

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 481 of 2015**

Sunil Banjare @ Chhotu, S/o. Bhagchand Banjare, Aged About 27 Years,
R/o. Kathiyaranka, Post Bemetara, Tahsil & District Bemetara, Chhattisgarh,
At Present R/o. Krishna Nagar, Behind Hanuman Mandir, Supela, Bhilai, Civil
& Revenue District Durg, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through the District Magistrate, Raipur, Through the
Police Station- Urla, Civil & Revenue District Raipur, Chhattisgarh.

---- Respondent

For Petitioner : Mr. P.P.Sahu, Advocate.
For Respondent/State : Mr. Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****12/08/2015**

1. This is a petition under Section 482 of Cr.P.C. whereby the order dated 12.05.2015 passed by the Special Judge (C.B.I.), Raipur, in Criminal Revision No.167/2015 is under challenge. By the said order, the order passed by the Judicial Magistrate First Class, Raipur, in Criminal Case No.25016/2014 dated 01.04.2015 was affirmed. The order pertains to rejection of bail petition under Section 437(6) of Cr.P.C.
2. The brief facts of the case are that the allegations were leveled against the petitioner that he was working as collecting agent in the ATM Machine installed by one company M/s. Add Technology Limited, Bangalore and was operator of such Machine to receive the electricity bills. A written report was preferred and it was found that from six operators, an amount of Rs.39,940/- was received by the petitioner and the said amount was not deposited to the

company's account, thereby, the offence was committed under Section 409 of IPC for breach of trust.

3. The charge sheet was filed under Section 409 of IPC and on 01.04.2015, an application was filed under Section 437(6) of Cr.P.C. that from the date of fixing of the evidence on the first time on 28.01.2015, the evidence is not concluded within a period of 60 days as required under Section 437(6) of Cr.P.C. The said bail petition was rejected initially by the Judicial Magistrate First Class on 01.04.2015 which was subject of challenge before the revisional Court in Criminal Revision No.167/2015.
4. Learned counsel for the petitioner submits that the petitioner though has received the amount as the ATM Machine was not working and was handed over to the Supervisor, which in turn was not deposited and since the petitioner was in charge of the Machine, the charges have been leveled against the petitioner. Therefore, considering the gravity and nature of offence, the petitioner may be released on bail. He further submits that in case of *Atul Bagga v. State of Chhattisgarh* wherein the rejection is based cannot be applied in the given facts as in that case the rejection was predominantly on the ground that the accused had approached the concerned Sessions Judge, therefore, the facts of that case will not apply in this case.
5. No reply has been filed by the State, despite repeated and last opportunity granted to the State. The State counsel is also not in position to submit the facts and gravity of the offence and only submits that there is a breach of trust.
6. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
7. Perusal of the order sheets shows that the case was initially listed on 14.01.2015 and thereafter was fixed for evidence on 28.01.2015. Subsequent

thereto from time to time it got adjourned and even the last order sheet which is placed on record shows that the witness though have been summoned but they had not turned up for evidence. More than 10 days have been granted for evidence but the evidence on behalf of the prosecution has not been produced.

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 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.
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.—

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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.”

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 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 the facts are taken in to account, apparently in this case the charges of criminal breach of trust is leveled for not depositing an amount of Rs.39,940/-. The petitioner is in jail since 20.10.2014 and the evidence has not been concluded till date of first date of evidence i.e. 28.01.2015 and more than 10 dates have passed. Taking into account that the delay is not attributed because of the petitioner and the gravity of the offence, I am inclined to allow this petition.
12. 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 12.05.2015 passed by the trial Court 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.
13. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
JUDGE