

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 518 of 2015

1. Nandkishore Dewangan, S/o. Vikram Dewangan, Aged About 40 Years, R/o. Ward No. 08, Sangam Chowk, Sarangarh, Police Station & Tahsil - Sarangarh, Civil & Revenue Distt. Raigarh Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through, The District Magistrate Raigarh, Distt. Raigarh Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Vivek Tripathi, Advocate
For Respondent/State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

22/09/2015

1. Challenge in this petition is to the order dated 16.06.2015, passed in Criminal Revision No.12/2015, passed by the Additional Sessions Judge, Sarangarh, District Raigarh (C.G.). By such order, the order dated 15.05.2015, passed by the Judicial Magistrate First Class, Sarangarh, District Raigarh in Criminal Case No.792/2014 in the matter of State Vs. Bhajoram & Ano., has been affirmed. The order pertains to rejection of bail under Section 437(6) of Cr.P.C.
2. Learned counsel for the petitioner submits that the petitioner is in jail since 13.10.2014 and is tried under Section 420, 467, 468, 471/34 of I.P.C. He further submits that the petitioner runs a shop of manufacturer of seal and only allegation against the petitioner is that seal is purchased from the shop of the petitioner by one Bhajoram,

which was subsequently misused to give false certificate as if that of Tahsildar. The counsel would further submit that the degree of offence which has been leveled against the petitioner is not to the extent to that of Bhajoram as he is the main culprit. He further submits that in this case initially the case was fixed for evidence on 13.03.2015 and till 11.05.2015, the evidence has not been completed. He would submit that considering the gravity of the offence against this petitioner, he may be enlarged on bail.

3. The State counsel opposes the argument.
4. I have heard learned counsel for the parties at length and perused the documents.
5. Perusal of the order sheets shows that initially the case before the trial court was fixed on 13/03/2015 for evidence but on that date witnesses were not present and 60 days passed on 11.05.2015. The order sheet of the Court below shows that till date no evidence has been recorded. Admittedly, the petitioner is in jail since 13.10.2014.
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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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.”

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. In the light of the aforesaid provision, if facts of the case are considered, it would reveal that allegations against the petitioner is that the petitioner runs a shop of manufacturer of seal and a seal embleming Tahsildar was purchased from his shop by Bhajoram. Primarily allegations are against Bhajoram and seizure has already been made. The petitioner is in jail since 13/10/2014 and the evidence has not been concluded from the first date of evidence from 13/03/2015 till date. Taking into account that the delay is not attributed because of the petitioner and considering the gravity of the charges leveled against the petitioner which is not at par that of Bhajoram Dewangan, I am inclined to allow this petition.
10. In view of the above, the petitioner is entitled to be released on bail under Section 437(6) of Cr.P.C. The impugned order dated 16.06.2015 passed by the trial Court is set aside and the petitioner shall be released on bail on 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.
11. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge