

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.495 of 2015

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Anuj Kumar, Son of Late Umesh Prasad, resident of Village- Bishunpur,
P.S. Town, District-Begusarai.

.... Petitioner

Versus

1. The State of Bihar.
2. Superintendent of Police, Begusarai.
3. Officer-in-charge, Town Police Station, Begusarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Baidya Nath Thakur, Advocate.

For the Respondents : Mr. Dinbandhu Singh, G.P. 9.

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 16-10-2015 Heard learned counsel for the petitioner and learned
counsel for the respondents.

The petitioner has filed the instant writ of 'Habeas Corpus' for his release in connection with Begusarai Town P.S. Case No. 41/2015, as the prayer made on his behalf for grant of bail in terms of Section 167(2) of the Code of Criminal Procedure has been refused by the Chief Judicial Magistrate, Begusarai, by the order dated 24.04.2015.

On 23.04.2015, an application under Section 167(2) of the Code of Criminal Procedure was moved on behalf of the petitioner before the Chief Judicial Magistrate, Begusarai, for granting bail on the ground that statutory prescribed period of 90



days for submission of investigation report has lapsed and the same has not been submitted. The Chief Judicial Magistrate, Begusarai, vide order dated 24.04.2015, rejected the prayer of the petitioner regarding his release in terms of provision of 167(2) of the Code of Criminal Procedure, recording the fact that the petitioner was remanded in judicial custody in connection with Begusarai Town P.S. Case No. 41/2015 on 13.03.2015, thus no question arises to release the petitioner under Section 167(2) of the Code of Criminal Procedure.

The facts in brief leading to this criminal writ are as under:-

An F.I.R. bearing Begusarai Town P.S. Case No. 41/2015 dated 22.01.2015, came to be instituted under Sections 341, 504, 387, 307 read with 34 of the Indian Penal Code and under Section 27 of the Arms Act against the petitioner besides three others named accused and two unknown accused, on the basis of a written statement made by the informant, namely, Chandan Singh, to the Officer-in-charge of Begusarai Town Police Station. The informant of Begusarai Town P.S. Case No. 41/2015, reported the occurrence at 2.15 P.M. in the police station and the F.I.R. instituted on the very date i.e., 22.01.2015 around 2.15 P.M.

The contents of the F.I.R. disclose that the accused



persons including the petitioner made a demand of Rs. 50,000/- from the informant in sequel of such earlier demand and on protest made by the informant one of the accused opened fire from the pistol, targeting the informant but anyhow the informant could be saved, thereupon nearby people gathered and the miscreants fled away from the place of occurrence but four miscreants were identified by the local people including this petitioner.

Around 10.00 A.M. on 22.01.2015, the Investigating Officer of Begusarai Town P.S. Case No. 41/2015, constituting a raiding party for the purpose of investigation and raid, in connection with the said case departed from the police station and reached the house of the petitioner and in presence of two independent witnesses, around 11.45 P.M., while the police was entering inside the house of the petitioner for the purpose of search, some persons started fleeing away, who were apprehended including this petitioner, thereupon in presence of two independent witnesses, personal search was made by the police, then one loaded country made pistol and two live cartridges of 7.65 bore were recovered from the possession of the petitioner and other arms and cartridges were also recovered from the possession of other accused persons; thereupon seizure list was prepared, on which the petitioner and others put their respective signature. The

S.I. made a written report to the Officer-in-charge of Begusarai Town Police Station, whereupon Begusarai Town P.S. Case No. 42/2015 came to be instituted under Sections 25(1-b) a/26/35 of the Arms Act.

The petitioner was arrested and forwarded to the Chief Judicial Magistrate on 23.01.2015 in connection with Begusarai Town P.S. Case No. 42/2015, thereafter, the petitioner was detained in judicial custody and sent to jail. After investigation, the police submitted charge sheet bearing no. 153/2015, dated 28.02.2015 in the court concerned, in connection with Begusarai Town P.S. Case No. 42/2015.

The I.O. of Begusarai Town P.S. Case No. 41/2015 submitted a memo of evidence and made an application on 11.03.2015 before the Chief Judicial Magistrate, Begusarai, with a prayer for taking the petitioner and others in judicial custody in connection with Begusarai Town P.S. Case No. 41/2015, as they were already in jail in connection with Begusarai Town P.S. Case No. 42/2015. The learned court below directed for issuance of production warrant in respect of the petitioner and others fixing the date on 13.03.2015.

In pursuance to the production warrant issued by the Chief Judicial Magistrate, Begusarai, the petitioner and others

were produced before the Chief Judicial Magistrate, Begusarai, from the Divisional Jail, Begusarai, and they were taken into judicial custody in connection with Begusarai Town P.S. Case No. 41/2015 on 13.03.2015.

Learned counsel for the writ petitioner submits that the date of custody of the petitioner in connection with Begusarai Town P.S. Case No. 41/2015 should be reckoned from 23.01.2015 i.e., the date of his remand in Begusarai Town P.S. Case No. 42/2015 and the prescribed period for submission of charge sheet had already been lapsed on the date i.e., 23.04.2015, when petition under Section 167(2) of the Code of Criminal Procedure was moved before the court of the Chief Judicial Magistrate, Begusarai, therefore, the petitioner was entitled for bail.

It is also argued on behalf of the petitioner that the petitioner was forwarded and produced before the Chief Judicial Magistrate, Begusarai, on 23.01.2015 in connection with Begusarai Town P.S. Case No. 42/2015 and he was taken into judicial custody and sent to jail, therefore, it will be deemed that the petitioner was also under arrest in connection with Begusarai Town P.S. Case No. 41/2015 on 23.01.2015, notwithstanding the fact that the petitioner was produced on 13.03.2015 from jail before the Chief Judicial Magistrate, Begusarai, and remanded in

judicial custody in connection with Begusarai Town P.S. Case No. 41/2015 on 13.03.2015.

Learned counsel for the petitioner further developed his argument that Begusarai Town P.S. Case No. 42/2015 ought not to have been registered separately as it was part of the same transaction of the occurrence/incident for which Begusarai Town P.S. Case No. 41/2015 had already been instituted. Learned counsel for the petitioner further buttressed his argument that since the petitioner was not arrested in connection with Begusarai Town P.S. Case No. 41/2015, so his judicial remand in this case was also bad. Learned counsel for the petitioner in support of his argument places reliance on the judgments of Hon'ble Supreme Court reported in A.I.R. 1992 SC 1768(C.B.I. –Vs- Anupam J. Kulkarni) and (1994) 5 SCC 402 (Sanjay Dutt-Vs- State).

A counter affidavit has been filed on behalf of respondent no. 3, contending therein that the petitioner was remanded in judicial custody in connection with Begusarai Town P.S. Case No. 41/2015 on 13.03.2015 and on the date i.e., 24.04.2015 of the filing of the petition under Section 167(2) of the Code of Criminal Procedure, the statutory period of 90 days had not expired and further contention of the respondent is that the statutory period of 90 days is calculated from the date of judicial remand of the



accused, not from the date of his arrest. The respondents have brought the charge sheet bearing no. 377/2015 dated 09.06.2015 under Sections 341, 504, 389,307 read with 34 of the Indian Penal Code and 27 of the Arms Act, on record, submitted in connection with Begusarai Town P.S. Case No. 41/2015 in the court of the Chief Judicial Magistrate, Begusarai, and according to the respondents the same has been submitted within statutory period of 90 days from the date of remand of the accused in connection with the said case, so the petitioner is not under illegal detention, rather he is in judicial custody and the present writ of “Habeas Corpus” is not maintainable.

We may now notice firstly the relevant provision contained in sub-sections(1) and (2) of Section 167 of the Code of Criminal Procedure, which reads as under:-

“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.

(2)

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, authorize 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 authorize the detention of the accused person, otherwise than in the 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 authorize 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, and, on the expiry of the said period of 90 days, or 60 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 authorize 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 authorize 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 authorizing 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 woman under 18 years of age, the detention shall be authorized to be in the custody of remand home and recognized social Institution.

Having regard to the words and expression “90 days, where the investigation relates to an offence punishable with death, life imprisonment for or imprisonment for a term of not less than 10 years and 60 days, where the investigation relates to any other offence, and, on the expiry of the said period of 90 days, or 60 days, as the case may be, the accused person shall be released on bail” occurring in proviso of clause (a) of sub-section (2) of Section 167, we want to make the aspect clear namely the computation of period of remand and the reckoning date. The



proviso of Section 167(2) clearly lays down that the total period of detention should not exceed 90 days in cases where the investigation relates to serious offence mentioned therein and 60 days in any other cases and if by that time investigation is not completed and police report in terms of Section 173(2) of the Code of Criminal Procedure is not submitted, on the expiry of said period the accused shall be released on bail after furnishing bail bond.

In Chaganti Satyanarayana's case(A.I.R. 1986 SC 2130),
the Supreme Court of India held thus:-

“11. On a reading of the sub-sections(1) and (2) it may be seen that sub-section(1) is a mandatory provision governing what a police officer should do when a person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57. Sub-section (2) on the other hand pertains to the powers of remand available to a Magistrate and the manner in which such powers should be exercised. The terms of sub-section (1) of Section 167 have to be read in conjunction with Section 57. Section 57 interdicts a police officer from keeping in custody a person without warrant for a longer period than 24 hours without production before a Magistrate, subject to the exception that the time taken for performing the journey from the place of arrest to the Magistrate's Court can be excluded from the prescribed period of 24 hours. Since sub-section (1) provides that if the investigation cannot be completed



within the period of 24 hours fixed by Section 57 the accused has to be forwarded to the Magistrate alongwith the entries in the Diary, it follows that a police officer is entitled to keep an arrested person in custody for a maximum period of 24 hours for the purposes of investigation. The resultant position is that the initial period of custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a Magistrate. In fact, the powers of remand given to a Magistrate become exercisable only after an accused is produced before him in terms of sub-section (1) of Section 167.

“18. The words used in proviso (a) are “no Magistrate shall authorize the detention of the accused person in custody”, “under this paragraph”, “for a total period exceeding i.e. 90 days/60 days”. Detention can be authorised by the Magistrate only from the time the order of remand is passed. The earlier period when the accused is in the custody of a police officer in exercise of his powers under Section 57 cannot constitute detention pursuant to an authorization issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand”.

Therefore, in our considered opinion, the controversy regarding the computation of period of 90 days/60 days has since been set at rest, so there can be no dispute that the reckoning date for computation of 90 days/60 days for the purpose of release in terms of Section 167(2) Cr. P.C. would be the date of first remand

of the accused in connection with that particular case for the purpose of investigation, not from the date of arrest and detention in terms of Section 57 Cr. P.C. or the date of judicial remand in any other case for the purpose of investigation or otherwise in terms of Section 309(2) Cr. P.C.

We also find no substance in the submission of the learned counsel of the petitioner that it will be deemed that the petitioner was also under arrest in connection with Begusarai Town P.S. Case No. 41/2015 on 23.01.2015. The submission of the learned counsel for the petitioner is based upon a misconceived approach of Legal Fiction. It is well settled that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands. If under the Code of Criminal Procedure, 1973, there is no such deeming provision for the purpose of assuming that an accused who is in judicial custody in connection with a criminal case pending for investigation, shall be deemed also under authorised detention, in terms of Section 167 of the Code by the Magistrate in connection with a different case, though he might not have been produced before the Magistrate for the purpose of remand in the other case, then this Court has no occasion to assume existence of such legal consequences regarding detention of the petitioner in

Begusarai Town P.S. Case No. 41/2015.

In the case of State of West Bengal-Vs-Dinesh Dalmia(2007) 5 SCC 773, the crucial question before their Lordships was whether the detention period should be counted from the date when the police took the accused in custody or the period should be counted from the earlier date when the accused surrendered in the case before the Metropolitan Magistrate, Egmore, Chennai, in connection with the said case. Considering the facts of the case it was held that the whole purpose of Section 167 of Cr. P.C., is that the accused should not be detained more than 24 hours and subject to 15 days' police remand and it can further be extended up to 90/60 days as the case may be. From reading of sub-section (1) & (2) of Section 167 Cr. P.C., with proviso it clearly transpires that the incumbent should be in fact under the arrest/detention of police for investigation. But the custody of police for investigation purpose cannot be treated as judicial custody/ detention in another case. The authorization of detention in terms of Section 167 of the Code of Criminal Procedure must be at the instance of police and for the purpose of investigation in a specific case.

We are of the view that while considering the maintainability of second F.I.R., the Court has to examine the



facts and circumstances giving rise to the first and second F.I.R. and the test of sameness is to be applied to find out whether both the F.I.Rs., relate to the same incident in respect of the same occurrence or are in regard to the incident which are two or more parts of the same transaction. If the answer is in the affirmative then the second F.I.R. is not maintainable. However, in case the contrary is proved, where the version in the second F.I.R. is different and they are in respect of two different incidents/crimes, the second F.I.R. is permissible.

We also find no merit in the submission made on behalf of the counsel for the petitioner that Begusarai Town P.S. Case No. 42/2015 ought not to have been registered separately as it was a part of same transaction of the occurrence/incident for which Begusarai Town P.S. Case No. 41/2015 had already been instituted. It appears from the record that earlier case i.e., Begusarai Town P.S. Case No. 41/2015 was instituted by the informant for the offence of extortion and attempt to murder and Begusarai Town P.S. Case No. 42/2015 came to be instituted for distinct and different cognizable offence i.e., unlawful possession of illegal arms, so both the incidents cannot be part of the same transaction. If the recovery of arms from the possession of the petitioner which led to institution of Begusarai Town P.S. Case

No. 42/2015 would have been made at the place of occurrence or while fleeing away from the place of occurrence after commission of the first incident then it may be treated as part of the same transduction.

Since Begusarai Town P.S. Case Nos. 41/2015 and 42/2015 are in respect of different and distinct crime as discussed above therefore they were required to be registered and investigated separately, as has been done.

In the case of C.B.I.–Vs- Anupam J. Kulkarni 1992(3) SCC 141, in paragraph 11 their Lordship observed;

“The occurrence constituting two different transaction give rise to two different cases and the exercise of power under Section 167(1) & (2) of the Code should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitutes two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in terms of Section 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody”.

Learned counsel for the petitioner has, therefore, wrongly relied upon the decision in Kulkarni’s case. In the facts of the

case the decision rendered therein does not support the contention of the petitioner, rather it favours the act and action of the police i.e., institution of two separate F.I.Rs. and to get the detention authorized by the Magistrate separately.

In the case of Sanjay Dutt–Vs- State, the Constitution Bench summarized the conclusion in respect of question referred to as under: (1994) 5 SCC 402 para-53(2)(b):-

“ The “indefeasible right” of the accused to be released on bail in accordance with Section 20(4)(bb) of the Tada Act read with 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the Challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which inures to, and is enforceable by the accused only from the time of default till the filing of the Challan and it does not survive or remain enforceable on the Challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the Challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of Challan only by the provisions relating to the grant of bail applicable at that stage”.

It is the settled law that the validity of detention is to be

adjudged on the date of return of the rule not on the date of filing of the petition seeking writ of Habeas Corpus.

We may also clarify this aspect of 'matter in issue' that the detention of the petitioner in terms of Section 167(2) is no longer in force, since the police has submitted charge sheet as indicated above. Now the petitioner would be under judicial custody in terms of Section 309(2) of the Code of Criminal Procedure. The provisions of Section 167(2) of the Code is no longer applicable in the case of the petitioner, either in respect of his detention or his release in connection with the said case, because the right to be released on bail under proviso of sub-section(2) of Section 167 of the Code of Criminal Procedure accrues to an accused at a particular stage but it cannot be held to be an 'indefeasible right', which can be exercised at any stage rather such right is extinguished the moment the investigation report is filed, if already not availed of, because Section 167 of the Code of Criminal Procedure ceases to apply. Therefore, the validity of detention of the petitioner and his right to be released on bail in terms of proviso (a)(ii) of sub-section 2 of Section 167 of the Code of Criminal Procedure are not required to be adjudged, at this stage for the release that Section 167 of the Code of Criminal Procedure ceases to apply in the case of the petitioner.

In view of the above discussion, we are of the opinion that the reckoning date of authorized detention, for the purpose of computation of 90 days, would be the date of remand i.e., 13.03.2015, of the petitioner in connection with Begusarai Town P.S. Case No. 41/2015; therefore, the petitioner is not entitled for release on bail in terms of sub-section (2)(a)(ii) of Section 167 of the Code of Criminal Procedure on 24.04.2015 and the order dated 24.04.2015 of the Chief Judicial Magistrate, Begusarai, requires no interference.

The application is, accordingly, dismissed.

(Sudhir Singh, J)

I agree.

(Ramesh Kumar Datta,J):-

(Ramesh Kumar Datta, J)

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