

**(2019) 01 CHH CK 0139**

**In the Chhattisgarh High Court**

**Case No :** Criminal Miscellaneous Petition No. 1108 Of 2018, 139 Of 2019

Ghasiram Yadu And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

**Date of Decision :** 30-01-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 167(2), 437(6)

Indian Penal Code, 1860 — Section 120(B), 409, 420, 423, 467, 468, 471

**Citation :** (2019) 01 CHH CK 0139

**Hon'ble Judges :** Goutam Bhaduri, J

**Bench :** Single Bench

**Advocate :** Shivendu Pandya, R.K. Bhagat

**Final Decision :** Allowed

## Judgement

1. Heard.

2. Both these cases are heard & decided together by this common order as they belong to one trial wherein the accused are facing trial.

3. The instant petitions have been filed against the order dated 12.03.2018 & 21.06.2018 passed by the Additional Sessions Judge Gariyaband in Criminal Revision Nos.3 & 7 of 2018, whereby the order passed by the JMFC, Deobhog rejecting the applications filed by the petitioners under Section 437 (6) Cr.P.C. was affirmed.

4. The facts of this case are that one Primary Agriculture Co-operative Centre at Deobhog was working in the area wherein Ghasiram Yadu was working as President, Ghanshyam Yadu was working as Data Entry Operator and Gulab Singh Yadu was working as salesman/in-charge of the centre. During their tenure they in connivance with each other have misappropriated in purchase of paddy which caused loss of Rs.40196145/- to the government, thereafter, the enquiry was carried out and after enquiry the report was made wherein offence was registered under Section 420, 409, 423, 467, 468, 471 & 120 (B) IPC and the

petitioners herein were arrested on 23.09.2015.

5. Learned counsel for the petitioners would submit that the charges in this case were framed on 02.02.2016, thereafter the case was fixed for evidence on 15.02.2016, thereafter, no substantive progress has taken place and the petitioners are still in jail and the evidence has not concluded within a period of 60 days. He further submits that the voluminous documents are present in the case which are documentary in nature and the evidence may take time. He further submits that the petitioners, who are entitled for bail, however, when the bail application under Section 437 (6) Cr.P.C. on behalf of Ghasiram Yadu and Gulab Singh Yadu was moved before the JMFC, Deobhog on 23.01.2018, the said rejection was subsequently subject of revision before the Sessions Judge and the Sessions Judge too by order dated 12.03.2018 has dismissed the revision. Likewise, Ghanshyam Yadu had preferred the application under Section 437 (6) Cr.P.C. before the JMFC, Deobhog which was dismissed on 25.04.2018 and having been subject of revision, the revisional Court too dismissed the revision by order dated 21.06.2018.

6. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioners and submits that the trial is being expedited with all vigor and there is no deliberate omission on the part of the prosecution. He further submits that the order is well merited which do not call for any interference.

7. I have heard learned counsel for the parties and perused the documents.

8. This fact is not in dispute that the petitioners were arrested on 23.09.2015; the charges were framed on 02.02.2016 and the first date of evidence was 15.02.2016, thereafter as has been submitted at the bar that only one witness has been examined and other witnesses are still to be cross-examined.

9. 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 is 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."

10. In a series of decisions including decision of this Court in the case of Lal Sahu Vs. State of Chhattisgarh 2012 (1) MPHT 67, Haricharan Ramteke v. State of Chhattisgarh 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 135 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."

11. Considering the principles laid down as above, if the facts are translated in the facts of this case, it would show that though one witness has been examined but the evidence is not yet concluded and the petitioners are in jail since 23.09.2015. Therefore, prima facie, it appears that the delay is not attributed because of the petitioners. Further taking into the nature of allegations and position of the petitioners, I am of the opinion that the present is a fit case to release the petitioners/accused under Section 437(6) of Cr.P.C.

12. In the result, both the petitions are allowed and the orders passed by the Court below are set aside. The petitioners shall be released on bail on each of them furnishing personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court. They shall appear before the trial Court on each and every date of hearing, unless exempted.