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

**CRM-M No. 11273 of 2017
Date of Decision: 02.06.2017**

Avtar Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.P. Dhir, Advocate,
for the petitioner.

Mr. Shilesh Gupta, Additional A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

The petitioner remained unsuccessful in his attempt to seek regular bail in case bearing F.I.R. No. 45 dated 28.02.2015, under Sections 420, 465, 467, 468 and 471 I.P.C. and under Sections 65, 66 and 66-A of the Information Technology Act, registered at Police Station Tanda, District Hoshiarpur.

CRM-M No. 24516 of 2016 was withdrawn on 04.08.2016. Thereafter, the application under Section 437 (6) Cr.P.C. was filed before the Magistrate on 10.08.2016, on the ground that the trial has not been concluded within the prescribed period of 60 days from the first date fixed for recording of the evidence.

Petitioner is in custody since 12.12.2015. Charges were framed on 13.05.2016.

Judicial Magistrate 1st Class, Dasua, vide order dated 02.09.2016, dismissed the application on the ground that the petitioner is accused of the offence of heinous nature. The order was upheld by the revisional Court on the same premise.

It is true that an application under Section 437 (6) Cr.P.C. can be declined by the Magistrate for the reasons to be recorded in writing. In a case triable by the Magistrate, the trial of a person of any non bailable offence, if not concluded within a period of 60 days from the first date fixed for taking evidence, then such person shall be released on bail to the satisfaction of the Magistrate, unless for the reasons to be recorded in writing the Magistrate otherwise directs. The aforesaid direction is couched in a mandatory tenure, however, with a reservoir for dismissal of the prayer, in case the order is followed by reasons.

The trial Court while rejecting the prayer has only recorded that the offence is serious in nature. In **Manoranjana Singh @ Gupta vs Central Bureau Of Investigation, 2017 (1) R.C.R. (Criminal) 1025**, Hon'ble Apex Court has observed that seriousness of the charge can be one of the relevant considerations, but the same is not the only test.

In my considered view, the trial Court has not adverted to the requirement of Section 437 (6) Cr.P.C. The orders ought to be supplemented by reasons. The trial Court is under legal obligation to examine the application of bail as per requirement and seriousness of the offence is not the only criteria on which the right of accused is to be tested. The grant or denial of privilege in favour of the petitioner is regulated to a large extent by the facts and circumstances of the case and the seriousness of the offence should not be made the only criteria for declining the prayer in question.

In view of above, the order dated 02.09.2016, passed by the Judicial Magistrate Ist Class, Dasua, and order dated 16.03.2017, passed by the Additional Sessions Judge, Hoshiarpur, are hereby set aside. The Judicial Magistrate Ist Class, Dasua, is directed to reconsider the application under Section 437 (6) Cr.P.C. in accordance with law preferably within a period of one week from the date of receipt of copy of this order.

Disposed of.

June 02, 2017

Apurva

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No