

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 26th OF JUNE, 2023

MISC. CRIMINAL CASE No. 58222 of 2022

BETWEEN:-

**RAJU @ RAJESH S/O HEERALAL GOSWAMI,
AGED ABOUT 22 YEARS,
OCCUPATION – LABOURER,
R/O: NAWLI, TEHSIL BHANPURA,
DISTRICT MANDSAUR (M.P.)**

.....PETITIONER

(BY SHRI AVINASH KUMAR KHARE - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION – GANDHI SAGAR,
DISTRICT MANDSAUR (M.P.)**

.....RESPONDENT

(BY SHRI KAPIL MAHANT – PANEL LAWYER)

Whether approved for reporting: YES

This application coming on for admission this day, the court passed the following:

ORDER

1/ Petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short “Cr.P.C.”) being

aggrieved by the impugned order dated 29.11.2022 passed by the Addl. Sessions Judge, Bhanpura, District Mandsaur in CRR No.1050/2022, wherein the learned ASJ has dismissed the Criminal Revision of the petitioner and affirmed the order dated 20.10.2022 passed by the JMFC, Bhanpura in Criminal Case No.268/2022, whereby an application under Section 437(6) of Cr.P.C. filed by the petitioner was dismissed.

2/ The facts giving rise to this petition are that present petitioner is facing trial before the learned JMFC, Bhanpura for the offence punishable under Section 420 and 201 of IPC in Criminal Case No.268/2022. On 4.8.2022 after framing the charges, the matter was fixed for recording of the prosecution evidence. However, after lapse of the 60 days, prosecution has failed to examine all its witnesses. Therefore, an application under Section 437(6) of Cr.P.C. was filed by the petitioner for grant of bail on the ground that after lapse of 60 days, as prescribed by Section 437(6) of Cr.P.C. which provides that if the trial by the Magistrate could not be concluded, then the petitioner is entitled for bail.

3/ Learned Judicial Magistrate after hearing both the parties rejected the application on the ground that the provisions of Section 437(6) of Cr.P.C. is not mandatory in nature. Three prosecution witnesses, out of 18 witnesses, have been examined and all the efforts done for the speedy trial. Present petitioner has cheated the 4 complainants and so many other persons on the pretext of doubling

their money and grabbed an amount of more than Rs.9.45 Lakhs, therefore, on the basis of gravity of the offence he is not entitled for bail. Being aggrieved by the aforesaid order, the petitioner filed a Criminal Revision, but the same was also dismissed by Revisional Court vide order dated 29.11.2022 by contending that the reasons recorded by the Judicial Magistrate were just and proper and no interference is called for.

4/ Aggrieved by the aforesaid order, the petitioner has preferred this petition on the ground that both the courts below did not consider the facts and law properly and they wrongly interpreted the provisions of Section 437(6) of Cr.P.C. Petitioner is a young person of 21 years and suffering jail incarceration since last one year, but prosecution evidence is still continuing. Prosecution has failed to conclude its evidence within stipulated time. Petitioner is in custody since last one year. Hence the orders passed by both the courts below be set aside and petitioner be enlarged on bail.

5/ On the other hand, learned counsel for the respondent/State opposed the prayer by contending that sub-section (6) of Section 437 of Cr.P.C. confers discretionary powers to the Magistrate to grant or refuse the bail after recording reasons and, therefore, release of the accused on bail under the aforesaid provision cannot be held to be mandatory. Hence, the courts below have rightly rejected the prayer made by petitioner for grant of bail.

6/ I have heard learned counsel for the parties and perused the documents placed on record.

7/ Before adverting to the contentions raised by the learned counsel for the parties, it would be appropriate to refer to Sub Section (6) of Section 437 of the Code of Criminal Procedure, 1973 and the same is reproduced here, as under: -

"S. 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."

8/ In the case of **Asif @ Nakta S/o Mehbub Sheikh v. State of Madhya Pradesh (Miscellaneous Criminal Case No.7059/2015) decided on 30.09.2015** and in the case of **Manoj Agrawal v. State of Madhya Pradesh reported in 2001 (1) MPHT 17**, it is held by this Court that the provision of Section 437 (6) of the Code of Criminal Procedure, 1973 is not mandatory, but it is directory and the Magistrate has full power to refuse or grant bail to an accused person, after taking into consideration: (1) nature of allegations; (2) whether delay is attributable to the accused or to the prosecution; and (3) criminal antecedents of the accused.

9/ Learned counsel for the petitioner placed reliance upon the order dated 19.4.2018 passed by the coordinate bench of this Court in **MCRC No.13444/2018 in the case of Pramod Kumar Vishwakarma Vs. State of M.P.**, in which it has been held that:-

“21. The observations made by this court herein ought not to be seen as an indictment of the Ld. Courts below but an expression of anguish that in such a case where bail ought to have been granted by the learned courts below, the applicant had to languish in jail for more than six months. The learned courts of the District Judiciary must realize that not every citizen is in a position to approach this court for the enforcements of his rights. Greater sensitivity is expected from the Ld. Judges of the District Judiciary who are the face of 14 the Judiciary of the State before whom most of the citizens appear and pray for succour and justice. Substantial number of those languishing in prisons are unable on account of financial and logistical difficulty to approach this court for the enforcements of their rights. Despite the Hon'ble Supreme Court having observed time and again in several cases that bail must be the rule and its denial an exception, cases like this present itself before this court repeatedly time and again. The courts below must be sensitive to the fact that for a large number of people of this State, the Court of the Judicial Magistrate First Class is the High Court and that of the Sessions Judge, the Supreme Court. They do not have the wherewithal to take their cases any higher.”

10/ Counsel for the petitioner has also placed reliance upon the judgment of Punjab and Haryana High Court in the case of **Raman**

Kumar Vs. State of Punjab in CRM-M-18492-2022 dated 17.8.2022,
in which it has been held that:-

“7. A perusal of the some of the Zimni orders attached with the petition would show that the trial is not proceeding speedily. Even otherwise, in terms of the provisions of Section 437(6) of Cr.P.C., bail ought to be granted, where the trial is not concluded within a period of 60 days after the first date fixed for the prosecution evidence.”

11/ But in the instant case from perusal of the proceedings of the trial Court, it revealed that trial Court has framed the charges on 4.8.2022 and till passing of the impugned order by the trial Court, 3 prosecution witnesses have been examined. Trial court has rejected the petition under Section 437(6) of Cr.P.C. filed by the petitioner on the ground that he has cheated so many persons for doubling their money and grabbed amount of more than Rs.20 Lakhs and that is a serious offence. Therefore, the reasons recorded by the trial Court for rejecting the application appears to be good reasons and also from perusal of the record, it is not established that unnecessary delay is attributable to the prosecution for examining the witnesses.

12/ The coordinate bench of this Court in the case of Kallu @ Ramkumar vide order dated 1.2.2017 passed in MCRC No.597/2017, has held that the provision of Section 437(6) of Cr.P.C. is not

mandatory in nature and the accused does not get absolute right to be released on bail under Section 437(6) of Cr.P.C.

13/ Undoubtedly, under Section 437(6) of Cr.P.C. the accused does not get absolute right to seek bail. Hence, the provisions does not confer any indefeasible right as is provided under Section 167(2) of Cr.P.C. While deciding the application under Section 437(6) of Cr.P.C., the Court has to keep in mind that the object behind such a provision is to speed up the trial particularly when the accused is in detention. However, the Magistrate is expected to keep in mind the gravity of the offence, quantum of punishment, the manner in which the accused is involved in the offence, whether the default is attributable to the accused in prison, likelihood of his jumping bail or any other special circumstances due to which the Magistrate considers it expedient not to exercise discretionary powers under Section 437(6) of Cr.P.C. Thus, in the end, it can be concluded that the right conferred under Section 437(6) of Cr.P.C. is not absolute, however, nonetheless, it is a right which cannot be defeated easily and both the courts below have not committed any grave error in rejecting the application filed by the petitioner in this regard.

14/ Therefore, this petition under Section 482 of Cr.P.C. is hereby **dismissed**. However, it is made clear that the order passed by this Court shall not deprive the petitioner in his right of moving the second application for bail under Section 437(6) of Cr.P.C. If the trial

Magistrate is satisfied that there are new reasons for grant of bail as the accused was kept in jail more than 60 days from the date of commencement of trial, then he shall be free to do so.

C.C. as per rules.

(ANIL VERMA)
JUDGE

Trilok/-