

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM NO. M-14978 of 2015
DECIDED ON : JULY 17, 2015**

RAM LAL

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporter of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present : Mr. Sukhdeep Singh Sidhu, Advocate
for the petitioner.

Mr. RPS Sidhu, AAG, Punjab

JASPAL SINGH, J. (ORAL)

Instant petition has been preferred under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C") for setting aside the order dated February 10, 2015 (Annexure P-11) passed by learned Judicial Magistrate Ist Class, Bathinda as well as order dated March 23, 2015 (Annexure P-12) passed by learned Additional Sessions Judge, Bathinda whereby revision filed by petitioner against order dated February 10, 2015 (Annexure P-11) seeking relief of bail under Section 437(6) Cr.P.C. in case FIR No. 120 dated October 08, 2013 under Sections 420, 465, 467, 468 and 471 IPC registered at Police Station Nahianwala, District Bathinda was dismissed, with further prayer that petitioner be released on bail under Section 437 (6) Cr.P.C.

2. Previously, petitioner moved an application under Section 438

Cr.P.C. seeking his pre-arrest bail in the case referred to above before learned Additional Sessions Judge, Bathinda. Though, arrest of petitioner was stayed by learned Additional Sessions Judge, Bathinda vide order dated December 24, 2013 but subsequent thereto, vide order dated August 07, 2014, that application was dismissed. Consequently, petitioner surrendered himself before learned trial Court and report under Section 173(2) Cr.P.C. was presented against him on August 19, 2014. Thereafter, petitioner was charge-sheeted under Sections 420, 465, 467, 468 and 471 IPC by learned trial Court vide order dated September 30, 2014. Since, petitioner did not plead guilty to the charge, case was fixed for prosecution evidence for October 14, 2014.

3. A perusal of copies of various orders passed by learned trial Court after framing charge for examination of prosecution witnesses reveals that trial was adjourned time and again. A close scrutiny of interim (zimni) orders transpires that complainant is not co-operating in the proceedings before learned trial Court even though he has engaged counsel to prosecute his case.

4. It is also pertinent to mention here that after dismissal of bail application preferred by petitioner under Section 437 (6) Cr.P.C. vide order dated February 10, 2015 by the trial Court, case was fixed for evidence of complainant. Complainant was summoned through bailable warrants for February 12, 2015 and then for February 26, 2015. On February 26, 2015, complainant despite service did not appear to lead his evidence. As a consequence thereof, he was ordered to be summoned through non-bailable warrants for March 24, 2015. Even on March 24, 2015, complainant did not turn up and failed to present himself in witness box. The case was adjourned for April 03, 2015. Again no evidence was recorded by learned trial Court on April 03, 2015 and case was adjourned to April 17, 2015.

Similarly, no prosecution witness was present or examined on April 17, 2015 and case was adjourned for prosecution evidence for May 14, 2015 i.e. the date whereafter, instant petition is preferred.

5. It would also be not out of place to mention here that no reason has been assigned by learned trial Court for declining the relief of bail under Section 437 (6) Cr.P.C. Similarly, no reason was also assigned by learned revisional court while dismissing revision vide order dated March 23, 2015 (Annexure P-12) preferred by petitioner.

6. It would be appropriate to reproduce the relevant provision contained in Section 473 (6) Cr.P.C, which reads as under:

“437. When bail may be taken in case of non-bailable offence.

(1) to (5) XX XX XX XX XX XX XX XX

(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.

(7) XX XX XX XX XX XX XX XX

7. A glance at the aforesaid provision makes it crystal clear that in a case of non-bailable offence, triable by Magistrate, the trial has not been concluded within a period of sixty days from the first date fixed for taking evidence and that accused remained in custody during the whole of the said period then he becomes entitled to be released on bail. However, benefit of above-referred provision can only be declined by learned Magistrate by recording sufficient reasons in writing.

8. From perusal of various interim/zimni orders passed by learned

Magistrate, which are not otherwise disputed by learned State counsel, it is clear that first time the case was fixed for prosecution evidence on October 14, 2014. Thereafter, case was adjourned time and again. Meaning thereby, that trial has not been concluded within a period of sixty days from the date case was fixed for first time for prosecution evidence, especially when accused is in custody continuously.

9. Admittedly, petitioner remained in custody during the afore-said period, for which, only prosecution can be blamed. No delay in disposal of trial can be attributed to petitioner. As such, he becomes entitle to the concession of bail under Section 437 (6) Cr.P.C.

10. To fortify the observation made by this Court we can have reference of various pronouncements captioned as *Sukhdev Singh vs. State of Punjab; 2009 (3) RCR (Criminal) 291; Smt. Kamlesh vs. State of Haryana; 2009 (4) RCR (Criminal) 974* as well as that of Madhya Pradesh High Court (Gwalior Bench) in the case of *Raj Kumar @ Raj Kumar Rathore vs. State of M.P; 2000 (3) RCR (Criminal) 126*. All these authorities are fully applicable in the facts and circumstances of the case in hand.

11. Resultantly, instant petition is allowed and order dated February 10, 2015 (Annexure P-11) passed by learned Judicial Magistrate Ist Class, Bathinda as well as order dated March 23, 2015 (Annexure P-12) passed by learned Additional Sessions Judge, Bathinda are set aside. Consequently, application moved by petitioner under Section 437(6) Cr.P.C. stands allowed. Petitioner is ordered to be released on bail at the satisfaction of learned trial Court/Duty Magistrate, Bathinda.

JULY 17, 2015
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(JASPAL SINGH)
JUDGE