

(2019) 02 CHH CK 0529

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 275 Of 2019

Gulshan Sahu

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Feb. 28, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 437(6)

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: N. Naha Roy, Anant Bajpai

Final Decision: Allowed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the order dated 05.01.2019 passed in a criminal revision, wherein the trial Court has affirmed the rejection of the application of the petitioner filed under Section 437 (6) Cr.P.C. dated 19.11.2018 passed by the JMFC, Raipur.

3. As per the case of the prosecution on 23.04.2018, the petitioner along with the other co-accused has committed theft in the house of Jagdish Agrawal and has stolen neckless, bracelet, bangles, ring and cash worth Rs.20 Lakhs. Having report been made, they were arrested and the charge-sheet was filed.

4. Learned counsel for the petitioner submits that the charges against the petitioner were framed on 07.07.2018 and as per the statement of the co-

accused it would reveal that no recovery was made from the present petitioner and the entire recovery of the goods/stolen ornaments was made from the other co-accused. He further submits that after framing of the charge on 07.07.2018, the case was fixed for evidence on 20.07.2018, thereafter till date evidence is not concluded and therefore, the petitioner was entitled for the bail, however, having the application was being filed, the same was rejected and the same was affirmed in revision.

5. Per contra, learned State counsel opposes the petition and submits that no exorbitant delay has been caused and considering the nature of the allegation benefit of bail may not be granted.

6. This fact is not in dispute that the petitioner is in jail since 01.05.2018. The facts would reveal that the charges were framed on 07.07.2018 and the case was fixed for evidence on 20.07.2018, for the some reason or the other the evidence could not be concluded as the case was traveling in between the Sessions Court and the court of Judicial Magistrate for adjudication of different bail petitions, however, it appears that till date not a single witness has been examined.

7. In the case of Riza Abdul Razak Zunzunia vs. State of Gujarat 2009 Cr.L.J. 4766, the scope, extent and object of provisions contained in Section 437(6) of Cr.P.C. has been considered and observed as under :-

21.The question that arises for determination is as to what would be the considerations which would weigh with the Magistrate while deciding an application under Section 437(6) of the Code. Whether the reasons for not releasing an accused on bail would be similar to the reasons for not granting regular bail or whether some special circumstances should exist for the purpose of declining grant of bail under Section 437(6) of the Code?

On behalf of the Bank it has been contended that factors like existence of a prima facie case, gravity of the offence and the likelihood of conviction which give rise to a belief that the accused is not likely to remain present at the time of the trial are required to be taken into consideration, whereas on behalf of the applicant it has been contended that such factors are not germane while deciding an application under Section 437(6) of the Code. On a plain reading of the provision as well as considering the object behind enacting the said provision if the contention advanced on behalf of the Bank viz.

the prima facie case, gravity of offence, involvement of the accused, etc. are the factors which are to be taken into consideration while deciding the application under Section 437(6) of the Code, were to be accepted, the same would render the said provision nugatory, inasmuch as if the same reasons for which the application for regular bail is refused, are to be considered while deciding the application under Section 437(6) of the Code, there would be no necessity for making such a provision. The application under Section 437(6) of the Code would stand rejected merely on the ground that the application for regular bail had been rejected. In the opinion of this Court, the factors which should be kept in mind while considering an application under Section 437(6) would be different from the factors that are to be taken into consideration while deciding an application for regular bail. Though it may not be possible to lay down any exhaustive list of such factors which may be taken into consideration while deciding the application under Section 437(6) of the Code, some relevant factors would be whether the trial has been delayed on account of the default on the part of the applicant; whether the accused has at any stage during the course of investigation or as an under trial prisoner been absconding; if having regard to the facts of the case there is every likelihood of his jumping bail; or if there are special circumstances due to which it may be deemed expedient not to exercise powers under Section 437(6) etc. But bail cannot be refused for reasons which are generally invoked for refusing bail. The following observations made by the Apex Court in *Aslam Babalal Desai v. State of Maharashtra*, (1992) 4 SCC 272: (1992 Cr.L.J.3712) in the context of compulsive bail under the proviso to Section 167(2) are apt even in the context of Section 437(6) of the Code: ""15. Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously or does not complete it within the time allowed by law.

22. Drawing an analogy, it can be safely stated that law expects early conclusion of cases triable by Magistrate. The delay in completion of trial in

such cases, must therefore, be at the pain of the accused being released on bail, except where the Magistrate by reasons recorded in writing

otherwise direct. The said provision therefore, has to be construed strictly in favour of individual liberty. Importing the grounds relevant for the purpose

of granting regular bail, for the purpose of deciding an application for bail under Section 437(6) of the Code would not only amount to doing violence to

the statute but would defeat the very object of introducing such a provision and reduced it to a mere dead letter. The prosecution, therefore, cannot be

permitted to trifle with individual liberty if it does not diligently pursue the proceedings before the Magistrate to ensure that the trial is concluded within

the period prescribed under Section 437(6) of the Code.

8. In a series of decisions including decision of this Court in the case of Lal Sahu Vs. State of Chhattisgarh 2012 (1) MPHT 6,7 Haricharan Ramteke

v. State of Chhattisgarh Â 2001 (2) MPHT 51 (CG) : 2002 Cri. LR 46 (M.P.,) Smt. Godawari Bai and Others vs. State of Chhattisgarh 2004 (4)

MPHT 5 (CG) : 2004 (2) CGLJ 13 5 and decision of other High Courts cited before this Court, the scope and ambit of provision contained under

Section 437(6) of Cr.P.C. has been considered. Broadly speaking while considering application for grant of bail under Section 437(6) of Cr.P.C., the

considerations are those which have been laid down by this Court in the case of Lal Sahu (supra) in para 11 which is reproduced herein below :

11. The question that arises for determination is as to what factors should weigh with the Magistrate while refusing grant of bail under sub-section (6)

of Section 437 of the Code. In my considered opinion, apart from the gravity of offence and the quantum of punishment, one or more of the following

factors, among others may weigh with the Magistrate while refusing bail:-

(a) the overall impact of the offence and the release of the person accused of such offence on the society,

(b) the possibility of tampering of evidence by the accused,

(c) the possibility of the accused absconding if released on bail, and lastly,

(d) the delay in conclusion of the trial within a period of 60 days if attributable to the accused.

9. Considering the principles laid down as above, if the facts are considered touching the gravity of the offence, it appears that balancing the gravity of the offence as against the principle laid down, prima facie, it appears that the delay is not attributed because of the petitioner. Further taking into the nature of allegations and position of the petitioner as the petitioner is in jail since 01.05.2018, I am of the opinion that the present is a fit case to release the petitioner/accused under Section 437(6) of Cr.P.C.

10. In the result, the petition is allowed and the orders passed by the Courts below are set aside. The petitioner shall be released on bail on his furnishing personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court. He shall appear before the trial Court on each and every date of hearing, unless exempted.