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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 06.03.2017*

+ W.P.(CRL.) 545/2015 & CRL.M.A. No.1683/2016

KARAN PAL SINGH ADVOCATE Petitioner

Through Petitioner in person

versus

UNION OF INDIA AND ANR. Respondents

Through Mr.Rahul Mehra, Sr.Standing
Counsel for the GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present public interest petition is filed under Article 226 of the Constitution of India by the petitioner with the prayer that this court may pass standing and bondable directions to all courts of Metropolitan Magistrate/ Additional Metropolitan Magistrate/ Chief Metropolitan Magistrate in the jurisdiction of this court relating to the provisions of Section 437(6) Cr.P.C. namely that if the trial cannot be concluded within specified period of sixty days from the first date fixed for taking evidence, the accused be released on bail without any further delay provided that there are no very, very, very special reasons to deny it.

2. The petitioner is an advocate by profession. He submits that he is filing the present petition for the benefit of under trials whose cases are pending before various courts and who are in judicial custody due to non-conclusion of the cases within a period of sixty days from the first date fixed

for taking evidence in the case.

3. The petitioner has in his petition relied upon the judgments of the various High Courts where directions have been passed in exercise of the powers under Section 437(6) of the Cr.P.C.

4. The petitioner further avers that a time of about 7-8 months usually gets consumed in the process of investigations, framing of charges and the sixty days time to conclude the trial. In between the accused is under custody as an under trial. The petitioner further avers that appropriate courts ignore this fact while deciding the bail application. It is further stated that confinement during the trial in judicial custody is a punishment before conviction/judgment and nobody can return that time spent by the accused in judicial custody during the trial if he is acquitted.

5. It is also pointed out that total capacity of Tihar Jail is only about 6250 prisoners. However, the Jail has more than 10,000 prisoners. Based on the above submissions and on the observations of various courts on the said provision, the petitioner has moved the present petition.

6. Section 437(6) of the Cr.P.C. reads as follows:

“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.”

Hence, where the case is triable by a Magistrate and the trial has commenced against an accused for a non-bailable offence, in case the trial does not conclude within a period of sixty days from the first date of taking

evidence in the case, the accused if he is in custody should be released on bail but the court has the option not to release the accused on bail for reasons to be recorded in writing. Hence, it is not in every case where the stipulated conditions are met that an accused who is in custody is to be released on bail.

7. The Supreme Court in the case of ***Gurcharan Singh & Ors. v. State (Delhi Administration)***, (1978) 1 SCC 118 held as follows:

“20.....This proviso is an innovation in the new Code and is intended to speed up investigation by the police so that a person does not have to languish unnecessarily in prison facing a trial. There is a similar provision under sub-section (6) of Section 437 Cr.P.C. which corresponds to Section 497(3A) of the old Code. This provision is again intended to speed up trial without unnecessarily detaining a person as an under trial prisoner, unless for reasons to be recorded in writing, the Magistrate otherwise directs.....”

8. A Division Bench of this court in ***Robert Lendi v. The Collector of Customs & Anr.***, 1986 (11) DRJ 157 interpreted Section 437(6) of the Cr.P.C. as follows:

“16. This brings us back to Sub-section (6) of Section 437. The object of Sub-section 6 of Section 437 is that if the trial of non-bailable offences in the court of a Magistrate is not concluded within sixty days from the first date fixed for taking evidence in the cases, 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.

.....

18. The next question that arises for consideration is whether while refusing bail under sub-section (6) of Section 437 of the Code the Magistrate can only refuse bail on the limited reasoning germane to the cause of delay and whether the bail can be refused on the general grounds recognized as good for refusal to grant bail. Undoubtedly, the

object of sub-section (6) of Section 437 of the Code is to eradicate delay in trial. To us, it appears that it is equally important that the ends of justice do not suffer. The procedural laws are essentially meant to safeguard the interest of justice. The twin objects namely to eradicate the delay in trial and to achieve the ends of justice are necessarily to be harmonised. It is in that context one has to find out whether the discretion exercised by the Magistrate, in withholding bail after sixty days, has been properly and judicially exercised. We find nothing in the provision to support the assertion of Mr.Mehta that reasons for declining the bail under this provision should be only those which are germane to the cause of delay. There is no reason to give such a restricted meaning to the provision. The expression used in the provision is “unless for reasons to be recorded in writing, the Magistrate otherwise directs.” A plain reading of the expression shows that the legislature has put no fetters on the powers of the Magistrate that under this provision bail can only be refused for reasons germane to the cause of delay. If that were so, the Legislature would have certainly made it clear. To us it appears that the consideration for refusing bail under this provision can be the reasons which are generally invoked and understood in law as the grounds for refusing bail. All that is required of the Magistrate is that should he decide to declining to grant bail, he must record his reasons in writing. There are no fetters placed on the exercise of this discretion.”

Hence, Section 437(6) of the Cr.P.C. gives discretion to the Magistrate. He may refuse to grant bail. The only fetter on his power is that he must record reasons for declining the bail in writing.

9. In the light of the above said provision, the Magistrate would obviously exercise his discretion in a judicial manner depending on the facts and circumstances of the case, gravity of the offence, quantum of punishment and the manner in which the applicant is involved, in the offence, as alleged by the prosecution, etc.

10. No straight jacket formula can be laid down as is sought by the

petitioner in the present petition. There obviously cannot be any mathematical formula. Hence, the present petition is dismissed. All the pending applications also stand dismissed.

**JAYANT NATH
JUDGE**

MARCH 06, 2017v

CHIEF JUSTICE

