

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.506 of 2019

Raj Kishore Harbansh, S/o Late Shri Tularam Harbansh, aged about 53 years, R/o Raj Kishore Nagar, Phase-II, Quarter No.127, Bilaspur, P.S. Sarkanda, Bilaspur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Anti Corruption Bureau, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Achyut Tiwari, Advocate
For Respondent/State	:	Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

10.5.2019

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 2.4.2019 passed by the Special Judge under the Prevention of Corruption Act (henceforth 'the PC Act'), Bilaspur in Special Criminal Case No.258 of 2015, whereby the application filed by the Applicant/accused under Section 436-A of the Code of Criminal Procedure for grant of default bail has been rejected.
3. Briefly stated the facts of the case are that the Applicant/accused was arrested on 2.6.2015 in connection with Crime No.38 of 2011 for alleged offences punishable under Sections 13(1)(e) and 13(2) of the PC Act. After filing of the charge-sheet, on 23.11.2015, the

Special Court framed charges against the Applicant/accused for offences punishable under Sections 13(1)(e) and 13(2) of the PC Act. Regular bail application of the Applicant under Section 439 of the Code of Criminal Procedure has already been rejected. Since the charges framed against the Applicant are under Sections 13(1)(e) and 13(2) of the PC Act, which are punishable by the maximum prescribed sentence of imprisonment for 7 years, on 19.3.2019, an application under Section 436-A of the Code of Criminal Procedure was filed by him for grant of default bail on the ground that he has already remained in custody for more than 3 years and 9 months and, therefore, he is entitled to get default bail. Vide the impugned order dated 2.4.2019, the Special Court has rejected the application of the Applicant under Section 436-A of the Code of Criminal Procedure on the ground that only the statements of defence witnesses are left to be recorded and thus the case is at final stage. Hence, the present revision by the accused.

4. Learned Counsel appearing for the Applicant/accused submits that there is nothing on record to show that the Applicant caused any delay in trial. He further submits that though presently the case is at the stage of recording of statements of defence witnesses, from the order-sheets of the Trial Court it reveals that on 31.7.2018, the defence has submitted a list of 32 witnesses for examination and since then only 7 defence witnesses have been examined. Recording of statements of remaining defence witnesses are yet to be done. He further submits that on 2.1.2019 examination-in-chief of the accused has been concluded. Thereafter, the case is still pending for cross-examination of the accused. In fact, the prosecution itself is causing delay in trial by seeking adjournments

on the ground of cross-examination of the accused. Since the accused has not been cross-examined by the prosecution itself for the last 4 months and recording of statements of remaining 25 defence witnesses are still left, it can be inferred that trial will take much more time to conclude. There has been no effort on the part of the accused to cause any delay in the trial. Provisions of Section 436-A of the Code of Criminal Procedure are mandatory in nature. The Special Court has rejected the application for default bail only on the ground that the case is at final stage. Therefore, the rejection is not in accordance with law. The Applicant/accused is in custody since 2.6.2015. Therefore, he may be admitted to benefit of default bail.

5. Learned Counsel appearing for the Respondent/State supports the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the material available minutely.
7. Section 436-A of the Code of Criminal Procedure runs thus:

“436-A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it

in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

8. While dealing with the subject issue in **(2015) 13 SCC 605 (Bhim Singh v. Union of India)**, it was observed by the Supreme Court as under:

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the

Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.”

9. In **(2016) 3 SCC 700 (Inhuman Conditions in 1382 Prisons, in re)** also, it was observed by the Supreme Court thus:

“16. With regard to the third issue regarding effective implementation of Section 436-A of the Code of Criminal Procedure, (for short “CrPC”), the affidavit stated that an advisory had been issued by the Ministry of Home Affairs of the Government of India on 17-1-2013 to all the States and Union Territories to implement the provisions of Section 436-A CrPC to reduce overcrowding in prisons. Among the measures suggested in this regard by the Ministry of Home Affairs, was the constitution of a Review Committee in every district with the District Judge in the Chair with the District Magistrate and the Superintendent of Police as members to meet every three months and review the cases of undertrial prisoners. The Jail Superintendents were also required to conduct a survey of all cases where undertrial prisoners have completed more than one-fourth of the maximum sentence and send a report in this regard to the District Legal Services Committee constituted under the Legal Services Authorities Act, 1987 as well as to the Review Committee. It was also suggested that the prison authorities should educate undertrials of their right to bail and the District Legal Services Committee should provide legal aid through empanelled lawyers to the undertrial prisoners for their release on bail or for the reduction of the bail amount. The Home Department of the States was also requested to develop a management information system to ascertain the jail-wise progress in this regard.”

10. In (2017) 5 SCC 702 (*Hussain v. Union of India*) also, it was observed by the Supreme Court as follows:

“11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases.

12. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice. Directions of this Court in *Noor Mohammed v. Jethanand*, ((2013) 5 SCC 202 are as follows: (SCC p. 217, para 34)

“34. Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more.”

13. In *Thana Singh v. Central Bureau of Narcotics*, (2013) 2 SCC 590 this Court directed that liberal adjournments must be avoided and witnesses once produced must be examined on consecutive dates. Directions were also issued for setting up of sufficient laboratories, for disposal of seized narcotics drugs and for providing charge-sheets and other documents in electronic form in addition to hard copies of same to avoid delay.

14. In *Akhtari Bi v. State of M.P.*, (2001) 4 SCC 355 this Court observed as under: (SCC p.358, para 5)

“5. it is incumbent upon the High

Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular Benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. *We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and Special Benches for that purpose.*”

15. Again in *Imtiyaz Ahmad v. State of U.P.*, (2012) 2 SCC 688 it was observed that long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery. These observations have been reiterated in a recent Constitution Bench judgment in *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509. In the said judgment it was noticed that providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

26. In view of the above, we do consider it necessary to direct that steps be taken forthwith by all concerned to effectuate the mandate of the fundamental right under Article 21 especially with regard to persons in custody in view of the directions already issued by this Court. It is desirable that each High Court frames its annual action plan fixing a tentative time-limit for subordinate courts for deciding criminal trials of persons in custody and

other long pending cases and monitors implementation of such timelines periodically. This may perhaps obviate the need for seeking directions in individual cases from this Court. We also feel that it is desirable for Chief Justices of all the High Courts to take other steps consistent with the directions already issued by this Court for expeditious disposal of criminal appeals pending in High Courts where persons are in custody by fixing priority having regard to the time period of detention. We also reiterate the directions for setting up of adequate number of forensic laboratories at all levels. Specification of some of these issues is in addition to implementation of other steps including timely investigation, timely serving of summons on witnesses and accused, timely filing of charge-sheets and furnishing of copies of charge-sheets to the accused. These aspects need constant monitoring by High Courts.

29. To sum up:

29.1. The High Courts may issue directions to subordinate courts that—

29.1.1. Bail applications be disposed of normally within one week;

29.1.2. Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

29.1.3. Efforts be made to dispose of all cases which are five years old by the end of the year;

29.1.4. As a supplement to Section 436-A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence *likely to be awarded* if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time;

29.1.5. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.”

11. On examination of the facts of the present case in the light of above observations of the Supreme Court, I find that the charges under Sections 13(1)(e) and 13(2) of the PC Act have been framed against the Applicant on 23.11.2015 for which the maximum prescribed sentence is of 7 years and the application under Section 436-A of the Code of Criminal Procedure for grant of default bail was filed by the Applicant after completion of period of his custody of 3 years and 9 months, i.e., more than one-half of the maximum prescribed sentence of 7 years. From perusal of the order-sheets of the Trial Court, it reveals that after completion of recording of the statements of the prosecution witnesses, on 31.7.2018, a list of 32 defence witnesses was submitted before the Trial Court which has been taken on record by it. Till date, total 7 defence witnesses have been examined. From the order-sheets, it is also clear that on 2.1.2019, examination-in-chief of the Applicant/accused has been concluded. Since then his cross-examination by the prosecution has not been done. From the order-sheets, it is further clear that adjournments for cross-examination of the Applicant/accused had been prayed for by the prosecution itself. From the order-sheets, it is also clear that there is nothing on record to show that there was any effort on the part of the Applicant to cause any delay in trial. Learned Counsel appearing for the State/Respondent also, after going through the order-sheets of the Trial Court, has not been able to point out that how and in what manner the Applicant caused any delay in trial. From the list of defence witnesses, it is also clear that still recording of statements of 25 defence witnesses is to be done. Therefore, still enough time is likely to be taken by the Trial Court in concluding the trial. Thus, finding of the Trial Court that the case

is at final stage is not in accordance with the material available. Since, as on today, the Applicant has already undergone about 4 years, which is more than one-half of the prescribed sentence of 7 years and there is nothing to show that the Applicant has caused any delay in trial, he is entitled to get default bail.

- 12.** In view of the foregoing, I find that the Trial Court has not properly appreciated the facts and circumstances of the case and, therefore, the impugned order cannot be held to be in accordance with law. Hence, the impugned order dated 2.4.2019 is set aside and the instant revision is allowed. The Trial Court is directed to release the Applicant on default bail under Section 436-A of the Code of Criminal Procedure on his furnishing adequate bail bonds and sureties to the satisfaction of the Trial Court.

Sd/-

(Arvind Singh Chandel)
Judge