HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 543 of 2015

1. Gokaran Sahu S/o Khubitram Sahu Aged About 32 Years R/o Village Khilora, Post Office & Police Station Sejbahar, Raipur, Tah. And District Raipur Chhattisgarh.

2. Girish Patel S/o Motilal Patel Aged About 35 Years R/o Village Khilora, Post Office & Police Station Sejbahar, Raipur, Tah. And District Raipur Chhattisgarh.

3. Shrawan Kumar Patel S/o Ganeshram Patel Aged About 28 Years R/o Village Khilora, Post Office & Police Station Sejbahar, Raipur, Tah. And District Raipur Chhattisgarh.

4. Arun Patel S/o Itwari Patel Aged About 32 Years R/o Village Khilora, Post Office & Police Station Sejbahar, Raipur, Tah. And District Raipur Chhattisgarh.

---- Petitioners

Versus

State Of Chhattisgarh Through The District Magistrate, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Petitioners – Shri Shivendu Pandya, Advocate.
For Respondent/State- Miss. Farah Minhaj, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

17/08/2015

1. This is a petition under Section 482 of Cr.P.C. whereby the order dated 21/05/2015 passed by the Additional Sessions Judge (Special Judge C.B.I.), Raipur in Criminal Revision No.184/2015 is under challenge. By said order, order dated 7/05/2015 passed in Criminal Case No.1625/2015 by Chief Judicial Magistrate Raipur has been affirmed. Order pertains to rejection of bail under section 437 (6) of Cr.P.C..

2. Brief facts of the case are that allegation leveled against the petitioners was that on 10/01/2015 on a secret information received by the Sub Inspector, Sejbahar Police Station, the Scorpio Vehicle bearing No.C.G. 04 K.J./1778 was intercepted and on search being made, it was

found that petitioners were carrying 95.040 bulk liters of liquor. Seizure was made from Gokaran, other petitioners also tried to flee away from the scene but they were arrested. Subsequently, case was filed under Section 34 (2) of Chhattisgarh Excise Act. Petitioners were arrested on 10/01/2015 and thereafter charge sheet was filed wherein charge was framed on 20/02/2015 and the case was fixed for evidence on 5/03/2015. Subsequently, an application was moved on 7/05/2015 on the ground that after completion of 60 days prosecution evidence was not concluded and only two witnesses were examined, therefore petitioners may be released on bail. Same was rejected by an order dated 7/05/2015 by the Chief Judicial Magistrate, Raipur which too was affirmed by the order dated 21/05/2015.

3. Learned counsel for the petitioners submits that all the four petitioners are in jail since 10/01/2015 and allegations were leveled that they were carrying illicit liquor of 95 bulk liter. It is further submitted that one of the petitioner Girish Patel has also been elected as Sarpanch and Gokaran Sahu has been elected as Panch and petitioners shall not abscond and they are permanent residents of village Sejbahar and further submits that taking into allegations and the gravity of the offence and the trial has not been concluded within 60 days from the first date of evidence, petitioners may be released on bail.

4. No reply has been filed by the State despite repeated efforts. Learned State counsel however opposes the petition.

5. I have heard learned counsel for the parties at length and perused the documents.

6. Perusal of the order sheets shows that initially case before the trial court was fixed on 5/03/2015 for evidence but on that date witnesses were

not present. Thereafter, case was fixed for evidence on 17/03/2015. Subsequently, case was fixed for 30/03/2015, 13/04/2015, 24/04/2015 but no witness was present.

7. Learned counsel for the petitioners submits that till date trial is not concluded and the petitioners are languishing in jail since 10/01/2015.

8. 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 released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.” The above provision intends to expedite the trial without unnecessarily detaining a person as an under trial prisoner. The same applies only to a case triable by a Magistrate and the underlying intention behind the above provision of sub-section (6) is that a criminal trial should be concluded within sixty days form the first date fixed for taking evidence and if it is not possible to conclude the case within that time, the accused, if in custody, shall be released on bail unless the Magistrate for reasons to be recorded otherwise directs. Similar provisions has been made in the Code of Criminal Procedure for the investigation stage.

9. 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.—**

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."

10. 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."

11. In the light of the aforesaid provision, if facts of the case are considered, it would reveal that for possession of illicit liquor of 95 bulk liter case was filed against four of the accused/petitioners. The petitioners are in jail since 10/01/2015 and the evidence has not been concluded from the first date of evidence from 5/03/2015 till date. Taking into account that the delay is not attributed because of the petitioners and the gravity of the offence in facts of the case, I am inclined to allow this petition.

12. In view of the above, the petitioners are entitled to be released on bail under Section 437(6) of Cr.P.C. The impugned order dated 21.05.2015 passed by the trial Court is set aside and the petitioners shall be released on bail on each of them furnishing personal bond of Rs.25,000/- with one local surety of the like amount to the satisfaction of the trial Court. They shall appear before the trial Court on each and every date of hearing, unless exempted.

13. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
JUDGE

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