection by strengthening it with any plausible grounds which is in existence rather by one stroke of pain, the said application has been rejected on the ground of apprehension that the petitioner may tamper with the evidence. No

discussion has been made by the learned trial court as to who are the witnesses, who have been examined and who are the witnesses who are yet to be examined. Mere mention of possibility of tampering with the evidence is basically to frustrate the legislative intent in section 437(6) of the Cr.P.C.. No doubt, it is true that the accused does not gain an indefeasible right for being released on bail under 3. section 437(6) of Cr.P.C. but at the same time learned Magistrate cannot refuse such right without giving appropriate reasons for such refusal. Learned Chief Judicial Magistrate, Pakur having not elaborated or justified the reasons given for refusing to release the petitioner on bail under section 437(6) of Cr.P.C., has, therefore, committed an illegality. Such facts situation, therefore, would definitely entitle the petitioner to be released on bail." In fact, in the case of Nehul Prakashbhai Shah v State of Gujarat a note of caution has been added to the effect that the reasons for rejection of the application under section 437(6) of the Cr.P.C. need to be more weighty than the routine grounds of rejection. The impugned order does not justify the rejection by strengthening it with any plausible grounds. Vague grounds cannot extinguish the right which has accrued to the petitioner on the trial having not been concluded within a period of 60 days from the date first fixed for taking of evidence. The reasons, as as been stated in the impugned order dated 02.05.2017 does not inspire confidence, as the same merely concentrated itself on the merits of the case without taking into note of the factors which are of prime importance while considering such application. The reasons there being vague, the impugned order dated 02.05.2007 is not sustainable in the eye of law and according the same is hereby quashed and set aside. The petitioner is directed to to be released on bail by the learned trial on the terms and conditions, it may so fix. This application is allowed. MK (Rongon Mukhopadhyay, J)

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