

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 640 of 2015**

Ajay Indarwar, S/o. Late Shri Gopal Indarwar, Aged About 21 Years,
Occupation- Driver, Permanent R/o. Village- Navatoli, P.S. & Tahsil- Kunkuri,
District- Jashpur, At Present R/o. Deepa Para, Ambedkar Nagar, Raigarh,
Tahsil- Raigarh, Civil & Revenue District- Raigarh, Chhattisgarh

---- Petitioner**Versus**

State Of Chhattisgarh, Through: S.H.O. of the Police Station- Saria, District-
Raigarh, Chhattisgarh

---- Respondent

For Petitioner : Mr. Abhishek Saraf, Advocate.

For Respondent/State : Mr. Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25/08/2015**

1. This is a petition under Section 482 of Cr.P.C. whereby the order dated 30.05.2015 passed by the learned Third Additional Sessions Judge, Raigarh, in Criminal Revision No.43/2015 is under challenge. By the said order, the order dated 22.05.2015 passed by the Judicial Magistrate First Class, Raigarh, in Criminal Case No.1164/2014 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 under Section 420 & 406 of IPC on the ground that on the date of incident i.e. 04.11.2014 the driver of the Swift Car reported the matter to his owner that the Car has been stolen while he was taking refresh beside the road, therefore, on 08.11.2014 a written complaint was made by the owner of the Car and the offence was registered under Section 406 & 420 of IPC.

Subsequently, the petitioner was arrested on 09.11.2014 and thereafter the charge sheet was filed. The charges were framed 20.01.2015 and the case was fixed for evidence before the JMFC on 03.02.2015. It is contended that after 03.02.2015 till date only one witness has been examined and thereafter the trial was not concluded within 60 days from the date of first evidence. The application having been made thereafter under Section 437(6) of Cr.P.C. for release of the petitioner on bail was rejected by order dated 22.05.2015 by the JMFC. Subsequently, when the order dated 22.05.2015 was challenged by the petitioner before the Third Additional District Judge, the same was affirmed by the order dated 30.05.2015, which is under challenge.

3. Learned counsel for the petitioner would submit that the case was fixed for evidence for the first time on 03.02.2015 and thereafter sixty days have passed but no evidence could be recorded. Consequently, by the mandatory provisions of Section 437(6) of Cr.P.C., petitioner is entitled for bail.
4. Learned State counsel opposes the same and would submit that prosecution was not negligent on its part to adduce evidence and the efforts were continuously made to procure the witnesses and further considering the nature of gravity of offence, petitioner is not entitled for bail.
5. I have heard learned counsel appearing for the parties, perused the documents placed.
6. This fact is not in dispute that after filing of the charge sheet, the charges were framed on 20.01.2015 and subsequently the case was fixed for evidence on 03.02.2015. The order sheet dated 22.05.2015 would reflect that after fixing of the case for evidence, one witness has been examined and the Court of JMFC rejected the application filed by the petitioner under Section 437(6) of Cr.P.C. on the ground that other witnesses have been summoned, consequently, the petitioner is not entitled for bail. Thereafter, the case was fixed from time to time but witnesses were not present.

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 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, if the facts are taken into account, it reveals that the petitioner is in jail since 09.11.2014 and the trial was fixed for evidence first time on 03.02.2015 and the same is yet to be concluded. Taking into account that the delay is not attributed because of the petitioner and further taking to the gravity of offence and the charges leveled against 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 30.05.2015 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