

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 491 of 2015**

Chhannulal Vishvakarma, S/o. Deendayal Vishvakarma, Aged About 45 Years, R/o. Dantewada, Police Station- Dantewada, District Dantewada (C.G.).

---- Petitioner**Versus**

State of Chhattisgarh, Through: District Magistrate, Dantewada, District Dantewada (C.G.).

---- Respondent

 For Petitioner : Mr. Srawan Agrawal, Advocate.
 For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****30/10/2015**

1. This is a petition under Section 482 of Cr.P.C. whereby the order dated 11.06.2015 passed by the learned Sessions Judge, South Bastar, Dantewada (C.G.) in Criminal Revision No.11/2015 is under challenge. By the said order, the Revisional Court has affirmed the order dated 06.05.2015 passed by the Chief Judicial Magistrate, Dantewada. 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 in jail since 24.08.2014 and he is facing charges under Section 420, 471, 474 of IPC and the charges have been framed on 29.01.2015. Thereafter, it is contended that the case was fixed for evidence on 26.02.2015 wherein the statement of one evidence was recorded. Subsequently, on two occasions, he submits that due to the non-availability of the counsel, the case was adjourned, however, lastly the case was fixed for 17.04.2014. Continuously the witnesses are not

present and therefore an application was moved under Section 437(6) of Cr.P.C. He further submits that even the direction was given by the Sessions Court to the JMFC wherein it was directed to decide the case within a period of 8 months. He submits that 8 months have passed, however, evidence is not concluded, therefore, he may be enlarged on bail.

3. Per contra, learned State counsel vehemently opposes the argument and would submit that as per the charges, the petitioner had obtained the employment by using forged mark sheet of his deceased brother and further on two occasions at the request of the petitioner the dates were adjourned. Consequently, the petitioner himself is liable for the delay caused and, as such, the order of the revisional Court is well merited.
4. I have heard learned counsel appearing for the parties, perused the order and the documents placed before this Court.
5. Perusal of the record would show that the charges against the petitioner is that he obtained the job of Driver on the basis of the forged mark sheet and since the report was made, after an enquiry, it was found that the petitioner has obtained the job of Driver by using the mark sheet of his deceased brother. Further, perusal of the order sheet would show that the charges were framed against the petitioner on 29.01.2015 and thereafter, the case was fixed for evidence on 26.02.2015 wherein one witness Chitrakant Dhruv was examined and cross-examined. Further, the case was fixed for 11.03.2015 but on that date the case could not be taken up. On 11.03.2015, the witnesses were not present, as such, the case was adjourned to 24.03.2015. On 24.03.2015 the counsel for the petitioner was absent though one of the witness was present and one witness was bound over to present on 08.04.2015. On 08.04.2015 another counsel was engaged by the accused and the case was adjourned to 17.04.2015. On 17.04.2015 the date was fixed for 02.05.2015 then 04.05.2015, 13.05.2015 and 25.05.2015 wherein one

witness was examined and lastly as per the order sheet the case was fixed for 06.06.2015 and on 06.06.2015 also the witness was present but the SDOP from Government side was absent, therefore, the case was adjourned.

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 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.
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:-

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.”

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 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 order and the record would show that the petitioner has been charged for the use of forged mark sheet of his deceased brother and obtained the job of Driver. Admittedly, few witnesses have been examined but at the same time one or two occasion, the case was adjourned at the request of the accused and on other occasion the witnesses were not present and on last occasion the witnesses though were present but the prosecutor was absent and the case was adjourned.
10. The accused is in jail since 24.08.2014 and admittedly the evidence is not concluded and out of 17 witness only few witnesses have been examined. Taking into the gravity of offence and the detention of the petitioner and considering the degree of offence, 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 11.06.2015 passed by the Court below is set aside and the petitioner shall be released on bail on his furnishing a personal bond of Rs.25,000/- with one 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. 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 he want to go out of the jurisdiction of the Court, he 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

Ashok