

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

CRM No.M-2519 of 2016 (O&M)

Date of Decision: 29.01.2016

Balwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. K.B. Raheja, Advocate for the petitioner.

Mr. D.S. Virk, AAG, Punjab.

....

TEJINDER SINGH DHINDSA.J.

The present petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail to the petitioner pending trial in case FIR No.197 dated 03.12.2014, under Sections 409/420/465/467/468/471 IPC, registered at Police Station Nathana, District Bathinda.

Suffice it to notice that the process of law was set in motion on the basis of a written complaint of Kuldeep Kumar, Assistant Registrar, Cooperative Societies, Bathinda. Allegations against the present petitioner as per complaint are of misappropriation of an amount of Rs.80 lacs approximately. Petitioner was arrested on 17.03.2015. After completion of investigation, challan was presented on 01.07.2015.

Section 437(6) Cr.P.C. reads in the following terms:

“Section 437(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.”

An application moved by the present petitioner under the aforesaid provision seeking benefit of bail has been declined by the learned Judicial Magistrate 1st Class, Bathinda in terms of order dated 01.12.2015. Even a revision petition preferred by the petitioner has been dismissed by the learned Additional Sessions Judge, Bathinda vide order dated 02.01.2016 thereby affirming the order dated 01.12.2015 passed by the Judicial Magistrate 1st Class, Bathinda.

Perusal of the order dated 01.12.2015 passed by the learned Judicial Magistrate 1st Class, Bathinda at Annexure P-3 would reveal that the gravity of the offence has weighed with the Court while declining the bail application. The Court has observed that keeping in view the allegations of misappropriation of public money, the petitioner '**might**' tamper with prosecution witnesses.

While upholding such view, the learned Additional Sessions Judge, Bathinda in addition has observed that the trial has been delayed at the instance of the defence counsel. In other words, delay is sought to be attributed to the present petitioner and accordingly benefit under Section 437 (6) Cr.P.C. has been declined.

Having heard counsel for the parties at length, this Court is of the considered view that the petitioner is held entitled to the benefit of bail under Section 437(6) Cr.P.C.

Under the provision, in any case triable by a Magistrate of an accused of any non-bailable offence and if the trial is not concluded within a period of 60 days and if the accused remains in custody throughout such period, he would be entitled to the benefit of bail unless for reasons to be recorded in writing, the Magistrate otherwise directs.

Needless to mention that the reasons to be assigned by the Magistrate while declining the benefit of Section 437(7) have to be valid and cogent reasons.

In the present case, the Judicial Magistrate 1st Class, Bathinda has been swayed by the allegations levelled against the petitioner as regards misappropriation of public money. Based solely on the allegation, it has been observed that the petitioner '**might**' influence the course of trial. This is nothing but a conjecture and a surmise. Even the order dated 02.01.2016 passed by learned Sessions Judge, Bathinda attributing delay in the course of trial to the accused/present petitioner is perverse. In this regard, the zimni orders as regards the trial proceedings have been placed on record at Annexure P-2 colly and the same has been perused. The same would reveal that only on two occasions, the defence counsel had sought time to cross examine PW1 and PW2 and on the dates so granted, cross examination was done. This Court does not find any delay at the hands of the present petitioner insofar as the trial proceedings are concerned.

This Court would be constrained to observe that the orders passed by the Judicial Magistrate 1st Class, Bathinda dated 01.12.2015 as also dated 02.01.2016 passed by the learned Additional Sessions Judge, Bathinda are unsustainable.

Gravity of offence by itself cannot be a valid ground and basis to decline the benefit under Section 437(6) Cr.P.C. In this regard, I would draw support from the view taken by a coordinate Bench of this Court in ***Sukhdev Singh vs. State of Punjab, 2009(3) RCR (Criminal) 291.***

For the reasons recorded above, the present application is allowed. Impugned orders passed by the Courts below are set aside.

Petitioner is directed to be released on bail on furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Bathinda.

Trial Court is, however, directed to conclude the trial expeditiously and preferably within a period of six months from today.

Disposed of.

29.01.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**