

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 542 of 2015

1. Dhananjay Kashayap, S/o. Itwari Lal, Aged About 34 Years, R/o Chandani Chowk, Kududand, Bilaspur, Tahsil & District - Bilaspur, P.S. Civil Line, Bilaspur Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh, S/o. Through : - S.H.O. - Civil Line, Bilaspur, District - Bilaspur, Chhattisgarh

---- **Respondent**

For Petitioner	:	Mr. Hemant Gupta, Advocate
For Respondent /State	:	Ms. M. Asha, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

25/08/2015

1. Challenge in this petition is to the order dated 18.06.2015, passed in Criminal Revision No.103/2015, by the Court of Third Additional Sessions Judge, Bilaspur, whereby the order dated 13.05.2015, passed, by the Judicial Magistrate First Class, Bilaspur in Criminal Case No.9415/2014, between State of C.G. Vs. Dinesh Yadav & Ors, registered under Section 420, 467, 468, 471/34, was affirmed. The order pertains to rejection of bail under Section 437 (6) of Cr.P.C.
2. Brief facts of the case are that a charge sheet has been filed against the petitioner and other co-accused persons, wherein on 20.02.2015, the charges have been framed. The case was fixed for the first time on 05.03.2015 for evidence and the summons were issued to the prosecution witnesses, however, no witnesses appeared. Thereafter on 20.03.2015, 04.04.15, 17.04.2015 and 29.04.2015, the case was fixed for evidence but on such date 29.04.2015, one prosecution

witness namely Sitaram Banjara had appeared and on that date, the witness was left unexamined because, the advocate on behalf of the accused was not present, however, on 13.05.2015, the witness was examined and cross examined. Subsequently an application under Section 437 (6) of Cr.P.C. claiming release of the petitioner was filed as the trial has not concluded within 60 days but the same was dismissed.

3. Learned counsel appearing on behalf of the applicant submits that the applicant is facing trial and after filing of challan on 14.10.2014, first time the case was fixed for evidence on 05.03.2015 and 60 days expired on 04.05.2015. He would further submit that since the trial was not concluded within 60 days on 13.05.2015, an application was preferred under Section 437 (6) of Cr.P.C., which was rejected by the Trial Court and the revision having been preferred against the order dated 13.05.2015, it was also dismissed by the learned Sessions Court. The counsel placed his reliance in case of ***Vijay Vs. State of M.P.***, reported in ***2006 (3) MPHT 380***, and order passed by this Court in case of ***Nohar Devdas Vs. State of C.G.***, reported in ***2014 (4) CGLJ 588*** and would submit that under the similar circumstances, the Court has granted bail to the accused as trial has not been concluded within a period of 60 days.
4. I have heard the learned counsel for the applicant as also the State and perused the records.
5. 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:

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

XXXXXX 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.”

6. Now considering the gravity of the charges, which were leveled against the petitioner, reading of the order would show that it was the case of identification of false surety. The accused has identified false surety before the Court and the surety bonds were placed on the basis of false and fabricated papers by such person. The Court has also recorded that the applicant has identified the persons, surety and the surety was subsequently found to be false. Consequently the gravity of the offence would show that the fraud has been played on the Court without any minimum respect to the Court proceeding. The petitioner can not be stated to be sitting on the fences and not a party to it to be exonerated from the criminal act only on the ground that he has only identified the surety. The Court can not be oblivious of the fact, the way the false surety are produced in the various Court below faith in criminal judgment delivery system can not be shelved. Therefore, the

gravity of the offence can not be diluted only on the ground that the trial could not be concluded within the specified period of 60 days from the date of first evidence considering the impact on society.

7. If the provisions of Section 437 (6) of the Code of Criminal Procedure, 1973 are closely perused, it appears that enough care has been taken by the legislature. There is an in-built exception. The words “unless for the reasons to be recorded in writing”, carves out exception to the rule which is referred in Section 437 (6) of the Code of Criminal Procedure, 1973. It is obligatory on the part of the Magistrate to record reasons in writing for the accused not being released on bail. Thus it is not mandatory or obligatory on the part of the Magistrate that once period of sixty days from the first date fixed for taking evidence is over, the applicant must be enlarged on bail. There is no such mathematical consequence. All that depends upon the facts and circumstances of the case and the gravity of the offence. Here in the instant case, taking the gravity of the offence would show that fraud has been played on the Court and the petitioner was a party to it.
8. Considering the circumstances and reading of the order of the Court below, the Court below has sufficiently carved out the reasons for not granting the bail by invoking Section 437 (6) of Cr.P.C. In a consequence, I do not find any illegality in the order of the Court below.
9. In a result, the petition has no merit and is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge