



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 BAIL APPLICATION NO. 1547 OF 2024

LATABAI WD/O. BHIMSING JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Bhaskar M. P.
APP for Respondent/s-State : Mr. A. S. Shinde.

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CORAM : S. G. MEHARE, J.
DATE : 23.09.2024

PER COURT :-

1. Heard the learned counsel for the applicant and learned APP for the respondent-State.
2. The applicant seeks bail in Crime No.69 of 2023, registered with Sillod City Police Station, District Aurangabad, of the offences punishable under Sections 120-B, 182, 193, 419, 420, 468 read with Section 34 of the IPC.
3. Learned counsel for the applicant has vehemently argued that the trial is not concluded within 60 days from the first date fixed for taking evidence. A few witnesses were examined, and thereafter, the trial was stalled for no satisfactory reasons. Since the trial was not concluded within 60 days from the first date fixed for taking evidence, he deserves bail under Section

437(6) of the Cr.PC. He relied on the case of *Chandraswami and another Vs. Central Bureau of Investigation ; (1996) 6 Supreme Court Cases 751*. He also relied on the case of *Sukhdev Singh Vs. State of Punjab ; 2009 Cri.L.J. 2941*. Relying on these judgments, he would submit that since the trial has been delayed for no cause at the hands of the applicant, the applicant deserves bail. He would submit that the learned Trial Court rejected the bail application on the incorrect ground that two witnesses remained to be examined. The reasons for rejecting the bail of the Trial Court as well as Sessions Court are against the law. The fundamental rights of the applicant to enjoy liberty have been affected. The prosecution would not ensure a speedy trial. Hence, he may be granted bail. The word “shall” has been used in Section 437 of the Cr.PC. So, the Court should exercise the powers to make the justice with the accused. Therefore, he may be granted bail.

4. Per contra, learned APP for the State has strongly opposed the application. Relying on the case of *U.T. Worldwide India Pvt. Ltd. And others Vs. State of Maharashtra and another; 2007 All M.R. (Cri.) 300* he argued that the word “shall” used in Section 437(6) is not mandatory. The said word has been interpreted in this judgment. The law has been laid

down that the term “shall” used in that Section is not mandatory.

5. He also relied on the case of *Snehdiip Shriram Soni Vs. State of Maharashtra ; 2022 All M.R.(Cri.) 2924*, in which the ratio laid in of *U.T. Worldwide (supra)* was reiterated.

6. The question before the High Court at Bombay at Principal Seat in *U.T. Worldwide (supra)* was whether the accused has a right to claim the bail under Section 437(6) of the Cr.PC. in view of the term “shall” used in that Section.

7. The Bombay High Court has interpreted the said Section and recorded the findings that the power to grant bail under various Sub-sections of Section 437 is discretionary and has to be exercised on sound judicial principles. The same principle will apply to bail under Section 437(6) of the Cr.PC. It cannot, therefore, be said that bail must be granted to the accused if the trial is not concluded within 60 days from first date fixed for evidence. Merely because the word shall is used in section does not mean that it is a mandate to do so. The word “unless” otherwise in Sub-Section cannot be ignored. Even if the period of 60 days is so over, the Court has discretion to refuse the bail under Section 437(6) but, reasons for that have to be

recorded. Provision is not like that under Section 167(2) of Cr.PC. If discretion is wrongly exercised, a remedy of appeal can be availed. Power to cancel bail can therefore, be exercised if the order for grant of bail is palpably illegal, perverse and vitiated by total non-application of mind. Similar was the view reiterated in the case of *Snehdiip (supra)*.

8. In *Chandraswami (supra)*, the Hon'ble Supreme Court observed in paragraph No.16 that we propose to examine the plea for grant of bail by looking at the totality of the facts and circumstances of the case at this stage, without going into the question of interpretation or applicability of Section 437(6) of Cr.PC. So also, we do not propose to examine if the cancellation of the bail granted to the appellants earlier in point of time was justified.

9. So, it could be said that in the said case, no law is laid down. However, the Hon'ble Supreme Court granted bail to the accused, looking at the nature of the offence, the facts and circumstances in existence.

10. In *Sukhdeo (supra)*, the Trial Court has declined the bail only on the ground that the delay has been caused by the Jail Authorities or the prosecution. The Additional Sessions Judge

declined the prayer of the petitioner for bail on the ground that the application under Section 437(6) of the accused is only maintainable in the Court of the Magistrate and not in the Sessions Court. The Court recorded the findings that the delay was not attributed to the applicant. Hence, he is entitled to release on bail. The purport of the findings of the Punjab and Haryana High Court was that the bail was not granted under Section 437(6) of the Code as a matter of right and delay caused in trial was the consideration for bail.

11. The learned Magistrate has passed an elaborate order and recorded the findings, that apart from the facts the examination of the remaining witnesses would not take much time to conclude the trial. If this accused is released on bail, she definitely would not turn to the Court. Considering the allegations against her, there is always possibility to abscond which will hamper the trial, because since inception of the crime, the accused was not traceable and arrested belatedly. The learned Magistrate also expressed an apprehension of tampering with the prosecution witnesses.

12. Learned Additional Sessions Judge, Aurangabad considered the case laws relied upon by the respective parties and recorded the findings that considering the role of the

applicant/accused and the co-accused as well as the observations of the Hon'ble High Court in the order of withdrawal of bail application dated 11.06.2024, the applicant is not entitled to parity. After considering the entire facts and rival submissions, thus it appears that subsequent applications though maintainable, the grounds raised by the applicant/accused in the application as well as in the submissions of the learned advocate for the applicant are not sufficient to allow the application.

13. Where the trial is not concluded within 60 days as prescribed under Section 437(6) of Cr.P.C. that does not give a right to bail for default. The term "shall" in the said section is discretionary. The Court should exercise such powers judiciously and consider other circumstances as provided under Section 437 of the Code of Criminal Procedure.

14. Both Courts have recorded the reasons for declining to exercise the powers under Section 437(6) of the Cr.P.C. Though the trial has been little bit delayed, and the Trial Court was expecting a speedy trial, the reasons for not exercising the discretion recorded by both Courts appears to be correct, legal and proper. The applicant has no good past. Hence, apprehension of her absconding is also justifiable. It appears

that the Trial Court is trying its best to conclude the trial at the earliest. But, many times, many things are not under the control of the Presiding Officer. It is a teamwork. All parties concerned should support the Court in concluding the trial within a reasonable period. The Court is satisfied that the reasons assigned for declining to exercise the discretionary powers under Section 437(6) are legal, correct, proper and free from perversity.

15. Therefore, the bail application stands dismissed.

(S. G. MEHARE, J.)

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