

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

213

CRM-M-19218-2022 (O&M)

Date of decision: 05.07.2022

BEANT SINGH

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Manoj Pundir, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional AG Haryana.

Mr. Krishan Singh, Advocate
for the complainant.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 482 read with Section 437(6) of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') for quashing/setting aside the order dated 22.03.2022 (Annexure P-5) passed by Judicial Magistrate First Class, Yamuna Nagar, vide which the bail petition filed by the petitioner under Section 437 (6) CrPC was dismissed and also against the judgment dated 20.04.2022 (Annexure P-7) passed by Additional Sessions Yamuna Nagar dismissing the revision petition preferred by the petitioner against the order passed by the Judicial Magistrate First Class, Yamuna Nagar and with a further prayer to release the petitioner on bail in case FIR No.109 dated 24.04.2019 registered under Sections 420 and 406 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') at Police Station Farakpur, District Yamuna Nagar as despite expiry of more than 60 days since the commencement of the prosecution evidence, the same has not been concluded by the prosecution within the prescribed period from the date when the case was

listed first for recording of the evidence on 17.01.2022.

Learned counsel for the petitioner submits that pursuant to the registration of the FIR against the petitioner on 24.04.2019 and he was arrested on 19.10.2021 and a final report under Section 173 CrPC was filed before the Court on 20.12.2021 after the conclusion of the investigation. Charge against the petitioner is stated to have been framed on 03.01.2022 and the case was thereafter fixed for recording of the prosecution evidence on 17.01.2022. He refers to the *zimni* orders passed by the Judicial Magistrate First Class, Jagadhri dated 17.01.2022, wherein it is duly recorded that no prosecution witness was present on the said date and they were ordered to be summoned again for 31.01.2022. Even on the said adjourned date, no prosecution witness was present. The matter was adjourned for recording of the prosecution evidence to 11.02.2022. Even on the said adjourned date, no prosecution witness was present and the case was thereafter adjourned to 24.02.2022. Bailable warrants for ensuring appearance of the witnesses were issued for 09.03.2022. On the said date only one prosecution witness namely Jaspal Singh appeared and his examination-in-chief was recorded but his cross-examination was deferred on request that there are chances of amicable resolution amongst the parties. The said aspect was duly admitted by the complainant as well. The other witnesses were not present. The matter was thus adjourned to 22.03.2022 for exploring the possibility of compromise and also securing the presence of other remaining prosecution witnesses. On the said adjourned date, the cross-examination of PW-1/Jaspal Singh was concluded. Yet another prosecution witness namely Mohit Rana was also examined, whereas fresh warrants were issued for summoning of the remaining witnesses.

An application for release on bail by invoking Section 437(6) CrPC

was thereafter moved by the petitioner. The said application was declined by the Judicial Magistrate First Class, Yamuna Nagar on the ground that evidence could not be concluded on account of request for adjournment by the counsel representing the petitioner-accused himself and as such he cannot be given benefit of his own delay.

The said reasoning of the Judicial Magistrate First Class, Yamuna Nagar was also accepted by the Additional Sessions Judge, Yamuna Nagar in her judgment dated 20.04.2022, while dismissing the revision petition preferred by the petitioner.

It has been vehemently argued by the learned counsel for the petitioner that the order rejecting the application was bad as the proceedings before the trial Court were delayed only for a period of 13 days, at best which may have been attributed to the petitioner. Even otherwise, the case was adjourned to 22.03.2022 and that the complainant himself had admitted to the possibility of the settlement amongst the parties. He further submits that even as on date, the evidence of the prosecution has not been concluded and as such a vested right accrues in favour of the petitioner.

Learned State counsel has however submitted that the conclusion of the prosecution evidence could not take place as a result of the Covid scenario.

Learned counsel appearing on behalf of the complainant contends that the complainant has been cheated by the petitioner on the pretext of doubling the investment so made. He contends that even though the case was registered in the year 2019, he has succeeded in evading his arrest for nearly 02 years and has not returned even a penny out of the amount embezzled/misappropriated by him. It is however not in dispute that the said fact relates to the merits of the case and does

not restrict to the mandate of Section 437 (6) CrPC.

I have heard learned counsel for the parties and have perused the material on record.

Section 437(6) of the Code of Criminal Procedure is extracted hereinbelow:-

“(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”.

A perusal of the aforesaid provision clearly establishes that in a case of Magisterial trial in case the evidence is not concluded by the prosecution within a period of 60 days from the first date fixed for taking evidence in the case, such a person shall, if he is in custody, be released on bail to the satisfaction of the Magistrate, unless, for reasons to be recorded in writing, the Magistrate otherwise directs.

The sole reason recorded by the Magistrate is that the delay was on account of the Covid scenario and that an adjournment had also been sought by the petitioner-accused himself. As a matter of fact, when the case in question was fixed for recording of the evidence on 17.01.2022, the subsequent *zimni* orders that have been appended by the petitioner do not reflect that the matter/case in hand was being adjourned on account of the Covid situation, rather active proceedings have been taking place on all dates of hearing. In any case, the same cannot be a ground to decline a right that has accrued in favour of an accused.

Insofar as the second reasoning given by the Magistrate that the petitioner-accused had himself sought an adjournment, the same does not hold any water. The adjournment at the behest of the petitioner was only for a period of 13 days i.e., from 09.03.2022 to 22.03.2022. It is undisputed that the evidence of the prosecution has not completed even till date.

Taking into consideration the mandatory provision of Section 437(6) CrPC as well as the stage of prosecution, the instant petition is allowed. The impugned order dated 22.03.2022 (Annexure P-5) passed by Judicial Magistrate First Class, Yamuna Nagar and judgment dated 20.04.2022 (Annexure P-7) passed by Additional Sessions Yamuna Nagar are set aside.

Accordingly, the petitioner is admitted to regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

July 05, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>