

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

CRM-M-19011-2023

Date of decision : 29.08.2023

Manjeet Kaur

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. R.K. Ambavta, AAG, Haryana with
ASI Raj Kumar.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 10th of March, 2023 (Annexure P-36) passed by the Revisional Court affirming the order dated 25th of January, 2023 passed by the JMIC, Tohana dismissing the application filed by the petitioner seeking bail under Section 437(6) Cr.P.C. in case FIR No.71 dated 23rd of June, 2021 registered for the offences punishable under Sections 420, 418, 419, 341, 406, 447, 506 and 120-B IPC, at Police Station Jakhal, District Fatehabad.

2. Petitioner has been booked and is facing trial in the aforesaid FIR. Charges were framed on 26th of August, 2022 and thereafter the matter was listed for prosecution evidence on 9th of

September, 2022. On 9th of September, 2022 no PW was present. On 23rd of September, 2022 one PW namely Vikas Dhaniya was examined. On 7th of October, 2022 no PW was present. Same was the case on 21st of October, 2022. On 4th of November, 2022 another PW i.e. Shyam Lal Head Master (Retd.) was examined as PW-2 and no other PW was present. Thereafter on 18th of November, 2022 only one PW came present who was examined. On 1st of December, 2022 again no PW came present. Same was the case on 15th of December, 2022, on 4th of January, 2023 and on 16th of February, 2023. On 2nd of March, 2023 another PW Karan Singh was examined. On 16th of March, 2023 again none of the prosecution witnesses came present. By now as per State Counsel out of 25 cited witnesses only 4 could be examined.

3. Petitioner being in custody preferred application under Section 437(6) Cr.P.C. which has been dismissed by the Trial Court observing as under :

7. The respectful perusal of judgments of the Hon'ble Madhya Pradesh High Court in Arjun Sahu v. State of Madhya Pradesh, 2008 Cr.LJ 2771 and Harekrishna Singh @ Krishna Singh v. State of Chhattisgarh (Bilaspur Bench) 2011 (4) MPHT (C.G.) 115; the Hon'ble Bombay High Court in UT Worldwide India Pvt. Ltd. v. State of Maharashtra (Bombay); the Hon'ble Gujrat High Court in Jigar Mayurbhai Shah v. State of Gujarat 2008(2) GLR 1134; Mukesh kumar Ravishankar Dave v. State of Gujarat, 2010(2) G.L.H. 554 and Nehul Prakashbhai Shah v. State Of Gujarat 2014 (10) R.C.R. (Criminal) 946; the Hon'ble Jharkhand High Court in

Didar Singh v. State of Jharkhand, 2006 Cr.LJ 1594; the Hon'ble Rajasthan High Court in Budhha @ Maharaj Singh v. The State of Rajasthan 1981 CrL.R. (Raj) 14; Didar Singh v. State of Rajasthan 2006 Cri.L.J. 1594; and Anwar Hussain v. State of Rajasthan (Jaipur Bench) 2007(1) RLW 12; and the Division Bench of Hon'ble Delhi High Court in Robert Lendi v. Collector of Customs" (DB) 1987 Cr.L.J 55 reflects-

firstly, that an accused involved in a non-bailable offence triable by Magisterial Court, whose trial is not concluded within a period of sixty days from the first date fixed for taking evidence and who has been in custody during the whole of the said period, does not get an absolute or indefeasible right to be released on bail to the satisfaction of the Magistrate rather the Magistrate has a discretion to direct otherwise (refuse bail) by recording in writing the reasons for such rejection;

secondly, that the provisions contained in Section 437(6) of the Code are not mandatory rather directory;

thirdly, that the Magistrate has option/discretion to refuse bail by assigning reasons taking into consideration the facts and circumstances eg. whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused, or whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner, or whether there are any chances of abscondence the accused on being bailed out, or whether accused was not in custody during the whole of the said period, and, if the answer to any one of the above referred fact situations or similar fact situations is in affirmative, then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code;

fourthly, that the right accrues to the accused only if he is in custody during he whole of the said period;

fifthly, that it would also be relevant to take into consideration the punishment prescribed for the offence for which the accused is being tried in comparison to the time that the trial is likely to take, regard being had to the factors like volume of

evidence, number of witnesses, workload on the Court, availability of prosecutor, number of accused being tried with accused and their availability for trial, etc;

sixthly, that the factors, parameters, circumstances and grounds for seeking bail by the accused as well as grounds to be considered by the Magistrate for his satisfaction would not be identical or similar to subsection (1) and sub-section (2) of the Section 437 of the code, but may be relevant and overlapping each other depending upon facts and there cannot be any straight jacket formula and that the reasons for rejection of application under Section 437 (6) need to be more weighty than the routine grounds of rejection;

seventhly, that the parameters relevant for deciding application under Section 167 (2) (a) (i) (ii) of the Code (default bail), can not be imported for exercise of power under Section 437 (6) of the Code; and

lastly, that the legislature, while enacting Section 437(6) of the Code, has not given an absolute, indefeasible or unfettered right of bail rather right of bail is given with a rider investing the Magistrate with discretion to refuse bail by recording reasons therefor. Therefore, the right of accused for a speedy trial, though, Constitutional and aimed at liberty of accused, is not put on that high a pedestal that it becomes absolute and it is a right given with reasonable restrictions.

8. In present case, applicant-accused has been charged under Section 341, 406, 418, 419, 420, 447, 506, 120-B of the Penal Code, out of which offence under Section 420 IPC is punishable with imprisonment upto 07 years, secondly, the fact that bail application of applicant has also been dismissed from Hon'ble High Court VOD 12.12.2022 cannot be ignored. Thirdly, offence involved in case in hand is an economic offence, wherein accused has grabbed the rightful money of complainant. Further, there is possibility of tampering with evidence/causing prejudice to the case of prosecution, if accused is enlarged on bail. Moreover, there are chances of absconding of accused from justice. In view of aforesaid, it appears that applicant/accused Manjeet Kaur is not

entitled to have concession of bail in terms the provisions of Section 437(6) of the Code. Accordingly, application under consideration is dismissed.”

4. The aforesaid order stands affirmed by the Revisional Court holding that right of an accused as enumerated under Section 437 Cr.P.C. is not absolute and thus there is no legal infirmity in the order passed by the Trial Court.

5. Counsel for the petitioner while assailing the aforesaid orders submits that both the Courts have completely misread the bare provisions. He submits that even if Section 437(6) Cr.P.C. is held to be directory and not mandatory the Trial Court has to record reason *viz-a-viz* reasons for being unable to conclude trial within the stipulated time period and a bare perusal of the order passed by the Trial Court would reveal that it is completely bereft of any such reason.

6. Mr. R.K. Ambavta, AAG, Haryana, Ld. State Counsel has reiterated that the provisions as contained in Section 437(6) Cr.P.C. is directory in nature and no fault can be found with the discretion exercised by the Trial Court.

7. Having heard counsel for the parties and after going through records of the case, this Court finds that the impugned orders passed by both the Courts below are unsustainable and deserve to be

set aside.

8. There is no dispute w.r.t. to the legal proposition that right guaranteed under Section 437 Cr.P.C. is directory and the Trial Court can well deny the same by recording reason as to how and why the trial got delayed. The interim orders placed on record are testimony to the inertness of the prosecution and also exhibit that the Trial Court did a little to advance and recognize the right of the accused to speedy trial.

9. Magistrate under Section 437(6) Cr.P.C. can deny bail by recording reasons as to how the trial could not be concluded within the stipulated time period whereas the Trial Court in the present case has assigned reasons for not granting bail. No reason has been assigned as to how and why the trial could not be concluded within the time period as specified by the statute. Moreover, the reasons recorded for declining the bail are also unsustainable. Admittedly, the report under Section 173(2) Cr.P.C. stands filed. Charges stand framed. Yet the Trial Court has recorded a finding that there is a possibility of tampering with evidence without there being any foundation/reason for recording such finding.

10. Keeping in view the aforesaid present petition is allowed. Petitioner is ordered to be released on bail under Section 437(6)

Cr.P.C. subject to the satisfaction of the Ld. Trial Court/Duty
Magistrate concerned.

August 29, 2023 (Pankaj Jain)
Dpr Judge

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