

***Sr. No. 214***

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRM-M No.4066 of 2022**

**Date of Decision: 30.05.2022**

**Sanjay**

**.....Petitioner**

**Vs.**

**State of Haryana**

**.....Respondent**

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

**Present:-** Mr. S.K. Jindal, Advocate,  
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

**JASGURPREET SINGH PURI, J. (ORAL)**

The present petition has been filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing of the orders dated 23.12.2021 (Annexure P-5) as well as dated 10.01.2022 (Annexure P-6) and also with a prayer under Section 437(6) Cr.P.C. for the grant of default bail to the petitioner in FIR No.1010 dated 26.10.2017, under Sections 406, 420, 467, 468, 471, 506 and 120-B IPC, registered at Police Station Chandni Bagh, Panipat.

Learned counsel for the petitioner has submitted that it is a case where the petitioner was arrested on 22.02.2021 and after the investigation of the case, challan was presented and thereafter, the trial commenced. He submitted that it is a case, which is triable by a Magistrate and the first date for prosecution evidence was 21.10.2021 and thereafter, the period of 60 days expired on 19.12.2021 and during

this period, the matter was fixed for prosecution evidence but none of the prosecution witness appeared and with a result, there was delay caused at the end of the prosecution itself. He submitted that the petitioner was entitled for the grant of bail under Section 437 (6) Cr.P.C after the expiry of 60 days from the date of first date fixed for taking evidence in the case. He submitted that although the provisions of Section 437(6) Cr.P.C are not mandatory in nature, but whenever a discretion is to be exercised by the Magistrate in this regard the same has to be exercised in a reasonable manner and in the context of facts and circumstances of the each case and apart from the same in case the bail is not to be granted to the accused then reasons are to be recorded in view of the provisions of Section 437(6) Cr.P.C but the same has not been done either by the learned Magistrate or by the learned Revisional Court. He submitted that so far as the order passed by the learned Magistrate is concerned, the denial was not based upon any reasons and so far as the order passed by the learned Revisional Court is concerned, it was declined in view of the fact that the Will was executed on 15.01.2009 but it was registered in the year 2013 whereas the mother of the petitioner had died on 17.01.2009. He submitted that so far as the date of the Will is concerned, it was admittedly prior to the death of the petitioner's mother, but the registration was done in accordance with law by virtue of the Sections 40 and 41 of the Registration Act, 1908, which was permissible under the law and all these factual positions have not been considered by the learned Revisional Courts and apart from the same, it has been noted rather in the order passed by the

learned Revisional Court in para 6 of the order that after the first date fixed for evidence of the prosecution, the matter was adjourned for three times till the expiry of 60 days due to want of evidence of the prosecution itself and therefore, the orders passed by both the learned Courts are liable to be set aside and the petitioner is entitled for the grant of the bail under Section 437(6)Cr.P.C. He also submitted that the matter with regard to the legality of the Will is also pending before the Civil Court.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody from 22.02.2021 and it is also correct that the first date of prosecution evidence was 21.10.2021 and 60 days expired on 19.12.2021 and during this period, no prosecution witness was examined. He has, however, submitted that the Will was got registered after a lapse of 4 years and therefore, the petitioner does not deserve the concession of bail.

I have heard the learned counsels for the parties.

The petitioner was arrested on 22.02.2021 and thereafter, the trial commenced and the first date of evidence was fixed for 21.10.2021 and thereafter, the period of 60 days expired on 19.12.2021 and during that period, admittedly no prosecution witness was examined. The subject matter of the legality of Will is also subjudice before the learned Civil Court. The proposition with regard to the applicability of Section 437 (6) Cr.P.C is well settled. It is always a discretion of the learned Magistrate considering the facts and circumstances of the case that the discretion has to be exercised on the

basis of satisfaction. As per the provisions of Section 437(6) Cr.P.C., when the case is triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence, then 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.** In other words, the right of grant of bail is not absolute, in case the Magistrate records the reasons in writing. In other words when there are reasons, which are to be recorded in writing that the accused does not deserve the concession of bail, the accused is entitled for the grant of bail. In the present case, the only reason given by the Courts below was that the matter was serious and grave in nature and reasons recorded by the learned Revisional Court were that the petitioner had earlier filed regular bail petition before this Court, which was dismissed and had also reiterated the observations made by the learned Magistrate that since the matter was serious and grave in nature, bail cannot be granted to the petitioner.

It has been submitted by learned counsel for the petitioner that in fact, in the present case the Will was dated 15.01.2009, which was prior to the death of his mother, which was 17.01.2009 and the first date fixed for prosecution witness was 21.10.2021 and 60 days had expired on 19.12.2021, but it was because of the default of the prosecution that no prosecution witness was examined. Learned counsel for the petitioner during course of arguments had shown a copy of the statement, which the petitioner made before the Sub Registrar when the

Will was got registered in the year 2013 that it has been mentioned that the Will was executed on 15.01.2009 and thereafter, the Sub Registrar got registered the Will in the year 2013. The reasons, which have been recorded by the learned Magistrate as well as the learned Revisional Court are not sufficient to deny bail to the petitioner. Apart from the same, the fact that the delay was caused on the part of the prosecution itself was also not discussed and rather, it has got bearing while pressing into service the provisions of Section 437(6) Cr.P.C.

In view of the aforesaid facts and circumstances of the present case, this Court is of the view that the impugned orders passed by the learned Magistrate dated 23.12.2021 and 10.01.2022 by the learned Revisional Court are liable to be set aside. Consequently, the present petition is allowed and the aforesaid orders are hereby set aside. The consequence of the present petition would be that the prayer of the petitioner for grant of bail under Section 437(6) Cr.P.C deserves to be allowed. Hence, the petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

**30.05.2022***monika***(JASGURPREET SINGH PURI )  
JUDGE**

*Whether speaking/reasoned*    *Yes/No*  
*Whether reportable*            *Yes/No*