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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1233 OF 2023

Shivani Sanjay Kadam

.... Applicant.

V/s

The State of Maharashtra

.... Respondent.

Mr. Rizwan Merchant i/b Roshni Singh for the Applicant.

Mrs. S.D. Shinde, APP for the Respondent/State.

Mr. Ajay B. Kamble, API, Bandra Police Station present.

CORAM : NITIN W. SAMBRE, J.

DATED : AUGUST 07, 2023

PC.:

1] Though Applicant has moved the present Application under Section 439 of the Criminal Procedure Code, Mr. Merchant, learned Counsel for the Applicant submits that Application is pressed only on the ground of Section 437(6) of the Cr.P.C. The provisions of sub-section (6) of Section 437 of Cr.P.C. read as under:-

“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.”

2] This Court in earlier round of litigation has rejected prayer of the Applicant vide reasoned order dated 13/12/2021. Subsequent thereto, Applicant has approached the Court of Metropolitan Magistrate for grant of bail, thereby purely invoking the provisions of sub-section (6) of Section 437 of Cr.PC.

3] Contentions of Mr Merchant, learned Counsel appearing for the Applicant are, (i) charge against the present Applicant was framed on 3/1/2022, (ii) despite lapse of more than one and half year after framing of the charge, there is no progress in the trial, (iii) provisions of sub-section (6) of Section 437 are mandatory and (iv) considering the fact that Applicant is a female, Applicant deserves to be released on bail in view of mandate of aforesaid provisions.

4] Learned APP submits that the provisions of sub-section (6) of Section 437 of Cr.P.C. are not mandatory and directory in nature. So as to substantiate the same, she would urge that, admittedly, Applicant is charged with non-bailable offence. Even if trial is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, Applicant cannot be released not only because there is existence of prima facie case against the Applicant but also in view of the reasons recorded by the learned Magistrate for rejection of bail.

5] Having appreciated the aforesaid submissions, it is worth to mention here that the Applicant has been charged for non-bailable offence in Crime No. 362 of 2020 registered with Bandra Police Station, District Mumbai for the offence punishable under Sections 406, 419, 420, 465, 467, 468, 471 of Indian Penal Code and Section 66(D) of the Information Technology Act, 2000. Punishment for the offence punishable under Section 467 of IPC is 10 years, whereas for other

offences, same ranges in between two years and seven years.

6] This Court while rejecting the prayer for bail has already recorded a finding that Applicant has not only cheated the complainant but she has also forged documents which she made the complainant to believe so as to illegally get an amount of Rs 2 crores from the complainant which she has spent on her luxurious living. The order of Magistrate refusing to grant bail under sub-section (6) of Section 437 in specific terms deals with very requirement under the said provisions. The Magistrate has noticed the involvement of the Applicant in a serious economic offence. The Magistrate has also noticed that accused was not produced for recording of evidence in view of pandemic and therefore trial was not progressed. Apart from above, Application under sub-section (8) of Section 173 of Cr.P.C. was also pending before the Magistrate at the behest of the complainant. As such, the Magistrate has recorded appealing reasons for not exercising discretion vested in him under the provisions of sub-section

(6) of Section 437 of Cr.PC.

7] This Court, after having gone into the provisions of sub-section (6) of Section 437 and aforesaid findings recorded by the Magistrate and the nature of evidence available against the Applicant who is involved in serious economic offence, is of the view that discretion vested in the Magistrate is rightly exercised by him, resulting into rejection of the prayer for bail. Provisions of sub-section (6) of Section 437 of Cr.P.C. cannot be held to be mandatory from the plain reading of the same, as the discretion is vested with the Magistrate to reject the prayer for grant of bail in case if trial is not concluded within a period of sixty days from the first date scheduled for recording of evidence. The Courts of Magistrates in Mumbai are overloaded with work, pendency of Application under sub-section (8) of Section 173 of Cr.P.C. at the behest of complainant, precious time of the Court could not be utilized during pandemic, resulting into non-production of accused for recording of evidence appears to be the reasons germane

to the cause of rejection. That being so, no case for grant of bail in exercise of power under sub-section (6) of Section 437 of Cr.P.C. is made out.

8] Application is accordingly dismissed.

(NITIN W. SAMBRE, J.)