



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

128

CRM-M-1861-2025 (O&M)

Date of decision: 20.01.2025

Balwinder Singh**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Saurabh Sharma, Advocate
for the petitioner.

Mr. Apoorv Garg, Sr. Deputy Advocate General, Haryana.

MANISHA BATRA, J. (Oral)**1. CRM-1908-2025**

Allowed as prayed for.

Documents are taken on record as Annexures P-16 to P-35.

2. CRM-M-1861-2025 (O&M)

This petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 31.05.2024 (Annexure P-14), passed by the Court of learned Additional Chief Judicial Magistrate, Kurukshetra, in case arising out of FIR No. 663 dated 22.09.2023, registered under Sections 406 and 420 of IPC and Sections 10 and 24 of the Immigration Act at Police Station Sadar Thanesar, District Kurukshetra, whereby an application filed by the petitioner under Section 437(6) of the Code of Criminal Procedure (*for short 'the Code'*), had

2025:PHHC:008789



been dismissed, as well as for quashing of order dated 12.12.2024, passed by the Court of learned Additional Sessions Judge, Kurukshetra, in Criminal Revision No. 115 of 2024, whereby the petition challenging the aforesaid order had been dismissed.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner has been booked for and is facing trial for commission of offences punishable under Sections 406 and 420 of IPC read with Sections 10 and 24 of the Immigration Act, on the allegations that he had cheated the complainant Satbir and one Sunil by inducing them to part with an amount of Rs.1,27,25,750/- on the pretext of sending their family members abroad. The petitioner had been arrested on 29.10.2023. Charges were framed on 07.02.2024. He moved an application under Section 437(6) of the Code for extending benefit of bail. The said application was dismissed by the learned trial Court, vide impugned order dated 31.05.2024 and the same has been affirmed by the learned revisional Court, vide impugned order dated 12.12.2024, as mentioned above. The petitioner, feeling aggrieved from the aforesaid orders, has filed the present petition.

4. It is argued by learned counsel for the petitioner that while rejecting the prayer made by the petitioner to extend him benefit of bail under the provisions of Section 437(6) of the Code, the learned Courts below did not apply their judicious mind. The aforesaid provision as well as the settled position of law in this regard had not been taken into consideration. Cryptic and non-speaking orders have been passed. The petitioner had produced sufficient material on record to prove that he deserved to be extended concession of bail since the trial initiated against him has not concluded

2025PHHC:008789



within a period of 60 days from the date of its commencement and in such circumstances, he was entitled to be released on bail as a matter of right as the provisions of Section 437(6) of the Code are mandatory in nature. It is, therefore, urged that the impugned orders are liable to be set aside, the petition deserves to be allowed and the petitioner deserves to be released on bail.

5. *Per contra*, learned Senior Deputy Advocate General, Haryana, appearing on behalf of respondent-State, who has advance notice of the petition and is ready to argue the matter, has submitted that the petition is not maintainable as the orders passed by the learned Courts below are well reasoned and do not warrant any interference. He has argued that no absolute right has been conferred upon an accused under the provisions of Section 437(6) of the Code to be granted benefit of bail on account of non-conclusion of trial within a period of 60 days. The Courts below have assigned sufficient reasons to hold that the petitioner did not deserve the benefit of the above provision. It is, therefore, urged that the petition, being devoid of any merit, is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

7. As per the provisions of Section 437(6) of the Code (*which are pari materia with the provisions of Section 480(6) of BNSS*), 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 60 days from the first date fixed for taking evidence in the case, such persons 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. A bare reading of Section 437(6) of the Code reveals that though a right has been provided in favour of an accused to secure bail but at the time same time, a check on the said right has been put by conferring jurisdiction upon the Magistrate to reject an application filed by the accused for his release under the aforesaid provisions for the reasons to be recorded in writing.

8. The first question that needs consideration by this Court is as to whether Section 437(6) of the Code gives an absolute right to an accused to secure bail if the condition stipulated therein stands fulfilled and its provisions are mandatory? This question finds answer from the observations made in ***Mukeshkumar Ravishankar Dave vs. State of Gujrat : 2011(6) R.C.R. (Criminal) 2650*** and ***Riza Abdul Razak Zunzunia vs. State of Gujarat : 2009 Cri.L.J. 4766***, wherein it was held by the High Court of Gujarat that the provision of Section 437(6) of the Code is not mandatory. Similar observations were made by the High Court of Chhattisgarh in ***Gulab Singh Banjare & Ors. vs. State of Chhattisgarh 2011(6) R.C.R. (Criminal) 966*** and ***Atul Bagga vs. State of Chhattisgarh 2010 Cri.L.J. 508***. Further, in ***CRM-M-29702-2018***, titled as ***Vinod Kumar vs. State of Haryana***, decided on 19.12.2018, it was observed by this Court that the use of word “shall” in sub-section 6 of Section 437 of the Code is not conclusive. In view of this provision, the Magistrate has been asked to give reasons to be recorded in writing for not releasing an accused on bail if the trial is not concluded within a period of 60 days from the first date fixed for evidence in the case, the provisions of sub-section 6 of Section 437 of the Code cannot be held to be mandatory. Further, a Division Bench of Delhi High Court in ***Robert Lendi***

2025:PHHC:008789



vs. The Collector of Customs & Anr. 1987 Cri.L.J. 55 and the High Court of Jharkhand in ***Didar Singh vs. State Jharkhand 2006 Cri.L.J. 1594***, while considering the question as to what factors should weigh with the Magistrate while refusing grant of bail under Section 437 of the Code, had observed that apart from gravity of offence and the quantum of punishment, the other factors which may weigh with the Magistrate while refusing bail are the overall impact of the offence and the release of the person accused of such offence on the society, the possibility of tampering of evidence by the accused, the possibility of the accused absconding if released on bail, and the delay in conclusion of the trial within a period of 60 days if attributable to the accused.

9. In view of the above discussed position of law, it is explicit that on the one hand, the provision of Section 437(6) of the Code enables the trial Magistrate to grant bail if the requirement of the conditions mentioned therein stands fulfilled, whereas on the other hand, it vests a discretion to decline the bail for the reasons to be recorded otherwise. However, this provision does not confer any indefeasible right as is provided under Section 167(2) of the Code. While deciding an application under Section 437(6) of the Code, the Court is required to keep in mind that the object behind such provision is to speed up the trial particularly when the accused is in detention. However, at the same time, the gravity of the offence, the quantum of punishment, the manner in which the accused is involved in the offence, whether the default is attributable to the accused, the likelihood of his jumping the bail or any other such circumstance which is considered to be expedient by the Magistrate to

2025:PHHC:008789



not to exercise the discretionary powers under Section 437(6) of the Code, is also to be kept in mind.

10. In the instant case, the charges were framed against the petitioner under various provisions of law on 07.02.2024. He is in custody since 29.10.2023. Undisputedly, trial has not concluded so far. While passing the impugned order, the learned trial Court had observed that the petitioner was facing trial for commission of offences of cheating and misappropriation of huge amount of money. Short adjournments were being given by the Court to secure the presence of the witnesses. The learned revisional Court observed that the learned trial Court was in constant process to issue summons/warrants against the witnesses to complete the trial in a time bound manner. The circumstance that one of the accused, who had been extended benefit of bail, had absconded and the factum of applications being filed for exemption on his behalf on previous occasions, was also taken into consideration. It was also observed that on one particular date, 03 prosecution witnesses were present but their examination was deferred on the request of learned counsel for the present petitioner himself. Detailed reasons had been given by the learned trial Court and upheld by the learned revisional Court for denying the concession of bail on the grounds as enumerated under Section 437(6) of the Code. The petitioner is also stated to be involved in two other cases of similar nature. The allegations against him are serious in nature since he is alleged to have duped the complainant of a huge amount of money and criminally misappropriated the same. Keeping in view the above discussed facts and circumstances that by giving proper reasons for not allowing the application, the learned trial Court had passed the impugned order and learned revisional

2025:PHHC:008789



Court, while exercising its limited power, had dismissed the petition, this Court does not find any illegality or infirmity in the impugned orders. As a consequence, the present petition is dismissed, being devoid of any merit.

20.01.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No