

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Mr. Justice Shib Sadhan Sadhu, J.

C.R.R. No.637 of 2015

Matang Sinh

... Petitioner

Versus

The Central Bureau of Investigation

... Opposite Party

**For the Petitioner : Mr.Sabyasachi Banerjee
Mr.Pradip Sancheti
Mr. Pratim Dasgupta**

**For the O.P. : Mr. Asraf Ali
Mr. Sankar Banerjee**

Heard on : April 02, 2015

Judgment on : May 07, 2015.

Shib Sadhan Sadhu, J.

1. The petitioner by means of the present petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C. for brevity) seeks to quash/set aside the impugned order dated 15th February, 2015 passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas in connection with case

No.RC/04/S/2014-CBI SCB (SIT), Kolkata under Sections 120B/420/406/409 of the Indian Penal Code corresponding to ACGR No. 3482 of 2014 whereby and whereunder the Learned Magistrate allowed the prayer for further detention of the petitioner in police custody.

2. The factual matrix leading to the filing of the instant Revisional Application in brief is that the petitioner was served with a notice under Section 160 of the Cr.P.C. by the Additional Superintendent of Police, CBI, SCB (SIT), Kolkata asking him to appear before the Investigating Authority at CGO Complex, BS Block, Salt Lake, Kolkata on 31.01.2015 at 11 a.m. and on receipt of such notice the petitioner attended the office of the said officer on 31.01.2015 at 11 a.m. The petitioner assisted the process of investigation but surprisingly enough he was informed that he has been arrested by the Opposite Party at 6 p.m. in the evening. Thereafter he was taken to N.R.S. Hospital for medical examination and thereafter he was referred to SSKM hospital wherein he was admitted. Since he was admitted in hospital he was not produced before the Learned Magistrate on 01.02.2015. However, the Learned Magistrate on hearing both the sides rejected the prayer for bail made on behalf of the petitioner and took the accused / petitioner in judicial custody till 13.02.2015. On 03.02.2015 the O.P. filed an application before the Learned Magistrate praying for direction upon the Superintendent, SSKM Hospital and the Jail Authority for production of the petitioner after being discharged from the hospital and the Learned Magistrate accordingly passed order directing the Superintendent of

Alipore Central Correctional Home to produce the petitioner as soon as he is discharged from the hospital.

3. On 07.02.2015 after being released from SSKM Hospital, the petitioner was produced before the Learned Magistrate and on the prayer of the Investigating Agency the petitioner was remanded to police custody till 11.02.2015. On 08.02.2015 he was again admitted to S.K.K.M. Hospital on account of some extreme medical exigencies and for that the petitioner could not be produced on 11.02.2015. The prayer for further police custody was rejected and the Learned Magistrate directed further production of the petitioner on 13.02.2015. But on 13.02.2015 the petitioner could not be produced and prayer for further police custody was rejected and 18.02.2015 was fixed for further production. On 15.02.2015 the petitioner was produced before the Learned Magistrate and the Investigating Authority prayed for another seven days police custody. The Learned Magistrate considered such prayer and remanded the petitioner to police custody till 21.02.2015. On 21.02.2015 the petitioner was produced and he was remanded to judicial custody till 07.03.2015. Thus it becomes evident that the petitioner was remanded to police custody beyond the period of 15 days of his first order of remand passed on 01.02.2015. Feeling aggrieved against the same the present petition was filed by the petitioner.
4. Mr. Sabyasachi Banerjee, Learned Counsel appearing for the petitioner submitted that the impugned order dated 15.02.2015 is absolutely illegal

because the Magistrate is empowered under Section 167 of the Cr.P.C. to remand an accused to police custody only for the first 15 days from the date of arrest. But in the instant case since the petitioner was arrested on 31.01.2015, the first fifteen days expired on 14.02.2015 and hence the impugned order dated 15.02.2015 allowing prayer for police remand till 21.02.2015 is bad in law and is liable to be set aside/quashed. He placed reliance on the decision of the Hon'ble Supreme Court reported in 1993 C.Cr.LR (SC)1 (CBI, Special Investigation Cell-1, New Delhi v. Anupam J. Kulkarni and (2015) 1 Supreme Court Cases (Cri) 398 : (2014) 14 Supreme Court Cases 434 (Satyajit Ballubhai Desai and others v. State of Gujarat) in order to substantiate his submission.

5. Mr. Asraf Ali, Learned Counsel appearing for the O.P. on the contrary, contended that since the accused person was not produced in person before the Learned Magistrate on 01.02.2015, the order passed by the Learned Magistrate remanding the petitioner to judicial custody is without jurisdiction and they have already challenged such order before the Learned Sessions Judge, Alipore and such order has been stayed. He further contended that the fifteen days should be counted from the date of production of the accused in person before the Learned Magistrate as per provision of the Clause (b) of the proviso of Section 167 (2) Cr.P.C. Therefore, the Learned Magistrate was quite right and justified in passing the order of police remand of the petitioner till 21.02.2015 as he was produced in person before the Learned Magistrate for the first time on

07.02.2015. Thus, according to him, the impugned order is quite legal and correct and it should not be interfered with.

6. I have considered the rival submission and contention advanced by the Learned Counsel for the parties in the light of the decisions placed and perused the entire materials available on record with special attention to the order impugned.
7. The moot question which now arises for consideration is from which date the first period of fifteen days mentioned in Section 167 (2) of the Cr.P.C. is to be computed.
8. At the very outset let me refer to the relevant provision of law which I think have a direct bearing upon the issue of controversy with which we are concerned.
9. Article 22 of the Indian Constitution provides for protection against arrest and detention in custody of a person. Sub-Article (2) thereof prescribes production of any person arrested and detained in custody before the nearest Magistrate within a period of twenty four hours of such arrest in the following term:

“Article 22(1) _____ (2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

Nothing in Clauses (1) and (2) shall apply –

(a) To any person who for the time being is an enemy alien; or

(b) To any person who is arrested or detained under any law providing for preventive detention.

Exceptions are provided for such production within a period of twenty four hours of arrest in Sub-Article (3) only in case relating to enemy alien and preventive detention.

10. Section 54 of the Cr.P.C. provides for examination of arrested person by Medical Officer. Section 54 Cr.P.C. as it stands after amendment Act 5 of 2009 with effect from 31.12.2009 reads as follows:

“54. Examination of arrested person by any Medical Officer:-

(1) when any person is arrested, he shall be examined by a Medical Officer in the service of Central or State Government and in case the Medical Officer is not available by a registered Medical Practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female Medical Officer, and in case the female Medical Officer is not available, by a female registered Medical Practitioner.

(2) the Medical Officer or a registered Medical Practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under Sub-Section (1), a copy of the report of such examination shall be furnished by the Medical Officer or registered Medical Practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

11. Section 55A Cr.P.C. provides that it shall be duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused. The duty under Section 55 A is subject to the duty under Section 56 Cr.P.C. Section 56 Cr.P.C. enjoins duty on the Police Officer making arrest to take the person so arrested or send that person before a Magistrate having jurisdiction in the case or before the Officer-in-Charge of a police station.

In the case in hand, the Additional Superintendent of Police, CBI, SCB (SIT), Kolkata effected arrest of the accused. Therefore, it is his duty to take or send the person arrested before the Magistrate having jurisdiction in the case. Section 57 Cr.P.C. commands that no police officer shall detain in custody a person arrested without warrant for a long period exceeding twenty four hours which period is exclusive of the time

necessary for the journey from the place of arrest to the Magistrate. The only relaxation for production of the arrested accused within twenty four hours contained in Section 57 Cr.P.C. is in case the Magistrate under Section 167 Cr.P.C. by special order authorized the police officer to detain such person for a period of more than twenty four hours. Section 167 (1) Cr.P.C. reiterates duty of the police officer in the following language:

“167. Procedure when investigation cannot be completed in twenty four hours:-

(1) 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 57, 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.

On such production of the arrested person by the police officer who effected arrest, before the Magistrate, it is open to the Magistrate under Sub-Section(2) of Section 167 Cr.P.C. to authorize detention of the accused person to such custody as such Magistrate thinks fit for a prescribed term. Such authorized custody by the Magistrate may be custody of the accused

in prison by way of judicial remand or custody of the person to the police by way of police custody.

12. Without such authorization from the Magistrate under Section 167 (2) Cr.P.C. the police officer who arrested the accused person has no discretion to keep the accused person in his custody either in police station or in his house or in a hospital or in any other place, in the light of the above provisions of the Constitution of India and the Code of Criminal Procedure, 1973. The action/inaction of the said C.B.I. Officer in not producing the accused person in this case before the Magistrate and in allowing the accused person to remain in hospital is in clear violation of the above constitutional and legal provisions. Any custody of the accused beyond twenty four hours without production of the accused before the Magistrate, becomes illegal as well as unconstitutional. When the accused was arrested on 31.01.2015 at 6 p.m. at the office of Additional Superintendent of Police, C.B.I., SCB (SIT), Kolkata, the accused should have been produced before the Magistrate at Alipore immediately thereafter or within reasonable time. Without there being prima facie case against the accused from the evidence collected by the said C.B.I. Officer, he would not have arrested the accused on 31.01.2015 at 6 p.m. Instead of producing the accused before the Magistrate either on the same day or within twenty four hours thereof by 6 p.m. on 01.02.2015 after getting the accused examined by Medical Officer of the Government Hospital, Kolkata either on 31.01.2015 or on 01.02.2015 before 6 p.m., the said C.B.I. Officer

admitted the accused into the S.S.K.M. hospital on 31.01.2015 and prayed for necessary order before the Learned Magistrate who passed order for sending the accused into the judicial custody till 13.02.2015 after rejecting the prayer for bail moved on behalf of the accused. Thereafter, the accused was produced on 07.02.2015 and on the prayer made by the said C.B.I. Officer, the Learned Magistrate remanded the accused to police custody till 11.02.2015. But the accused was not produced on 11.02.2015 as it was reported that he was again admitted in the S.S.K.M. hospital on 08.02.2015 and the prayer for further police remand for seven days more was rejected by the Learned Magistrate on the ground that the accused was not produced before him. The accused was produced on 15.02.2015 and on the prayer of the I.O. the Learned Magistrate allowed further detention of the accused in police custody till 21.02.2015 rejecting the objection raised by the defence that such further prayer of police remand is illegal as the statutory period of 15 days had elapsed.

13. In case an arrested accused person acquired any health problem after his arrest, then it is for the police officer to produce the accused before the Magistrate within twenty four hours after obtaining Medical Certification of the accused from a Government Doctor and thereafter it is for the Magistrate who after authorising the custody of the accused to this specified authority under Section 167(2) Cr.P.C. to take a decision and to give a direction either to prison authorities in case the accused is authorised to be detained in prison or to the police authorities in case the

accused is authorized to be detained in police custody, for getting necessary medical aid and to provide necessary medical facilities to the accused so detained. It is not for the police officer to admit the accused in a hospital and to violate legal and constitutional mandate of production of the arrested accused before the Magistrate within twenty four hours of his detention under arrest. Such action on the part of the police officers is likely to lead unscrupulous tendencies like in the present case, where the accused was allowed to remain in hospital from 31.01.2015 to 06.02.2015 after his arrest without production before a Magistrate, till the accused was declared fit by the hospital authorities and he was produced on 07.02.2015. Such activity on the part of the police officers will give wrong signals to the society and to the public at large that rich and influential person can manage unscrupulous police officers, so that they need not go either to a Court or to a prison even after arrest while in custody. The said C.B.I. Officer prima-facie committed a Constitutional violation in not producing the accused before the Magistrate within twenty four hours of his arrest. His action/inaction in this regard is highly deplorable.

14. In so far as granting of further police remand of seven days more to the accused in this case by the Learned Magistrate on 15.02.2015 till 21.02.2015, it has to be seen whether it was granted in accordance with law.

15. The Hon'ble Supreme Court in the case of CBI v. Anupam J. Kulkarni (supra) cited by the Learned Advocate appearing for the petitioner has dealt with this point, namely considering the scope of remand under Sections 57 & 167 of the Cr.P.C. has held thus:-

“ Having regard to the words “in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole” occurring in sub-section (2) of section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in Dharam Pal's case. Taking the plain language into consideration particularly the words “otherwise than in the custody of the police beyond the period of fifteen days” in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary can be ordered only during the first period of fifteen days. To this extent the view taken in Dharam Pal's case is correct.”

16. Their Lordships have taken into consideration the period of custody during the first remand of fifteen days and the rest of the statutory period

prescribed in Section 167(2) of the Cr.P.C. and made a distinction that the police custody for the accused is only within first fifteen days from the date of production before the Magistrate and the remaining period would be only judicial custody. Eventually, Their Lordships have reached a conclusion that police custody, if found necessary can be ordered only during the first period of fifteen days.

17. Subsequently, the above said proposition has been referred by the Hon'ble Supreme Court in a later judgment in *Dinesh Dalmia V. CBI* reported in AIR 2008 SC 78 : (2007) 8 SCC 770 wherein Their Lordships quoting the above said case have observed as follows:-

“25. In *Anupam J. Kulkarni* (AIR 1992 SC 1768) the question which inter alia arose for consideration of this Court was as to whether the period of remand ordered by an Executive Magistrate in terms of Section 57 of the code should be computed for the purpose of sub-section (2) of Section 167 thereof. This Court, keeping in view the provisions of Clause (2) of Article 22 of the Constitution of India, answered the question in the affirmative. It was held that a total period of remand during investigation is fifteen days.”

18. In the above said two decisions, the Hon'ble Supreme Court emphasized reiterating and restating a view that only during the first remand period of fifteen days the police custody of the accused can be prayed for further investigation. The above said legal position has been further clarified by the Hon'ble Supreme Court in a subsequent and latest decision relied upon

by the Learned Counsel for the petitioner (Satyajit Ballubhai Desai & Ors. V. State of Gujarat) (supra).

19. In the decision reported in 2010 Cr.L.J. 3849 (SC) : 2010(6) SCC 753 (Devender Kumar and Anr. V. State of Haryana and Ors.) the Hon'ble Supreme Court has further explained the legal position as follows:-

“12. As to the second branch of Mr.Luthra's submissions that a second application for police remand was not maintainable after the dismissal of the first, reference was made to a decision of this Court in CBI v. Anupam J. Kulkarni (1992) 3 SCC 141 : AIR 1992 SC 1768) wherein the provisions of Section 167 Cr.P.C. were gone into in some detail and the very question which is now before us was also considered and it was held that within the first 15 days' period of remand, the Magistrate could direct police custody other than judicial custody, but if the investigation was not completed within the first 15 days' period of remand, no further police remand could be made. It was emphasised that police remand would only be made during the first 15 days after arrest and production before the Magistrate and not otherwise, although, judicial remand could extend to 60 days from the date of arrest and in special cases, to 90 days.

15. With regard to the second point which was urged by Mr. Luthra, the same was considered in depth and was settled in Anupam J. Kulkarni case (1992) 3 SCC 141) referred to hereinabove. What is clear is the fact that police remand can only be made during the first period of remand after

arrest and production before the Magistrate, but not after the expiry of the said period.

16. Of course, we do not agree with the submissions made by Mr. Luthra that the second application for police remand is not maintainable even if made during the first 15 days' period after arrest. The said point has also been considered and decided in the above case. Within the first 15 days of arrest the Magistrate may remand the accused either to judicial custody or police custody for a given number of days, but once the period of 15 days expires, the Magistrate cannot pass orders for police remand.”

20. The remand order passed by the jurisdiction Magistrate alone has to be legally considered as first remand for all the practical purposes. In the case of CBI v. Anupam J. Kulkarni (supra) the Hon'ble Supreme Court has clearly laid down that the period of 90 days or 60 days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody. In the instant case the Learned Magistrate passed the remand order on 01.02.2015 sending the accused into the judicial custody till 13.02.2015. Therefore, the impugned order passed on 15.02.2015 remanding the petitioner/accused to police custody till

21.02.2015 is beyond the first remand period of fifteen days. Therefore, such order is absolutely illegal and cannot be sustained.

21. In the light of the observations which were obtained after following the principles laid down by the Hon'ble Supreme Court, this Court is of the firm view that the police custody cannot be ordered in any circumstances beyond the first remand period of fifteen days. In such view of the matter the impugned order under challenge is liable to be set aside and accordingly it is set aside.
22. In fine, the instant Criminal Revision case is allowed. No order as to costs.
23. The Learned Registrar General is directed to circulate a copy of this judgment to all the Learned District & Sessions Judges of West Bengal and Andaman Nicobar Islands who in their turn shall circulate it to all the Judicial Magistrates under their control so that they can exercise their jurisdiction in the matter of remanding an accused to police custody properly.
24. Let a copy of this judgment be also sent to the Learned Director, West Bengal Judicial Academy, Bijan Bhawan, Salt Lake City, Kolkata for sensitization of the Judicial Magistrates attending the Academy.
25. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.

(Shib Sadhan Sadhu, J.)

