

Didar Singh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Oct-15-2004

Reported in : 2006(1)BLJR169; 2006CriLJ1594; [2006(1)JCR283(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 167(2), 437 and 437(6); Indian Penal Code (IPC) - Sections 386, 387, 419 and 420,

Appeal No. : Bail Appln. No. 5145 of 2004

Appellant : Didar Singh

Respondent : State of Jharkhand

Advocate for Def. : Himanshu Mehta, G.A.

Advocate for Pet/Ap. : Babban Lal, Adv.

Judgement :

Amareshwar Sahay, J.

1. Heard the parties.

2. The petitioner is facing trial for commission of the offences under Sections 419, 420, 386 and 387, I.P.C. There is no dispute of the fact that the prayer for bail of the petitioner was earlier rejected up to this Court.

3. Admittedly till 13-7-2004, five prosecution witnesses have already been examined during the trial.
4. It appears that the petitioner, filed a fresh application for bail before the trial Court on 18-8-2004, only on the ground that sixty days has already expired from the first date fixed for evidence i.e. 8-6-2004 and the trial has not yet concluded and, as such, under the provisions of Section 437(6) of the Code of Criminal Procedure, he was entitled to be released on bail. The learned Magistrate by order dated 18-8-2004, itself rejected the petition for bail tiled by the petitioner under Section 437(6) of the Cr.P.C. for the reasons that only five witnesses have been examined till date and the other important charge-sheet witnesses, namely, Dr. Una Priya, Dr. Manjit Singh, Dr. Ashok Kumar Gupta and some other witnesses from whom the petitioner had demanded huge amount by way of ransom have not yet been examined and further that the Investigating Officer has also not yet been examined by the prosecution. The learned trial Court was of the view that unless those charge-sheet witnesses are examined, releasing the petitioner on bail would not be justifiable.
5. The petitioner thereafter moved before the Sessions Judges for bail under Sections 437(6), Cr.P.C. which has also been rejected by the impugned order dated 26-8-2004.
6. Thereafter the petitioner has filed this application before this Court contending inter alia that 8-6-2004, was the first date fixed by the trial Court for evidence and till 13-7-2004, only five prosecution witnesses could be examined by the prosecution and on 10-8-2004, sixty days expired counting from 8-6-2004, the first date fixed for evidence and, therefore, in view of Section 437(6) Cr.P.C, the petitioner is entitled to be released on bail.
7. Mr. Babban Lal, learned Counsel appearing for the petitioner, relying on the provisions of Sections 437(6) of the Cr.P.C. contended that admittedly sixty days had already expired from the first date fixed for evidence in this case and, therefore, the petitioner who is being tried by a Magistrate is in and custody is entitled to be released on bail. In support of his submission he has relied on a decision of Madhya Pradesh High Court in the case of Ram Kumar @ Raj Kumar

Rathore v. State of Madhya Pradesh reported in 2000 Cri LJ 2644 and also on an order of this Court in B. A. No. 2173 of 2004 in the case of Nageshwar Bhagat v. The State of Jharkhand reported in (2004(4) JLJR 3 (HC)).

8. On the other hand, Mr. Mehta learned Government Advocate by referring Section 437(6), Cr.P.C. submitted that the said provision is not mandatory in nature rather, it is discretionary. Elaborating his argument Mr. Mehta has contended that under the provisions of Section 437(6) of the Cr.P.C, the Magistrate can refuse bail, even though the trial is not concluded within a period of sixty days from the first date, fixed for evidence, for the reasons to be recorded by the Magistrate. It is submitted that the only requirement is that the Magistrate has to record for refusing to grant bail. Mr. Mehta has relied on the decision of a Division Bench of Delhi High Court in the case of Robert Lendi v. Collector of Customs and Anr. reported in 1987 Cri LJ 55 and also in the decision of the Supreme Court in the case of Chandra Swami v. Central Bureau of Investigation reported in : (1996)6SCC751 .

9. In order to examine the rival contentions of the parties, it is necessary to examine Section 437(6), Cr.P.C. which reads as under:

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.

10. From plain reading of the aforesaid quoted provision, it appears that the intention of the legislature is to speed up trial without unnecessarily detaining a person as an under-trial prisoner. This provision applies only to a case triable by a Magistrate and not to a case committed to the Sessions for trial. The intention behind the provision is that the trial should be concluded within period of sixty days from the first date fixed for evidence.

11. The contention advanced on behalf of the petitioner that if the trial Court is not concluded within a period of sixty days from fixed date for evidence then accused who is in custody has to be released on bail cannot be accepted as from the plain reading of the aforesaid provision, it is clear that the said provision under Section 437(6) is not mandatory in nature as Section 167(2) of the Cr.P.C, which provides that if the investigation is not completed within a period of ninety days or sixty days as the case may be then the accused is entitled to be released on bail mandatorily irrespective of the merit of the case. Under Section 167(2) Cr.P.C, the right to be released on bail is absolute under the provision of Section 437(6) of the Cr.P.C. which is not mandatory in nature, the entitlement of the accuseds to be released on bail is dependent upon the reasons to be recorded in writing by the Magistrate for refusal to release him on bail. The reasons may be several, therefore, it is the discretion of the trial Court either to release or not to release an accused under the aforesaid provision for the reasons to be recorded in writing. There is no doubt that discretion of the trial Court has to be exercised judicially and not arbitrarily. It is found that the trial Court has exercised its discretion either refusing or granting bail in exercise of power under Section 437(6) of the Cr.P.C. is justifiable in the facts and circumstances of a particular case then such exercise of discretion is not liable to be interfered with unless it is found that discretion so exercised by the trial Court is wholly improper, unjustified and arbitrary. The Division Bench of Delhi High Court in the case of Robert Lendy 1987 Cri LJ 55 (supra) has held that the procedural law is essentially meant to safeguard the interest of justice. The twin objects, namely, to reject 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.

12. It is further held in the aforesaid decision of the Delhi High Court 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 a Magistrate is that if he decides to decline to grant bail, he must record his reason in writing. The decision of Supreme Court cited by the learned Counsel for the petitioner in the case of Chandra Swami AIR 1997 SC 2576 (supra) is of no avail for this case, as it appears that the Supreme Court did not go

into question of interpretation or applicability of Section 437(6), Cr.P.C.

13. In the decision in the case of Ram Kumar alias Raj Kumar Rathore (supra), the Madhya Pradesh High Court has held that the provisions of Section 437(6), Cr.P.C. is mandatory in nature and after the expiry of sixty days from the first date fixed for recording evidence, the accused acquires statutory right of being released on bail, if the trial is not concluded within the said period, with all due respect, I differ with the view of the Single Judge of Madhya Pradesh High Court, because in my view the provisions of Section 437(6) is not mandatory in nature and the accused does not get absolute right to be released on bail under Section 437(6) of the Cr.P.C, if the period of sixty days expires from the first date fixed for recording evidence and the trial is not concluded within the said period.

14. In the case of Nageshwar Bhagat v. State of Jharkhand reported in 2004 (4) JLR3 it appears that the learned single Judge of this Court has not laid down any law nor has interpreted Section 437(6), Cr.P.C. but has only held that, rejection of bail by High Court at an earlier stage cannot be a ground for not invoking the power as vested in Section 437, Clause (6), Cr.P.C. It further appears that in the said case, not a single witness was examined on behalf of the prosecution within a period of sixty days from the first date for recording evidence, therefore, the aforesaid decision of this Court cited on behalf of the petitioner is not applicable in the facts and circumstances of the case.

15. In the present case from order of the trial Court which has been produced before this Court on behalf of the petitioner and has been kept on record, it appears that learned Magistrate while refusing bail to the petitioner, has considered that this is a case, registered under Sections 419, 420, 386 and 387 and five witnesses have already been examined during the trial for prosecution and further that the charge-sheet witnesses from whom the petitioner is said to have demanded ransom of huge amount are yet to be examined on behalf of the prosecution and, therefore, in my view, the learned Magistrate rightly exercised his discretion and refused bail to the petitioner for justifiable reasons. The petitioner did not apply for bail before the trial Court or before the Sessions Judge on merit, rather he applied for bail only under the provisions of Section 437(6), Cr.P.C.

knowing well that on merit his prayer for bail has already been rejected up to this Court. learned Counsel for the petitioner has also not advanced any argument on the merit of the allegations against the petitioner.

16. Considering the facts and circumstances of this case, I find that the learned trial Court as well as the Sessions Court have rightly refused to release the petitioner on bail in the facts and circumstances of the present case in exercise of the power under Section 437(6) of the Cr.P.C. Accordingly, the plea advanced on behalf of the petitioner for his release on bail under Section 437(6) is refected.

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