

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M- 20684 of 2020

Date of Decision: 3.11.2020

Dharaminder Sharma

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rajesh Kapila, Advocate
for the petitioner.

Ms. Samina Dhir, Deputy Advocate
General, Punjab.

Anil Kshetarpal, J.

Through this petition, filed under Section 439 Cr.P.C., the petitioner prays for grant of regular bail pending trial in a criminal case arising from FIR No. 27, dated 07.02.2017, registered under Section 417, 420, 467, 468 and 471 IPC at Police Station Division No1 Pathankot, District Pathankot.

The petitioner applied for bail pending trial in terms of Section 437 (6) Cr.P.C., which has been dismissed by the learned trial Court.

Previous petition Criminal Misc. No. M-11212 of 2017, filed by him for grant of pre-arrest bail was dismissed on 08.04.2017. Thereafter, the petitioner filed a petition for grant of regular bail, vide Criminal Misc. No. M-48367 of 2019, which was also dismissed, on 20.11.2019. The petitioner, once again, filed Criminal Misc. No. M-15133 of 2020, which was permitted

to be withdrawn with the liberty to file an application before the learned trial Court, under Section 437(6) Cr.P.C. As noticed above, the application filed by the petitioner has been dismissed by the trial court.

Some facts of the case are required to be noticed. The petitioner entered into two agreements, to sell off two different parcels of land, to the first informant and received a sum of ₹ 74,40,000/-. However, the petitioner failed to execute the respective sale deeds, in accordance with the contract. The first informant alleges that the petitioner has duped him of a sum of ₹74,40,000/-. Thereafter, when the first informant had put pressure on the petitioner, he handed over the security cheques to the first informant, in April, 2015. Even at that time, the petitioner hoodwinked the first informant and wrote an amount of ₹ 10,000/- in place of ₹ 10,00,000/-, on two cheques. Similarly, in two other cheques, in place of amount of ₹5,00,000/-, an amount of ₹5,000/-, each was written. Thereafter, when the first informant confronted the petitioner, he gave him another set of cheques of different dates. Thereafter, the first informant came to know that the land has been sold to someone else, by the petitioner.

In the present case, a copy of the challan, as required under Section 207 Cr.P.C., was supplied to the petitioner on 18.11.2019, whereas the charges were framed on 06.12.2019. Thereafter, the case was adjourned to 20.12.2019, for prosecution's evidence. On 20.12.2019, no witness of the prosecution was present although, three prosecution witnesses, namely Tilak Raj Pathania, Rama Pathania and Nisha Pathania, were served. Thereafter, the case was adjourned to 17.01.2020, when Tilak Raj Pathania was partly examined-in-chief and his further examination-in-chief was deferred at the

request of the Assistant Public Prosecutor as he wanted to move an application under Section 319 Cr.P.C. The case was adjourned to 27.01.2020. The Public Prosecutor, on the next date of hearing i.e. 27.01.2020, did file an application under Section 319 Cr.P.C., on which notice was issued to the accused and the case was adjourned to 10.02.2020. After hearing arguments, the application under Section 319 Cr.P.C., was dismissed by the learned Additional Chief Judicial Magistrate, on 10.02.2020 and thereafter, the case was adjourned to 19.02.2020, for remaining evidence of the prosecution. On 19.02.2020, statements of PW.2-Nisha Pathania and PW.3-Rama Pathania, were recorded. The prosecution witnesses cited at serial No. 1, 4 and 5 in the list of witnesses, were summoned for 13.03.2020. On 13.03.2020, it was reported that Prem Singh, Lambardar, one of the prosecution witnesses, had already died, whereas Hem Raj and Tilak Raj failed to appear despite having been served for that date of hearing. Therefore, the bailable warrants were ordered to be issued against them. The prosecution witness, cited at serial No. 6 in the list of witnesses, was also summoned for the next date fixed. After 23.03.2020, a curfew was imposed and now the case is being repeatedly adjourned as the physical working of the Courts has been hampered due to the outbreak of the Novel Corona virus.

As per the custody certificate, the petitioner has already suffered incarceration for a period of 1 year and 3 months approximately, as he is in custody since 24.07.2019.

The question which needs consideration is whether Section 437(6) Cr.P.C., gives an absolute right to the accused to seek bail if the

conditions stipulated therein stand fulfilled. On careful perusal of Section 437(6) Cr.P.C., it becomes apparent that this provision on the one hand, enables the Magistrate to grant bail if the requirements of Section 437(6) Cr.P.C., stand fulfilled, whereas on the other hand, vests a discretion to decline the bail for reasons to be recorded otherwise. In such circumstances, the Magistrate is required to maintain a perfect balance between the two conflicting interests viz. sanctity of the individual liberty and the interest of justice. However, a word of caution is that the provisions of Section 437(6) Cr.P.C., have to be construed strictly in favour of the individual liberty. It would not be appropriate to import the grounds which are considered sufficient to decline bail in normal circumstances. The courts would do violence to the Statute, if the grounds which are considered appropriate to decline bail in normal circumstances are considered relevant for the purpose of deciding an application under Section 437(6). It would result in defeating the very object of introducing such a provision or in other words, it would result in reducing the statutory provision to mere dead letter.

No doubt, under Section 437 (6) Cr.P.C., the accused does not get absolute right to seek bail. Hence, the provision does not confer any indefeasible right as is provided under Section 167(2) Cr.P.C. While deciding the application under Section 437(6) Cr.P.C., the Court has to keep in mind that the object behind such a provision is to speed up the trial particularly when the accused is in detention. However, the Magistrate is expected to keep in mind, the gravity of the offence, quantum of punishment, the manner in which the accused is involved in the offence, whether the default is attributable to the accused in prison, likelihood of his

jumping bail or any other special circumstances due to which the Magistrate considers it expedient not to exercise discretionary powers under Section 437(6) Cr.P.C. Thus, in the end, it can be concluded that the right conferred under Section 437(6) Cr.P.C., is not absolute, however, nonetheless, it is a right which cannot be defeated easily.

Now let us examine this case. As per the requirement, the prosecution was expected to conclude its evidence within 60 days from the first date fixed for the prosecution's evidence. In the present case, the first date fixed for prosecution's evidence was 20.10.2019. The period of 60 days elapsed in the month of February, 2020. There was no lock-down at that time and the Courts were functioning normally upto the 3rd week of March, 2020. The prosecution witnesses, although served, did not choose to appear. Thus, the case of the petitioner for grant of bail squarely fell within the scope of Section 437(6) Cr.P.C. The learned Magistrate has erred in observing that due to lock-down and curfew, the normal functioning of the Courts was not possible and therefore, the petitioner was not entitled to bail. Still further, the petitioner is not stated to be a habitual offender. As per custody certificate, the petitioner stands acquitted in a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881. Apart from this case, the petitioner is not involved in any other criminal case.

Thus, the reason given by the Magistrate for declining bail to the petitioner is incorrect. Hence, this Court is of the considered view that the ends of justice would be met if the petitioner is directed to be released on bail against heavy surety to the satisfaction of the trial Court. Consequently, the present petition is allowed and the petitioner is ordered to be released on

regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate.

(Anil Kshetarpal)
Judge

November 3, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No