

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2638 of 2019****Order reserved on 19.03.2020****Order delivered on 20.05.2020**

Atul Kumar Shrivastava, S/o. late Shri J.N.L. Shrivastava, aged about 48 years, R/o. Super Estate Colony, Mahaveer Nagar, Math Purena, District- Raipur (Chhattisgarh)

---- **Petitioner**
In-Jail

Versus

State of Chhattisgarh, through : Town Inspector, Ganj Line Police Station, Raipur (Chhattisgarh).

---- **Respondent**

For Petitioner : Mr. T. K. Tiwari, Advocate.

For Respondent/State: Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order [C.A.V.]**

1. This Cr.M.P. is directed against the impugned order passed by the learned Additional Sessions Judge, Raipur dated 30-11-2019 affirming the order passed by the Judicial Magistrate First Class rejecting an application under Section 437(6) of the Code of Criminal Procedure, 1973 preferred by the petitioner finding no merit.
2. The petitioner is standing trial for the offence under Section 408 of the Indian Penal Code, 1860 as he was arrested for that offence on 28-10-2018 and charge-sheeted on 24-12-2018. His regular bail application has been rejected by the Judicial Magistrate First Class on 23-11-2018 by the Court of Sessions on 1-1-2019 and the application for grant of bail was preferred before this Court being M.Cr.C.No.1960 of 2019 which was dismissed on merits on 5-7-2019 and thereafter, second bail was dismissed as withdrawn on 18-11-2019 with liberty to file

application under Section 437(6) of the Code of Criminal Procedure, 1973.

3. Thereafter, the present petitioner filed an application under Section 437(6) of the Code of Criminal Procedure, 1973 before the Judicial Magistrate First Class, Raipur stating inter alia that though charge was framed against him on 21-5-2019 and case was fixed for prosecution evidence on 30-5-2019 thereafter, the case was fixed on 13-6-2019, 25-6-2019, 9-7-2019, 23-7-2019, 6-8-2019, 2-9-2019, 16-9-2019, 30-9-2019, 14-10-2019, 24-10-2019, 7-11-2019 and 21-11-2019, but there is no substantive progress in the trial and trial could not be concluded by 30-7-2019 within the period of sixty days as prescribed under Section 437(6) of the Code of Criminal Procedure, 1973. The said application was rejected on 22-11-2019 by the learned Judicial Magistrate First Class. Thereafter, the petitioner preferred revision against that order before the revisional Court and the revisional Court by that impugned order dismissed the revision against which this petition has been preferred stating that though sixty days has already been expired from 30-5-2019 the first date the case was fixed for recording of evidence of prosecution therefore, both the courts below committed legal error in not granting bail under Section 437(6) of the Code of Criminal Procedure, 1973. Therefore, the impugned order deserves to be set aside and he be released on bail extending the benefit of Section 437(6) of the Code of Criminal Procedure, 1973.
4. Mr. T.K. Tiwari, learned counsel for the petitioner, submits that both the courts below have committed legal error in not giving the benefit of Section 437 (6) of the Code of Criminal Procedure, 1973 to the petitioner as charge under Section 408 of the Indian Penal Code, 1860 was framed against the petitioner on 21-5-2019 and the date was fixed

on 30-5-2019 for recording of the prosecution evidence and the sixty days' period has already expired on 30-7-2019. He would rely upon the decisions of this Court in the matter of **Ratan Kumar Jain v. State of Chhattisgarh**¹ passed in Cr.M.P.No.1014/2014 on 5-12-2014, **Suneshwar Singh Thakur v. State of Chhattisgarh** passed in Cr.M.P.No.1447/2016 on 10-3-2017, **Manohar Lal v. State of Chhattisgarh** passed in Cr.M.P.No.937/2018 on 19-11-2018 and **Gulshan Sahu v. State of Chhattisgarh Through District Magistrate, Raipur, Chhattisgarh** passed in Cr.M.P.No.275/2019 on 28-2-2019.

5. On the other hand, learned counsel for the State would oppose the application filed by the petitioner and would submit that the petitioner's regular bail application has already rejected on merits. Considering the overall effect of offence upon the society and delay in conclusion of trial within a period of 60 days is attributable to the accused, his application under Section 437 (6) of the Code of Criminal Procedure, 1973 has rightly been rejected by the two courts below. He would rely upon the decisions in the matters of **Gurucharan Singh and Others v. State of (Delhi Administration)**², **Ratan Kumar Jain** (supra), **Lal Sahu v. State of Chhattisgarh**³, **Gulab Singh Banjare and another v. State of Chhattisgarh**⁴ and **Atul Bagga v. State of Chhattisgarh**⁵.
6. Offence under Section 467 of the IPC is punishable with imprisonment for life and offence under Sections 420, 468 and 471 of the IPC are punishable with imprisonment for 7 years with fine. Thus, the trial Magistrate has no jurisdiction under Section 437(1) of the CrPC to grant bail to the petitioner under Section 467 of the IPC which is

1 2015(2) CGLJ 83

2 1978(1) SCC 118

3 2012(1) MPHT 67 (CG)

4 2010(1)CGLJ132

5 2010(1) MPHT 65 (CG) : 2010 Cri.L.J. 508

punishable with imprisonment for life. Section 437(6) of the CrPC carves out an exception to the provisions contained in clause (1) of sub-section (1) of Section 437 of the CrPC which reads as under:

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

(1) to (5) XXX XXX XXX

(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."

7. A plain and careful perusal of sub-section (6) of Section 437 of the CrPC would show that it is imperative in nature, but gives a discretion to the trial Magistrate that for the reasons to be recorded in writing, the Magistrate can direct that accused person(s) may not be released on bail even if the trial is not concluded within 60 days from the date of fixing the case for taking evidence in the case.
8. The focal question that falls for consideration is, whether the learned Magistrate was justified in rejecting the application under Section 437(6) of the CrPC even though the trial could not be concluded within 60 days from the first date of fixing the case for evidence?
9. In **Gurucharan Singh** (supra), the Supreme Court has held that object of Section 437(6) of the CrPC is to speed up trial without unnecessarily detaining a person as an under trial prisoner, and observed as under:

".....There is similar provision under sub-section (6) of Section 437 of Cr.P.C. which corresponds to section 497(3A) of the old Code. This provision is again intended to speed up trial without unnecessarily detaining a person as an undertrial prisoner, unless for reasons to be recorded in writing, the Magistrate otherwise directs....."

10. This court in **Atul Bagga** (supra) in unmistakable terms has held that apart from the gravity of offence and the quantum of punishment, the following factors, among others may weigh with the Magistrate while refusing dealing the application under Section 437(6) of the CrPC and held as under:

- “11. xxx xxx xxx
 (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 the 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.”

11. Thus, the seriousness of the offences for which the accused has been charged, the overall impact of the offence and the release of the person accused of such offence on the society, the possibility that the accused, if released on bail is likely to influence the witnesses or tamper with the prosecution evidence, the fact that other co-accused are absconding would be relevant factors for refusing bail under sub-section (6) of Section 437 of the Code.

12. The Madhya Pradesh High Court in the matter of **Devraj Maratha @ Dillu v. State of M.P.**⁶ considered the question whether the provisions contained in sub-section (6) of Section 437 of the CrPC is mandatory for the magistrate to release the accused on bail when the trial is not concluded within a period of sixty days from the date fixed for taking evidence in the case and answered the question as under:

- “21. In view of preceding analysis and enunciation of law governing the field, the reference is answered as under:
 (a) Provision envisaged in sub-section (6) of Section 437 of the Code is mandatory in the sense that the Magistrate is required to exercise his power of granting bail after the statutory period, if the trial is not

⁶ 2018 (2) MPLJ (Cri) 386

concluded within that, however, passing of an order under Section 437(6) of the Code is mandatory, but not grant of bail.

- (b) 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 antecedents of the accused or any other justifiable reason, while refusing to grant bail.”

It has clearly been held by the Madhya Pradesh High Court that, what is mandatory is passing of an order under Section 437(6) of the CrPC, but grant of bail on failure to conclude the trial within the statutorily fixed time limit is not mandatory to which I respectfully agree.

13. Reverting to the facts of the case in light of legal position with regard to grant of bail under Section 437(6) of the Code of Criminal Procedure as noticed hereinabove, it is quite vivid that in the trial the prosecution could not adduce evidence of any of the witnesses, though it was fixed for evidence time to time despite the fact that summons were issued to the witnesses for giving evidence, the trial Court noticing the principle of law laid down in Atul Bagga (supra) considered the case of the petitioner and found that the petitioner is not entitled to have the benefit of Section 437(6) of the Code of Criminal Procedure, 1973 which, in turn, revisional court has affirmed and declined to interfere with the discretionary order passed by the trial Magistrate. The two Courts have concurrently found that the petitioner is not entitled for the benefit of Section 437(6) of the Code of Criminal Procedure, 1973. Such a finding recorded by two courts below is purely a discretionary order after considering the nature of allegations and attending facts and circumstances of the case which is neither perverse nor contrary to the record warranting interference in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. Judgments relied upon by the learned counsel for the petitioner are clearly

distinguishable and therefore not helpful to the petitioner.

14. Thus, this petition under Section 482 of the CrPC deserves to be and is accordingly dismissed.

15. Before parting with the record, it is pertinent to notice that on 7-3-2020 four witnesses namely Jasprit Khanuja, Arup, Abhijit & Anil were present, before the trial Magistrate out of whom only Ms. Jasprit Khanuja was examined partly, but thereafter the learned Magistrate adjourned the matter for 12 days in violation of the provisions contained in Section 309(1) of the CrPC, whereas it could have been taken on the next working day particularly when the petitioner / accused is languishing in jail and witnesses are appearing for evidence and his application for grant of regular bail has already been rejected. Even the learned Magistrate having rejected his application under Section 437(6) of the CrPC, did not take a call to record the prosecution evidence promptly and expeditiously and conveniently adjourned the matter for more than a week, which cannot be countenanced. The learned Magistrate is directed to conclude the trial expeditiously preferably within 45 days from the date of receipt of a copy of this order.

16. The Registrar (Judicial) is directed to send a copy of this order to the learned Magistrate for compliance and needful.

Sd/-
(Sanjay K. Agrawal)
Judge