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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1352 of 2018

Pawan Kumar Agrawal, son of Shri Radhe Shyam Agrawal, aged about 46 years, resident of Saket Extension, Qtr. No.L-101, Near Agrasen Chowk, Bilaspur

---- Applicant

versus

State of Chhattisgarh through the State Economic Offence Wing, Raipur

--- Respondent

For Applicant	:	Shri B.P. Sharma, Shri M.L. Sakat and Shri Raza Ali, Advocates
For Respondent/State	:	Shri Shailendra Dubey, Additional Advocate General and Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

31.1.2019

1. With the consent of Learned Counsel appearing for the parties the revision is heard finally.
2. The instant revision has been preferred against the order dated 31.10.2018 passed by the Special Judge under the Prevention of Corruption Act (henceforth 'the PC Act')/4th Additional Sessions Judge, Raipur in Special Criminal Case No.186 of 2015, whereby the application filed by the present Applicant under Section 436-A of the Code of Criminal Procedure for grant of default bail has been rejected.
3. Facts of the case, in brief, are that the present Applicant was arrested on 20.3.2015 in connection with Crime No.5 of 2015

registered by the Economic Offences Wing, Chhattisgarh, Camp Bilaspur. On 15.6.2015, a charge-sheet for the offence punishable under Sections 13(1)(e) and 13(2) of the PC Act and Sections 109, 120B, 420, 467, 468 and 471 of the Indian Penal Code was filed before the Special Court against the present Applicant as well as against the other co-accused persons, namely, Alok Agrawal, Abhish Swami, Radhe Shyam Agrawal, Smt. Pushpa Agrawal and Smt. Alka Agrawal. On 7.10.2016, charges have been framed against the present Applicant and the other co-accused persons by the Trial Court. Against co-accused Alok Agrawal, charges under Sections 13(1)(e) and 13(2) of the PC Act and Sections 420, 467, 468, 471 and 120B of the Indian Penal Code have been framed and against the present Applicant and the rest of the co-accused persons charges under Section 12 of the PC Act and Sections 109 and 120B of the Indian Penal Code have been framed. Regular bail applications under Section 439 of the Code of Criminal Procedure have already been rejected by this Court as well as by the Supreme Court. Since the charges framed against the present Applicant are under Section 12 of the PC Act and Sections 109 and 120B of the Indian Penal Code which are punishable by the maximum prescribed sentence of imprisonment for 7 years, on 22.9.2018, an application under Section 436-A of the Code of Criminal Procedure was filed by the present Applicant for grant of default bail on the ground that he has already remained in custody for more than 3½ years and, therefore, he is entitled to get default bail. A reply to the said application was filed by the prosecution before the Trial Court raising objection that during trial many applications were filed by the present Applicant to cause delay in trial which has resulted into delay in trial and, therefore, the present

Applicant is not entitled to get default bail under Section 436-A of the Code of Criminal Procedure. It was also objected that according to the contents of the charges framed against the present Applicant, he is also liable to be charged for the offence punishable under Section 467 of the Indian Penal Code, but, inadvertently, that charge is not included in the order framing charges. It was submitted by the prosecution before the Trial Court that they will be filing an application for modification in the order framing charges against the Applicant. Since the offence punishable under Section 467 of the Indian Penal Code is punishable with imprisonment for life, the present Applicant is not entitled to get default bail under Section 436-A of the Code of Criminal Procedure.

4. The Special Judge, after hearing the parties, vide the impugned order dated 31.10.2018, has rejected the application of the present Applicant moved under Section 436-A of the Code of Criminal Procedure on the ground that there is a serious charge of economic offence against the present Applicant and, therefore, he cannot be allowed benefit of default bail.
5. Learned Counsel appearing for the Applicant submits that there is nothing on record to show that the Applicant caused any delay in trial. He further submits that presently, charges under Section 12 of the PC Act and Sections 109 and 120B of the Indian Penal Code have been framed against the present Applicant. Apart from this, no other charge either under Section 467 of the Indian Penal Code or a charge for any other offence has been framed against the Applicant. Though the prosecution had made a submission before

the Trial Court that an application will be filed by them for modification in the order framing charges against the present Applicant, no such application has yet been filed by them nor the Trial Court itself has made any modification in its order framing charges against the present Applicant and without there being any modification/change in the order framing charges against the Applicant the trial is still going on. The Trial Court has unnecessarily dealt with the merit of the case while dealing with the application under Section 436-A of the Code of Criminal Procedure. While dealing with the application under Section 436-A of the Code of Criminal Procedure for grant of default bail, consideration on merits of the case or on dismissal of the applications for grant of regular bail either by the Court below or by the higher Courts is wholly immaterial. It is true that the present Applicant has been charged with the offence relating to public money, but merely a person has been charged with such offence, it will not take away his right to claim benefit of default bail under Section 436-A of the Code of Criminal Procedure. He further submits that rejection of the application under Section 436-A of the Code of Criminal Procedure for default bail only on the ground that the charges framed against the Applicant relate to a serious economic offence and, therefore, the Applicant cannot be allowed benefit of default bail is not in accordance with law. In this case, there are total 302 listed witnesses. As on date, only 42 witnesses have been examined. It is further submitted that the Applicant is in custody since 20.3.2015. He may be admitted to benefit of default bail. Reliance has been placed on **(2017) 5 SCC 702 (Hussain v. Union of India)**, **(2016) 3 SCC 700 (Inhuman Conditions in 1382 Prisons, in re)** and **(2015) 13 SCC 605 (Bhim Singh v. Union of**

India).

6. Learned Counsel appearing for the Respondent/State supports the impugned order. It is submitted that though charges under Section 12 of the PC Act and Sections 109 and 120B of the Indian Penal Code have been framed against the present Applicant, from the contents of the order framing charges it is clear that the Applicant has also committed the offence punishable under Section 467 of the Indian Penal Code for which charge appears to have inadvertently not been framed by the Trial Court. It is further submitted that the Trial Court has rightly rejected the application for grant of default bail.
7. I have heard Learned Counsel appearing for the parties and perused the material available minutely.
8. 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.”

9. While dealing with the subject issue in **Bhim Singh case** (supra), it was observed by the Supreme Court as follows:

“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.”

10. In **Inhuman Conditions in 1382 Prisons case** (supra) also, it was observed by the Supreme Court as under:

“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.”

11. In **Hussain case** (supra) also, it was observed by the Supreme Court thus:

“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.”

- 12.** 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 Section 12 of the PC Act and Sections 109 and 120B of the

Indian Penal Code have been framed against the present Applicant on 15.6.2015 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 present Applicant after completion of period of his custody of 3½ years, i.e., one-half of the maximum prescribed sentence of 7 years.

- 13.** The prosecution has raised an objection before the Trial Court as well as before this Court that a charge under Section 467 of the Indian Penal Code has inadvertently not been included by the Trial Court in its order framing charges against the present Applicant, but from the contents of the said order framing charges it appears that the Applicant has also committed the offence punishable under Section 467 of the Indian Penal Code. It was also submitted by the prosecution before the Trial Court that they will be filing an application for modification in the order framing charges against the present Applicant, but from perusal of the order-sheets of the Trial Court upto the date of 11.1.2019 it reveals that neither such application has been filed by the prosecution nor the Trial Court itself has modified its said order and the trial against the present Applicant is still going on without there being any modification in the said order. The Applicant is still in custody for about 3 years and 11 months since the date of his arrest. Since the maximum period of punishment prescribed for the charges framed against him is 7 years, in my considered view, he is entitled to get default bail under Section 436-A of the Code of Criminal Procedure.

- 14.** As regards delay in trial alleged to have been caused by the present Applicant, a perusal of the order-sheets of the Trial Court

does not go to show that the Applicant, in any manner, caused delay in trial by filing unnecessary applications. Learned Counsel appearing for the State, after going through the order-sheets of the Trial Court, has also not been able to point out how or in what manner the Applicant caused delay in trial.

15. In the premises of aforesaid, 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 31.10.2018 is set aside and the instant revision is allowed. The Trial Court is directed to release the present 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.

16. A copy of this order be sent to the Trial Court forthwith.

Sd/-

(Arvind Singh Chandel)
Judge