

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No.3324 of 2016

ORDER:

The petitioners, who are accused Nos.13 and 14 in Crime No.148 of 2015 of Madanapalle I Town Police Station, Chittoor District, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in the above crime, registered for the offences punishable under Sections 353, 307, 379 and 109 IPC, Section 20 (1) (c) (ii) (iii) (iv) and (x) of the Andhra Pradesh Forest Act, 1967, Rules 3 and 4 of the Andhra Pradesh Sandalwood and Red Sanders Wood Transit Rules, 1969, Section 29 of the Wild Life Protection Act, 1972 and Section 55 (2) of the Biological Diversity Act, 2002.

The case of the prosecution is that on 14.11.2015 at about 11.30 a.m. at Annamaiah Circle, on Madanapalle-Kadi Road, accused No.1 was arrested while he was illegally transporting red sander logs through Ford Icon Car bearing No.KA02D5838. It is also alleged that accused No.1 tried to kill the police party by trying to run over the car. With great difficulty, the police are alleged to have arrested accused No.1 and seized six red sander logs under a cover of panchanama. Accused No.1 is alleged to have confessed about the involvement of accused Nos.2 to 34 in cutting the red sandalwood trees and also transporting the same abroad with the help of accused No.33, who is an international smuggler. Basing on these allegations the above crime came to be registered.

It is stated that the petitioners were arrested on 30.01.2015 on P.T.Warrant in this crime and since then they are in jail.

Heard learned counsel for the petitioners and Additional Public Prosecutor appearing for the respondent-State.

The only point urged by the learned counsel for the petitioners is that the petitioners are being arrested in Crime No.187 of 2015 of Madanapalle Taluq Police Station on 18.12.2015 and in view of the fact that the petitioners are in jail in Crime No.187 of 2015, from 18.12.2015 their period of custody in the said crime should also taken into account while considering their application under Section 167 (2) Cr.P.C., in the present crime as well. He submits that if the same is taken into consideration the detention would be beyond 90 days, in which event the petitioners are entitled for statutory bail.

Learned Additional Public Prosecutor opposed the same contending that if such methodology is applied for calculating the period of limitation for filing charge sheet it would be very difficult for the police to interrogate the accused in cases where they are involved in number of crimes of similar nature.

In order to appreciate the rival submissions, it would be useful to refer to the judgments which are cited by both the parties.

In ***Tupakula Appa Rao v. State of A.P.***^[1] this Court was considering a situation where the accused therein was involved in three crimes registered under Sections 408, 468, 476 and 420 IPC and Section 3 of the APP DFE Act, 1999 for misappropriating the society funds while working as Secretary, Primary Agricultural Co-operative Credit Society, Nidamanuru. The argument which was advanced before the Court was that the petitioner therein has not been arrested in connection with the left out crimes with an intention to see that he is arrested again the moment he is released on bail in one crime and likewise one after another in the other crimes so as to

see that the petitioner continues to be in jail. The question which cropped up for consideration in the said case was whether the petitioner is deemed to have been in custody in other crimes also although there has been no formal arrest in connection with those crimes. Dealing with the said aspect, this Court after referring to various authorities including the judgment of the Apex Court in ***Government of Andhra Pradesh v. A.V.Rao***^[2] and also a Full Bench Judgment of Allahabad Court in ***Shabbu v. State of U.P.***^[3] held as under:

“15. If the arrest is shown in all the cases, simultaneously there is no difficulty he can be said to be in custody in each of those cases. If for any reason his arrest is limited to one case like in the instant cases it is not as though he is remedy less. The fall out of the above discussion is that whether or not the custody of a person in one case should also be treated as custody in other cases wherein he is wanted is a question of fact and is to be decided with reference to facts and circumstances of each case. If the facts indicate that a person already detained in custody in one case out of more than one case and his arrest is not formally shown on account of the negligence of the concerned authorities and for no fault of the accused he can with all justification claim that his custody in one case should also be deemed to be in custody for the purpose of other case or cases.

17. Turning to the instant cases, having regard to the fact all the cases registered against the petitioner pertain to the same police station and the fact that his arrest could have been shown in other cases also simultaneously but not shown the facts warrant a conclusion that he is deemed to have been in custody in respect of other crimes also although formal arrest is not shown in the other cases also. However, it is needless to say whether the bail can be granted or not, depends upon the facts of each case and would be left to the discretion of the Court to exercise the same on merits in each case.”

In ***Government of Andhra Pradesh v. A.V.Rao*** (2 supra) the

Apex Court dealt with the scope 428 Cr.P.C. which provides for a set off. The question which fell for consideration before the Apex Court was whether the period of detention undergone by the writ petitioners in connection with the sessions cases before their conviction could be treated as part of the period of imprisonment on conviction so as to entitle them to remission of their sentences under the Prisons Act. Dealing with the scope of 428 Cr.P.C. and also the provisions of the Prisons Act, the Apex Court observed as under:

“The argument is that the 'expression "period of detention" in [section 428](#) includes detention under the Preventive Detention Act or the Maintenance of Internal Security Act. It is true. that the section speaks of the "period of detention" undergone by an accused person, but it expressly says that the detention mentioned refers to the detention during the investigation, enquiry or trial of the case in which the accused person has been convicted. The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the "same case" in which he has been convicted. We therefore agree with the High Court that the period during which the writ petitioners were in preventive detention cannot be set off under [section 428](#) against the term of imprisonment imposed on them.”

From the Judgment of the Apex Court referred to above, it is clear is that the authorities were aware about the involvement of the petitioner in other crimes and respondent/police had an opportunity of seeking remand of the said person also, but they failed to do so.

It is to be noted that the said case was dealing with set off under Section 428 Cr.P.C. which becomes operative only after the accused is convicted. The period of detention which allows set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the same case, in which he has been convicted.

Under those circumstances, the Apex Court agreed with the view expressed by the High Court holding that the period during which the writ petitioners were in preventive detention cannot be given set off under Section 428 Cr.P.C. against the term of imprisonment imposed on them. However, the Apex Court held that in respect of a crime which also forms part of detention, the period of detention undergone by him in that crime could be taken into consideration for the purpose of giving set off. The relevant portion of the judgment is as under:

“There is however substance in the other point raised by the writ petitioners regarding the computation of the period during which the writ petitioner in each case should be held to have suffered imprisonment on conviction. In A.V. Rao's case (W.P. 1865/76), he was already in detention under the Preventive Detention Act when the First Information Report was lodged on December 18, 1969 in connection with the sessions cases. Some of the co-accused in these cases were arrested and produced before the magistrate for remand on December 19, 1969, but Rao was produced before the magistrate sometime in April, 1970 after he was released from preventive detention. It was argued that he also could have been produced before the magistrate for remand on December 19, 1970. On behalf of the respondent, State of Andhra Pradesh, it was contended that as Rao was already in detention under the Preventive Detention Act, it was not possible to produce him before the magistrate for remand until the period of preventive detention was over, we do not find any justification in law for the position taken up by the State. Rao being already in custody, the authorities could have easily produced him before the magistrate when the First Information Report was lodged. Nothing has been pointed out to us either in the preventive detention law or [the Code](#) of Criminal Procedure which can be said to be a bar to such a course. That being so we think that the claim that the entire period from December 19, 1969, when many of the co-accused were produced before the magistrate to April 18, 1970 should be treated as part of the period during which Rao was under detention as an under trial prisoner, must be accepted as valid.”

But the situation on hand is totally different. As seen from the record, three crimes came to be registered against the petitioners. Crime No.187 of 2015 at Madanapalle Taluq Police Station was registered on 14.11.2015 for the offences punishable under Sections 353, 307, 379 read with 34 IPC, Section 20 (1) (c) (iii) (iv) and (ix) of the Andhra Pradesh Forest Act, 1967 and Rule 3 of the Andhra Pradesh Sandalwood and Red Sanders Wood Transit Rules. Crime No.64 of 2015 of Sodam Police Station was registered for the offences punishable under Sections 353, 307, 379, 411, 120 (B) read with 109 IPC, Sections 29 and 32 of the Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandalwood and Red Sanders Wood Transit Rules, 1969, Section 29 of the Wild Life Protection Act, 1972 and Sections 55 (2) and 58 of the Biological Diversity Act, 2002 and third crime is the present case registered at Madanapalle I Town Police Station.

Three crimes are registered in three different police stations, ofcourse in the same District. The remand report which has been placed on record refers to two crimes registered against the petitioners ie. Crime No.148 of 2015 and Crime No.64 of 2015, but there is no reference to Crime No.187 of 2015 registered earlier to these crimes. Therefore, it is difficult to accept the argument of the learned counsel for the petitioners that the arrest of the petitioners in Crime No.187 of 2015 was also to the knowledge of the respondent-police in this crime.

Identical issue came up for consideration before the Apex Court in ***State of W.B. v. Dinesh Dalmia***^[4]. It pertains to a claim made by the accused seeking release in terms of Section 167 (2) Cr.P.C. on expiry of 90 days period of detention as prescribed under that Section. The date from which the said period of detention should

be reckoned with was the main issue involved therein. In the said case, the First Information report was lodged against certain persons including the respondent therein. Prior to that the respondent was arrested in connection with some other case and the investigating officer prayed for issuance of production warrant before the Chief Metropolitan Magistrate, Calcutta. The said Magistrate directed production of accused before him on or before 22.02.2006. On 14.02.2006 the said order was brought to the notice of the Additional Chief Metropolitan Magistrate, Chennai and the learned Magistrate observed that the issue of handing over of the accused to Calcutta Police would be considered after the expiry of the period of the custody given to C.B.I. On 27.02.2006, while the accused was in the custody of CBI, he voluntarily surrendered before the Magistrate, Chennai in connection with the two cases at Calcutta, which was accepted. Thereafter, on 11.03.2006 the accused was handed over to Calcutta Police. The accused moved an application for bail contending that as he had surrendered on 27.02.2006 before the Magistrate and the period of (15) days was over, he should be released on bail, as police failed to file challan within the statutory period. The said Court rejected the bail application holding that the production of the petitioner was done before the said Court on 13.03.2006 and on the strength of the production warrant issued by it the period of police custody has to be considered from the date of his physical production. The accused again moved an application under Section 167 (2) Cr.P.C. but the same was rejected holding that the statutory period of 90 days has not expired. Against the said order, the accused preferred a revision before the High Court at Calcutta. The High Court took a view that the detention of the accused should be counted with effect from 27.02.2006, ie., when the accused surrendered himself at Chennai. Aggrieved by the same, the State preferred an appeal before the Apex Court. While discussing the

scope of 167 (2) Cr.P.C. the Apex Court held as under:

“Sub-section (1) of Section 167 Cr.P.C. says that when a person is arrested and detained in custody and it appears that investigation cannot be completed within 24 hours fixed under [Section 57](#) and there are grounds of believing that accusation or information is well-founded, the officer in charge of the Police Station or the Police Officer making the investigation not below the rank of sub-inspector shall produce the accused before the nearest judicial magistrate. The mandate of sub-section (1) of [Section 167, Cr.P.C.](#) is that when it is not possible to complete investigation within 24 hours then it is the duty of the Police to produce the accused before the Magistrate. Police cannot detain any person in their custody beyond that period. Therefore, Sub-Section (1) pre-supposes that the police should have custody of an accused in relation to certain accusation for which the cognizance has been taken and the matter is under investigation. This check is on police for detention of any citizen . Sub-Section (2) says that if the accused is produced before the Magistrate and if the Magistrate is satisfied looking to accusation then he can give a remand to the police for investigation not exceeding 15 days in the whole. But the proviso further gives a discretion to the Magistrate that he can authorize detention of the accused otherwise then the police custody beyond the period of 15 days but no Magistrate shall authorize detention of the accused in police custody for a total period of 90 days for the offences punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and no magistrate shall authorize the detention of the accused person in custody for a total period of 60 days when the investigation relates to any other offence and on expiry of the period of 90 days or 60 days as the case may be. He shall be released if he is willing to furnish bail. Therefore, the reading of sub-Sections (1) & (2) with proviso clearly transpires that the incumbent should be in fact under the detention of police for investigation. In the present case, the accused was not arrested by the police nor was he in the police custody before 13.3.2006. He voluntarily surrendered before a Magistrate and no physical custody of the accused was given to the police for investigation. The whole purpose 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 as the case may be. But the custody of police for investigation purpose cannot be treated judicial custody/ detention in another case. The police custody here means the Police custody in a particular case for investigation and not judicial custody in another case. This notional surrender cannot be treated as Police custody so as to count 90 days from that notional surrender. A notorious criminal may have number of cases pending in various police station in city or outside city, a notional surrender in pending case for another FIR outside city or of another police-station in same city, if the notional surrender is counted then the police will not get the opportunity to get custodial investigation. The period of detention before a Magistrate can be treated as device to avoid physical custody of the police and claim the benefit of proviso to Sub-[Section 1](#) and can be released on bail. This kind of device cannot be permitted under [Section 167](#) of the Cr.P.C. The condition is that the accused must be in the custody of the police and so called deemed surrender in another criminal case cannot be taken as starting point for counting 15 days police remand or 90 days or 60 days as the case may be. Therefore, this kind of surrender by the accused cannot be deemed to be in the Police custody in the case of 476/02 in Calcutta. The Magistrate at Egmore, Chennai could not have released the accused on bail as there was already cases pending against him in Calcutta for which a production warrant had already been issued by the Calcutta Court. In this connection in the case of State of Maharashtra Vs. Bharati Chandmal Varma^[5] their Lordships has very clearly mentioned that; "For the application of the proviso to [Section 167\(2\)](#) of the Code, there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention.. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused was found to have been involved in some other offence disconnected from the offence for which he is arrested. In such an eventuality the officer investigating such second offence

can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to [Section 167\(2\)](#) would remain unextendable."

The Apex Court further held that if one case is registered against the accused and during the course of investigation it is found that he has committed more than one offence, then it would be treated as one investigation and for each offence a separate police remand cannot be sought. But in case of a different offence being committed, then a separate case has to be registered and separate investigation has to be taken up. The period of detention in those case cannot be taken into consideration for the purpose of Section 167 (2) Cr.P.C. Therefore, for each separate offence the accused has to be tried separately; the proceedings have to be initiated separately and independent remand has to be obtained.

In the present case also three different crimes were registered against the petitioners and the petitioners were arrested on 18.12.2015 in Crime No.187 of 2015 and on 30.01.2016 in Crime Nos.64 of 2015 and 187 of 2015. In view of the judgment of the Apex Court in Dinesh Dalmia case (4 supra), the argument of the learned counsel for the petitioners that the period of detention has to be reckoned from 18.12.2015 and that the petitioners are entitled for statutory bail, cannot be accepted. Accordingly, the Criminal Petition is dismissed.

However, it is always open to the petitioner to move an application seeking regular bail before the trial Court or in case the charge sheet is not filed within 180 days he can move an application seeking statutory bail, in which event the trial Court shall dealt with

the same on merits.

C. PRAVEEN KUMAR, J

22.04.2016

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[1] (2002) 1 ALT (CrI.) 76 (A.P.)

[2] AIR 1977 SC 1096

[3] 1982 CrI.L.J. 1757

[4] (2007) 5 SCC 773

[5] (2002) 2 SCC 121