

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1046 of 2018**

Kumud Kumar Sahu, S/o. Shri J.K. Sahu, Aged About 59 Years, Post Branch Manager, Jila Sahkari Kendriya Bank Maryadit, Branch Deobhogh. R/o. Sai Darshan Nagar, Jorapara- Raipur, P.S. Telibandha, Tahsil & District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh, P.S. Deobhogh, District- Gariyaband, Chhattisgarh.

---- Respondent

For Petitioner : Mr. J.A.Lohani, Advocate

For Respondent-State : Mr. Ashish Shukla, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****07.08.2018**

1. The instant petition is against the order dated 10.01.2018, passed by the Court of Additional Sessions Judge Gariyaband in Criminal Revision No.35/2017. By such order, the order passed by the J.M.F.C. Deobhog dated 21.09.2017 whereby the application under Section 437(6) of Cr.P.C. was dismissed as affirmed.
2. The facts of the case, in brief, is that the petitioner was working as a Branch Manager of Jila Sahakari Kendriya Bank Maryadit, Deobhog and while working as Branch Manager, he in connivance with other persons made misappropriation in purchase of paddy which caused loss of Rs.4,01,96,145/- to the State. Thereafter, an enquiry was carried out and after the enquiry, the report was made wherein the offence under Section 409, 420, 423, 467, 468, 471 & 120-B of Indian Penal Code was registered and the petitioner was arrested on 20.10.2016.

3. Learned counsel for the petitioner would submit that after the charge was framed on 07.11.2016, the case was fixed for evidence on 21.11.2016, thereafter no substantial progress has been taken in this case, the petitioner is still in jail and the evidence is not concluded within a period of 60 days and further the voluminous documents are present in this case which are documentary in nature and the witnesses may take time. It is further stated that no amount was transferred in the account of the present petitioner thereby he was not financially benefited. Consequently, it will not have adverse impact, if the petitioner is released on bail.
4. Per contra, learned State counsel opposes the bail and would submit that the order sheets would show that the case is fixed twice in a month so as to make early disposal, therefore, there is no deliberate omission has been committed on the part of the prosecution. He further submits that the order passed by the learned Court below is well merited, which do not call for any interference.
5. This fact is not in dispute that the petitioner was arrested on 20.10.2016 and the order sheet would show that the charge was framed on 07.11.2016 and thereafter the case was fixed for evidence on 21.11.2016. The order sheet would further show that till 21.09.2017 only one witness Ashwanath Singh was examined and other witnesses are still to be cross-examined. Further the order of the learned Additional Sessions Judge would show that the application under Section 319 of Cr.P.C. was filed, which is pending adjudication.
6. In the case of ***Riza Abdul Razak Zunzunia vs. State of Gujarat***¹, the scope, extent and object of provisions contained in Section 437(6) of Cr.P.C. has been considered and observed as under :-

1 2009 Cr.L.J. 4766

21. The question that arises for determination is as to what would be the considerations which would weigh with the Magistrate while deciding an application under Section 437(6) of the Code. Whether the reasons for not releasing an accused on bail would be similar to the reasons for not granting regular bail or whether some special circumstances should exist for the purpose of declining grant of bail under Section 437(6) of the Code? On behalf of the Bank it has been contended that factors like existence of a prima facie case, gravity of the offence and the likelihood of conviction which give rise to a belief that the accused is not likely to remain present at the time of the trial are required to be taken into consideration, whereas on behalf of the applicant it has been contended that such factors are not germane while deciding an application under Section 437(6) of the Code. On a plain reading of the provision as well as considering the object behind enacting the said provision if the contention advanced on behalf of the Bank viz. the prima facie case, gravity of offence, involvement of the accused, etc. are the factors which are to be taken into consideration while deciding the application under Section 437(6) of the Code, were to be accepted, the same would render the said provision nugatory, inasmuch as if the same reasons for which the application for regular bail is refused, are to be considered while deciding the application under Section 437(6) of the Code, there would be no necessity for making such a provision. The application under Section 437(6) of the Code would stand rejected merely on the ground that the application for regular bail had been rejected. In the opinion of this Court, the factors which should be kept in mind while considering an application under Section 437(6) would be different from the factors that are to be taken into consideration while deciding an application for regular bail. Though it may not be possible to lay down any exhaustive list of such factors which may be taken into consideration while deciding the application under Section 437(6) of the Code, some relevant factors would be whether the trial has been delayed on account of the default on the part of the applicant;

whether the accused has at any stage during the course of investigation or as an under trial prisoner been absconding; if having regard to the facts of the case there is every likelihood of his jumping bail; or if there are special circumstances due to which it may be deemed expedient not to exercise powers under Section 437(6) etc. But bail cannot be refused for reasons which are generally invoked for refusing bail. The following observations made by the Apex Court in *Aslam Babalal Desai v. State of Maharashtra*, (1992) 4 SCC 272: (1992 Cr.L.J.3712) in the context of compulsive bail under the proviso to Section 167(2) are apt even in the context of Section 437(6) of the Code: “15. Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously or does not complete it within the time allowed by law.

22. Drawing an analogy, it can be safely stated that law expects early conclusion of cases triable by Magistrate. The delay in completion of trial in such cases, must therefore, be at the pain of the accused being released on bail, except where the Magistrate by reasons recorded in writing otherwise direct. The said provision therefore, has to be construed strictly in favour of individual liberty. Importing the grounds relevant for the purpose of granting regular bail, for the purpose of deciding an application for bail under Section 437(6) of the Code would not only amount to doing violence to the statute but would defeat the very object of introducing such a provision and reduced it to a mere dead letter. The prosecution, therefore, cannot be permitted to trifle with individual liberty if it does not diligently pursue the proceedings before the Magistrate to ensure that the trial is concluded within the period prescribed under Section 437(6) of the Code.”

7. In a series of decisions including decision of this Court in the case of ***Lal Sahu Vs. State of Chhattisgarh***², ***Haricharan Ramteke v. State of Chhattisgarh***³, ***Smt. Godawari Bai and Others vs. State of Chhattisgarh***⁴ and decision of other High Courts cited before this Court, the scope and ambit of provision contained under Section 437(6) of Cr.P.C. has been considered. Broadly speaking while considering application for grant of bail under Section 437(6) of Cr.P.C., the considerations are those which have been laid down by this Court in the case of ***Lal Sahu (supra)*** in para 11 which is reproduced herein below :

“11. The question that arises for determination is as to what factors should weigh with the Magistrate while refusing grant of bail under sub-section (6) of Section 437 of the Code. In my considered opinion, apart from the gravity of offence and the quantum of punishment, one or more of the following factors, among others may weigh with the Magistrate while refusing bail:-

- (a) the overall impact of the offence and the release of the person accused of such offence on the society,
- (b) the possibility of tampering of evidence by the accused,
- (c) the possibility of the accused absconding if released on bail, and lastly,
- (d) the delay in conclusion of the trial within a period of 60 days if attributable to the accused.”

8. Considering the principles laid down as above, if the facts are translated in the facts of this case, it would show that though certain witnesses have been examined but the evidence is not yet concluded and an application under Section 319 of Cr.P.C. is still further filed. Therefore, prima facie, it appears that the delay is not attributed because of the petitioner. Further taking into the nature of allegations and position of the petitioner, I am of the

2 2012 (1) MPHT 67

3 2001 (2) MPHT 51 (CG) : 2002 Cri. LR 46 (M.P.)

4 2004 (4) MPHT 5 (CG) : 2004 (2) CGLJ 135

opinion that the present is a fit case to release the petitioner/accused under Section 437(6) of Cr.P.C.

9. In the result, the petition is allowed and the orders passed by the Court below are set aside. The petitioner shall be released on bail on his furnishing personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court. He shall appear before the trial Court on each and every date of hearing, unless exempted.

Sd/-
Goutam Bhaduri
Judge

Ashok