2025 INSC 242

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.818/2025
(@Petition for Special Leave to Appeal (Crl.) No.1314/2025

SUBHELAL @ SUSHIL SAHU **Appellant(s)**

VERSUS

THE STATE OF CHHATTISGARH **Respondent(s)**

O R D E R

1. Leave granted.

2. This appeal arises from the impugned order passed by the High Court of Chhattisgarh, Bilaspur dated 22-7-2024 in MCRC No.2810/2024 by which the High Court denied regular bail to the appellant in connection with Crime No.460/2023 registered at Police Station Dindayal Upadhyay Nagar, District Raipur, Chhattisgarh for the offence punishable under Sections 420, 201, 120-B read with Section 34 of the Indian Penal Code.

3. The offence relates to crypto currency. The amount involved according to the Investigating Officer, who is personally present in the Court, is approximately Rs.4 Crore.

4. Undoubtedly, it is an economic offence. We do not undermine the seriousness of the alleged crime. Unfortunately, almost 2000 investors have lost their money in the scheme floated by the appellant – herein along with other co-accused. Charge-sheet has been filed against 5 individuals including the appellant – herein. The trial is going on in the Court of Chief Judicial Magistrate, Raipur. Till date, one witness has been examined. We are informed that the first informant has entered the box and the recording of his oral evidence is going on. The problem is that the prosecution intends to examine 189 witnesses. Again, a big question who are these 189 witnesses and why the public prosecutor intends to examine so many witnesses.

5. Be that as it may, the appellant is in custody since December, 2023. Even if 50 witnesses are examined before the oral evidence is closed, it will take a long time.

6. We take notice of the fact that since the trial is being conducted by the Chief Judicial Magistrate, the maximum punishment he can impose if the offence is established would be 7 years.

7. At this stage, the learned counsel appearing for the petitioner also invited our attention to Section 437(6) of the Code of Criminal Procedure, 1973 (for short, "the Code") which reads thus:-

> ***"437. When bail may be taken in case of non-bailable offence.--***
>
> ***(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."***

8. It is not necessary for us to consider the scope, purport and applicability of sub-section (6) of Section 437 referred to above, however, as it has been relied upon, we take this opportunity of explaining the proviso.

9. Sub-section (2) of Section 437 of the Code can be divided in two parts. The first part would indicate that it is mandatory, but in the next breath, the legislature has given discretion to the Magistrate not to grant bail by assigning reasons. In that situation, although the first part can momentarily said to be mandatory, it cannot be interpreted to give an indefeasible right to the accused of being released on bail, since that right is controlled / regulated by the later part of the sub-section. If legislature had stopped at the end of the first part, making it mandatory for the Magistrate to release the accused on bail if the trial is not over within 60 days from the first date of taking evidence, the

provision would have been somewhat akin to sub-section (2) of Section 167 of the Code. But, with the second part being in its place, the two provisions cannot be equated. The provision of sub-section (6) of Section 437 can certainly be said to have been inserted with an intention to speed up the trial without unnecessarily detaining a person as an under-trial prisoner for a prolonged time. Contrary to that, Section 167(2) leaves no room for any discretion with the Court so far as release of an accused on bail is concerned in the given set of circumstances. Under this provision of the Code no reason is good to deny bail to the accused.

10. Later part of sub-section (6) of Section 437 of the Code empowers a Magistrate to refuse bail by assigning reasons. In our view, the legislature, has incorporated this provision with a view to recognize right of an accused for a speedy trial with a view to

protect individual liberty. At the same time, the legislature has tried to strike a balance by allowing the Magistrate to refuse bail by assigning reasons in a given set of circumstances. Meaning thereby, that where in the opinion of the Magistrate, it is not proper or desirable or in the interest of justice to release such accused on bail, he may refuse bail by assigning reasons. The provisions of Section 437(6), as such, cannot be considered to be mandatory in nature and cannot be interpreted to grant an absolute and indefeasible right of bail in favour of accused.

11. The grounds relevant for the purpose of refusing bail would not be the same which could have weighed with the Magisterial Court while refusing bail under Section 437(1) & (2) of the Code. That is a stage much prior to trial. Whereas the stage contemplated under Section 437(6), is after filing of charge-sheet and framing of charge when trial commences and the accused prefers an application after lapse of 60 days

from first date fixed for taking evidence. If the grounds were expected or intended by the legislature to be the same, there was no reason for the legislature to insert sub-section (6) of the Code. In our view, therefore, reasons for rejection of application under sub-section (6) of the said Section have to be different and little more weighty than the reasons that may be relevant for rejection for bail at the initial stage. If this meaning is not given, sub-section (6) would be rendered otiose.

12. We may, however, hasten to add that, that cannot be an absolute proposition and some of the reasons which may be relevant for rejection for regular bail under Section 437(1)&(2) of the Code, may also be relevant for rejection of application under sub-section (6) of the said Section, in a given situation. We do not subscribe to the theory that factors which are relevant for rejection of regular bail, at the initial stage are not at all relevant

for rejection of application under sub-section (6) of the said Section. Fact situations are so large in numbers, that it may not be possible to contemplate, enumerate, illustrate or incorporate here the factors which would be relevant and which would not be relevant for the purpose of rejection of application under sub-section (6) of Section 437 of the Code. But, it can certainly be said that grounds relevant for considering application under sub-section (6) of Section 437 of the Code and the grounds relevant for considering application for regular bail would be different to some extent.

13. In our view, following factors would be relevant:

> **1. Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?**
>
> **2. Whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner?**
>
> **3. Whether there are any chances of abscondence of the accused on being bailed out?**

4. Whether accused was not in custody during the whole of the said period?

If the answer to any one of the above referred fact situations or similar fact situations is in affirmative then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code.

14. The right accrues to him only if he is in custody during the whole of the said period as can be seen from the language employed in sub-section (6) of Section 437 of the Code by the legislature.

15. It would also be relevant to take into consideration the punishment prescribed for the offence for which the accused is being tried in comparison to the time that the trial is likely to take, regard being had to the factors like volume of evidence, number of witnesses, workload on the Court, availability of prosecutor, number of accused being

tried with accused and their availability for trial, etc.

16. Therefore, so far as question Nos. 3 and 4 are concerned, this Court is of the view that the factors, parameters, circumstances and grounds for seeking bail by the accused as well as grounds to be considered by the Magistrate for his satisfaction, would not be exactly the same, but they may in a fact situation be relevant and may overlap each other in both the situation. The factors which are quoted above by this Court are only illustrative and not exhaustive.

17. This Court is of a considered view that applications under Section 437 (6) have to be given a liberal approach and it would be a sound and judicious exercise of discretion in favour of the accused by the Court concerned more particularly where there is no chance of tampering of evidence e.g. where the case depends on documentary evidence

which is already collected; where there is no fault on part of the accused in causing of delay; where there are no chances of any abscondence by the accused; where there is little scope for conclusion of trial in near future; where the period for which accused has been in jail is substantial in comparison to the sentence prescribed for the offence for which he is tried. Normal parameters for deciding bail application would also be relevant while deciding application under Section 437(6) of the Code, but not with that rigour as they might have been at the time of application for regular bail.

18. Differently put, where there is absence of positive factors going against the accused showing possibility of prejudice to prosecution or accused being responsible for delay in trial, application under Section 437(6) has to be dealt with liberal hands to protect individual liberty as envisaged under the Constitution of India and sought to be

protected by insertion of sub-section (6) to Section 437 of the Code by the legislature.

19. Sub-section (6) of Section 437 has been very exhaustively explained by the High Court of Gujarat in *Nehul Prakashbhai Shah v. State of Gujarat* reported in (2012) 53 (3) GLR 2685. One of us, J.B Pardiwala, J. was a part of the Bench which decided the Criminal Reference. We quote the relevant observation:

> ***"9.4.2 Our say, in context of Section 437(6), would be better understood if word 'investigation' is read to mean 'trial' in the above quote.***
>
> ***10. Attempt on part of the Magisterial Court in such situation should be to strike a balance by putting one hand on right to speedy trial of an accused as embodied under Article 21 of the Constitution of India and the interest of the prosecution and society on the other hand.***
>
> ***11. A close reading of provisions of Section 437(6) of the Code, prima-facie would show that a duty is cast upon the concerned Magistrate to see that the trial of an accused is concluded within a period of sixty days from the first date of taking***

evidence. The Magistrate is obliged to make all possible endevours to see that provisions contained in Section 437(6) of the Code are complied with in its true, letter and spirit. To that extent, it appears that a right accrues in favour of an accused to tell the Court concerned that the trial has not been concluded within sixty days from the first date fixed for taking evidence for no fault on his part and, therefore, he should be released on bail, may be at that stage, there is some discretion vested in the Magistrate to refuse bail for the reasons which the Magistrate may deem fit to record. Such reasons cannot be routine. Such reasons have to weighty enough to outweigh the right that accrues to the accused in first part of sub-section (6) of Section 437 of the Code, which appears to be drawing force from Article 21 of the Constitution of India.

11.1 The words 'any case' appearing in sub section (6) of Section 437 of the Code point at the legislative intent to make that provision applicable to all cases which are Magisterial triable and nonbailable. Legislature has not drawn any other distinction for applicability of sub-section (6) of Section 437 of the Code. In comparison to that, the provisions contained in Section 167(2)(a)(i) and (ii) of the Code provide for grant of bail in event charge-sheet is not filed within stipulated time. The provision is aimed at expeditious conclusion of investigation. It also protects liberty of an accused where the Investigating Agency fails to conclude investigation and file charge-sheet within a

stipulated time. Since the accused gets arrested on basis of allegations of offence, the legislature has deemed it proper to protect his interest by awarding to him a right of bail, irrespective of nature of offence if the charge-sheet is not filed within stipulated time limit. That right has been held to be absolute and indefeasible. The parameters contained therein cannot be wholly employed while dealing with an application under Section 437(6) of the Code since they both operate on different plains. Even the language employed in both the provisions is different. Whereas, it gives discretion to Judicial Officer to refuse bail under Section 437(6), it leaves no scope for such discretion under Section 167(2) of the Code.

12. So far as Question No.VI referred by the learned Single Judge is concerned, we state that decision of a co-ordinate Bench of equal strength will have a binding effect on another co-ordinate Bench as it lays down a principle of law rather than a statement of law in context of the subject matter.

13. So far as fundamental right of an accused envisaged under Article 21 of the Constitution of India is concerned, insofar as it relates to a speedy trial, the same cannot be pressed into service vis-a-vis the right of an accused accruing under Section 437(6) of the Code. Because the right of the accused under Section 437(6) of the Code is altogether different than one envisaged under Article 21 of the Constitution of India. Section 437(6) of the Code takes in

its sweep only the right to speedy trial, whereas Article 21 of the Constitution of India has a very wide connotation.

14. The foregoing discussion lead us to conclude and answer the questions under reference as under:

Q-1 An accused involved in a non-bailable offence triable by Magisterial Court whose trial is not concluded within a period of sixty days from the first date fixed for taking evidence in that case, and who has been in custody during the whole of the said period, does not get an absolute or indefeasible right to be released on bail to the satisfaction of the Magistrate. The Magistrate has a discretion to direct otherwise (refuse bail) by recording in writing the reasons for such rejection.

Q-2 The provisions contained in Section 437(6) of the Code are not mandatory.

Q-3 The Magistrate has option/discretion to refuse bail by assigning reasons therefor. The parameters, factors, circumstances and grounds to be considered by Magistrate vis-a-vis such application preferred by the accused under Section 437(6) of the Code may be:

1. *Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?*

2. Whether there are any chances of the accused tampering with evidence or causing

prejudice to the case of the prosecution in any other manner?

3. Whether there are any chances of abscondence of the accused on being bailed out?

4. Whether accused was not in custody during the whole of the said period?

If the answer to any one of the above referred fact situations or similar fact situations is in affirmative than that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code.

The right accrues to him only if he is in custody during the whole of the said period as can be seen from the language employed in sub-section (6) of Section 437 of the Code by the legislature.

It would also be relevant to take into consideration the punishment prescribed for the offence for which the accused is being tried in comparison to the time that the trial is likely to take, regard being had to the factors like volume of evidence, number of witnesses, workload on the Court, availability of prosecutor, number of accused being tried with accused and their availability for trial, etc.

The factors which are quoted above by this Court are only illustrative and not exhaustive.

Q-4 The factors, parameters, circumstances

and grounds for seeking bail by the accused as well as grounds to be considered by the learned Magistrate for his satisfaction would not be identical or similar to subsection (1) and sub-section (2) of the Section 437 of the code, but may be relevant and overlapping each other depending upon facts and there cannot be any straight jacket formula. But, we may add that the reasons for rejection of applications under Section 437(6) need to be more weighty than the routine grounds of rejection.

Q-5 The parameters relevant for deciding application under Section 167(2)(a)(I)(II) of the Code (default bail), cannot be imported for exercise of power under Section 437(6) of the Code.

Q-6 A decision in principle rendered by a coordinate Bench of equal strength would bind another co-ordinate Bench as it lays down a principle of law and not a statement of law in context of subject matter.

Q-7 The legislature, while enacting Section 437(6) of the Code, has not given an absolute, indefeasible or unfettered right of bail. But right of bail is given with a rider investing the Magistrate with discretion to refuse bail by recording reasons therefor. Therefore, the right of accused for a speedy trial, though, Constitutional and aimed at liberty of accused, is not put on that high a pedestal that it becomes absolute. It is a right given with reasonable restrictions. This is the only way the provisions of Section 473(6) of the Code and Article 21 of the Constitution of India can be harmonised

and have to read and interpreted accordingly."

20. In the overall view of the matter, we are convinced that the appellant deserves to be released on bail, subject to certain terms and conditions as may be imposed by the Trial Court. It is ordered accordingly.

21. However, we on our own would like to impose one condition.

22. According to the learned counsel appearing for the appellant – herein, the total amount involved in the alleged scam is approximately Rs.4/- Crore but he attributes about Rs.35 lakh to the appellant - herein.

23. For the purpose of bail and in the peculiar facts and circumstances of the case, we direct the appellant – herein to deposit an amount of Rs.35,00,000/- lakh with the Trial Court within a period of six months from today.

24. We are conscious of the fact that we have been condemning the High Courts when they impose such conditions. But here is a case wherein we are compelled to impose such conditions having regard to the peculiar facts of this case.

25. We make it clear that within the time period of 6 months, if the amount is not deposited by the appellant, this bail shall stand automatically cancelled.

26. The appeal is allowed in the aforesaid terms.

27. Pending applications, if any, shall also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
18TH FEBRUARY, 2025.