

(212) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15539-2022
Date of Decision: 28.04.2022

Ashok Kumari @ Sadhana

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anuj Dewan, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, DAG, Punjab.

JASJIT SINGH BEDI, J.(Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No.124 dated 27.07.2021 registered under Sections 420, 409, 120-B IPC at Police Station Division No.2, District Pathankot.

2. The brief facts of the case are that FIR was recorded on the statement of Sashi Kapoor to the effect that both Ashok Kumari @ Sadhana and her husband Raman were agents of the Post Office and they after opening the RD, FDR of people, used to deposit the money. They also opened two RDs in the name of his wife Rama Kapoor out of which one RD was matured/closed in the month of July, 2020 and entry in this regard was made by them in their own hands and the total amount of the same was Rs.7,46,507/-. Raman Kumar used to collect the amount of installments of the second RD from him by visiting his house and in this

regard he asked to Raman Kumar many times to provide him the copies of the RD but he delayed the matter on one pretext or the other. When he went to the post office, he came to know that Raman Kumar had not deposited the amount in their RD/account and has misappropriated the amount and thus cheated them to the tune of Rs.12,53,000/-. During the investigation, it was found that the accused had also cheated different persons to the tune of Rs.1,01,32,600/-. Thus, an offence was made out under Sections 420, 409 and 120-B IPC.

3. The learned counsel for the petitioner contends that the challan in the present case was presented on 25.10.2021 and the charges under Sections 420, 409 and 120-B IPC were framed on 13.12.2021 and the first date fixed for the prosecution evidence was on 22.12.2021. There were a total of 55 witnesses to be examined by the prosecution though only 05 witnesses have been examined so far. As per the provisions of Section 437(6) Cr.P.C. if the trial in a case triable by the Court of a Magistrate is not concluded within a period of 60 days from the first date fixed for recording of prosecution evidence, then, the accused person who is in custody ought to be granted the concession of regular bail. He further contends that the prosecution witnesses examined thus far have never made any complaint to the Post Office officials regarding any fraud or financial mismanagement on the part of the petitioner and directly approached the Police authorities for registration of the case. It cannot be believed that the various account holders were for the last 4-5 years depositing the money with the accused but never chose to approach the Post Office in order to verify

the co-accused. It is further contended that no recovery was effected from either of the accused and thus, keeping in view the period of custody already undergone by the petitioner and the fact that she is a mother of two minor children, she deserves the concession of regular bail.

4. On the other hand, the learned State counsel contends that during the investigation, it has been found that the accused cheated a number of persons to the tune of Rs.1,01,32,600/- and the magnitude of the scam does not entitle the petitioner to the grant of regular bail. There was also a likelihood of the accused pressurizing the prosecution witnesses.

5. I have heard the rival contentions of both the parties.

6. The petitioner has been in custody since 28.07.2021. As many as 55 prosecution witnesses are to be examined by the prosecution out of which only 05 have been partly examined.

7. A perusal of the some of the Zimni orders attached with the petition would show that the trial is not proceeding speedily. Even otherwise, in terms of the provisions of Section 437(6) Cr.P.C., bail ought to be granted, where the trial is not concluded within a period of 60 days after the first date fixed for the prosecution evidence.

8. As has already been noticed above, the first date fixed for prosecution evidence was 22.12.2021 and therefore, the trial ought to have been concluded within a period of 60 days i.e. 21.02.2022.

This Court in “Vinod Kumar Versus State of Haryana, CRM-M-29702-2018, decided on 19.12.2018”, held as under:-

“Heard arguments of learned counsel for the parties and have also perused the zimni orders as well as other documents available on the record.

Section 437 (6) of the Code is relevant for resolving the controversy in the case in hand, which is reproduced as under : -

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

- (1) xx xx xx*
- (2) xx xx xx*
- (3) xx xx xx*
- (4) xx xx xx*
- (5) xx xx xx*

(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) xx xx xx”

The above said provision mandates that in case of non-bailable offence, which is being tried by a Magistrate and the trial has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case and the accused has remained in custody during whole of the said period, he becomes entitled to be released on bail. However, the Magistrate can

decline the benefit of aforesaid provisions by recording reasons in writing.

On perusal of the zimni orders, which have been placed on record by moving separate application by learned counsel for the petitioner, which have not been disputed by learned State counsel, it is evident that the trial has not been concluded within a period of sixty days from the date of framing of the charge or the first date fixed for recording statement of the prosecution witnesses and the accused remained in custody during that period.

Undisputedly, the delay has not occurred because of the fault on the part of the petitioner and the bail has not been granted to him, whereas he is entitled for bail in view of provisions of Section 437 (6) of the Code.

It is not disputed that the petitioner has remained in custody during said period of more than sixty days from the first date for recording the evidence and no delay has been attributed to him. The reasons given by learned State counsel or by the Court below cannot be sustained and as such the petitioner is entitled for the concession of bail as envisaged under Section 437 (6) of the Code.

[emphasis supplied]

This Court in “Dharaminder Sharma Versus State of Punjab, CRM-M-20684-2020, decided on 03.11.2020”, held as under:-

“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.”

[emphasis supplied]

9. Even otherwise, the petitioner is a lady and is a mother of two minor children one of the age of 11 years and the second of the age of 8 years. The two minor children are residing with their maternal aunt as the petitioner and her husband are in custody since 27.07.2021.

10. In view of the above, the present petition is allowed and the petitioner-**Ashok Kumari @ Sadhana** is ordered to be released on bail subject to her furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

11. Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

28.04.2022
JITESH

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