

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 321 of 2019

Ashish Jha, S/o. Surya Kant Jha, Aged About 42 Years, R/o. Bunglow No. 1, Pallavi Vihar, Gol Chowk, P.S. - D.D. Nagar, Raipur, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through The Police Station Pandri, Raipur, District : Raipur, Chhattisgarh

---- Respondent

For Petitioner	:	Mr. B.P. Sharma with Mr. Manay Nath Thakur, Advocates for the Petitioner.
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For Respondent-State	:	Mr. Chandresh Shrivastava, Dy. A.G.
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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

07.03.2019

Heard

1. The present petition is against the order dated 27.11.2018 passed in Criminal Revision No.438/2018 by the Second Additional Sessions Judge Raipur whereby the order dated 26.07.2018 passed by the Judicial Magistrate rejecting the application under Section 437(6) of Cr.P.C. for bail was affirmed.
2. Learned counsel for the petitioner would submit that the petitioner was a collection agent, he was not in the helm of affairs of the company who has collected the money and after arrest of the petitioner on 12.07.2017 the charges were framed on 12.12.2017 and the first evidence was recorded on 22.12.2017. Thereafter, the evidence has not been completed within 60 days, therefore, the petitioner may be enlarged on bail. He submits under the circumstances, the petitioner would have been given the benefit of

Section 437(6) of Cr.P.C. He further submits that all the evidences are documentary in nature and no purpose would be served to keep the petitioner in jail as it would defeat the provisions of Section 437(6) of Cr.P.C.

3. State counsel opposes the argument advanced by the learned counsel for the petitioner.
4. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
5. In the case of **Atul Bagga versus State of Chhattisgarh, 2010 Cr.L.J.508**, this Court considered the scope, extent and object of provisions contained in Section 437 (6) of the Code and held:

“10. -----

“Sub-section(6) of Section 437 of the Code carves out an exception to the provision contained in clause(i) of sub-section (1) of Section 437 of the Code and reads as follows:

“437. When bail may be taken in case of non-bailable offence.—

xxxxxxx xxxxxxxx xxxxxxxx

(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.

It would, thus, appear that under the first limb of sub-section (6) of Section 437 of the Code where the trial of a person accused of any nonbailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence in the case, the law mandates that 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. The second limb of sub-section (6) of Section 437 of the code carves out an exception and empowers the Magistrate to refuse bail for reasons to be recorded in writing. It is, therefore, open to a Magistrate to refuse bail under subsection (6) of Section 437 of the Code where the Magistrate assigns reasons in writing which are amenable to scrutiny by a superior Court for examining whether the Magistrate was justified for reasons recorded by him in writing in refusing bail under sub-section(6) of Section 437 of the code. If the reasons assigned by the Magistrate justify refusal of bail and cannot be termed arbitrary then the order refusing bail by

the Magistrate under sub-section (6) of Section 437 of the Code would be in accordance with law and not open to interference in revision.

“11. The question that arises for determination is as to what factors should weigh with the Magistrate while refusing grant of bail under subsection (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.”

6. In the case of **Riza Abdul Razak Zunzunia vs. State of Gujarat, 2009**

Cr.L.J. 4766, similar view has been taken in following words by observing

as below:-

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 directs. 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 reduce 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 the light of the aforesaid provision and the nature of allegations, it is stated that the petitioner was working as Area Manager of the Company named & styled as Speak Asia & Aerolike Company and he is only an employee. Perusal of the order would show that after the first evidence was recorded on 22.12.2018, the evidence could not be concluded within the stipulated time and the delay cannot be attributed to the petitioner. Taking into consideration that the delay is not attributed because of the petitioner and the gravity of the offence and nature of involvement in crime that of petitioner, I am inclined to allow this petition.
8. In view of above, the petitioner is entitled to be released on bail under Section 437(6) of Cr.P.C. The impugned order dated 27.11.2018 passed by the Court below is set aside and 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.
9. Accordingly, the petition is allowed.

Sd/-
Goutam Bhaduri
Judge