



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 971 OF 2025

Satish Ghanshyam Rathi

-- VERSUS --

State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.M. Daga, Advocate for the Petitioner.

Mr. Bhagwan M. Lonare, A.P.P. for the Respondent/State.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 18, 2025.

The learned counsel appearing for the petitioner submits that though the application under Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS), (corresponding to old Section 437 of the Code of Criminal Procedure, 1973), was filed by the petitioner under said section, however, the contents of the application clearly demonstrates that the application was filed under Section 437(6) of the Cr.PC. He further submits that even the observations of the trial Court would demonstrate that the Trial Court has considered the application dated 26/11/2024 as under Section 437(6) of Cr.PC.

2. After perusal of the said application, it appears that it was styled as application under

Section 480 of the BNSS, 2023, and Section 437 of the Cr.P.C. seeking grant of regular bail or grant of temporary bail for six weeks on medical grounds relating to the applicant and the ill-health of the applicant's mother. Therefore, this is a composite application for regular bail or for temporary bail on medical grounds. Though, some averments appeared in the application regarding delay in the trial, and the matter is posted for evidence since 03/02/2024, and further part of application shows that as per Section 437(5) of Cr.P.C. if the trial is not concluded within 60 days from the date of evidence, the applicant is entitled for default bail.

3. It is further averred that the physical health of applicant is deteriorating day-by-day. The mother of applicant, namely, Shakuntala, aged about 75 years, is suffering from a deadly cancer disease. On all these grounds, bail was claimed. However, by order dated 13/01/2025, the application was rejected. There were passing observations in respect of consideration under Section 437(6) of Cr.P.C., however, from the entire proceedings, it appears that it is not the comprehensive application filed under Section 480(6) of BNSS / 437(6) of Cr.P.C. Therefore, even in the order, there is only passing reference and by giving brief reasons so far as delay in trial is concerned, the application is rejected. However, there

is no consideration of the judgment delivered by the Supreme Court in the case of ***Subhelal Alias Sushil Sahu VS State of Chhattisgarh, (2025) 5 SCC 140.***

4. As could be gathered from the further proceedings that the petitioner had also applied for bail before the learned Additional Sessions Judge, Malkapur, District Buldhana, under Section 437(6) of the Cr.P.C. However, the said application was rejected.

5. However, the fact remains that the learned Magistrate did not consider the parameters laid down under Section 437(6) of the Cr.P.C. It is further to be noted that the judgment relied upon by the petitioner in the case of ***Subhelal Alias Sushil Sahu VS State of Chhattisgarh, (2025) 5 SCC 140,*** lays down elaborate guidelines with respect to the consideration of applications under Section 437(6) of Cr.P.C.

6. In the absence of specific application before the learned Magistrate under Section 437(6) of the Cr.P.C., the Magistrate has not considered the law laid down by the Supreme Court in the aforesaid case. Therefore, the learned counsel appearing for the petitioner seeks permission to withdraw the present application, with liberty to apply specifically under Section 437(6) of the Cr.P.C.

7. Needless to mention, at this juncture, that the trial Court shall not be influenced by the observations made by the Additional Sessions Judge.

8. It is further to be noted from the *roznama* that since 19/03/2025, the Court No.1 is vacant. However, the learned A.P.P. submits that the charge is given to the Judicial Magistrate First Class, Court No.2, Motala.

9. Considering the present facts and circumstances, the petitioner is at liberty to file a specific application under Section 437(6) of the Cr.P.C. before the Judicial Magistrate First Class, Court No.2, Motala. The said Court shall decide the case in accordance with the guidelines and parameters laid down by the Supreme Court in the case of *Subhelal Alias Sushil Sahu (supra)* and shall take into consideration facts and circumstances of the case independently.

10. It is further clarified that this Court has not expressed any opinion on the merits of the case or on the grounds on which the writ petition is filed before this Court. In this view of the matter, with the aforesaid liberty, the petition is **disposed of**.

11. The learned Magistrate is requested if the application is filed by the petitioner, the same

shall be decided within 15 days of filing the application on its own merits.

PIYUSH MAHAJAN

[M.M. NERLIKAR, J]