

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 1833 of 2020**

Gour Das @ Gaur Das, aged about 45 years, S/o Prafull Das, R/o village-  
Lakra Joria, P.O. & P.S. Salanpur, Dist.- Bardhman, West Bengal

... **Petitioner**

**-Versus-**

State of Jharkhand

... **Opposite Party**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner

: Mr. S.K. Laik, Advocate  
Mr. Raj Nandan Chatterjee, Advocate

For the Opposite Party-State

: Mr. Abhay Kumar Tiwari, A.P.P.

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06/07.09.2021. Heard Mr. S.K. Laik along with Mr. Raj Nandan Chatterjee, learned counsel for the petitioner and Mr. Abhay Kumar Tiwari, learned A.P.P. for the opposite party-State.

2. This criminal miscellaneous petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

3. The petitioner has filed this criminal miscellaneous petition for quashing the order dated 27.05.2020 passed by the learned Sessions Judge, Dhanbad in Criminal Revision No.61/2020 in connection with Dhanbad (Bank More) P.S. Case No. 804/2014, corresponding to G.R. Case No. 3681/2014, whereby, the application preferred by the petitioner under Section 437(6) of Cr.P.C. for grant of bail has been rejected and the order dated 10.02.2020 passed by the learned Chief Judicial Magistrate, Dhanbad is confirmed by the said order.

4. It was alleged in the complaint petition that the petitioner along with others had induced the informant as well as other innocent persons to become members of Swabhumika Group of Companies, running several

branches across different states. It was also alleged in the complaint that on 02.09.2009, the petitioner along with co-accused opened office at Dhanbad branch and started giving lucrative offers to the investors and other persons and started announcing different schemes including recurring deposit, fixed deposit, MIS and other though for the same the company has no license either from SEBI or RBI. Thus, being deceived with the promise made by the officials of the company several innocent persons have invested their hard earned money, but when they approached for getting maturity to their utmost surprise, the post dated cheque issued in their favour was bounced due to insufficient fund. It was also alleged that the accused persons along with the petitioner cheated a sum of Rs.5 Crores at Dhanbad branch from different investors in the name of the company and a sum of Rs.50 Crores approx from the investors all over India. On this background, complaint was filed, which was converted into F.I.R. under Section 156(3) of Cr.P.C.

5. Mr. Laik, learned counsel for the petitioner submits that till date only three witnesses have been examined. The other co-accused namely, Anilava Deb, Dipesh Chakraborty and Sukanta Das have been granted regular bail by this Court in B.A. Nos. 6389 of 2019, 6943 of 2015 and 327 of 2016 respectively. He further submits that the petitioner is in judicial custody since 26.08.2014. He also submits that mainly the documentary evidence is the subject matter of deciding the trial. He further submits that the petitioner is seriously ill and has been admitted in RIMS. So far as Section 437(6) of Cr.P.C. is concerned, he submits that this aspect of the matter has been considered by a coordinate Bench of this Court in the case of **Deepak Das v. The State of Jharkhand**, reported in **2017 2 JLJR 43**.

6. Mr. Abhay Kumar Tiwari, learned A.P.P. appearing for the opposite party-State submits that the revisional court has rightly rejected the petition filed by the petitioner under Section 437(6) of Cr.P.C.

7. The coordinate Bench of this Court in the case of *Deepak Das (supra)* has taken into consideration the judgment passed by the Division Bench of Hon'ble Gujarat High Court in Criminal Reference No.2 of 2011 in the case of ***Nehul Prakashbhai Shah & Ors. v. State of Gujarat***, in which Section 437(6) of Cr.P.C. has been considered, whereby, it has been held that the provisions are not mandatory in nature. Various factors, which must weigh in the mind of the Magistrate have been enumerated in the judgment under reference and the same is quoted herein below:

*"Q-3 The Magistrate has option/discretion to refuse bail by assigning reasons therefor. The parameters, factors, circumstances and grounds to be considered by Magistrate vis-à-vis such application preferred by the accused under Section 437(6) of the Code may be:*

*(1) Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?*

*(2) Whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner?*

*(3) whether there are any chances of abscondence of the accused on being bailed out?*

*Whether accused was not in custody during the whole of the said period?*

*If the answer to any one of the above referred fact situations or similar fact situations is in affirmative than that would work as a fetter on the right that accrues to the accused under first part of sub section (6) of Section 437 of the Code."*

8. On perusal of the impugned order, it transpires that the trial court has rejected the prayer on the ground that there is apprehension of running away from the trial during mid trial release by the petitioner. The revisional court has come to the conclusion that apart from apprehension of fleeing

from the trial by the petitioner, there is apprehension also that the witnesses may be influenced or evidence may otherwise be tampered with.

9. 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. Before rejecting the petition under Section 437(6) of Cr.P.C., appropriate reason is required to be provided. Moreover, the petitioner is ill and has been admitted in RIMS. Another aspect of the matter is there with regard to release on bail on an application under Section 437(6) of Cr.P.C. *Prima facie*, it appears that it is an interlocutory order and the order passed by the revisional court is not maintainable.

10. In view of the aforesaid facts, the order dated 27.05.2020 passed by the learned Sessions Judge, Dhanbad in Criminal Revision No.61/2020 in connection with Dhanbad (Bank More) P.S. Case No. 804/2014, corresponding to G.R. Case No.3681/2014 and the order dated 10.02.2020 passed by the learned Chief Judicial Magistrate, Dhanbad are, hereby,

quashed and set aside. The learned trial court is directed to release the petitioner on bail, subject to such conditions it may impose.

11. Accordingly, this criminal miscellaneous petition stands allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

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