

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 438 of 2015**

Smt. Roshani Tiwari @ Uma Tiwari, Aged about 38 years, W/o. Raju Tiwari,
R/o. Munsii Ismail Ward, Bhatapara, P.S. Bhatapara (Gramin), Baloda Bazar-
Bhatapara (C.G.)

---- **Petitioner****Versus**

State of Chhattisgarh, Through: S.H.O., Police Station- Bhatapara (Gramin)
District Baloda Bazar- Bhatapara (C.G.).

---- **Respondent**

For Petitioner : Mr. Hemant Gupta, Advocate.

For Respondent/State : Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/09/2015**

1. This is a petition under Section 482 of Cr.P.C. whereby the order dated 05.02.2014 passed by the learned First Additional Sessions Judge, Baloda Bazar, in Criminal Revision No.35/2013 is under challenge. By the said order, the Revisional Court has affirmed the order dated 24.10.2013 passed by the Chief Judicial Magistrate, Baloda Bazar. The order pertains to rejection of bail application under Section 437(6) of Cr.P.C.
2. Learned counsel for the petitioner submits that the petitioner is a lady and she is in jail since 13.04.2013 and the charges were framed on 19.07.2013. He further submits that out of 78 witnesses only 12 witness have been examined and the rest are still remained to be examined. Consequently, the proceeding could not be concluded within a period of 60 days from the date of first evidence on 02.08.2013. He submits that under the circumstances, taking into

the fact that the petitioner is a lady, the provisions of Section 437(6) of Cr.P.C. may kindly be extended in favour of the petitioner and she may be released on bail.

3. Per contra, learned State counsel vehemently opposes the argument and would submit that as per the charges, the petitioner has taken money from more than 65 persons in the name of chit-fund and thereby has taken away the money. She further submits that if the petitioner is released on bail, she may influence the witness, therefore, she may not be released on bail.
4. I have heard learned counsel appearing for the parties, perused the order and the documents placed before this Court.
5. Perusal of the order sheet would show that the petitioner was charged under Section 420 read with Section 34 of I.P.C. and Section 6 & 7 of Inami Chit Fund and Dhan Parichalan Scheme Adhiniyam, 1978. The order shows that the charge was framed against the petitioner on 19.07.2013 and she was arrested on 13.04.2013. Subsequently, the case was fixed for further date on 16.08.2013, 30.08.2013, 13.09.2013, 27.09.2013, 11.10.2013 and 24.10.2013 and on 24.10.2013, an application under Section 437(6) of Cr.P.C. was moved which was eventually dismissed. Thereafter, the case was again fixed for evidence and as many as 50 dates have passed. It is submitted by both the counsels that till date out of 78 witnesses, only 12 witnesses have been examined and rest of the witnesses are still to be examined.
6. Section 437 of the Cr.P.C. envisages 'that bail may be taken, in case of non-bailable offence. Apart from other grounds, sub-section (6) of Section 437 of the Cr.P.C. envisages that "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

7. 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:-

“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:

XXXXXX XXXXXXXX XXXXXXXX

(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.”

8. 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.”

9. Perusal of the charge sheet would show that the petitioner has taken money from different persons in order to roll it in the chit-fund and admittedly few of the witnesses have been examined but the evidence could not be concluded within 60 days from the first date of evidence. Though the gravity of offence is not minor but at the same time the petitioner who is a lady cannot be ignored

considering the number of remaining witnesses as they are more than 60 and 50 dates have passed for evidence. The other co-accused husband of the petitioner, Raju Tiwari and one Yashwant @ Bunti have already been enlarged on bail.

10. This is not in dispute that the petitioner is a lady and she is in jail since 13.04.2013 and almost two years and five months have passed. Section 437 of Cr.P.C. provides that the Court may extend bail, if the detainee is a woman. Therefore, after going through the documents filed alongwith the petition and taking into the detention of the petitioner and specially the fact that petitioner is a lady and she is in jail since more than two years and five months, I am inclined to enlarged the petitioner on bail.
11. 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 05.02.2014 passed by the Court below is set aside and the petitioner shall be released on bail on her furnishing a personal bond of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the trial Court. She shall appear before the trial Court on each and every date of hearing, unless exempted.
12. Further, it is directed that the petitioner shall not directly or indirectly make any inducement or threat or promise to the witness enlisted by the prosecution. The petitioner shall also remain present before the Court on the date of hearing and if she want to go out of the jurisdiction of the Court, she should file proper application and take permission of the Court to move out of the jurisdiction.
13. In view of foregoing, the petition is allowed.

Sd/-
(Goutam Bhaduri)
JUDGE