

**HIGH COURT OF UTTARAKHAND AT
NAINITAL**

THE HON'BLE SRI JUSTICE RAKESH THAPLIYAL

C482 Application No. 2502 of 2023

Mohd. Inam

.....Applicant

Versus

State of Uttarakhand and Another

....Respondents

Counsel for the applicant	:	Mr. Rajendra Dobhal, learned Senior Counsel assisted by Mr. Shubhang Dobhal, learned counsel
Counsel for the State	:	Mr. Saurabh Pandey, learned Brief Holder
Counsel for the respondent	:	Mr. Arvind Vashisth, learned Senior Counsel, assisted by Mr. Hemant Mehra, learned counsel

Hon'ble Rakesh Thapliyal, J. (Oral)

1. The brief facts of the case are that the applicant moved an application for default bail under Section 437(6) Cr.P.C., which was rejected by the Additional Chief Judicial Magistrate/ 5th Additional Senior Civil Judge, Dehradun by order dated 01.09.2023, against which, Criminal Revision No.214 of 2023 was preferred before the 5th Additional Sessions Judge, Dehradun, which was also rejected by order dated 01.12.2023.

2. Being aggrieved with the orders dated 01.09.2023 and 01.12.2023, the present C482 application has been preferred, wherein a relief is being sought that both the orders may be set-aside, and the applicant be released on default bail during the pendency of trial.

3. On the previous date when the matter was heard at length i.e. on 03.01.2024, Mr. Arvind Vashisth, learned Senior Counsel for respondent no.2, has raised a preliminary objection with regard to the maintainability of the present C482 application, and submits that against the order, rejecting the application under Section 437(6) Cr.P.C., neither a revision was maintainable, nor the present C482 application. He further submits that the applicant can move an application under Section 439 Cr.P.C. for seeking default bail.

4. Apart from this, Mr. Vashisth submits that the order rejecting the application under Section 437(6) Cr.P.C. is an interlocutory order, therefore, neither the revision was maintainable, nor the present C482 application.

5. The matter was again heard on 08.01.2024 and on that day, both the learned counsel for the parties had argued at length and relied upon several judgments. For ready reference, the order passed by this Court on 08.01.2024 is being reproduced herein as under: -

“Mr. Rajendra Dobhal, learned Senior Counsel for the applicant, submits that the order rejecting the Application of the applicant under Section 437(6) of Cr.P.C. is not an interlocutory order, since Section 437(6) of Cr.P.C. gives an absolute right to the applicant to be released on bail, if the trial is not concluded. In reference to this, Mr. Dobhal placed reliance on the judgment rendered by the Madhya Pradesh High Court in **Rajesh Sarathe vs. the State 2 of Madhya Pradesh (MCRC 22726 of 2019)**, decided on 01.08.2019). By giving

reference of this judgment, Mr. Dobhal submits that the parameters relevant for the purpose of considering Bail Application under Section 437(6) of Cr.P.C. are different from the parameters relevant for considering the bail application under Section 437(1) and 439(1) of Cr.P.C. He submits that Section 437 of Cr.P.C. provides a right in favour of the accused to secure bail where the trial could not be concluded within a period of 60 days, from the first date fixed for taking evidence. He further submits that since the order passed by the Magistrate under Section 437(6) of Cr.P.C. affects or adjudicate the right of the accused, it cannot be said to be an interlocutory order.

2. In the judgment of the Madhya Pradesh High Court in the case of **Rajesh Sarathe** (supra), reference of the judgment of the Hon'ble Apex Court rendered in the case of **Amar Nath vs. State of Haryana (1977) 4 SCC 137** was also given, wherein the Hon'ble Apex Court interpreted the provision of Section 397(2) of Cr.P.C.

3. Interestingly, both the counsels Mr. Rajendra Dobhal and Mr. Arvind Vashisth placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of **Amar Nath** (supra), and both the counsels placed reliance particularly on Paragraph-6 of the said judgment.

4. Apart from this, Mr. Rajendra Dobhal also placed reliance upon the judgment of **Suresh Verma vs. State of U.P. and another 2013 SCC OnLine All 1694**, wherein the C-482 application was preferred against the order rejecting the application moved under Section 437(6) of Cr.P.C. The Allahabad High Court, in this case, in exercise of the inherent jurisdiction as conferred by Section 482 of Cr.P.C., released the applicant on bail. Apart from this, Mr. Dobhal as well as Mr. Saurabh Pandey, learned Brief Holder for the State, placed reliance on the judgment of the Madhya Pradesh High Court in the case of **Ram Kumar @ Raj Kumar Rathore vs. State of M.P. 2000 CriLJ 2644**, wherein it is opined that the provisions of Section 437(6) of Cr.P.C. are mandatory in nature. Apart from this, Mr. Rajendra Dobhal, learned counsel for the applicant, further placed reliance on another judgment of the Hon'ble Supreme Court in the case of **Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225** and he particularly referred to paragraph 86 of the said judgment and submits that the right to speedy trial is a fundamental right of the party.

5. Another judgment, which has been placed reliance upon by Mr. Rajendra Dobhal, learned Senior Counsel, is in the case of **Devraj Maratha @ Dillu vs. State of Madhya Pradesh (M.Cr.C. No.2668/2018, decided on 16.03.2018)**, wherein in Paragraph 22, the Madhya Pradesh High Court observed that the provision envisaged in sub-section (6) of Section 437 of the Code is mandatory in the sense that the Magistrate is required to exercise his power of granting bail after the statutory period, if the trial is not concluded within that period, however, passing of an order under Section 437(6) of the Code appears to be mandatory.

6. On the other hand, Mr. Arvind Vashisth, learned Senior Counsel, who appears for the complainant, placed reliance on the judgment of the Allahabad High Court in the case of **In re Provisions of Section-14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 vs. NIL 2018 SCC OnLine All 2087** and refers Paragraphs 64, 85 and 87, and in response to this, Mr. Dobhal submits that in this judgment, interpretation of Section 437(6) of Cr.P.C. has not been dealt with and, therefore, this judgment is not applicable.

7. Another judgment, which has been placed reliance upon by Mr. Arvind Vashisth, is the Full Bench judgment of the Allahabad High Court in the case of **Ghulam Rasool Khan and others vs. State of U.P. and others 2022 SCC OnLine Allahabad 1975** and he refers particularly Paragraphs 6 and 11 of the said judgment. In this judgment Question No. 3 was framed which is as follows:

“Whether an aggrieved person who has not availed of the remedy of an appeal under the provisions of Section 14A of Act, 1989 can be allowed to approach the High Court by preferring an application under the provisions of Section 482 of the Cr.P.C.?”

8. This Question No. 3, as framed, has been dealt with in Paragraph 12, and in Paragraph-13, the answer has been given in negative.

9. Another judgment, which has been placed reliance upon by Mr. Arvind Vashisth, is of the Allahabad High Court in the case of **Surendra Kuwar Singh vs. State of U.P. and others 2015 SCC OnLine All 7137**, and he refers to Paragraph-12 of this judgment.

10. Apart from this, Mr. Arvind Vashisth further placed reliance upon the judgment of the Hon’ble Supreme Court in the case of **Dharmatma Singh vs. Harinder Singh and others (2011) 6 SCC 102** and he referred to Paragraph-22 of the said judgment.

11. Finally, Mr. Rajendra Dobhal, learned Senior Counsel for the applicant, submits that this is a case of default bail and not of regular bail and so far as the default bail is concerned, the same is a matter of right. In response to this, Mr. Arvind Vashisth, learned Senior Counsel for the complainant, submits that there is a major difference under Section 167(2)(a)(ii) of Cr.P.C. and Section 437(6) of Cr.P.C. The major difference has been pointed out by Mr. Arvind Vashisth, learned Senior Counsel, is that Section 167 of Cr.P.C. is mandatory to release the accused on bail but under Section 437(6) of Cr.P.C. there is a discretionary power of the Trial Court to release the accused on bail. Mr. Rajendra Dobhal, learned Senior Counsel, in response to this, further submits that Section 167 of Cr.P.C. will attract during the investigation, but Section 437(6) of Cr.P.C. will attract when the trial has begun. Finally, he submits that if we take both the provisions, both are meant for default bail. The concept of default bail, according to both the counsels, is that the accused can claim, as a matter of right, to

be released on bail, but Mr. Arvind Vashisth, learned Senior Counsel for the complainant, submits that Section 437(6) of Cr.P.C. does not pertain to default bail because the bail can be refused.”

6. Thereafter, the matter was taken up on several occasions and today, Mr. Rajendra Dobhal, learned Senior Counsel for the applicant again placed reliance on the judgment in the case of **Suresh Verma Vs. State of U.P. and another, 2013 SCC OnLine All 1694 (supra)**, wherein it has been held that the provisions of Section 437(6) of CrPC are mandatory in nature and if the trial has not concluded within sixty days from the first date fixed for evidence, then the accused by virtue of Section 437(6) CrPC is entitled to be released on bail.

7. Mr. Arvind Vashisth, learned Senior Counsel for the respondent submits in support of preliminary objection with regard to maintainability of instant C482 Application by placing reliance on several judgments including the judgment rendered by the Hon’ble Supreme Court in the case of **Amar Nath (supra)** and submits that since the order passed by the Magistrate under Section 437(6) CrPC is an interlocutory order, therefore, the Revision would not lie under Section 397(2) of CrPC. He submits that since the present applicant has preferred a Revision against the order refusing to grant bail under Section

437(6) CrPC, and hence the present C482 Application is also not maintainable and the remedy available to the applicant is to seek regular bail under Section 439 CrPC.

8. Apart from this, he submits that earlier, the present applicant preferred a 1st Bail Application, which was rejected on 11.08.2022 and thereafter a 2nd Bail Application was also preferred, which was also dismissed on 23.08.2023. He submits that since in this case, the charges were framed on 10.08.2022 and when the 1st Bail Application, as well as 2nd Bail Application was decided, the grounds which he has taken in an Application moved under Section 437(6) CrPC, were available to the applicant which he has not taken while moving the 1st Bail Application, as well as in the 2nd Bail Application.

9. Mr. Arvind Vashisth, learned Senior Counsel for the respondent further submits that the Revisional Court, after taking into consideration that the 1st Bail Application as well as the 2nd Bail Application of the present applicant were rejected, therefore, he is not entitled to get the benefit of Section 437(6) of CrPC. Apart from this, he also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Dharmatma**

Singh Vs. Harminder Singh and others, (2011) 6

SCC 102, and by placing reliance on para 22 of the said judgment, Mr. Arvind Vashisth, learned Senior Counsel for the respondent submits that Section 482 CrPC saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice, and therefore, he submits that under Section 482 CrPC, the applicant cannot be enlarged on bail particularly when the applicant has a remedy to move an Application under Section 439 of CrPC to seek regular bail and the remedy available under Section 482 of CrPC is not meant for this.

10. In response to this, Mr. Rajendra Dobhal, learned Senior Counsel for the applicant submits that the 1st Bail Application was rejected on 11.08.2022 and the 2nd Bail Application was rejected on 23.08.2023 and in both the Bail Applications, the grounds of Section 437(6) of CrPC were not taken and the Application moved under Section 437(6) of CrPC was moved after disposal of the 2nd Bail Application and it was a new and fresh ground.

11. Mr. Saurabh Pandey, learned Brief Holder for the State submits that the application moved by the

accused/applicant under Section 437(6) of CrPC was rejected by the trial Court on 01.09.2023. The order passed by the trial Court, rejecting the Application under Section 437(6) of CrPC on 01.09.2023 is being extracted herein as below: -

“01.09.2023

आज यह जमानत प्रार्थना पत्र अन्तर्गत धारा 437(6) द0प्र0सं0 अभियुक्त ईनाम की ओर से द्वारा अधिवक्ता प्रस्तुत। सुना। आदेश हुआ कि अभियुक्त ईनाम का जमानत प्रार्थना पत्र अन्तर्गत धारा 437(6) द0प्र0सं0 अस्वीकार किया जाता है। आदेश की प्रति अभियुक्त को निशुल्क प्रदान की जाए तथा एक प्रति जिला कारागार देहरादून को प्रेषित की जाए। पत्रावली नियत तिथि को पेश हो।

ह0 अपठित
(ममता पंत)
पंचम अपर सिनियर सिविल
जज/ए0सी0जे0एम
देहरादून

12. Mr. Saurabh Pandey, learned Brief Holder for the State submits that as per Section 437(6) CrPC, if in any case triable by Magistrate the trial of a person accused of any non-bailable offence is not concluded within a period of the sixty days from the first date fixed for taking evidence then such person shall, if he is in custody during the whole period of the said person, be released on bail to the satisfaction of the Magistrate concerned, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

13. It is submitted that by virtue of Section 437(6) CrPC, the Magistrate should give the reasons while

rejecting the Application under Section 437(6) CrPC but on plain reading of the order passed by the learned Magistrate dated 01.09.2023 no reasoning has been given while rejecting the application under Section 437(6) CrPC.

14. Mr. Saurabh Pandey, learned Brief Holder for the State, by giving reference of Section 437(6) CrPC, submits that whether the order passed by the learned Magistrate dated 01.09.2023 is as per the mandate of Section 437(6) CrPC or not, that aspect can only be examined under Section 482 CrPC. He fairly submits that against the order rejecting the Application under Section 437(6) CrPC, a Revision was preferred by the accused/application wherein the complainant also put his appearance; however, the question of maintainability was not raised by the complainant before the Revisional Court.

15. In response to this, Mr. Arvind Vashisth, learned Senior Counsel for the applicant submits that it is purely a question of law whether the application preferred under Section 482 CrPC is maintainable or not, particularly when a remedy is available to the applicant to seek regular bail under Section 439 CrPC, therefore, such a

legal issue with regard to maintainability can be raised at any stage.

16. Several judgments have been relied upon by Mr. Arvind Vashisth, learned Senior Counsel for the respondent but in none of the judgments, the issue of maintainability has been dealt with, particularly, in reference to Section 437(6) CrPC. Even on perusal of all the judgments, this aspect has also not been dealt with whether the condition as stipulated under Section 437(6) of CrPC is mandatory in nature or not.

17. Mr. Rajendra Dobhal, learned Senior Counsel for the applicant also placed reliance on several judgments, wherein, a particular issue with regard to Section 437(6) of CrPC has been dealt with and it has been held that the conditions as stipulated under Section 437(6) of CrPC are mandatory in nature.

18. So far as the preliminary objection as raised by the learned Senior Counsel for the respondent that the present C482 Application is not maintainable, this Court is of the view that the order rejecting the application of the applicant under Section 437(6) of CrPC is not an interlocutory order since Section 437(6) of CrPC gives an

absolute right to the accused to be released on bail if the trial is not concluded.

Furthermore, the order passed by the Magistrate rejecting application under Section 437(6) of CrPC affects the right of the applicant who wants to secure bail on the ground that the trial could not be concluded within 60 days, therefore, it cannot be said to be an interlocutory order.

Furthermore, it is settled principle of law that Section 482 CrPC save the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

19. Here, in the present case, while rejecting application under Section 437(6) of CrPC, the Magistrate concerned have not recorded any reasons which in fact is the mandate of Section 437(6) of CrPC and this aspect has also been overlooked by the revisional Court. Therefore, the question here to examine is that whether the order passed by the Magistrate on 01.09.2023 is as per the mandate of Section 437(6) of CrPC or not, that aspect can only be examined by this Court while exercising inherent powers under Section 482 CrPC.

Therefore, this Court rejects the submissions as advanced by Mr. Arvind Vashisth, learned Senior Counsel for the respondent and holds that the present C482 Application is maintainable.

20. Further, after taking into consideration all the arguments as advanced by the learned Senior Counsel for the petitioner and the learned Senior Counsel for the respondent, as well as Mr. Saurabh Pandey, learned Brief Holder for the State, this Court is of the view that the conditions, as stipulated under Section 437(6) of CrPC are mandatory in nature and if the trial is not concluded within the period as stipulated under Section 437(6) of CrPC, then the accused is entitled to get the benefit to be released on bail.

21. Here, in the present case, the applicant is in jail since 18.05.2022 and up till date, only two witnesses have been examined out of 14 witnesses. Thus, after taking into consideration all these aspects, this Court is of the opinion that the present C482 Application is maintainable and since the accused/applicant already remained in custody since 18.05.2022, therefore, he is entitled to be released on bail.

22. In view of the observations and reasons as given above, the order dated 01.09.2023, as well as the order passed by the Revisional Court dated 01.12.2023 are hereby set aside; the present C482 Application is allowed without expressing any opinion on the merit of the case and the Trial Court is directed to release the applicant on bail subject to executing his personal bond and furnishing two sureties each in the like amount with the following conditions: -

- (i) The applicant shall cooperate with the trial and attend the Court on each date of hearing.
- (ii) The applicant shall not tamper the evidence.
- (iii) The applicant shall not pressurise/intimidate the prosecution witnesses.

23. In defiance of above conditions, the prosecution would be at liberty to move application for cancellation of bail.

Dt: 24.05.2024
Mahinder/

Rakesh Thapliyal, J.