

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 667/2022

Snehdip S/o Shriram Soni,
 Aged about 47 years, Occ. Nil,
 R/o. A-4/22, KDK, College Road,
 Nandanwan, Nagpur
 (Presently lodged in Central Prison,
 Chandrapur)

... **APPLICANT**

VERSUS

State of Maharashtra, through
 Police Station Officer, Police
 Station, Gadchiroli, Gadchiroli.

... **NON-APPLICANT**

Mr. D. V. Chauhan, Advocate for applicant.
 Mr. S.M. Ukey, Additional Public Prosecutor for
 non-application/State.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVED ON</u>	: <u>04.07.2022.</u>
<u>PRONOUNCED ON</u>	: <u>19.07.2022</u>

JUDGMENT :

Heard.

2. **Admit.**

3. This application raises a challenge to the order dated 15th

March, 2022 of the learned Chief Judicial Magistrate, Gadchiroli, by which bail in terms of Section 437(6) of the Code of Criminal Procedure ('Code') has been rejected. Being aggrieved by the said rejection, the applicant ('accused') has invoked the inherent jurisdiction of this Court.

4. Briefly stated, at the instance of report lodged by District Irrigation Officer, Gadchiroli, the crime was registered against in all 13 persons for the offence punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, involving deflection of government money to the tune of Rs. 2.86 crores. The applicant – Snehdip S/o Shriram Soni has been arraigned as accused No.1 alleging to be principal conspirator. Voluminous documents have been seized on account of fraud, forgery and cheating. A list of 100 witnesses has been sited in the charge-sheet. The applicant (accused No.1) has applied to the trying Magistrate for his release on bail in terms of Section 437(6) of the Code, which was rejected and impugned herein.

5. It is argued that the learned Magistrate seriously erred in appreciating the very purport of Section 437(6) of the Code. Sub-clause (6) to Section 437 of the Code has carved out a special provision entitling the accused to release on bail provided that the trial has not been concluded within the period of 60 days from the first date fixed

for recording evidence. The special provision has been made to protect the fundamental right of the accused of his life, particularly enshrined in Article 21 of the Constitution of India. It is submitted that the accused has not contributed in delaying the conclusion of trial.

6. On facts, it is submitted that the Trial Court has fixed the case for recording of evidence on 25th October, 2021. However, trial was not concluded within the period of 60 days thereafter, therefore by invoking the right of bail in terms of Section 437(6) of the Code, accused applied for bail. The learned counsel appearing for the applicant cited some decisions of this Court to uphold his contention regarding entitlement of accused for bail.

7. Per-contra, the learned Additional Public Prosecutor ('APP') resisted the application vide reply-affidavit dated 25th June, 2022. Most of the part of reply has been devoted in contending the prime role of accused and seriousness of crime. Besides that, it is submitted that the provisions of Section 437(6) of the Code, are not of mandatory nature, but discretionary one. The learned Magistrate is well within his powers to refuse enlargement of bail, provided by assigning reasons. The learned APP would submit that several accused are involved in the trial, therefore, for one or other reason, the trial could not be completed within stipulated period with reference to Section 437(6) of

the Code. Some time was consumed as the accused has applied for providing Legal Aid, as well as proceeding was stalled in pandemic period. It is submitted that there are 13 accused whilst the prosecution was to examine 100 witnesses. Till date, the Trial Court has recorded evidence of 17 witnesses and thus, the Magistrate has rightly declined to exercise discretion in refusing bail.

8. The learned APP in resistance, relied on various decisions in cases of *Jigar Mayurbhai Shah Vs. State of Gujrat, 2008, Cri. L. J. 2750* (Gujrat High Court), *Dharti Singh alias Gograj Vs. State, 2016, Cri L. J. 2242*, (Rajasthan High Court), *Mukeshkumar Ravishankar Dave Vs. State of Gujrat, 2010 Cri L. J. 3476* (Gujrat High Court), *Patel Vinodbhai Manibhai Patel Vs. State of Gujarat, 2008 Cri. L. L. 4613* (Gujarat High Court) and *Tamaskant Chatterjee Vs. State of Chhattisgarh, AIR Online 2019 Chh 1721* (Chhattisgarh High Court). In these cases, the different High Courts have expressed that the provision of Section 437(6) is not mandatory, the accused cannot be allowed to take benefit of his own wrong and the seriousness of offence is to be considered.

9. On the other hand, it is argued on behalf of the accused that while considering bail in terms of Section 437(6) of the Code, it cannot be rejected merely on the ground of seriousness of crime. The

very purport of inserting Sub-clause (6) to Section 437 in the Code is to protect the fundamental right of liberty of the accused. The said right cannot be curtailed without valid and substantial grounds. In support of said contention, reliance is placed on the decision of this Court in cases of ***Gajanan Prabhakar Mapari Vs. The State of Maharashtra***, (Bail Application No. 352/2018), decided on 22nd June, 2018, ***Balya @ Bhalchandra Anandrao Madavi Vs. State***, (Criminal Application (BA) No. 60/2012, decided on 31st March, 2012 and ***Shri Tarkeshwar Goraknath Pandey Vs. The State of Maharashtra***, (Criminal Bail Application No. 152/2011), decided on 18th February, 2011. In case of *Shri Tarkeshwar Goraknath*, the learned Single Judge of this Court expressed that merely because offences are serious, bail cannot be refused. The cases are being prolonged for multiple reasons and therefore, to protect fundamental right of the accused the discretion has to be exercised.

For the sake of ready reference, relevant provision of the Code is reproduced as below:-

“437(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.”

10. Sub-section (6) to Section 437 of the Code provides that if the Magistrate trying a case in which the accused has been charged for non-bailable offence, the trial has not concluded within the period of sixty days from the first date of recording evidence, he becomes entitled to be released on bail. The court while dealing with the application under this sub-section is empowered to refuse for “the reasons” to be recorded. The expression “unless for the reasons to be recorded in writing” in this sub-section is in the nature of a proviso. There is no fetter on the power of the Court in refusing bail under this sub-section. Only requirement of law is to record the reasons for refusal. The very object of the sub-section is to expedite the trial. It is necessary to harmonise rights of the accused and prevailing situation in the given case, as well as other attending circumstances. Who is responsible for the delay during this period of 60 days is relevant factor, coupled with other relevant circumstances. The totality of circumstances warrants consideration.

11. This Court has occasion in case of *UT Worldwide India Pvt. Ltd. Vs. State of Maharashtra and another*, 2007 ALL MR (Cri) 300, to consider whether the word “Shall” appearing in Sub-section (6) to Section 437 of the Code is of mandatory character. In that regard, it is observed that, it is not possible to hold that there is a

mandate to release the accused on bail into all cases mechanically. If the Magistrate is of the opinion that this is a fit case not to release, for reasons to be recorded, he can do so. The power conferred under Section 437(6) of the Code is discretionary. The accused has given right to apply for bail, if the trial is not concluded, but the Magistrate still has a discretion not to grant bail for the reasons to be recorded. Of-course, the discretion is to be exercised judiciously, and on sound principles by taking into consideration facts of each case. If the discretion is not to be exercised in favour of accused, then certainly reasons have to be assigned, which is the legal requirement. The necessity to record reason acts as a safeguard.

12. Though the learned APP has submitted that the offence is of serious nature and involves fraud of crores of rupees, however the seriousness of the offence cannot be a sole criteria for rejection of bail particularly, in context to Section 437(6) of the Code. If the same reasons like deciding bail application are again cited for denying bail under Section 437(6) of the Code, it would render the very provision otiose. The intent of the legislature is to prevent prolonged incarceration in cases triable by the Magistrate. Sub-clauses (1) to (3) to Section 437 has made adequate provision for grant of bail by the Magistrate in cases of non-bailable offences. Likewise, Section 439 of

the Code invests a special power to the Sessions Court and this Court for grant of bail. Despite existence of these provisions, Legislature has introduced Sub-clause (6) to Section 437 of the Code for grant of bail which itself postulates that object of legislation is else more than merely looking to the seriousness of the crime.

13. Plain reading of Sub-clause (6) to Section 437 of the Code provides that the right of bail would accrue, if the trial is not concluded by the Magistrate within a period of 60 days from the first date fixed for taking evidence in the case. Thus, the Section bears a direct nexus with right of accused to have speedy trial, failing which in absence of sufficient reasons, he has right to get a release on bail on said count. Therefore, while dealing with bail application under Sub-clause (6) to Section 437 of the Code, the concern is to the reasons which are germane to the cause of delay. No doubt, the Legislature has put no fetters on the powers of the Magistrate while recording the reasons, but Sub-clause (6) to Section 437 of the Code cannot be read in isolation to construe that reasons for refusal can be general consideration. The provision is to be read contextually with other clauses of Section 437 of the Code to understand the purport of the term “reasons to be recorded”. In a peculiar contingency of non-completion of trial within 60 days, a special right is conferred to the

accused for bail. Thus, the requirement of reasons would be in context to the delay i.e. whether justifiable or otherwise. The center of focus shall be to the causes of delay whilst general consideration have little role to play.

14. Coming to the facts, the Trial Court has framed charges on 04.10.2021. I have carefully examined the note-sheet of the case. After framing of charge, case was fixed for recording evidence on 25.10.2021, then on 08.11.2021, 20.11.2021, 03.12.2021, 16.12.2021, 23.12.2021, 01.01.2022, 14.01.2022, 28.01.2022, 10.02.2022, 22.02.2022. On 05.03.2022, the accused has invoked Sub-clause (6) to Section 437 of the Code for bail. Close examination of the note-sheet discloses that there are in all 13 accused out of which some are under trial. The accused who were on bail, on some dates remained absent and sought exemption. In the meantime, various applications have been filed. They are like application for bail, for providing Legal Aid, for seeking exemption, releasing on personal bond etc. The State has also sought time for producing Muddemal articles, filing of supplementary charge-sheet, calling say of other side on various applications and so on. On two dates, the Presiding Officer was on leave or was deputed for some training programme. The note-sheet discloses that on 2 to 3 dates, the Magistrate has directed to issue

witness summons, but due to multiple applications evidence could not be recorded. True, the learned Magistrate has not assigned the reasons in so many words justifying rejection, however it is a matter of record.

15. The learned counsel appearing for accused submitted that the delay was not attributed particularly to the applicant (accused No.1). Only once he sought adjournment for providing Legal Aid. While considering the bail application under Sub-clause (6) of Section 437 of the Code, the Magistrate has to see all attending circumstances and the events which have contributed into the delay. The provision of Sub-clause (6) to Section 437 of the Code cannot be looked into narrow sense to give meaning that the reasons for delay must be confined to the particular applying accused. The statute has carved out exception to the general rule by stating that in case of refusal, there must be reasons in writing. Of-course, the reasons for delay can be due to several causes, even de-hors to the applying accused. It cannot be said that the reasons for delay must attribute to the applying accused only for denial of bail. The Magistrate is well within its power to consider all causes for delay while exercising discretion.

16. The note-sheet, reveals that the Magistrate has endeavoured in issuing witness summons repeatedly. Since there are multiple accused, for one or other reason the trial could not be proceeded.

Accused (various) as well as State has taken time to file reply on multiple applications, which consumed time. Muddemal articles were secured as well as documents were filed by State on which reply was sought from accused. In the meantime, different Advocates were engaged by the accused. Likewise, the Presiding Officer was not available on some dates. These reasons can be termed as justifiable ground for declining to exercise the discretion. Merely on the count that the trial has not concluded within 60 days, bail cannot be granted mechanically. This provision is not akin to the bail under Section 167(2)(a)(b) of the Code, which is popularly known as default bail. In said eventuality the Magistrate has no discretion whilst under Section 437(6) of the Code, discretion lies with Magistrate which flows from the section itself.

17. Undeniably the magnitude of the case is quite vast as the prosecution has furnished a list of 100 witnesses and it is informed that till date, 17 witnesses have been examined. It is common knowledge that when there are multiple accused represented by different Advocates, sizable time will be consumed in recording evidence of each witness. Taking overall view of the matter, there are justifiable reasons for refusal of discretion and thus, it cannot be said that the Magistrate has erred in exercising discretion. In view of that, no case of

interference is made out, hence application stands rejected. The Trial Court shall endeavour to conclude the trial expeditiously.

(VINAY JOSHI, J.)

Gohane

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