

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 425 of 2015

Santosh Anand Singh, S/o. Late Shri Gopal Singh, Aged About 30 years, R/o. Village Puti Pakhna (Pasan), P.S. Pasan, District Korba Chhattisgarh, At Present Purani Basti Pohadiya, Out Post C.S.B. Korba, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through: District Magistrate Bilaspur, District Bilaspur. Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Rajesh Kumar Jain, Advocate
For Respondent/State	:	Mr. Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31/07/2015

Heard

1. Despite several opportunities granted, no return has been filed by the State.
2. This is a petition under Section 482 of Cr.P.C. against the order dated 19.02.2015 passed by the First Additional Session Judge, Bilaspur, in Criminal Revision No.27/2015 whereby the rejection of order passed by the Judicial Magistrate First Class on 20.01.2015 under Section 437(6) of Cr.P.C. was affirmed.
3. Learned counsel for the petitioner submits that the petitioner is being tried for an offence under Section 420, 467, 468, 471 read with Section 34 of IPC alongwith the other co-accused. One of them is named Laxmi Prasad Sahu. It is contended that the petitioner is in custody since 29.06.2014, but the trial is not proceeding. It is therefore submitted that an application was preferred under Section 437(6) of Cr.P.C. as the trial was not concluded within a period of days from the first date fixed for evidence i.e. on 11.11.2014. Hence, the petitioner is entitled to bail.
4. It is further submitted that the reasons which has been assigned by the learned Court below would not justified the rejection of the petition under Section 437(6)

of Cr.P.C. It is further submitted that the other co-accused namely Laxmi Prasad Sahu has been enlarged on bail by the coordinate Bench of this Court on 12.05.2015 on the similar grounds of delay in trial.

5. The State counsel opposes the argument, however, he is not able to dispute the fact that the co-accused namely Laxmi Prasad Sahu has been released on bail by this Court in Cr.M.P. No.204 of 2015 on 12.05.2015.
6. In the case of ***Atul Bagga versus State of Chhattisgarh, 2010 Cr.L.J.508***, this Court considered the scope, extent and object of provisions contained in Section 437 (6) of the Code and held:-

10. -----

“Sub-section(6) of Section 437 of the Code carves out an exception to the provision contained in clause(i) of sub-section (1) of Section 437 of the Code and reads as follows:

“437. When bail may be taken in case of non-bailable offence.—

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xxxxxxx

xxxxxxx

(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.

It would, thus, appear that under the first limb of sub-section (6) of Section 437 of the Code where the trial of a person accused of any non-bailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence in the case, the law mandates that 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. The second limb of sub-section (6) of Section 437 of the code carves out an exception and empowers the Magistrate to refuse bail for reasons to be recorded in writing. It is, therefore, open to a Magistrate to refuse bail under sub-section (6) of Section 437 of the Code where the Magistrate assigns reasons in writing which are amenable to scrutiny by a superior Court for examining whether the Magistrate was justified for reasons recorded by him in writing in refusing bail under sub-section(6) of Section 437 of the code. If the reasons assigned by the Magistrate justify refusal of bail and cannot be termed arbitrary then the order refusing bail by the Magistrate

under sub-section (6) of Section 437 of the Code would be in accordance with law and not open to interference in revision.

“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 tampering 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.”

7. In the case of ***Riza Abdul Razak Zunzunia vs. State of Gujarat, 2009 Cr.L.J.***

4766, similar view has been taken in following words by observing as below:-

“21. The question that arises for determination is as to what would be the considerations which would weigh with the Magistrate while deciding an application under Section 437(6) of the Code. Whether the reasons for not releasing an accused on bail would be similar to the reasons for not granting regular bail or whether some special circumstances should exist for the purpose of declining grant of bail under Section 437(6) of the Code? On behalf of the Bank it has been contended that factors like existence of a prima facie case, gravity of the offence and the likelihood of conviction which give rise to a belief that the accused is not likely to remain present at the time of the trial are required to be taken into consideration, whereas on behalf of the applicant it has been contended that such factors are not germane while deciding an application under Section 437(6) of the Code. On a plain reading of the provision as well as considering the object behind enacting the said provision if the contention advanced on behalf of the Bank viz. the prima facie case, gravity of offence, involvement of the accused, etc. are the factors which are to be taken into consideration while deciding the application under Section 437(6) of the Code, were to be accepted, the same would render the said provision nugatory, inasmuch as if the same reasons for which the application for regular bail is refused, are to be considered while deciding the application under Section 437(6) of the Code, there

would be no necessity for making such a provision. The application under Section 437(6) of the Code would stand rejected merely on the ground that the application for regular bail had been rejected. In the opinion of this Court, the factors which should be kept in mind while considering an application under Section 437(6) would be different from the factors that are to be taken into consideration while deciding an application for regular bail. Though it may not be possible to lay down any exhaustive list of such factors which may be taken into consideration while deciding the application under Section 437(6) of the Code, some relevant factors would be whether the trial has been delayed on account of the default on the part of the applicant; whether the accused has at any stage during the course of investigation or as an under trial prisoner been absconding; if having regard to the facts of the case there is every likelihood of his jumping bail; or if there are special circumstances due to which it may be deemed expedient not to exercise powers under Section 437(6) etc. But bail cannot be refused for reasons which are generally invoked for refusing bail. The following observations made by the Apex Court in **Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272: (1992 Cr.L.J.3712)** in the context of compulsive bail under the proviso to Section 167(2) are apt even in the context of Section 437(6) of the Code: “15. Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously or does not complete it within the time allowed by law.

22. Drawing an analogy, it is can be safely stated that law expects early conclusion of cases triable by Magistrate. The delay in completion of trial in such cases, must therefore, be at the pain of the accused being released on bail, except where the Magistrate by reasons recorded in writing otherwise direct. The said provision therefore, has to be construed strictly in favour of individual liberty. Importing the grounds relevant for the purpose of granting regular bail, for the purpose of deciding an application for bail under Section 437(6) of the Code would not only amount to doing violence to the statute but would defeat the very object of introducing such a provision and reduced it to a mere dead letter. The prosecution, therefore, cannot be permitted to trifle with

individual liberty if it does not diligently pursue the proceedings before the Magistrate to ensure that the trial is concluded within the period prescribed under Section 437(6) of the Code.”

8. In the light of the aforesaid provision, if the facts are taken into account, it is apparent that the another co-accused Laxmi Prasad Sahu has been released on bail and the present petitioner is also in jail since 29.06.2014 and the trial was first fixed for evidence on 11.11.2014. Thereafter, there is no material progress in the trial. Taking into account that the delay is not attributed because of the petitioner and the other co-accused has been enlarged on bail on the similar facts, in the opinion of this Court, the petitioner is also entitled for the bail.
9. In view of above, the petitioner is entitled to be released on bail under Section 437(6) of Cr.P.C. The impugned order dated 19-02-2015 passed by the trial Court is set aside and the petitioner shall be released on bail on his furnishing personal bond of Rs.20,000/- with one local surety of the like amount to the satisfaction of the trial Court. He shall appear before the trial Court on each and every date of hearing, unless exempted.
10. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
JUDGE