



2026:AHC:129123

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 39389 of 2025

Mohd. Ashfaque Ansari Alias Ashfaque Ansari

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Zain Abbas
Counsel for Opposite Party(s)	:	G.A.

Court No. - 68

HON'BLE ASHUTOSH SRIVASTAVA, J.

Heard Sri Zain Abbas, learned counsel for the applicant, Sri Paritosh Malviya, learned AGA for the State-Respondent and perused the record.

The instant bail application on behalf of the applicant, Mohd. Ashfaque Ansari Alias Ashfaque Ansari, has been filed seeking his enlargement on bail in Case Crime No. 578 of 2015, under Sections 120-B, 212, 467, 468, 471 of the I.P.C., Police Station Sadar Bazar, District Meerut, during the pendency of the trial before the Court below. The applicant is stated to be languishing in jail since 27.11.2015.

The instant bail application has been reported as the first bail application on behalf of the applicant. However, the records reveal that initially the FIR giving rise to the instant Case Crime Number was filed under Section 3/9 of the Official Secrets Act, 1923, Section 14 of the Foreigners Act, 1946, Sections 120-B, 467, 468, 471, 380 and 411 of the IPC at Police Station Sadar Bazar, District Meerut. After investigation the applicant was charge sheeted under Sections 120-B, 212, 467, 468 and 471 of IPC. It transpires from the records that the applicant was arrested in another Case Crime No. 2023 of 2015 (State Vs. Irshad Ansari & others) under Sections 121, 121-A, 120-B, 489-B, 489-C, Police Station STF Kolkata and was confined in Kolkata Jail since 27.11.2015. The applicant could not obtain bail in the aforesaid case. The applicant was summoned under B-Warrant in the present case vide order dated 14.08.2021 fixing 10.09.2021. The applicant applied for bail before the Court below which was rejected vide order dated

06.05.2022. Thereafter the applicant approached this Hon'ble Court seeking enlargement on bail in the instant case crime number by filing Criminal Misc. Bail Application No. 29538 of 2023, which too was rejected vide order dated 10.01.2024. It transpires that after rejection of the bail plea by this Court vide order dated 10.01.2024 the applicant filed Second Bail application before the Sessions Court. The District and Sessions Judge, Court No. 6, Meerut, vide its order dated 29.08.2025 rejected the second bail application of the applicant. After rejection of his bail plea the applicant has approached this Court by means of the present bail application.

In the opinion of the Court the present bail application is the second bail application before the High Court but the applicant has not described it as such. Neither the Registry of this court has taken note of this Fact.

Be that as it may, this Court taking note of the above facts, proceeds to decide the bail application on merits.

Learned counsel for the applicant has argued that the applicant is innocent and has been falsely implicated in the present case. The applicant is being prosecuted for offences under Sections 120-B, 212, 467, 468 and 471 IPC giving rise to the Case Crime No. 578 of 2015, Police Station Sadar Bazar, District Meerut and is languishing in jail since 27.11.2015. Charge sheet against the applicant has been filed on 07.12.2021 and charges against the applicant have been framed vide order dated 22.08.2024. The trial registered as Trial No. 23553 of 2021 is sub-judice before the Court of Additional Chief Judicial Magistrate, Court No. 10, Meerut. Learned counsel has invited the attention of the Court to a questionnaire dated 31.03.2026 issued by the Court concerned regarding the status of the trial, which has been brought on record as Annexure No. SA-2 to the supplementary affidavit dated 15.04.2026 to submit that charge sheet against the applicant was filed as far back as on 07.12.2021 and the Court concerned also took cognizance of the same. The charges have also been framed against the applicant inasmuch as the trial is pending at the stage of evidence of the prosecution but till date none of the prosecution witnesses have been examined. There are 31 prosecution witnesses. Learned counsel has argued that the applicant is entitled to the benefit of Section 437(6) Cr.P.c. and is entitled to be enlarged on bail. Reliance has been placed upon the decision of the Apex Court in the case of **Sahil Manoj Machari Vs. The State of Maharashtra (SLP) Criminal No. 7502 of 2026** decided on 04.05.2026 and in the case of

Vaibhav Singh Vs. State of U.P., SLP (Criminal) No. 7416 of 2026 decided on 29.04.2026. In both the above cases the Apex Court has made observations as regards the rights of accused to have speedy trial as enshrined under Article 21 of the Constitution of India.

Per contra, Sri Paritosh Malviya, learned AGA has vehemently opposed the bail plead of the applicant by submitting that the applicant has been hand in glove with co-accused Mohd. Ezaz @ Mohd. Kalam stated to be a Pakistani National and ISI Agent. The applicant has been charged with harbouring the said Pakistani Agent, Mohd. Ezaz @ Mohd. Kalam and providing him confidential information relating to Indian Army/Indian Air force through e-Mails from different districts of Uttar Pradesh, Uttarakhand to Pakistan particularly, to the Officers of ISI and to one Irfan in Bangladesh. The co-accused Pakistani Agent, Mohd. Ezaz @ Mohd. Kalam is stated to have stayed at the house of the applicant for nearly 20 months and learnt Hindi Language, Photography and Video mixing. The applicant provided all logistics to the Pakistani Agent who too was arrested and have quantity of illegal and prohibited articles, sensitive and confidential information/documents were recovered from the possession of the said Agent. It is argued that releasing the applicant on bail shall not be the national interest. It is accordingly prayed that the bail application of the applicant is liable to be rejected.

I have heard the learned counsel for the applicant as also the learned AG for the State Respondent, perused the records as also the decisions of the Apex Court cited at the bar.

Learned counsel for the applicant has laid much emphasis upon the Section 437 (6) of the Cr.P.C. and to the Article 21 of the Constitution of India to press the bail plea of the applicant. Section 437 (6) of the Code of Criminal Procedure, 1973 is being reproduced hereunder:-

"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."

The provision of sub-section (6) of Section 437 Cr.P.C. 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. However, the provisions cannot be interpreted to give an indefeasible right to the accused of being released on bail, since the right is controlled by the later part of the provision which empowers a Magistrate to refuse bail by assigning reasons. The legislature in its wisdom has incorporated the provisions with a view to recognize right of an accused for a speedy trial with a view to protect individual liberty and at the same time has tried to strike a balance by allowing the Magistrate to refuse bail by assigning reasons in a given set of circumstances. In the opinion of the Court, the provisions of Section 437 (6) Cr.P.C., cannot be considered to be mandatory in nature and cannot be interpreted to grant an absolute and indefeasible right of bail in favour of the accused.

The provisions of Section 437 (6) Cr.P.C., has been interpreted by the Courts of law in several decisions. Recently, the provisions came to be interpreted by the Apex Court in the case of ***Subhelal @ Sushil Saku versus the State of Chattisgarh, Crl. Appeal No. 818 of 2025 (arising out of SLP (Crl.) No. 1314 of 2025)*** decided on 18th February, 2025 and reported in 2025 INSC 242. The Apex Court while drawing a distinction with Section 167 (2) Cr.P.C., and approving the decisions of the High Court of ***Gujrat in Nehul Prakash Bhai Shah versus State of Gujrat*** reported in ***(2012) 53 (3) GLR 2685*** observed that fundamental right of an accused envisaged under Article 21 of the Constitution of India in so far as it relates to a speedy trial cannot be pressed into service viz-a-viz the right of an accused accruing under Section 437 (6) of the Cr.P.C. inasmuch as the right of the accused under Section 437 (6) of the Code is altogether different than one envisaged under Article 21 of the Constitutions 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.

The provisions contained in Section 437(6) of the Cr.P.C. are not mandatory. the legislature while enacting Section 437(6) of Cr.P.C. has not given an absolute, indefeasible or unfettered right of bail. But the right of bail is given with a rider investing the magistrate with discretion to refuse bail by recording reasons therefor. The right of an accused for a speedy trial, though, constitutional and aimed at liberty of the accused, is not put on that high a pedestal that it becomes absolute.

In the case at hand, the applicant has been charged of assisting an ISI Agent in collecting confidential and sensitive information regarding the Armed Forces of India, which can undermine the national security of India. In such circumstances the Court is of the opinion that the personal liberty of the applicant cannot be placed over and above the security of the nation. The trial against the applicant is yet to commence and if the applicant is released on bail there is every chance of absconding tampering with or destruction of the evidence, influencing witnesses and interfering with investigation. Consequently, the Court is not inclined to release the applicant on bail. The application is, accordingly, **rejected**.

This Court, while rejecting the bail application of the applicant takes note of the fact that the applicant is languishing in jail since 27.11.2015 and the trial has yet not commenced. In such circumstances, appropriate directions to the Trial Court to expedite the trial is warranted. Accordingly, the Trial Court is directed to proceed with the case expeditiously by fixing short dates, ensure the presence of the witnesses and make all endeavour to conclude the trial within six months.

May 27, 2026
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(Ashutosh Srivastava,J.)