

(2008) 04 GUJ CK 0050

In the Gujarat High Court

Case No : Criminal Revision Application No. 49 of 2008

Patel Vinodbhai Manibhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 437(6), 439
Penal Code, 1860 (IPC) — Section 406, 407, 408, 420

Citation : (2008) CriLJ 4613 : (2008) 2 GLH 701

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : A.M. Parekh, for the Appellant; Mita Panchal, Additional Public
Prosecutor for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—Present Criminal Revision Application has been preferred against the order passed by the learned Sessions Judge,

Gandhinagar dated 17.1.2008 in Criminal Misc. Application No. 566 of 2007, whereby bail was granted to the applicant under Sub-Section 6 of

Section 437 of Criminal Procedure Code, has been cancelled.

2. I have heard learned Counsel appearing for the parties and looking to the facts and circumstances of the case, I see no reason to entertain

present application mainly for the following facts and reasons:

(i) It appears from the facts of the case that present applicant is involved in the offence in connection with C.R. No. I 154 of 2006 registered with

Dabhoda Police Station for the offence punishable u/s 406 407 and 420 of the Indian Penal Code.

(ii) Aforesaid offence was registered with Dabhoda Police Station and he was

arrested on 19.1.2007.

(iii) It appears that upon completion of the investigation, the charge-sheet/chalan was filed on 12.2.2007 before the concerned trial Court.

(iv) It appears that the charge was framed and thereafter, evidence was started by the prosecution witnesses, but as the period of 60 days was over, the trial could not be completed.

(v) It appears that under Sub-section 6 of Section 437 of Criminal Procedure Code, an application was preferred mainly on the ground that as 60

days are already over from the first date fixed for taking evidence and as the trial was not over, bail was granted to the applicant. Trial Court

granted bail u/s 437(6) of Code of Criminal Procedure on this ground.

(vi) Against the order passed by the learned Judicial Magistrate First Class, Gandhinagar on 23.10.2007, Criminal Misc. Application was

preferred by the respondent - State bearing Criminal Application No. 566 of 2007 for cancellation of bail and the learned Sessions Court,

Gandhinagar has observed that time and again, the applications for adjournment were made by the present applicant. Thereafter, the trial could not

be completed within 60 days and therefore, the order passed by the learned Judicial Magistrate First Class, Gandhinagar dated 13.10.2007 in

Criminal Case No. 1807 of 2008 was quashed and set aside and the present applicant was sent to the judicial custody.

(vii) it appears from the provisions of the Code of Criminal Procedure that it is not mandatory for the trial court to enlarge the applicant on bail, if

the period of 60 days is over from the first date fixed for taking evidence and even if, the trial is not over. If the provisions of Sub-section 6 of

Section 437 of Criminal Procedure Code, 1973 are read carefully, there is an inbuilt mechanism if the trial is not over within 60 days from the first

date fixed for taking evidence. For ready reference, Sub-section 6 of Section 437 of Criminal Procedure Code reads as under:

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 bail to

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

3. In view of the aforesaid provisions, there is an exception already mentioned in Section itself to the effect that if the Magistrate is satisfied with the

reasons to be recorded in writing, the bail may be refused to the accused, even if, 60 days are over from the first date fixed for taking evidence.

There is no such mathematical co-relation that once 60 days are over, from first date fixed for taking evidence, the bail must be granted to the

accused. Looking to the gravity of the offence, quantum of punishment, manner in which the accused is involved and the evidence against the

accused and looking to the overall impact of the offence upon the society and looking to such other factors, bail can be refused despite the fact that

60 days period is over from the first date fixed for taking evidence and if the trial is not over. The only condition u/s 437(6) of Code of Criminal

Procedure for such refusal of bail, is to record reasons for not to enlarge the accused on bail. Once taking of his own handwriting on one hand, the

accused may not prefer an application for adjournment and claimed bail under Sub-section 6 of Section 437 of Criminal Procedure, which has

been decided by Orissa High court in the case of Chhabi v. State of Orissa reported in 1995 (2) Cri 622 (Crimes). Para 3 thereof read as under:

3. A Magistrate, while dealing with a case under Sub-section (6) of Section 437 of the Code has to record reasons for making an exception. The

said provision deals with cases where the trial of a person accused of any non-bailable offence is not concluded within a period of a sixty days

from the first day fixed for taking evidence in the case, and it provides that such person shall, if he is in custody during the whole of the said period

be released on bail unless for reasons to be recorded in writing the Magistrate otherwise directs. It is the right of an accused person to demand that

the charge against him should be tried without any unreasonable delay and such delay entitles the accused to get bail. That right is statutorily

recognised and puts a time limit. In a case falling under this Sub-section if the Magistrate for reasons to be recorded, holds that the accused shall

not be released, then the accused will not be released on bail. It is stated that merits of the case should not be considered at that stage. There is no

force in this place. An overall view cannot be equated with prejudging the case. The Court is not precluded from considering the nature of

allegations, while dealing with a case under Sub-section (6) of Section 437 of the Code. Taking totality of the circumstances, I find nothing wrong

in the orders passed by the courts below to warrant interference. However, any observation made while dealing with the case should not weigh

when the matter is taken up for trial. Learned Counsel for petitioner states that in case trial is not expeditiously finalised, learned Magistrate shall be

moved for bail. Needless to say that an effort should be made by learned Magistrate to dispose of the proceeding as early as practicable. If any

application for bail is filed, the same shall be considered on its own merits.

4. This Court has also decided in Criminal Misc. Application No. 945 of 2005 decided on 5.5.2005 that it is not mandatory u/s 437(6) of the

Code of Criminal Procedure on the part of the trial Court to enlarge the accused on bail, no sooner did, 60 days are over from the first date fixed

for taking evidence in Criminal case, if other cogent and convincing reasons are recorded by the trial Court. This has also been followed in Criminal

Misc. Application No. 15144 of 2007 by this Court decided on 5.2.2008.

5. Looking to the facts and circumstances of the present case, it appears that there are serious charges against the present applicant under Sections

406 408 and 420 of Indian Penal Code. The first date of evidence was started by the prosecution witness on 25.6.2007 after fixation of the

charge against the present applicant. Thereafter, as stated hereinabove, adjournment applications were preferred in the month of August as well as

in the month of October. Meanwhile, examination-in-chief of the prosecution witness has been continued upto the end of September, 2007. Thus,

for the reasons recorded by the learned Sessions Judge, Gandhinagar, I see no reason to enlarge the present application on bail u/s 6 of Sub-

Section 437 of Criminal Procedure Code. There are valid reasons for rejecting bail application of the present applicant. Applicant/accused cannot

be allowed to take benefit of his adjournment application. Accused is applying for adjournment and subsequently says now, 60 days are over from

first date fixed for taking evidence and he must be enlarged on bail u/s 437(6) of Code of Criminal Procedure. This advantage of his own wrong,

cannot be availed for getting bail u/s 437(6) of Code of Criminal Procedure. The order passed by the learned Sessions Court, Gandhinagar is

absolutely true and correct in consonance with the provisions of Criminal Procedure Code, 1973. No error has been committed by the leaned

Sessions Court, Gandhinagar in allowing Criminal Misc. Application preferred by

the State bearing Criminal Misc. Application No. 566 of 2007

and correctly the order granting bail by the trial Court has been quashed. Accused is directed to surrender to judicial custody, if he has not availed

bail u/s 439 of Code of Criminal Procedure.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, there is no substance in the present application. Hence, the same is dismissed.