

(2009) 11 GUJ CK 0037

In the Gujarat High Court

Case No : Special Criminal Application No. 765 of 2009

Riaz Abdul Razak Zunzunia

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 437(1), 437(2), 437(3), 437(4)
Penal Code, 1860 (IPC) — Section 408, 419, 420, 467, 468

Citation : (2010) 51 GLR 1061

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : N.D. Nanavaty, S.I. Nanavati, Utpal M. Panchal, J.N. Bhandari, Sanjiv Dave and V. Nanavati, for the Appellant; K.P. Raval, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Petitioner is original accused No. 2 in Criminal Case No. 20658 of 2007 pending before the learned Judicial Magistrate, First Class, Surat arising out of C.R. No. 59 of 2007 dated 7-2-2007. The petitioner challenges the order dated 30th September, 2008 passed by the learned Judicial Magistrate, First Class, Surat below application Exh. 35 as upheld by order dated 24th February, 2009 passed by the learned Additional Sessions Judge, Surat in Criminal Revision Application No. 32 of 2009.

2. Short facts leading to the present petition are as follows:

2.1. The petitioner at the relevant time was employed as Branch Manager of one Memon Co-operative Bank ("Bank" for short). The Bank filed a complaint bearing C.R. No. 57 of 2006 on 22-2-2006 against the petitioner alleging offences punishable under Sections 408, 467, 469, 471 of the Indian Penal Code. The complaint stated, inter alia, that the petitioner in his capacity as Branch Manager by unauthorizedly using the pass-word siphoned off large sums of money from different accounts of account holders of the Bank and thus misappropriated a

sum of Rs. 1,38,76,301/- from the Bank. The complaint narrated the unauthorized withdrawal by the petitioner of different sums of money from different accounts of account holders. Pursuant to the said complaint, the police investigated the offence, filed charge-sheet in Case No. 36128 of 2006 which is pending before the learned Judicial Magistrate, First Class, Surat.

2.2. In the said case, since after commencement, the trial could not be completed within a period of 60 days, the petitioner prayed for bail under Sub-section (6) of Section 437 of the Criminal Procedure Code. When such bail was refused, the petitioner approached this Court by filing Criminal Revision Application No. 229 of 2009. The said application was granted. by the learned Single Judge of this Court by order dated 17/20th July, 2009. It is not in dispute that though the complainant-Bank has challenged the said decision before the Apex Court and the SLP is pending, no stay against the said judgment has been granted. To the contents of the decision of the learned Single Judge in Criminal Revision Application No. 229 of 2009, is hall be making a detailed reference at a later stage.

3.1. So far as the present petition is concerned, the same arises out of another complaint bearing C.R. No. 59 of 2007 filed by one Ajay Mohanbhai Lokhandwala (hereinafter to be referred to as "the complainant") before Salabatpura Police Station, Surat. The complainant in his complaint has made allegations against one Abrar Amin who is accused No. 1 and referred to other responsible officers of the Bank. He has alleged that the said accused committed offences punishable under Sections 419, 420, 468, 467 and 471 of the Indian Penal Code. During the course of investigation, it was found that the petitioner was also involved in commission of the said offence disclosed by the complainant. A charge-sheet, has therefore, been filed against the petitioner as well, showing him as accused No. 2. In the complaint, it is stated, inter alia, that in the name of the complainant, an account was opened in the Bank which account the complainant" had never sought to open. Through impersonation, some other person posing to be Ajay Mohanbhai Lokhandwala had thus opened a pseudonymous account. Through the said bogus Current A/c. 2458, as per the complainant, transactions of crores of rupees had taken place.

3.4. The petitioner was arrested in connection with this complaint also. Eventually, prosecution submitted charge-sheet alleging, inter alia, that through the said bogus account, transactions of crores of rupees unauthorizedly had taken place. Along the similar lines, the Magistrate has also framed charge.

3.5. Once again, after commencement, trial could not be completed within 60 days. The petitioner therefore filed application dated 23-9-2008 Exh. 35 before the learned J.M.F.C. seeking bail under Sub-section (6) of Section 437 of the Criminal Procedure Code. In the said application, it is stated, inter alia, that charge was framed on 25th June, 2008 and the date of taking evidence was fixed on 5-7-2008 and from 5-7-2008 to 23-9-2008, even after 80 days, trial is not completed and the petitioner has been injudicial custody all throughout such

period. He may, therefore, be released on bail. This application came to be dismissed by order dated 30th September, 2008. The learned Judge observed that as per the allegations, the petitioner himself was in the position of Manager of the Bank and by misusing his position and by conniving with other accused, he had opened bogus Bank account through which transactions of crores of rupees were done and had thereby cheated the Bank and committed serious offences. He also observed that Section 467 of the Indian Penal Code prescribes punishment up to life imprisonment. It is also observed that there are as many as 19 witnesses cited by the prosecution which is bound to take some time. Therefore, considering the seriousness of the offence involved, the accused should not be released on bail. He further observed that earlier also the accused had filed bail application which had been dismissed by the Sessions Court and from the record it appears that chief examination of the complainant is over and the cross-examination is going on. The case has been prolonged on account of repeated adjournment applications of the accused. On all these grounds, the learned Magistrate was pleased to dismiss the application of the petitioner.

3.6. The petitioner challenged the said order before the Sessions Court. The learned Sessions Judge by his order dated 24-2-2009, however, dismissed the revision application of the petitioner holding that the order of the Magistrate requires no interference. In addition to approving the reasons cited by the learned Magistrate, the learned Sessions Judge further observed that the petitioner was the Branch Manager of the Bank and as per the allegations, he had opened bogus current accounts and transacted huge amount of money through said accounts. He relied on the provisions of Sub-section (6) of Section 437 to hold that for the reasons to be recorded in writing, such bail application could be refused.

3.7. The petitioner, is therefore, before this Court in the present petition seeking bail under Sub-section (6) of Section 437 of the Criminal Procedure Code.

4. Learned Senior Advocate Mr. N.D. Nanavati appearing for the petitioner with Mr. Utpal Panchal submitted that looking to the facts of the case and the provisions contained in Section 437 of the Criminal Procedure Code, the Courts below committed grave error in rejecting the bail application of the petitioner. He contended that the petitioner was in no way responsible for any delay at least during 60 days after commencement of the trial. Right to seek bail had therefore crystallized which could be denied only for valid reasons to be recorded. He contended that the reasons indicated by the Courts below are not germane to the matter on hand. From the record, he pointed that some of the original documents are missing, and therefore, the trial is unlikely to be concluded shortly.

4.1. He heavily relied on the decision of learned Single Judge of this Court in Criminal Revision Application No. 229 of 2009 in the case of Riaz Abdul Razak Zunzunia v. State of Gujarat to contend that this very petitioner has been granted bail in another case. Reliance was also placed on the decision of the

learned Single Judge in the case of Bhikhaji Chaturji Thakore v. State of Gujarat 2007 (4) GLR 3405 : 2007 (2) GLH 580 wherein in Para 23, the learned Judge observed that the provisions of Sub-section (6) of Section 437 are mandatory in nature.

4.2. Reliance was also placed on a decision of the Apex Court in the case of Chandraswami v. Central Bureau of Investigation, 1996 (6) SCC 751 to contend that when it is possible that the trial may not be completed soon, the petitioner should be enlarged on bail on suitable conditions. For the same purpose, reliance was also placed on an unreported order of the Apex Court dated 15-2-2008 passed in Special Leave to Appeal (Cri.) No. 6491 of 2007.

Dated 6-11-2009

5. On the other hand, learned Senior Advocate Mr. S.I. Nanavati appearing for the complainant vehemently opposed the bail application and submitted that the accused is facing serious charges, that the trial is at advance stage and almost 16 out of 19 witnesses have been examined. It is submitted that accused including the present petitioner are responsible for prolonging the trial. He further contended that the Courts below have taken into account all relevant aspects of the matter and exercised discretion vested by the statute. This Court, therefore, in exercise of writ jurisdiction would not interfere with the order under challenge. He stated that the High Court had rejected regular bail application of the petitioner.

5.1. He relied on an unreported decision dated 9-10-2009 of the learned Single Judge of this Court in Special Criminal Application No. 1344 of 2008 in the case of Ghabhuji Shravanji Makwana v. State of Gujarat wherein the learned Judge observed that the provision of Sub-section (6) of Section 437 of the Code of Criminal Procedure is only an exception to the limited extent that in case the trial has not commenced or concluded within the stipulated period and if the accused makes an application, the Magistrate will have to consider the same.

5.2. Reliance was also placed on the decisions of learned Single Judge of this Court in the case of Jigar Mayurbhai Shah Vs. State of Gujarat, and in the case of Patel Vinodbhai Manibhai Patel Vs. State of Gujarat,

6. Learned A.P.P. Shri Raval also opposed the bail application and submitted that the Courts below have rightly refused to grant bail exercising discretionary powers and have recorded proper reasons for the same.

7. Before examining the facts of the case on the basis of the arguments advanced, it would be necessary to appreciate the scope and ambit of the provisions of Sub-section (6) of Section 437 of the Criminal Procedure Code.

8. Sub-section (6) of Section 437 provides that 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.

9. Before I attempt to express my understanding of the said provision, let me notice the decisions of various High Courts including this Court on the subject.

9.1. Learned Single Judge of Kerala High Court in *In Re: 122 Prisoners*, opined that under Sub-section (6) of Section 437 of the Criminal Procedure Code, the normal rule is to release the prisoner on bail, who has completed 60 days of detention as specified unless the Court otherwise directs. It was observed that rule is mandatory in nature and if any prisoner is to be detained further, it shall be done only as per the specific order passed by the Magistrate recording reasons for such continued detention. It was observed that if any prisoner is detained in any of the prisons in the State for more than the period stated in Section 437(6) of the Code without any reasoned order in writing for the continued detention, such detention would be unauthorized and illegal and the prisoner deserves immediate release from prison. These observations were made in context of a petition filed by 122 under trial prisoners in which it was brought to the notice of the Court that large number of under trial prisoners are languishing indifferent jails of the State.

9.2. Madhya Pradesh High Court, speaking through learned Single Judge, in the case of *Ram Kumar @ Raj Kumar Rathore Vs. State of M.P.*, again taking a strict view of the matter opined that the provision (Section 437(6)) is mandatory and mandate is that if the Magistrate is trying a case in which the accused has been charged for non-bailable offence and trial has not concluded within a period of 60 days from the first date of recording the evidence in the case and that the accused had remained in custody during the whole of such period of sixty days, then he becomes entitled to be released on bail provided of course, the Magistrate does not reject the same recording in writing his reasons.

9.3. Other line of judgments have been rendered by other High Courts. To begin with, Chhattisgarh High Court in the case of *Maqbool Fida Husain Vs. Raj Kumar Pandey*, opined that the provisions of Section 437(6) is an enabling provision which empowers the Court to grant bail in those cases where otherwise it has no power. However, the provision does not empower the Court to violate judicial propriety or to grant bail in those cases where bail has been refused by High Court on merit. It was observed that while exercising power u/s 437(6), the Court has to exercise the judicial discretion and not to act mechanically. It was further observed as follows:

Right of liberty does not mean to infringe the right of others, therefore, if the provision shall be construed liberally by applying its benefit without due consideration it will amount to provide tool in the hand of hardened and habitual criminals.

9.4. Learned Single Judge of Jharkhand High Court in the case of *Didar Singh Vs. State of Jharkhand*, opined that upon completion of the period of 60 days from

the date of commencement of trial, release of the accused on bail is not mandatory, but depends on the reasons to be recorded by the Magistrate for refusal of such bail.

9.5. A Division Bench of Delhi High Court in the case of Robert Lendi Vs. The Collector of Customs and another, opined as follows:

21. The next question that arises for consideration is whether while refusing bail under Sub-section (6) of Section 437 of the Code the Magistrate can only refuse bail on the limited reasoning germane to the cause of delay and whether the bail can be refused on the general grounds recognised as good for refusal to grant bail. Undoubtedly, the object of Sub-section (6) of Section 437 of the Code is to eradicate delay in trial. To us, it appears that it is equally important that the ends of justice do not suffer. The procedural laws are essentially meant to safeguard the interest of justice. The twin objects namely to eradicate 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. We find nothing in the provision to support the assertion of Mr. Mehta that the reasons for declining the bail under this provision should be only those which are germane to the cause of delay. There is no reason to give such a restricted meaning to the provision. The expression used in the provision is "unless for reasons to be recorded in writing, the Magistrate otherwise directs". A plain reading of the expression shows that the Legislature has put no fetters on the powers of the Magistrate that under this provision bail can only be refused for reasons germane to the cause of delay. If that were so, the Legislature would have certainly made it clear. To us, it appears that the considerations for refusing bail under this provision can be the reasons which are generally invoked and understood in law as the grounds for refusing bail. All that is required of the Magistrate is that should he decide to decline to grant bail, he must record his reasons in writing. There are no fetters placed on the exercise of this discretion.

23. In conclusion, we may state that there is a sharp distinction recognised by the Code of Criminal Procedure between the enquiry and trial. Under Sub-section (6) of Section 437 of the Code the first date fixed for taking evidence in the case, would be the date fixed for recording of evidence, after the accused is charge-sheeted and the prosecution is given notice of the date on which the evidence of the prosecution is to be recorded. We are further of the view that the reasons for refusing bail under this provision need not be restricted to reasons which are germane to the cause of delay. We see no such fetters on the powers of the Magistrate and the only requirement of law is that should the Magistrate refuse to grant bail, he must record his reasons for so doing in writing. The reference is accordingly answered.

9.6. Different learned Single Judges of our High Court have also rendered judgments on the topic which may be noted at some length.

9.7. In the case of Bhikhaji Chaturji Thakore (supra), learned Single Judge observed in Para 23 that Sub-section (6) of Section 437 clearly uses the mandatory word "shall" because the scheme of the Act is that if you cannot conclude the trial at least within sixty days from the date of starting of the recording of the evidence, then, such an apathy shown by the Court or by the prosecution would pave the path of the accused to walk out of the jail. It may, however, be noted that the learned Judge was dealing with an application for cancellation of bail granted by the Court below under Sub-section (6) of Section 437 of the Criminal Procedure Code. It was in this context that the above observations were made.

Dated 9-11-2009

9.8. In the case of Jigar Mayurbhai Shah (supra), learned Single Judge opined as follows:

Thus, it is not mandatory or obligatory on the part of the Magistrate that once period of sixty days from the first date fixed for taking evidence is over, the applicant must be enlarged on bail. There is no such mathematical consequence. All that depends upon the facts and circumstances of the case, gravity of the offence, quantum of punishment and the manner in which the present applicant is involved in the offence as alleged by the prosecution.

9.9. In the case of Patel Vinodbhai Manibhai (supra), the learned Judge has observed as under:

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.

9.10. In Ghabhuji Shravanji Makwana (supra), learned Judge, as already noted, was of the opinion that upon satisfying the provisions of Sub-section (6) of Section 437 of Code, if the accused makes an application to the Magistrate, the only stipulation is that the Magistrate shall have to consider the same. In other words, the learned Judge was of the opinion that there is no mandate to the Magistrate to grant such application and the powers are discretionary in nature.

9.11. Before the decision of Ghabhuji Shravanji Makwana (supra), another

learned Single Judge of this Court in the case of Riaz Abdul Razak Zunzunia (supra) considered the provisions of Sub-section (6) of Section 437 in detail. The learned Judge was of the opinion that Sub-section (6) of Section 437 of the Code is mandatory in nature. In fact, the decision at the first blush seems to be suggesting that the grounds for refusing bail u/s 437(6) could not be the same which are to be taken into consideration while deciding ordinary bail application of an accused. It is, therefore, the submission of the Counsel for the complainant that there is direct conflict in the decisions in the case of Ghabhuji Shravanji Makwana and Riaz Abdul Razak Zunzunia (supra).

10. Section 437 of the Criminal Procedure Code makes provisions for bail in case of non-bailable offence. Sub-section (1) of Section 437 provides that when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail. Sub-clauses (i) and (ii) of Sub-section (1) of Section 437 provide for certain exceptions to the said rule which are not important for our purpose. Sub-section (2) of Section 437 pertains to obtaining of bail bonds from a person with respect to whom at any stage of investigation or inquiry, or trial, there are no reasonable grounds for believing that he has committed a non-bailable offence, but there are sufficient grounds for further inquiry into his guilt. Sub-section (3) of Section 437 provides for some of the conditions for bail which may be imposed on a person under certain circumstances. Sub-section (4) of Section 437 requires the Court to record reasons in writing for releasing any person under Sub-section (1) or (2) of Section 437. Sub-section (4) of Section 437 reads as follows:

(4) An officer or a Court releasing any person on bail under Sub-section (1) or Sub-section (2) shall record in writing his or its reasons or special reasons for so doing.

Sub-section (6) of Section 437 reads as follows:

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

11. Upon perusal of the provisions of Sub-section (6) of Section 437 and other provisions of Section 437, following aspects emerge:

(i) Sub-section (6) of Section 437 would apply if the following conditions are satisfied:

(a) If the case is triable by a Magistrate;

(b) Trial pertains to non-bailable offence;

(c) Such trial of a person is not concluded within a period of sixty days from the first date fixed for taking evidence in the case,

(d) Such person was in custody during the whole of the said period,

(ii) If the above conditions are satisfied, the person shall be released on bail unless for the reasons to be recorded in writing the Magistrate otherwise directs.

12. As noted, under Sub-section (4) of Section 437, the Magistrate is required to record reasons or special reasons for releasing any person on bail under Sub-sections (1) or (2) as the case may be. On the other hand, under Sub-section (6), the Magistrate has to record reasons in writing for not releasing the person on bail if the conditions mentioned herein-above are satisfied. Thus, from the requirement of recording of reasons for granting bail under Sub-sections (1) and (2) of Section 437, there is subtle shift of requirement of reasons for not releasing the person on bail if conditions specified in Sub-section (6) are fulfilled. In my opinion, therefore, the Legislative intent is ordinarily to release an accused on bail if the conditions specified in Sub-section (6) are satisfied. Withholding of order of bail is an exception. Granting bail would be the rule.

13. This, however, is not the same thing to say that all the considerations which apply at the stage of granting or refusing bail under Sub-section (1) or Sub-section (2) of Section 437 will, in no case, be relevant while taking up an application for bail under Sub-section (6) of Section 437. To put it differently, even if all conditions of Sub-section (6) noted above are fulfilled, granting of bail by the Magistrate could neither be a mechanical exercise nor be a rigid rule. It must depend on facts and circumstances of each case. Further, there may be various grounds on which it may be wholly inexpedient to release an accused on bail even under Sub-section (6) of Section 437. Some of these grounds could be that the accused would not be available for trial if released, that gravity of the offence and the manner in which the same was committed and the criminal antecedents of the accused or serious and genuine apprehension of pressurising witnesses by the accused would make it inexpedient to release him on bail. It is neither possible nor advisable to attempt to be exhaustive. Suffice, however, to say that there are bound to be grounds which would be common at both the stages, namely, while taking up an application for bail under Sub-sections (1) or (2) of Section 437 as well as under Sub-section (6) of Section 437. Surely, when an accused cannot be trusted to return to face the trial, it would be a valid ground for denying him bail at the outset under Sub-sections (1) or (2) of Section 437 as well as while considering his application for bail under Sub-section (6) of Section 437. Paramount consideration for Court is a fair trial. Fair to the accused, fair to the victim, fair to the society. In the case of *Zahira Habibullah Sheikh and Another Vs. State of Gujarat and Others*, the Apex Court observed that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned.

14. Insofar as the case of *Riaz Abdul Razak Zunzunia* (supra) is concerned, with

profound respect, I am unable to fully concur with some of the observations. The same, if viewed in isolation would suggest that the circumstances and grounds which would be pressed for denying bail under Sub-section (1) or (2) of Section 437 could not be the grounds on which the application under Sub-section (6) of Section 437 could be turned down by the Magistrate. For example, in Para 21 of the judgment, the learned Judge observed as follows:

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 u/s 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 u/s 437(6) of the Code, there would be no necessity for making such a provision. The application u/s 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 u/s 437(6) would be different from the factors that are to be taken into consideration while deciding an application for regular bail.

Thereafter, once again in Para 22, following observations were made:

Importing the grounds relevant for the purpose of granting regular bail, for the purpose of deciding an application for bail u/s 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 reduce it to a mere dead letter.

The above observations, however, must be seen in light of the entire judgment and not in isolation. While making the above observations, the learned Judge has specifically stated that grounds, such as, whether accused has at any stage during the course of investigation or as an undertrial prisoner been absconding or having regard to the facts of the case, there is likelihood of his jumping bail or there are special circumstances due to which it may be inexpedient to exercise the powers, would be some of the grounds on which bail can be refused. These observations would persuade me to believe that the learned Judge did not mean to convey that the grounds which can be used for refusing ordinary bail application could not be the grounds on which the bail application under Sub-section (6) of Section 437 can be turned down.

15. Whether there is a conflict between the decisions of two learned Judges in the case of Riaz Abdul Razak Zunzunia (supra) and Ghabhuji Shravanji Makwana, it is not necessary for me to conclude in this judgment. Further, particularly when the decision in the case of Riaz Abdul Razak Zunzunia (supra) is challenged before the Apex Court, it is not necessary for me to delve on this issue any further. Besides, I also find that within the narrow confines of the decision in the case of Riaz Abdul Razak Zunzunia (supra), it is still possible to decide the

present application without seeking any reference which in any case would be further delaying the application of the accused for being granted bail on account of delay in completion of the trial.

16. Coming to the merits of this particular case, I find that the charges against the petitioner are extremely serious. It is alleged, inter alia, that the petitioner who was the Branch Manager of the Co-operative Bank in question had in connivance with the other accused opened fictitious Bank accounts through which bogus transactions worth crores of rupees were carried out. I am conscious of the fact that the petitioner is one and same in whose favour said decision in the case of Riaz Abdul Razak Zunzunia (supra) has been rendered. It is also a case where he was allegedly involved in defalcation of Bank fund in excess of Rs. 1 crore. I, however, cannot lose sight of the fact that this is the second complaint of somewhat similar nature, if at all, of enhanced gravity. In the present case, the petitioner is stated to have not only managed to open bogus Bank account, but through such Bank account, bogus transactions worth crores of rupees have also been carried out. One may recall that in the previous complaint filed by the Bank, the petitioner is stated to have used his position of trust to misutilize the pass-word and siphoned off large sums of money from the accounts of various account holders of the Bank. In the case on hand, the petitioner allegedly siphoned off crores of rupees through bogus Bank account. As observed earlier, the paramount purpose of any criminal trial is to secure justice to the accused as well as to the victims through a fair trial. One of the prime concerns of a criminal prosecution is to ensure presence of the accused at the time of trial. When there are reasonable chances that the accused would not be available to face the trial, to release him on bail, whether under Sub-sections (1) or (2) of Section 437 or under Sub-section (6) of Section 437 would be wholly inexpedient. Gravity of the offence, manner in which the offence is committed and the criminal antecedents of the accused in the present case would convince me that the Courts below rightly did not exercise powers under Sub-section (6) of Section 437.

17. I have perused the reasons recorded by the Courts below for declining the application of the petitioner for bail. The learned Magistrate, for example, noted that the petitioner is alleged to have opened bogus Bank account and carried out transactions worth crores of rupees. He is charged with offences punishable under Sections 419, 420, 468, 467 and 471 out of which offence u/s 467 is punishable with imprisonment for life. He further observed that during the cross-examination of the complainant himself, applications for adjournments were filed by the accused.

18. Similarly, the learned Sessions Judge, while approving the reasoning of the learned Magistrate, further observed that accused was a Branch Manager of the Bank and bogus current accounts were opened and huge amounts were transacted through such accounts and that there is prima facie evidence against him.

19. Further, upon perusal of rojakam with the assistance of the learned Advocates

appearing for the parties, I find that though after the first date of hearing of the trial, for initial period of 60 days, there was no application for adjournment made on behalf of the present petitioner, but such adjournments were sought by other co-accused. Subsequently also, admittedly, the petitioner's Counsel has sought adjournments on various dates. Additionally, majority of the 19 listed witnesses have already been examined in the trial. Counsel for the petitioner, however, submitted that on 30th September, 2009, Police Inspector has communicated to the learned Magistrate that some of the original documents are not available. Particularly when this is not the ground on which the application is based, without any further inquiry, it is not possible to grant bail only on this ground, Effect of the said communication will be for the Magistrate to judge.

20. Under the circumstances, I see no reason to interfere with the order passed by the Courts below. The petition is therefore dismissed. Rule is discharged.