

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 1692 OF 2017

Parmeshwaridin Pal	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. S.R. Pathak, Advocate for the applicant.
Mr. S.R. Agarkar, APP for the respondent/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **12th October, 2017.**

P.C.:

This Application for bail is made under section 437(6) of the Code of Criminal Procedure. The applicant/accused is facing charges under section 420 r/w. 34 of the Indian Penal Code and his first Bail Application was rejected by this Court on 1st February, 2017. This being the Application under section 437(6), this Court cannot consider the ground which can be considered at the time of regular bail. The only ground and circumstances to be considered under section 437(6) are why within the period of 60 days from the first date fixed for taking evidence, the trial was not concluded and for rejecting the bail whether the Magistrate has given the reasons in writing.

2. The charge was framed on 14th February, 2017. The first date of recording of evidence was fixed on 28th February, 2017, so the trial

legally and ideally was to be concluded on 29th April, 2017. However, the trial was not concluded, so the accused preferred Application before the trial Court which was rejected on 12th May, 2017 by Additional Chief Judicial Magistrate, Pune and against which the accused filed Criminal Revisional Application before the learned Sessions Judge, which was rejected on 6th July, 2017. Thereafter this second Bail Application is filed. While rejecting the Application, the learned Magistrate has given reasons that summons were issued by the Judge on 24th April, 2017, i.e., before completion of 60 days. The main ground given is that considering the pendency of the cases and workload of police agency, it is impossible to complete all the trial within a period of 60 days. He has further stated that opportunity to complete the evidence is to be given to the prosecution.

3. The learned counsel for the applicant/accused has submitted that the reasonings given by the learned Judge while rejecting the Application for bail are not proper. He should not have considered the pre-charge conduct of the accused and has wrongly observed that the accused tried to get adjournment to avoid framing of charge. The learned Magistrate ought not to have considered that the accused is facing the charges of cheating and High Court has

rejected the Application for bail on merits. He submitted that after framing of the charge, the accused has moved an application for alteration of charge, i.e., charge under section 420 to be deleted and it is only to be tried under section 406 of the Indian Penal Code. However, the said Application was rejected. The said Application was moved on 28th July, 2017 and it was dismissed on 16th September, 2017. Thus, the said application was moved after the period of 60 days was over. He further submitted that the learned Judge has erroneously considered other facts and reasons which are not permissible to be taken into account while dealing with Bail Application under section 437(6) of Cr. P.C. In support of his submissions, the learned counsel relied on following decisions:

- (i) Riaz Abdul Razack Zunzunia vs. State of Gujarat¹
- (ii) Shri Tarkeshwar Goraknath Pandey vs. State of Maharashtra²
- (iii) Balay @ Bhalchandra Anandrao Madavi vs. State³

He further submitted that in the case of **Riaz Abdul Razack Zunzunia** (*supra*), the learned Single Judge of Gujarat High Court has held that under the provisions of section 437(6), a accused of any non-bailable offence is entitled to be released on bail. It appears

1 2010 ALL MR (Cri) Journal 44

2 2011 ALL MR (Cri) 1608

3 2013 ALL MR (Cri) 661

that section 437(6) of the Cr. P.C. is mandatory in nature and is more in nature of default bail envisaged under section 167(2) of the Cr.P.C. He further submitted that as per the principles of criminal jurisprudence, every person is held to be innocent unless he is held guilty and therefore, rejection of the bail at this stage and not considering the principles laid down under section 437(6) will amount to punishment to the applicant/accused.

4. Per contra, learned APP opposed the Bail Application and submitted that the learned Magistrate has given the reasoning for rejection of bail. He has issued summon for witnesses before 60 days and the complainant is examined. He submitted that it is the duty of the accused to cross-examine the witnesses but till today, no efforts are made by the learned counsel for the applicant/accused to cross-examine the complainant. He has submitted that adjournments are sought by the accused on the ground that the application for bail under section 437(6) is pending before the Sessions Court and now before the High Court. He submitted that for this reason, the Magistrate cannot be blamed for not concluding the trial within 60 days.

5. Perused the cases cited before this Court and so also the order passed by the learned Magistrate. It is true that the learned Magistrate has erroneously considered the conduct of the accused before framing of the charge which he ought not to have taken into account. The reasons given by the learned Magistrate for not entertaining the bail is that the Court is overburdened and it is not possible for the Court to finish all the trials within 60 days. It appears from the record that the complainant is examined and if at all the Magistrate has to consider the Bail Application even under section 437(6), then the Magistrate needs to take into account the evidence of the complainant and whether is there any incriminating material against the accused. However, the learned Magistrate has not considered the said aspect but this Court cannot overlook this factual position that complainant's evidence is on record as on today before the Magistrate.

6. The Magistrate has stated that the accused was not produced before the Court by the police and secondly, the witnesses are not produced before the Court by the police machinery. It is made clear that despite the evidence of the witnesses, the Magistrate can invoke the powers under section 437(6) if he is satisfied. It is not necessary

to keep the accused in the jail. Such circumstances may be due to failure of police to produce further witnesses or there is nothing incriminating against the accused or any other circumstances. It is to be remembered that the Magistrate is not helpless but needs to follow Criminal Procedure Code. The purpose of section 437(6) is to ensure speedy trial to the accused. Non-production of the witnesses should not be tolerated by the Magistrate, as it is a duty of the police machinery to produce them on the given dates before the Court. On the other hand, it is equally the responsibility of the Magistrate not to send the witnesses back without examination. The Judge has to respect the time of the people. The learned Magistrate should adhere to the procedure laid down in the Cr. P.C. and keep this case on day-to-day basis. I am informed by the Investigating officer, who was present in the Court that approximately 20 witnesses are to be examined. In view of this, I am granting the period of 40 working days to the learned Magistrate so that one witness is to be kept present everyday and is to be examined and cross-examined on the same day. The timetable is to be given to the Investigating officer accordingly and the Investigating officer shall follow the timetable of the learned Magistrate. No adjournment is to be sought either by the Investigating officer or by the learned counsel for the accused. If the

learned counsel for the accused wants any adjournment, then the benefit is to be given to the prosecution. All the evidence is to be concluded on or before 15th December, 2017.

7. Bail Application is disposed of.

(MRIDULA BHATKAR, J.)