

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 463 of 2015**

Jhabak Nishad, Aged about 18 years, S/o. Prahlad Nishad, R/o. Parvati Nagar, Khamhardih, Police Station- Pandri (Mowa), District Raipur (C.G.).

---- Petitioner

Versus

State of Chhattisgarh, Through the Station House Officer, Police Station Telibandha, Raipur, District Raipur, Chhattisgarh.

---- Respondent

 For Petitioner : Mr. L.C.Das, Advocate.
 For Respondent/State : Mr. Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****20/08/2015**

1. This is a petition under Section 482 of Cr.P.C. whereby the order dated 07.05.2015 passed by the learned Seventh Additional Sessions Judge, Raipur, in Criminal Revision No.161/2015 is under challenge. By the said order, the order dated 28.04.2015 passed by the Judicial Magistrate First Class, Raipur, in Criminal Case No.19082/2014 was affirmed. The order pertains to rejection of bail application under Section 437(6) of Cr.P.C.
2. Brief facts of the case are that the charge sheet was filed against the petitioner and other co-accused under Section 457, 380 read with Section 34 of IPC. It was stated by the petitioner that the petitioner is in custody since 16.10.2014 and after filing of the charge sheet, the charge was framed by the Court on 09.02.2015 and thereafter the case was fixed for evidence on 23.02.2015. It is stated that on that date, an application for compounding of the offence was filed under Section 320(2) of Cr.P.C., but the same was rejected and thereafter, the case was fixed for evidence on 09.03.2013,

23.03.2015, 06.04.2015 and 20.04.2015 and till date the evidence is not concluded. It is submitted that thereafter, an application under Section 437(6) of Cr.P.C. was filed before the trial Court, as the trial was not concluded within a period of 60 days from the date of first evidence, however, the same was rejected by an order dated 28.04.2015, which was affirmed by the revisional Court by order dated 07.05.2015.

3. Learned counsel for the petitioner submits that the petitioner is in jail since 16.10.2014 and taking into the period of detention and the fact that the period of 60 days from the date of first evidence have been passed, the applicant may be enlarged on bail as per the mandatory provisions of Section 437(6) of Cr.P.C.
4. Learned State counsel would submit that only one witness has been examined in this case out of twelve witnesses, therefore, the petitioner may not be enlarged on bail.
5. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
6. This fact is not in dispute that on 09.02.2015 the charge was framed and thereafter the case was fixed for evidence on 23.02.2015. The order sheet would show that on 23.02.2015, the witnesses were absent and therefore summons were issued. On the same day, the application was filed under Section 320 (2) of Cr.P.C. for compounding the offence. The said application, however, was dismissed by the Court by holding that the offence are not compoundable and thereafter, the case was again fixed on 09.03.2015. Subsequently, again the case was fixed for evidence on 23.03.2015, 06.04.2015, 20.04.2015, 04.05.2015, 18.05.2015, 29.05.2015, 23.06.2015 and so on. As stated by the petitioner, this fact is not in dispute that the evidence is still not concluded. The State counsel has also not stated anything about the conclusion of the trial, therefore, the only fact which can

be inferred that only one witness has been examined and for rest of the witnesses, still the case is pending for evidence.

7. 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 from 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.
8. 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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(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.”

9. 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.”

10. In the light of the aforesaid provisions and taking the gravity of offence and detention of the petitioner that he is in jail since 16.10.2014 and the nature of conduct as one point of time, an application for compounding of offence was also filed and further taking into account that the delay is not attributed because of the petitioner, in the opinion of this Court, the petitioner is entitled for 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 07.05.2015 passed by the Court below is set aside and the petitioner shall be released on bail on his furnishing personal bond of Rs.25,000/- 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.
12. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
JUDGE