

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO. 2674 OF 2018
WITH
CRIMINAL BAIL APPLICATION NO. 2675 OF 2018**

Jayesh S/o Mansukhlal Parekh

... Applicant

Vs.

The State of Maharashtra

... Respondents

...

Mr. Manoj Mohite a/w Mr. Shreeram Shirsat & Mr. Amit Potnis
I/by M/s Tamkare & Company for the applicant in both
applications

Ms. A.A. Takalkar, APP in Criminal Bail Application No. 2674 of
2018

Mr. S.R. Agarkar, APP in Criminal Bail Application No. 2675 of
2018.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 18th JANUARY, 2019.

P.C.

1. These are the applications for bail under Section 437(6) of Code of Criminal Procedure. Criminal Bail Application No. 2674 of 2018 pertains to C.R. No. 92 of 2016 lodged with Matunga Police Station. Chargesheet is filed and the case is pending before the Metropolitan Magistrate, 30th Court, Kurla, Mumbai vide C.C. No. 10/PW/2017. Whereas, in Criminal Bail Application No. 2075 of 2018 relates to CR No. 107 of 2016 lodged with Matunga Police Station. Chargesheet has been filed and the case is pending before

the Court of Metropolitan Magistrate, 30th Court, Kurla, Mumbai vide CC No. 1309/PW/2016.

2. Applicant is prosecuted for the offences punishable under Sections 406, 420, 465, 467, 468 of Indian Penal Code. Charge has been framed in both these cases on 30th December, 2017 and the witness summons were issued on 12th January, 2018. Prosecution has examined one witness in both these cases. It is submitted that in accordance with the Section 437 (6) of Code of criminal Procedure, the trial Court ought to have proceeded with the case and the same should have been concluded within a period of 60 days from the first date fixed for taking evidence. It is submitted that the summons were issued to the witness on 12th January, 2018 and the matter was posted for recording evidence on 25th January, 2018. It is submitted that prosecution has examined only one witness and has not been able to adduce evidence of other prosecution witnesses which has resulted in violation of aforesaid provision and since applicant is continues to be in custody, he is entitled for bail. It is submitted that applicant had deposited an amount of Rs.50,00,000/- in relation to the case vide CR No. 92 of 2016 and Rs.20,00,000/- in relation to CR No.

107 of 2016. It is further submitted that the applicant is in custody for a period about two years and it is not clear as to how long it will require to conclude the trial. It is further submitted that learned Metropolitan Magistrate has not assigned any reason in accordance with the aforesaid provision for rejecting the application for bail preferred by the applicant.

3. Learned counsel for the applicant has relied upon the several decisions in support of his submissions and has contended that not concluding the trial within time stipulated under the provisions of Section 437 (6) of the Code of Criminal Procedure, applicant is entitled for bail. In the case of **Tarkeshwar Goraknath Pandey Vs. State of Maharashtra**¹, the Court had granted bail to the accused on the basis of provision of Section 437(6) of Code of Criminal Procedure on the ground that trial was not concluded within 60 days from the first date for taking evidence. It was observed that record reveals that no adjournment was sought by the accused who is in jail. Trial not concluded without any fault on the part of the accused. In the case of **Balya @ Bhalchandra Anandrao Madavi Vs. State**². This Court had relied upon the

1 2012(1) Bom.CR (Cri.) 569

2 2013 ALL MR (Cri.) 661

aforesaid decision and granted bail under Section 437(6) of Code of Criminal Procedure. It was observed that accused cannot be detained unreasonably without trial particularly when there are no chances of the evidence being collected against the accused in the case. In the case of *Sirajul and others Vs. State of Uttar Pradesh and another*³, the Hon'ble Apex Court has observed that the need for speedy investigation and trial are mandated by the letter and spirit of the provisions of Cr.P.C. (in particular, Section 197, 173, 309, 437(6) and 468 Cr.P.C.) and the constitutional protection enshrined in Article 21 of the Constitution. In another decision relied upon by the applicants decided by the *High Court of Karnataka in the case of R.D. Panathur Vs. State of Karnataka*⁴, the Court has considered the principle governing provisions of Section 437(6) of Code of Criminal Procedure.

4. Learned APP submitted that trial had already commenced. One witness examined by the prosecution and case is posted for examination of witnesses. It is submitted that examination in chief in both the cases is completed and in one case the complainant is under cross-examination. It is submitted that the applications for

3 2015 9 SCC 201

4 Laws(Kar)-1997-12-6

bail preferred by the applicant were rejected by this Court on merits. It is submitted that this Court has expedited the trial and subsequently extended the time to conclude the trial. It is submitted that it is not mandatory that the trial must be completed within 60 days. It would depend upon the facts and circumstances of the case. For the reasons existing, the trial Court can proceed with the case even beyond that period. Merely on account of not concluding trial within 60 days, the accused is not automatically entitled for bail. It is submitted that learned Magistrate has rejected the application for bail preferred by the applicant by assigning reasons. Learned APP submitted that the judgments relied upon by the applicant itself indicate that for the reasons which are available in a particular case, the trial can proceed beyond the period of 60 days as stipulated under Section 437(6) of Code of Criminal Procedure and bail can be refused. Learned APP relied upon the decision of the M.P. High Court in the case of *Devraj Maratha @ Dillu Vs. State of M.P.*⁵ in which it was observed that the Magistrate is vested with full power to take into consideration (i) the nature of allegations (ii) whether the delay is attributable to the accused or to the prosecution; and (iii) criminal

5 2018 Law Suit (MP) 1852

antecedents of the accused or any other justifiable reason, while refusing to grant bail.

5. I have perused the documents on record. Apparently, the charge was framed on 30th December, 2017. Summons was issued to the witness No.1 as stated herein above. Examination in chief of the witnesses was recorded in both the case and in one of the case witness under cross-examination. Learned Magistrate while rejecting the application for bail preferred by the applicant in exercise of power under Section 437(6) has observed that the application for bail was earlier rejected by the High Court and the trial Court was directed to conclude the trial within nine months. Later on accused had moved an application for bail before the High Court on 12th January, 2018 and the same was rejected on 12th January, 2018. The trial Court was directed to conclude the trial within specified period and it would not be just and proper to give bail under the provisions under Section 437(6) of Code of Criminal Procedure.

6. Applicant had preferred an application for bail before the Sessions Court which was rejected and thereafter he had preferred an application for bail before this Court. By order dated 16th June,

2017, the application for bail was rejected by assigning reasons. Thereafter, applicant had preferred subsequent application for bail before this Court which was rejected by order dated 12th January, 2018. By order dated 16th June, 2017, the trial Court was directed to complete the trial within nine months from the date of receipt of the order. Subsequently, the request letter was received from the trial Court dated 7th September, 2018 and by order dated 9th October, 2018, time to conclude the trial was extended for a period of nine months. Said direction was given after taking into consideration the reasons stated in request letter forwarded by the trial Court dated 7th September, 2018. In the said letter it was stated that the charge was framed on 30th December, 2017. The evidence of the informant (P.W.No.1) was started on 15th February, 2018 and same was continued on 20th February, 2018. The prosecution moved application Exh.29 to direct the accused to produce some original documents. The said application came to be rejected on 23rd February, 2018. Prosecution moved application Exh.31 for permission to lead secondary evidence on 26th February, 2018. The application Exh.21 was rejected vide order dated 6th March, 2018. The order below Exh.31 is challenged by

the prosecution before Sessions Court vide Criminal Revision No. 276 of 2018 and by order dated 17th July, 2018, Sessions Court has permitted to lead secondary evidence to the prosecution, and the matter is fixed for recording further evident. It was also mentioned that the Court was vacant since 18th May, 2018 and therefore trial could not be completed. The prosecution intends to examine near about 29 witnesses. Considering the reasons stated therein, the time to conclude the trial was extended by this Court.

7. In the aforesaid circumstances, the trial could not be concluded within period of 60 days. In the case of **UT Worldwide India Pvt. Ltd. Vs. State of Maharashtra & Anr.**⁶ This Court has observed that merely because the word “Shall” appears in sub-section (6), it is not possible to hold that there is a mandate to release the accused on bail in all cases mechanically. A Section or part of it or even sub-section or parts of sub-section have to be taken into consideration while interpreting the same. No word or part can be left out or read in isolation. It was also observed that liberty of an individual cannot be interfered with unless there are strong reasons compelling such interference. Necessity to record reasons acts as a safeguard. As noted herein above, the trial has

⁶ 2007 ALL MR (Cri) 300

commenced and the witness is being examined, the prosecution leads to several witnesses. This Court has also directed to expedite the trial and time to conclude the trial has been extended. Thus, there are sufficient reasons for not proceeding with the trial. However, it needs to be considered that the applicant is in custody since the date of arrest and the prosecution shall proceed with the trial expeditiously. Learned APP on instructions from the officer who is present in the Court submitted that all the witnesses which are proposed to be examined are available and the prosecution would take steps for examination of witnesses expeditiously and there will be no delay on the part of the prosecution.

8. In the circumstances, the trial Court is directed to proceed with the trial expeditiously and as far as possible on a day to day basis by giving priority to these cases. However, it is expected that the defence shall co-operate in expeditious disposal of the trial. Taking into consideration, aforesaid circumstances, no case for grant of bail is made out under Section 437(6) of Code of Criminal Procedure. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application Nos. 2674 of 2018 and 2675 of 2018 are rejected.
- ii. Applicants are at liberty to prefer an application for withdrawal of the amount deposited in this Court during pendency of these applications.
- iii. Criminal Bail Application Nos. 2674 of 2018 and 2675 of 2018 stand disposed off.

(PRAKASH D. NAIK, J.)