

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

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**CRM-M-47865-2022
Date of decision: 21.10.2022**

SURENDER BIND

....Petitioner

Versus

STATE OF HARYANA

...Respondent

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

Present : Mr. Shashi Kumar Yadav, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No. 396 dated 06.07.2020 registered under Section 448 of the Indian Penal Code, 1860 (for short “the IPC) and Section 406, 420, 467, 468 and 471 of the IPC were added later on at Police Station, Palla, District Faridabad.

2. The FIR in the present case is registered on the complaint of one Virender Kapoor, who alleged that he had given the keys of his house to the petitioner for maintenance in the year 2018, however, he has forcibly occupied of the said house illegally and is refusing to vacate the premises.

3. Learned counsel for the petitioner *inter alia* contends that the an agreement to sell on 02.06.2013 was allegedly executed by one

Sheela in favour of the petitioner and later on the same property was sold to the complainant Virender Kapoor by Sheela on the sale consideration of Rs. 26,31,600/-. The entire payment in question has stated to have been made to Sheela wife of Puranmal on 20.09.2013 and possession was delivered to him. General Power of Attorney and Will were also executed in favour of Virender Kapoor by Sheela. He contends that the petitioner being in occupation of the said premises, the entire transaction has been forged so as to defeat the rights of the petitioner. He further contends that in any case, the petitioner was taken in custody on 11.11.2021 and a final report under Section 173 (2) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") was filed on 26.11.2021. Charge against the petitioner was framed on 07.03.2022 and the case was fixed for recording of prosecution evidence for 21.03.2022. He contends that a period of nearly 07 months has passed since then and that the prosecution evidence in the case has not yet been concluded. He contends that the offence in question is a magisterial trial and that as per Section 437 (6) Cr.P.C., in the event the trial of a person accused of any non-bailable offence is not concluded by the magisterial Court within a period of 60 days from the first date fixed for taking evidence in the case, such person shall be released on bail unless for reasons to be recorded in writing, it is directed otherwise. He contends that there are no necessitating circumstances that would warrant denial of bail to the petitioner. He contends that the petitioner has already undergone an actual custody of nearly 11 months in the present case and that only 04 of a total of 17 witnesses so cited by the prosecution have been examined and the

conclusion of the trial shall take a long time. He further places reliance on the judgment of this Court passed in the matter of “*Raman Kumar versus State of Punjab*” in CRM-M-18492 of 2022 decided on 17.08.2022.

4 Per contra, learned counsel appearing on behalf of the respondent-State contends that the petitioner is a habitual offender and that two other FIRs namely FIR No. 69 of 2019 and FIR No. 394 of 2019 have also been registered against the petitioner for similar offences under Section 420, 406 of the IPC. It is thus contended that any concession of bail ought not to be extended to the petitioner who has criminal antecedents. The rest of the contentions regarding the date of arrest, filing of the charge-sheet as well as the period of custody along with the witnesses examined is not disputed by the learned counsel.

5. While dealing with the aspect of grant of bail as per provisions of Section 437(6) Cr.P.C, this Court in CRM-M-18492 of 2022 decided on 17.08.2022 titled “*Raman Kumar versus State of Punjab*” had observed as under :

“.....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 nonbailable 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.

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]

6. Merely because two other cases have been registered against the petitioner cannot be the sole basis for continued detention of an accused or to deny him bail in perpetuity.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

8. Without examining the merits of the instant case and taking into consideration the position in law as extracted above and also the period of custody as well as the stage of trial, I deem it appropriate

to enlarge the petitioner on bail to the satisfaction of the trial Court.

9. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

10. 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.

11. 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.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 21, 2022
vishal sharma

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