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Section 437(6) of CrPC is Particular in Nature: Legal Discourse

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ABSTRACT

The Code of Criminal Procedure 1973 (hereinafter 'CRPC') provides procedure for investigation, inquiry and trial in any criminal case. It forms core law on the procedure of criminal trial in our country. The criminal cases have been classified into cognizable and non-cognizable offence. But both of these categories could constitute a bailable offence. Therefore, all the cognizable offences confer jurisdiction on the Judicial Magistrate to detain the accused for ninety days or sixty days, according to the provisions of section 167 of CRPC. However, section 437(1) of CRPC confers discretion to grant bail in case of cognizable offence/s of the specifications provided in it. Therefore, a question arises whether the provisions of section 437(6) of CRPC regulates the discretion of Hon'ble High Court or Hon'ble Supreme Court for grant of bail in any manner? This paper endeavours to find the extent of applicability of section 437(6) of CRPC in the applications for grant of bail and its effect over the mandate imposed by section 167(2) of CRPC in order to ensure literal interpretation of the provisions of law related to grant of bail.

I. INTRODUCTION

The Code of Criminal Procedure (hereinafter 'CRPC') provides procedure for investigation, inquiry and trial in a criminal case. The Indian Penal Code defines different types of offences and provides a probable term of penalty for the commission thereof. It is supplemented by the provisions of CRPC. First Schedule to the CRPC classifies offences into cognizable² and non-cognizable³, bailable and non-bailable and also mentions the Court which may take cognizance of any particular offence.

This paper endeavours to interpret the provisions of section 437(6) of CRPC which contemplates for grant of bail during the stage of inquiry. It concludes that section 437(6) of

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² Section 2(c) of CRPC provides: 'cognizable offence' means an offence for which, and 'cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

³ Section 2(l) of CRPC defines non-cognizable offence as: non-cognizable offence means an offence for which, and —non-cognizable case means a case in which, a police officer has no authority to arrest without warrant;

CRPC does not affect the provisions of section 167 of CRPC for grant of bail, in general, in cases of pre-trial detention during the stage of investigation and it is applicable for grant of bail in particular case/s.

II. BAIL IN COGNIZABLE OFFENCES

Section 167 of CRPC provides procedure when investigation cannot be completed in twenty-four hours. Section 167(1) of CRPC states: Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57⁴ of CRPC, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. This provision is in line with Section 57 which states: No police officer shall detain in custody a person arrested without warrant ...⁵. It means that Section 167 of CRPC provides exclusively for cognizance in cases of cognizable offences.⁶ A cognizable offence may be bailable as well as non-bailable. This is evident from the classification provided in the First Schedule to the CRPC.

Section 167(2) of CRPC provides a maximum period of detention by the Judicial Magistrate to be ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and the maximum period of detention is sixty days, where the investigation relates to any other offence.⁷ An

⁴ Section 57 of CRPC provides for Person arrested not to be detained more than twenty-four hours.

⁵ Section 57 of CRPC states: No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

⁶ see *Supra* note 2.

⁷ Section 167(2) of CRPC states:

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

Executive Magistrate is also empowered to detain for seven days in case the Judicial Magistrate is not available.⁸ The provision of Section 167 CRPC is also applicable in reference to the provisions on bail and bonds contained in Chapter XXXIII of CRPC and it overrides them due to its specific application to bail in cognizable cases.⁹

III. BAIL IN NON-COGNIZABLE OFFENCES

Section 437 of CRPC provides 'when bail may be taken in case of non-bailable offence'. A non-bailable offence may be cognizable as well as non-cognizable. The provisions on bail in cognizable offences are provided in section 167 of CRPC.¹⁰ Section 437(1) of CRPC provides conditions that determine grant of bail in non-bailable offences and it includes non-cognizable offences too. It states that any person accused of or suspected of the commission of any non-bailable offence who is arrested or detained without warrant. This purports its specific application to cognizable offences. But there is no provision in CRPC that determine

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution

⁸ Section 167(2A) of CRPC provides provision related to detention by the Executive Magistrate. It states:

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

⁹ Proviso (a) to Section 167(2) CRPC.

¹⁰ see *Supra* section on Bail in Cognizable Offences.

the period of under trial detention of accused during the investigation in a non-cognizable case.

It would be pertinent to mention that the accused can be detained without warrant in a cognizable case whereas it is mandatory to obtain warrant of arrest in a non-cognizable case. This signifies that a cognizable case is more severe than a non-cognizable case. Therefore, the provisions on pre-trial detention which is applicable in a cognizable case would *ipso facto* apply in a non-cognizable case.

IV. BAIL UNDER SECTION 437(6) CRPC

Section 437 of CRPC provides 'when bail may be taken in case of non-bailable offence'.

Section 437(6) of CRPC states: 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.

Clearly, section 437(6) of CRPC applies only to non-bailable offences. Non-bailable offences can be cognizable as well as non-cognizable. It would be imperative to describe the procedure for investigation, inquiry and trial as a whole in order to further interpret the provision of section 437(6) CRPC in reference to the grant of bail in non-bailable offences.

(A) Procedure of trial:

The investigation in a criminal case is initiated on filing of first information report¹¹, in case of cognizable offence or on report under section 155 of CRPC before a police officer in case of any non-cognizable offence. A complaint¹² can be filed before the Magistrate under Section 2(d) of CRPC. The police officer has authority to investigate the case whether it is cognizable or non-cognizable by the provisions of Chapter XII¹³ of CRPC. Section 190 of CRPC empowers the Magistrate to take cognizance of offences upon complaint or police report or it may take cognizance on information from any person other than a police officer or upon his own knowledge, that such offence has been committed. Chapters XV and XVI of

¹¹ Section 154 of CRPC provides for Information in cognizable cases. This is First Information Report according to the terminology designated to section 154 CRPC by section 207 of CRPC.

¹² Section 2(d) of CRPC defines the term complaint and states: — 'complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant'.

¹³ Chapter XII of CRPC provides for information to the police and their powers to investigate.

CRPC provides special provision relating to cognizance by the Magistrate in cases of complaint.

Section 173 of CRPC mandates filing of police report within two months in case of offences relating to rape of a child. The police report must be filed within ninety days of initiation of investigation after detention of the accused by the Magistrate under section 167 of CRPC. The time limit for filing a police report except under clause (1-A) to section 173 of CRPC is not provided to be ninety days. But, section 167 of CRPC provides that in cognizable cases, the accused can be detained for a maximum period of ninety days or sixty days, as the case may be, provided for the offence. So, the police are required to complete the investigation within ninety days or sixty days so that the release of accused does not vitiate the sanctity of investigation in any manner. So, the default maximum time limit for filing a police report under section 173 of CRPC is ninety days.

(B) Interpretation of section 437(6) crpc:

Section 437(6) of CRPC provides entitlement to bail in cases of non-bailable offences triable by Magistrate. A non-bailable offence may be cognizable as well as non-cognizable.¹⁴

(C) Case of cognizable offences:

In case of cognizable offences, the trial commences only after filing of police report under section 239 of CRPC. If the Magistrate on examination of the accused as well as hearing the submissions of prosecution, considers the charge against the accused to be groundless, he shall discharge¹⁵ the accused and record his reasons for so doing. If the Magistrate is of opinion that the accused shall not be discharged, it shall frame the charge¹⁶, provide opportunity to the accused to plead guilty and may on its discretion convict accordingly¹⁷. If the accused does not plead guilty, the Magistrate shall fix the date for evidence/ examination of witnesses under section 242 of CRPC. Therefore, it is necessary that the police report is filed before the commencement of evidence in the case.

The police report is prepared in the time span of sixty days or ninety days, as the case may be, under section 173 of CRPC. Section 437(6) of CRPC confers bail to a person in custody if the trial is not completed within sixty days from the first day fixed for taking evidence in the case. The date for evidence is fixed only after filing of charge sheet or police report. The police report is required to be filed within the maximum time span of sixty days or ninety

¹⁴ see *Supra* section on Bail in Cognizable Offences.

¹⁵ Section 239 of CRPC.

¹⁶ Section 240 of CRPC.

¹⁷ Section 241 of CRPC.

days under section 173 of CRPC. So it is only after filing of police report, i.e., after sixty days of pre-trial detention of accused that the first date will be fixed for taking evidence in the case. Even if the trial completes within sixty days, as contemplated by section 437(6) of CRPC, the accused has to undergo custody of one hundred and twenty days. Proviso (a) to Section 167 of CRPC permits maximum detention during investigation for sixty days or ninety days, as the case may be. Hence, if the accused is granted bail in accordance with the provision of sixty days provided by section 437(6) of CRPC, it has to undergo a minimum sentence of under trial detention for one hundred twenty days or one hundred fifty days, as the case may be, which is beyond the authority conferred for detention during investigation of a case under section 167 of CRPC. Section 437(6) of CRPC provides entitlement to bail during inquiry because the stage of taking evidence in the case is a part of inquiry. An accused would be detained during the inquiry only if he has been duly granted bail under section 167 of CRPC but

1. is liable for violation of conditions of bail imposed under clause (2) and (3) to section 437 of CRPC which would include cases of bail jump and other conditions which may be imposed by the Hon'ble Court;
2. is committed to custody on consideration of Magistrate under clause (5) to section 437 of CRPC.

Therefore, section 437(6) of CRPC entitles bail in a case triable by a Magistrate, if 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. This provision is applicable only on accused detained in custody for violation of conditions of clause (2) and (3) to section 437 of CRPC or on discretion of Magistrate under clause (5) to section 437 of CRPC. It does not affect or determine the grant of bail under section 167 of CRPC read with the circumstances contemplated by clause (1) to section 437 of CRPC.

(D) Case of non-cognizable offences:

Section 437(1) of CRPC provides for bail in non-bailable offences but it restricts its application to cognizable offences by the words, 'arrested or detained without warrant'. The conditions for grant of bail provided in section 437(1) of CRPC are determinative for cognizable offences as well as non cognizable offences.¹⁸ Therefore,

1. The interpretation of section 437(6) of CRPC, in the previous section, is applicable for cognizable as well as non-cognizable offences because section 437(6) of CRPC

¹⁸ see *Supra* section on Bail in Non-cognizable offences.

does not in any manner contemplate for grant of bail for accused detained during the investigation;

2. the said interpretation does not affect clause (1) to section 437 of CRPC in relation to grant of bail under section 437(6) of CRPC.

V. CONCLUSION

Chapter XXXIII of CRPC provides provisions as to bail and bonds. This Chapter is supplemental to section 167 of CRPC because the latter section specifically mandates maximum term of pre-trial detention by the Magistrate during the stage of investigation.

Section 437(6) of CRPC entitles bail to a person accused of any non-bailable offence, triable by a Magistrate, if the trial is not concluded within sixty days of the first date fixed for taking evidence in the case. This paper concludes that section 437(6) of CRPC does not determine the authority of Magistrate to grant bail during the investigation stage under section 167 of CRPC. It further concludes that section 437(6) of CRPC, therefore, is applicable only on cases of violation of conditions imposed during the grant of bail or when the Magistrate in his discretion authorised detention under section 437(5) of CRPC. Therefore, section 437(6) of CRPC is applicable only on particular cases for grant of bail and is particular in nature.
