

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

MISC. CRIMINAL CASE NO.7059 OF 2015

Aasif @ Nakta S/o Mehbub Sheikh

Vs.

State of Madhya Pradesh

Shri Nilesh Dave, learned counsel for the applicant.

Ms. Mamta Shandilya, learned counsel for the respondent/State.

ORDER

(Passed on this 30th day of September, 2015)

This application under Section 482 Cr.P.C. is directed against the order passed by the learned XII Additional Sessions Judge, Indore district Indore in Cr.R.No.470/2015 on 20/07/2015, wherein the learned Sessions Judge has dismissed the criminal revision of the applicant and confirmed the order passed by the learned Judicial Magistrate First Class, Indore, district Indore, in criminal case no.35509/14 dated 25.06.2015.

2. The facts giving rise to this application are that the present applicant was facing trial before the learned Judicial Magistrate

First Class under Sections 457, 380, 411 of IPC in criminal case no.35509/14. After framing of charge, the matter was first fixed for recording of evidence on 15.12.2014. However, after lapse of 60 days, no evidence could be recorded and therefore, an application was filed by the present applicant under Section 437(6) Cr.P.C. for grant of bail on the ground that after lapse of 60 days, as prescribed by Section 437(6) Cr.P.C., the trial by the Magistrate could not be concluded.

3. The learned Magistrate dismissed the application on the ground that there are as many as 17 criminal cases pending against the present applicant and therefore, it is not proper to release the applicant on bail. Aggrieved by this order, the present applicant presented a criminal revision which was disposed of by the XII Additional Sessions Judge, Indore in criminal revision no.470/2015, by impugned order dated 20.07.2015. The revision was dismissed and the learned Additional Sessions Judge found that the reasons stated by the Magistrate were just and proper and therefore, no interference was called for.

4. Aggrieved by this order, this application under Section 482 Cr.P.C. is filed on the ground that both the learned Courts did not consider the facts and law properly and they wrongly interpreted the provisions of Section 437(6) Cr.P.C.

5. The learned counsel for the applicant placed reliance on the judgment of the Co-ordinate Bench of this Court in the case of **Ram Kumar @ Raj Kumar Rathore Vs. State of Madhya Pradesh** reported in **LAWS(MPH)-2000-2-42**.

6. In this case, the Co-ordinate Bench of this Court held that the provisions of Section 437(6) Cr.P.C. are mandatory and the reasons given by the Court that it is doubtful that he would be attending the Court on each and every date fixed by the Magistrate were not judicious. The Co-ordinate Bench observed as below:-

“3.....These reasoning indicating the apprehension of the learned Courts below, by no stretch of imagination, could be termed as judicious, and therefore, they are not of such a nature as to thwart and wash off the mandatory character of the provisions of Section 437(6) of the Code of Criminal Procedure. I am of the considered view that the statutory right given to the accused by the above provisions cannot be taken away in such a fashion. Since the petitioner had all through remained in custody during the said period of more than sixty days from the first date fixed for recording the evidence, he would be deemed to have been clothed with the right to be released on bail. The rejection of his application under Section 437(6) of Code of Criminal Procedure by the learned trial Magistrate and later the dismissal of his revision petition by the learned Fourth Additional Sessions Judge, Gwalior, was nothing but the abuse of the process of Court and had given rise to the miscarriage of justice.”

7. The order passed by the Single Bench of this Court was

considered in detail by the High Court of Jharkhand in the case of

Didar Singh Vs. State of Jharkhand 2006 CRI.L.J.1594.

The High Court of Jharkhand took a dissenting view and held that the provisions of Section 437(6) Cr.P.C. are not mandatory but directory. In that case, the application under Section 437(6) Cr.P.C. was rejected on the ground that only five witnesses had been examined till date and many other witnesses like doctors and investigating officer were not examined and the Court was of the view that unless all those charge sheet witnesses were examined, releasing the petitioner on bail would not be justifiable. The Single Bench of High Court of Jharkhand observed in para 9,10 and 11 thus:-

"9. In order to examine the rival contentions of the parties, it is necessary to examine Section 437(6) Cr.P.C. which reads as under:-

"437(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 the bail to satisfaction of the Magistrate unless for the reasons to be recorded in writing, the Magistrate otherwise directs."

10. From plain reading of the aforesaid quoted provision, it appears that the intention of the legislature is to speed up trial without unnecessarily detaining a person as an under-trial prisoner. This provision applies only to a case triable by a Magistrate and not to a case committed to the Sessions for trial. The intention behind the provision is that

the trial should be concluded within period of sixty days from the first date fixed for evidence.

11. The contention advanced on behalf of the petitioner that if the trial Court is not concluded within a period of sixty days from fixed date for evidence then accused who is in custody has to be released on bail cannot be accepted as from the plain reading of the aforesaid provision, it is clear that the said provision under Section 437(6) is not mandatory in nature as Section 167(2) of the Cr.P.C, which provides that if the investigation is not completed within a period of ninety days or sixty days as the case may be then the accused is entitled to be released on bail mandatorily irrespectively of the merit of the case. Under Section 167(2) Cr.P.C, the right to be released on bail is absolute under the provision of Section 437(6) of the Cr.P.C. which is not mandatory in nature, the entitlement of the accused to be released on bail is dependent upon the reasons to be recorded in writing by the Magistrate for refusal to release him on bail The reasons may be several, therefore, it Is the discretion of the trial Court either to release or not to release an accused under the aforesaid provision for the reasons to be recorded in writing. There is no doubt that discretion of the trial Court has to be exercised judicially and not arbitrarily. It is found that the trial Court has exercised its discretion either refusing or granting bail in exercise of power under Section 437(6) of the Cr.P.C. is justifiable in the facts and circumstances of a particular case then such exercise of discretion is not liable to be interfered with unless it is found that discretion so exercised by the trial Court is wholly improper, unjustified and arbitrary. The Division Bench of Delhi High Court in the case of Robert Lendy (1987 Cri LJ 55) (supra) has held that the procedural law is essentially meant to safeguard the interest of justice. The twin objects, namely, to reject the delay in trial and to achieve the ends of justice are necessarily, to be harmonized. It is in that context, one has to find out whether the discretion exercised by the

Magistrate in withholding bail after sixty days, has been properly and judicially exercised.”

8. The Single Bench of High Court of Jharkhand made the following observations on the view taken by the Single Bench of this Court in the case of Ram Kumar (Supra):-

“13. In the decision in the case of Ram Kumar alias Raj Kumar Rathore (supra), the Madhya Pradesh High Court has held that the provisions of Section 437(6) Cr.P.C. is mandatory in nature and after the expiry of sixty days from the first date fixed for recording evidence, the accused acquires statutory right of being released on bail, if the trial is not concluded within the said period, with all due respect, I differ with the view of the Single Judge of Madhya Pradesh High Court, because in my view the provisions of Section 437(6) is not mandatory in nature and the accused does not get absolute right to be released on bail under Section 437(6) of the Cr.P.C, if the period of sixty days expires from the first date fixed for recording evidence and the trial is not concluded within the said period.”

Accordingly, the plea to release the petitioner was dismissed.

9. The High Court of Orissa in the case of **Chhabi Vs. State of Orissa** reported in **1995(2) CRIMES 622** observed that even the nature of allegations should be taken into account when deciding whether the accused may be given the benefit of provisions of Section 437(6) Cr.P.C. It is further observed that any observations made while dealing with the case should not be weighed when the matter is taken up in trial.

10. With due respect to the view expressed by the Co-ordinate Bench of this Court in the case of Ram Kumar (Supra), I defer with the view of the Single Bench of this Court and I find that provisions of Section 437(6) Cr.P.C. are not mandatory but directory. The Magistrate has full power to take into consideration (1) the nature of allegations (2) whether delay is attributable to the accused or to the prosecution and (3) the criminal antecedents of the accused.

11. After taking all these factors into consideration while passing a detailed order, the Magistrate is of the view that benefit of provisions of Section 437(6) Cr.P.C. may not be extended to the accused, no interference can be made in such order.

In this view of the matter, the present application filed under Section 482 Cr.P.C. do not show any abuse of the process of the Court and therefore, it is liable to be dismissed and dismissed accordingly.

C.C.as per rules.

(ALOK VERMA)
JUDGE

RJ