

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

CRM-M-13021-2023

Date of Decision: June 01, 2023

Upender Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Yuvraj Singh Chauhan, Advocate,
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Vivek Puri, J.

The petitioner has assailed the order dated 21.02.2023 passed by the Court of learned Judicial Magistrate First Class, Karnal vide which bail as per the provisions of Section 437(6) of the Code of Criminal Procedure (for short `Cr.P.C.') in the case bearing FIR No. 230, dated 18.05.2022, under Sections 120-B, 379, 406, 420, 467, 468, 471 of the Indian Penal Code (for short `IPC'), registered at Police Station Taraori, Karnal, has been declined and the judgment dated 27.02.2023 passed by the Court of learned Additional Sessions Judge, Karnal vide which the revision petition was dismissed.

2. The petitioner has been arraigned as an accused in the aforesaid FIR.

3. Precisely, the FIR has been registered on the allegations that the petitioner along with the co-accused had mis-appropriated 300 quintals of rice, which was being transported in the truck owned by him.

4. Learned counsel for the petitioner contends that the petitioner was arrested on 10.08.2022. On presentation of the challan, the charge was framed by the learned trial Court with regard to commission of offence under Sections 120-B, 420, 467, 468, 471, 406, 473 and 379 IPC vide order dated 03.12.2022. The offences are triable by the Court of learned Judicial Magistrate First Class. The first date fixed for the prosecution evidence was 17.12.2022. The prosecution failed to conclude the evidence within a period of 60 days from the first date fixed for taking evidence in the case. The said period expired on 15.02.2023. The petitioner had applied for concession of bail as per the provisions of Section 437(6) Cr.P.C., but the same has been declined by the Courts below. It has been submitted that the delay in disposal of the case is not attributable to the petitioner in any manner. Although, the petitioner is involved in 08 other cases, but he is on bail in 07 of those cases. No proceedings have been initiated against the petitioner in the 8th case.

5. Learned State counsel has opposed the bail on the score that the delay in disposal of the trial is not

attributable to the prosecution and moreover, the petitioner is arraigned as an accused in 08 other cases.

6. Section 437(6) Cr.P.C. reads as under:-

“(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. Section 437(6) Cr.P.C. is enabling provision and gives a discretion to the Court while granting bail due to delay in the trial of the case. An absolute right may not vest in the accused to be released on bail and the Magistrate is required to record the reasons in writing for refusal to release him on bail. If it is not possible to conclude the trial within a period of sixty days from the date first fixed for recording of evidence and the accused is in custody, he shall be released on bail, until the Magistrate for reasons to be recorded otherwise directs.

8. It is significant to note that the Courts below have observed that the delay in trial is not attributable to the prosecution and another reasons assigned for declining the bail to the petitioner is to the effect that he is involved in 08 other cases.

9. The perusal of the judgment passed by the Court of learned Additional Sessions Judge (Annexure P-2) indicates that on 17.12.2022 i.e. the first date fixed for evidence, summons were issued to PW HC Rajesh Kumar, but the same received back with request that official was on law and order duty. The request was allowed and fresh summoned to PW HC Rajesh Kumar and the other PWs were ordered to be issued.

10. On the next date of hearing i.e. 05.01.2023, PW1 Zammer Ahmad was examined and the case was adjourned to 19.01.2023.

11. On 19.01.2023, PW2 Vijay Kumar Sharma was present and partly examined. His cross-examination was deferred as the court time was over. The summons issued to PW HC Satbir Singh and HC Rajesh Kumar were received back, but they had not appeared. Accordingly, bailable warrants were issued against them.

12. On the next date of hearing i.e. 01.02.2023, the summons issued to the witnesses were not received back.

13. Thereafter, on 15.02.2023, cross-examination of PW2 Vijay Kumar Sharma was recorded and the summons of un-examined witnesses were directed to be issued.

14. It has been observed by the Court of learned Additional Sessions Judge that earnest efforts are being made for examining the prosecution witness and the delay is

not attributable to any default on the part of the prosecution.

15. It shall not be out of place to mention here that there is a lack of material to indicate that any delay in disposal of the case or recording the statements of the prosecution witnesses is attributable to the petitioner. The material on record is indicative of the fact that one or two witnesses had not appeared despite service through summons and also request for exemption was received as the witness was deputed for law and order duty. It shall not be appropriate to decline the bail to the petitioner on the score that the delay is not attributable to the prosecution, particularly when the material on record does not indicate that the delay is attributable to the petitioner in any manner.

16. The petitioner is stated to be involved in 08 other cases. Learned counsel for the petitioner has pointed out that the petitioner is on bail in 07 cases. The criminal liability of the petitioner in the other cases will be adjudicated on the basis of the relevant material that may be adduced on the record of those cases. Moreover, now a period of about 10 months have elapsed from the date when the petitioner was arrested in the instant case. On a query, learned State counsel submits that out of 17, till date only 2 witnesses have been examined in the instant case.

17. In these circumstances, the impugned order dated 21.02.2023 passed by the learned trial Court, as well as, the judgment dated 27.02.2023 passed by the Court of learned Additional Sessions Judge, cannot be termed to be legally sustainable and are liable to be set aside.

18. For the foregoing reasons, present petition is allowed, the impugned order dated 21.02.2023 and judgment dated 27.02.2023 are set aside. Without making any expression of opinion on the merits of the case, the petitioner is ordered to be released on bail to the satisfaction of learned Chief Judicial Magistrate/trial Court/Duty Magistrate concerned.

June 01, 2023

vk

(Vivek Puri)
Judge

Whether speaking/reasoned:	Yes
Whether reportable:	Yes