

GAHC010224522022



2024:GAU-AS:8866

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./531/2022

CENTRAL BUREAU OF INVESTIGATION
REP. BY INSPECTOR OF POLICE, SPECIAL POLICE ESTABLISHMENT,
SPECIAL CRIME BRANCH, KOLKATA, KOLKATA, 3RD MSO BUILDING, 2ND
FLOOR, DF BLOCK, SALT LAKE, KOLKATA-700064.

VERSUS

MUKUT SAIKIA @ SHYAM
S/O LATE KHATKESWAR SAIKIA,
THE THEN POLICE CONSTABLE, SPECIAL BRANCH, ASSAM POLICE,
GUWAHATI, RESIDENT OF VILL- DAKHINGAON, BYLANE-1, H. NO. 12, P.O.
KAHILIPARA, P.S. DISPUR, GUWAHATI, DIST. KAMRUP (M), ASSAM

Advocate for the Petitioner : MR M HALOI,

Advocate for the Respondent : MS. G DEKA, MR. K UDDIN, T M LAHKAR, MR K K KALITA

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

06-09-2024

Heard Mr. Manash Haloi, learned Special Public Prosecutor for the petitioner CBI and Mr. Kankan Kalita, learned counsel for the sole opposite party.

2) This revision petition by the petitioner CBI is against the impugned order dated 05.08.2022 passed by learned Special Judicial Magistrate First Class, Kamrup (Metro), Guwahati in C R Case No. 4381^C/2021, by which the learned Magistrate rejected the prayer of the CBI for police custody of the sole opposite party, Mukut Saikia.

3) The petitioner CBI in this revision petition has prayed, amongst others, to set aside and quash the order dated 05.08.2022 passed by the learned Special Judicial Magistrate First Class, Kamrup Metro, Guwahati (hereinafter referred to as Spl. JMFC) in CBI Case No.RC-10(S)/2019-Kol so far, it relates to rejection of the application dated 03.08.2022 filed by the CBI to allow the custodial interrogation of already charge sheeted accused Mukut Saikia, the sole opposite party, by taking police remand, during further investigation as the said accused could not be apprehended before.

4) The Court on 07.11.2022 while issuing notice to the opposite party called for the records of said C R Case No. 4381^C/2021 from the Court of learned Spl. JMFC, Kamrup Metro, Guwahati. Perused the same.

5) Brief facts of the case is that one Paramjit Singh Dell on 07.04.2010 lodged a written Ejahar before the Officer-in-Charge of Paltan Bazar Police Station stating that around 10:00 pm while his father Inder Singh Dell, aged about 75 years, was knocking at the main door of the compound of Magni Devi, of which he is the caretaker, three persons came in a Maruti Van and forcefully took his father in the said Maruti Van that appears that his father had been kidnapped. It was also stated that though they tried to help their father but they could not do the same, since the lock that was put on the compound gate from inside by one Smti. Lily Gangwal and Smti. Sahera Begum (Junu's mother) did open the gate in spite of their request. In the said Ejahar, it was

further alleged that on the same day around 11:00 one Mr. Sakia, who used to visit Smti. Lily Gangwal and Sahera Begum quite often and claims himself as a man of one Sri Khagan Sarma (the then ADGP, Assam) threatened his father Inder Singh Dell and asked him to vacate the residential house situated in the said compound and warned informant's father Inder Singh Dell that if he fails to vacate the residential house, he would face serious consequences. As such, by the said Ejahar, the informant requested the concerned police authority to take immediate action. Said Ejahar of the informant Paramjit Singh Dell was accordingly registered as Paltan Bazar Police Station Case No. 217/2010 under Sections 365/341/506/34 IPC. On the next day i.e. on 08.04.2010, the dead body of said Inder Singh Dell, father of the informant Paramjit Singh Dell, was found lying at Hajongbari Machghat, Chandrapur under the jurisdiction of Pragjyotishpur Police Station. As such, with due permission of the Court of learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati (CJM, in short) Section 302 IPC was added in said Paltan Bazar Police Station Case No. 217/2010 along with Sections 365/341/506/34 IPC.

6) The investigation of said Paltan Bazar PS Case No. 217/2010 was taken up by CID, Assam Police, Guwahati on 13.04.2010. On completion of the investigation, it came to the conclusion that the case under Sections 365/340/506/34 IPC was true, but no clue was found. As such the CID, Assam, Guwahati vide No. 895 dated 13.11.2014 submitted the Final (Closer) Report in said Paltan Bazar PS Case No. 217/2010 before the Court of learned Spl. JMFC and the said Magistrate on 06.07.2018 accepted the said Closer Report dated 13.11.2014 submitted in said Paltan Bazar PS Case No. 217/2010.

7) During pendency of the investigation of said Paltan Bazar PS Case No. 217/2010, its informant preferred a Writ Petition being WP(C) No. 2767/2010 before this High Court. Smti. Magni Devi Jain, wife of Pannalal Jain and her son/legal heirs Binod Kumar Jain, who are owner of the plot of land at Bani Kanta Kakati Road, Ulubari of which the deceased Inder Singh Dell was the caretaker, also filed a Writ Petition being WP(C) No. 2460/2010 before this High Court.

8) By order dated 04.05.2019 passed in those WP(C) No. 2767/2010 and WP(C) No. 2460/2010 the Court directed that records of the case may be transmitted to the CBI for further/proper investigation immediately and bring the investigation to a logical conclusion in accordance with law and referred the case to the CBI for investigation. Pursuant to the said order dated 04.05.2019 passed in WP(C) No. 2767/2010 and WP(C) No. 2460/2010, the learned CJM, by order dated 16.07.2019 handed over the said Paltan Bazar PS Case No. 217/2010 dated

07.04.2010 to the CBI and also four other Paltan Bazar Police Station Cases relating to transactions of the land of which Smti. Magni Devi Jain, wife of Pannalal Jain was the owner of the land and the deceased Inder Singh Dell was the caretaker.

9) Treating the said Paltan Bazar Police Station Case FIR No. 217/2010 dated 07.04.2010 under Sections 365/341/506/34 IPC of the informant Paramjit Singh Dell as the original FIR, the CBI on 19.10.2019 registered CBI Case No.RC-10(S)/2019-Kol under Sections 365/341/506/34 IPC.

10) The CBI vide No. 15 dated 15.10.2021 submitted the Charge Sheet in said CBI Case No.RC-10(S)/2019-Kol before the learned Spl. JMFC, under Section 120-B IPC read with Sections 364/606/302/201 IPC arising out of Paltan Bazar Police Station FIR No. 217/2010 dated 07.04.2010 against Mukut Saikia @ Shyam, Police Constable Special Branch, Assam Police, Guwahati (A-1); Raj Pratim Chakraborty, Inspector of Police Special Branch (Head Quarter), Assam Police, Guwahati (A-2); Smti Lily Gangwal @ Lali @ Lily Kaur, Housewife (A-3); Smti. Munni Gangwal @ Chandrika Vyas, Housewife (A-4). As during investigation by the CBI, three of the accused persons of said CBI Case No.RC-10(S)/2019-Kol, arising out of Paltan Bazar PS Case No. 217/2010, namely, Raju Gangwal, Khagen Sarma, [then ADGP, Special Branch, Assam Police, Guwahati] and Sahera Begum had expired on 08.01.2012, 20.09.2020 and 25.10.2019, respectively, the CBI did not forward their names in the said Charge Sheet.

11) In the said Charge Sheet No. 15 dated 15.10.2021 in said CBI Case No.RC-10(S)/2019-Kol arising out of Paltan Bazar PS Case No. 217/2010 dated 07.04.2010 submitted before the learned Spl. JMFC, the CBI stated that investigation discloses substantive offences committed by the accused persons A-1 to A-4 and also by the deceased accused persons Raju Gangwal, Khagen Sarma and Sahera Begum. CBI in the said Charge Sheet No. 15 dated 15.10.2021 stated that prima facie established that late Khagen Sarma in pursuance of criminal conspiracy with Mukut Saikia (@ Shyam) (A-1), Raj Pritam Chakraborty (A-2), Lily Gangawal (A-3), Munni Gangawal (A-4), Late Raju Gangawal, Late Khagen Sarma and Late Sahera Begum criminally intimidated deceased Inder Singh Dell, and thereafter, abducted said Inder Singh Dell with intention to commit murder and further, murdered him with the help of three unknown associates and further Mukut Saikia (A-1) washed out the Maruti Van inside and outside in order to disappear the evidence after abducting and murder of said Inder Singh Dell. It is to be noted herein that in the said Charge Sheet No. 15 dated 15.10.2021 the CBI shown the accuse persons A-1 to A-4 as not

arrested.

12) The CBI in the said Charge Sheet No. 15 dated 15.10.2021 in its CBI Case No.RC-10(S)/2019-Kol arising out of Paltan Bazar PS Case No. 217/2010 dated 07.04.2010 categorically stated before the learned Special Judicial Magistrate First Class, Kamrup (Metro), Guwahati that the efforts have been taken to trace those unknown persons/associates (including the three persons in the Maruti Van who on the night of 07.04.2010 abducted said Inder Singh Dell and murdered him) and further investigation is still going on and that report under Section 173 (8) CrPC will be filed before the learned Court.

13) After filing of the charge sheet in said CBI Case No.RC-10(S)/2019-Kol arising out of Paltan Bazar PS Case No. 217/2010 dated 07.04.2010 the same was registered as C R Case No. 4381^C/2021 before the Court of learned Spl. JMFC and said Magistrate on 08.04.2022 took cognizance of the offences against the four accused persons of the case.

14) It is seen from the records that said C R Case No. 4381^C/2021 was fixed on 22.07.2022 before the learned Spl. JMFC for appearance of the accused persons of the case and the accused person Mukut Saikia (A-1) by filing petition remained absent. The learned Magistrate did not accept the said petition of the accused Mukut Saika and rejected it and issued Non Bailable Warrant of Arrest against him for appearance of the matter. As such, the accused person Mukut Saikia appeared before the said learned Magistrate and submitted bail application No. 1261 to allow him to go on bail and also prayed to recall the order of NBWA issued against him. Against the said bail application of the accused person, Mukut Saikia, the CBI filed its objection.

15) On perusal of the records and finding that the offence alleged committed by the accused person Mukut Saika being punishable under Sections 120B/364/506/302/201 IPC and that he is implicated interalia with the offence under Section 302 IPC, considering the nature and gravity of the offence, alleged to be committed by the said accused person, the learned Spl. JMFC by order dated 25.07.2022 passed in said C R Case No. 4381^C/2021 rejected the bail of said accused person Mukut Saika and also rejected the prayer to recall the order of NBWA issued against the said accused person.

16) As in the meanwhile, accused person Mukut Saikia @ Shyam (A-1) was in custody in said C R Case No. 4381^C/2021 arising out of CBI Case No.RC-10(S)/2019-Kol (Paltan Bazar PS Case No.

217/2010), the CBI filed a petition before the learned Spl. JMFC in said C R Case No. 4381^C/2021 for police custody of said Mukut Saikia @ Shyam (A-1) stating that he was not arrested in said CBI Case No.RC-10(S)/2019-Kol and that his police custody is required as further investigation in said CBI Case No.RC-10(S)/2019-Kol is going on so as to trace out the three unidentified individuals who had allegedly accompanied the accused person Mukut Saikia during the kidnapping and murder of Inder Singh Dell and that thorough investigation is required to be carried out for identification those three accomplices so as to bring them to justice.

17) But, the learned Spl. JMFC by order dated 05.08.2022 passed in said C R Case No. 4381^C/2021 rejected the said application of the CBI refusing to hand over the said accused Mukut Saikia (A-1) to the custody of the CBI for his interrogation. However, the learned Spl. JMFC by the said order dated 05.08.2022 allowed the CBI to interrogate the accused person Mukut Saikia (A-1) in judicial custody for further investigation of the case.

18) Hence this revision application by the CBI against the said order dated 05.08.2022 passed by learned Spl. JMFC by order dated 05.08.2022 passed in said C R Case No. 4381^C/2021. The said order dated 05.08.2022 of the learned Spl. JMFC in C R Case No. 4381^C/2021 is as follows: -

CR Case No. 4381^C/2021

Date

05/08/2022

Inspector Sri Abhay Kumar is present full stop

Learned For the accused Mukut Soy is also present.

Today is the date fixed for necessary order.

I already heard both sides yesterday.

Sri Abhay Kumar Submitted that custodial interrogation is very much essential to unearth, the truth behind kidnapping and murder of Inder Singh Dell and to trace three unknown persons who accompanied Mukut Saikia on 07.04.2010 at night, at the time of kidnapping and committing murder of deceased, Inder Singh Dell.

Learned counsel for the accused person submitted that had there been any chance or possibility to unearth the truth as claimed by the CBI in their petition, the CBI ought to have taken the accused under custody just after his interrogation on 21.11.2020 because there was nothing which prevented the CBI to arrest him and to take him under police custody.

Perused the case record.

Perusal of the chargesheet reflects that further investigation is still going on in the case. However, the accused person, Mukut Saikia, was remanded in judicial custody, not due to his arrest during further investigation, but as a matter of course, when his prayer for bail was rejected after his appearance, before this Court. Hence, section 167 of the CrPC which provides for taking an arrested person into police custody, does not apply to the instant case as the accused person is in judicial custody, not due to arrest by the investigating agency. Accordingly, this Court is not inclined to allow the prayer made by the CBI for allowing them to take the accused person Mukut Saikia into police custody and hence the prayer is rejected.

However, CBI is at Liberty to interrogate the accused person in judicial custody as further investigation is still going on, as reflected in the chargesheet.

Fixed as before

08/08/2022 for production of accused Mukut Saikia.

25/08/2022 for appearance of other accused person.

Sd/- Illegible

Special Judicial Magistrate First Class, Kamrup Metro,
Guwahati

19) It is also seen from the records that the said accused person Mukut Saikia filed Bail Application No. 2164/2022 for his bail in said CR Case No. 4381^C/2021 and a co-ordinate Bench of this Court by order dated 14.02.2023 rejected the bail of said accused person Mukut Saikia.

20) Said CR Case No. 4381^C/2021 was in the meanwhile was committed to the Court of learned Sessions Judge, Kamrup (Metro), Guwahati wherein it was registered as Sessions Case No. 230/2022. The learned Sessions Judge, Kamrup (Metro) Guwahati on 02.09.2023 in said Sessions Case No. 230/2022 framed charge under Sections 120B/506/364/302/201 IPC against the accused person Mukut Saikia (A-1) and under Sections 120B/506/364/302 IPC against the other three accused persons Raj Pritam Chakraborty (A-2), Lily Gangawal (A-3) and Munni Gangawal (A-4) to which all of the accused persons A-1 to A-4 pleaded not guilty and the trial of the said Sessions Case No. 230/2022 had already began, where the Court of learned Sessions Judge, Kamrup (Metro), Guwahati had also recorded evidence of prosecution witnesses.

21) It is also seen that the learned Sessions Judge, Kamrup (Metro) Guwahati in said Sessions Case No. 230/2022 rejected the bail prayer of the accused person Mukut Saikia (A-1) and he is in jail custody. Further, pursuant to the Notification dated 07.06.2024 of this High Court, said Sessions Case No. 230/2022 was withdrawn from the Court of learned Sessions Judge, Kamrup (Metro) Guwahati and was transferred to the Court of learned Special Judge, CBI, Assam and it is

presently pending before the Court of learned Special Judge, CBI, Assam, Additional Court No.2 at Chandmari, Guwahati with the same Sessions Case No. 230/2022 arising out of CR Case No. 4381^C/2021, noted above.

22) From the above it is already noticed that the accused person Mukut Saikia (A-1) was not arrested during the investigation of the CBI Case No.RC-10(S)/2019-Kol. As after taking cognizance of offence on 08.04.2022 under Section Sections 120B/506/364/302/201 IPC said accused person Mukut Saikia did not appear before the learned Spl. JMFC on 22.07.2022, NBWA was issued against him. Therefore, said accused person Mukut Saikia filed bail application and also prayed for recalling of the order of NBWA issued against him. The learned Spl. JMFC by order dated 25.07.2022 rejected the bail of the accused person Mukut Saika in said C R Case No. 4381^C/2021 and also rejected his prayer to recall the order of NBWA issued against him in the said case and accordingly, said accused person Mukut Saikia was taken into judicial custody in said C R Case No. 4381^C/2021 as per the order dated 25.07.2022.

23) It is also seen that the impugned order rejecting the prayer of the CBI for custodial interrogation of the accused person Mukut Saika was of 05.08.2022 and that the CBI on 03.08.2022 prayed for custodial interrogation of the accused person Mukut Saika in said CBI Case No.RC-10(S)/2019-Kol, which was much within fifteen days after the date of judicial custody of the said accused person Mukut Saika i.e., after 25.07.2022. Moreover, the period of fifteen days in the case expired on 09.08.2022.

24) A three-Judge Bench of the Hon'ble Supreme Court in the case of *State -Vs- Dawood Ibrahim Kaskar*, reported in (2000) 10 SCC 438 have held that —

“11. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above sub-section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted — as has been interpreted by the

Bombay High Court in Mansuri (From the Judgment and Order dated 1-8-1996 of the Designated Court for Bomb Blast Cases, Brihat Mumbai in Misc. Applications Nos. 201, 210 and 211 of 1996) — to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned, he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167."

25) The Hon'ble Supreme Court in the case of *CBI -Vs- Rathin Dandapat*, reported in (2016) 1 SCC 507 have considered both the three-Judge decision in the case of *Dawood Ibrahim Kaskar* (supra) as well as in the case of *Dinesh Dalmia -Vs- CBI*, reported in (2007) 8 SCC 770 and came to the finding that the refusal of police remand in that case (*Rathin Dandapat's case*) was against the settled principle of law laid down by the said Court in *Dawood Ibrahim Kaskar* (supra).

26) In the case in hand said CBI Case No.RC-10(S)/2019-Kol is pending for further investigation and for submission of report under Section 173(8) CrPC pertaining to trace out the unknown persons/associates, including the three persons in the Maruti Van, who on the night of 07.04.2010 abducted said Inder Singh Dell and murdered him. As those three unidentified individuals who had allegedly accompanied the accused person Mukut Saika during the kidnapping and murder of Inder Singh Dell, therefore, the CBI had prayed for custody of said accused person Mukut Saikia for custodial interrogation for thorough investigation to identify those three accomplices/associates so as to bring them to justice, which was denied by the learned Spl JMFC by the impugned order dated 05.08.2022 passed in C R Case No. 4381^C/2021.

27) For the reasons above and following the three-Judge Bench judgment of the Hon'ble

Supreme Court in the case of *Dawood Ibrahim Kaskar*, (supra), the impugned order dated 05.08.2022 passed by learned Special Judicial Magistrate First Class, Kamrup (Metro), Guwahati in C R Case No. 4381^C/2021 arising out of CBI Case No.RC-10(S)/2019-Kol (Paltan Bazar Police Station Case No. 217/2010) rejecting the prayer of the CBI for custodial interrogation/police custody of the accused person Mukut Saikia @ Shyam (A-1) is accordingly set aside and quashed.

28) The learned Special Judicial Magistrate First Class, Kamrup (Metro), Guwahati is directed to pass a fresh order on the application made by the CBI before it relating to granting of police remand/custodial interrogation of the opposite party Mukut Saikia @ Shyam (A-1) in said C R Case No. 4381^C/2021 arising out of CBI Case No.RC-10(S)/2019-Kol, in accordance with law.

29) With the above observation and direction this Criminal Revision Petition stands allowed.

30) Registry shall forward a copy of this order to the Court of learned Special Judicial Magistrate First Class, Kamrup (Metro), Guwahati in C R Case No. 4381^C/2021 as well to the Court of learned Special Judge, CBI, Assam, Additional Court No.2, Chandmari, Guwahati in Sessions Case No. 230/2022 for their information.

JUDGE

Comparing Assistant