

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CRIMINAL PETITION NO.12947 of 2018

Between :

State rep., by Inspector of Police,
Anti-Corruption Bureau,
City Range-II, Hyderabad,
(through Standing-Counsel-cum-Special P.P.
For ACB Cases,
High Court Judicature at Hyderabad.

... Petitioner/ Complainant

and
Sri Vaidya Vara Prasad,
XIV Addl. District Judge,
Ranga Reddy District,
Presently residing at Flat No.103,
Sai Sharan Residency,
Vikas Nagar, Dilsukh Nagar, Hyderabad

... Respondent/ Accused Officer

DATE OF JUDGMENT PRONOUNCED : 19.12.2018

THE HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/ Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

* THE HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

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Vs.

\$ Sri Vaidya Vara Prasad,
XIV Addl. District Judge,
Ranga Reddy District,
Presently residing at Flat No.103,
Sai Sharan Residency,
Vikas Nagar, Dilsukh Nagar, Hyderabad
... Respondent/ Accused Officer

!Counsel for the petitioner : Sri N. Ananda Rao, Standing
counsel-cum-Spl.P.P. for
ACB Cases.

Counsel for the Respondent : Sri K. Raghavacharyulu,

<Gist :

>Head Note:

? Cases referred:

1. 1980 AIR 1632, 1980 SCR (3) 383,
2. 1992 (3) SCC 141
3. 1986 (3) SCC 141
4. 1975 (2) SCC 220
5. AIR 1994 SC 1447
6. 2000 (9) SCC 266
7. 2010 (6) SCC 753
8. 2014 (14) SCC 434

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.12947 of 2018

ORDER:

The Criminal Petition is filed by the petitioner/complainant under Section 482 Cr.P.C. seeking to quash the order dated 27.11.2018 in CrI.MP.No.996 of 2018 in Crime No.25/ RCA-CR-II/ 2018 on the file of the First Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2. The petitioner herein is the State, represented by the Inspector of Police Anti Corruption Bureau, City Range-II, Hyderabad, representing through Standing Counsel-cum-Special Public Prosecutor, no other than complainant in the above crime registered against the respondent/ accused Officer, now under suspension.

3. The present petition is impugning the dismissal of the police custody sought by the prosecution agency in CrI.MP.No.996 of 2018, by order, dated 27.11.2018. Though elaborate arguments advanced by both sides in more than two sittings on either side supporting the order by the respondent/ accused Officer and impugning the order by the prosecution agency, in the present case, it is not necessary to dwell into the factual merits without answering the legal position. Hence, the present order is confined to discuss the

legal position and if at all there from required to go into the facts what is already heard it can be considered.

4. With the above observation, from the hearing, now coming to the very maintainability of the present petition before this Court from the impugment that the order of dismissal of the police custody, though application filed within first 15 days, no way entitles the Court by sitting against that order if at all even otherwise on merits can grant from the statutory bar contemplated by Section 167(2) Cr.P.C.

5. In this regard, it is necessary to reproduce Section 167 Cr.P.C. amended from time to time including by Amended Act 5 of 2019, for more clarity.

“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, authorise 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) ¹ the Magistrate may authorise 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 authorise 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 ninety days, or sixty 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 authorise 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 authorise 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 authorising 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 a woman under eighteen years of age, the detention shall be authorized to be in the custody of a remand home or recognised social institution.]

(2-A) ¹ Notwithstanding anything contained in sub- section (1) or sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the

orders made by an Executive Magistrate under this sub- section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub- section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons- case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub- section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub- section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

6. From the above, so far as Section 167(2) proviso (b) Cr.P.C concerned, it is nothing new to reiteration of A.P.Amendment covered by A.P.Act 31 of 2001 w.e.f. 06.12.2000 in its saying the accused for taking to judicial custody must be produced in person by complying with mandate of Section 57 as contemplated by Section 167(1) and after the first production for remand extension accused need not be produced personally as it can be even by electronic video linkage facility. Thereby, now the issue confines for the case on hand to the scope of Section 167(2) proviso (a) Cr.P.C.

7. From what Section 167(2) proviso (a) Cr.P.C reproduced no way requires repetition reads is the first remand or subsequent remand pending investigation by the learned Magistrate before whom produced other than before cognizance Magistrate shall not exceed 15 days (not maximum 14 or 15 days) whether it is the Executive Magistrate before whom the accused was produced it must be for 7 days and thereafter to produce before the concerned Magistrate even that the first 7 days also to be taken into consideration. It is with reference to Section 167(2) Cr.P.C. from the use of the words such custody as Magistrate thinks fit, for a remand not exceeding 15 days in the whole, what the proviso (a)(ii) of sub-section 167(2) speaks further is the Magistrate may authorize the detention of the accused other than in police custody beyond the period of 15 days that too if specified that adequate grounds exist for so doing. It also clarifies by the proviso (a) to Section 167(2) Cr.P.C from what is wording used in Section 167(2) Cr.P.C was police custody must be if at all within first 15 days from the time of acceptance of the accused to judicial remand. There even after judicial remand of first maximum 15 days in between any application for police custody filed, it can be considered to grant. No doubt if the application for police custody filed within time and once Magistrate not chosen to grant police custody and in the

meantime 15 days expired, whether impugning that order any superior court can grant police custody even facts entitling police custody is the pertinent question herein from the above to answer.

8. In this regard six expressions of the Apex Court are mainly relevant. Before coming to the principle laid down in the expressions, a perusal of Sections 436, 437, 438 and 439 Cr.P.C. there is no prohibition for police custody to grant even accused in a bailable case was released on bail forthwith on production without even application as what is specifically provided in Section 167(2) Cr.P.C. and its proviso (a) no way controlled by the chapter covering the police particularly sections 436 to 439 Cr.P.C. What all section 437 Cr.P.C clarified in regard to test identification proceedings for identification of any suspect by any witness that is not a bar for grant of bail is not even specifically wording so far as police custody is concerned for clarification sake from arguments advanced by both sides touching those aspects also.

9. It is, in this context it is necessary to refer the Constitution Bench expression of the Apex Court in Gurubaksh Singh Sibbia v. State of Punjab¹ and in the end portion of judgment as part of 7 guidelines laid down by guideline (v)

¹ 1980 AIR 1632, 1980 SCR (3) 383

dealt with the bar for grant of anticipatory bail, in case, where police custody of the accused is required for the first 15 days from the accused produced before the Magistrate for acceptance of the remand to take to judicial custody which includes granting of interchangeable police custody also at the cost of repetition only within that period. For more clarity, the said guidelines read as follows:

- (1) The power under [Section 438, Criminal Procedure Code](#), is of an extra-ordinary character and must be exercised sparingly in exceptional cases only.
- (2) Neither [Section 438](#) nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled.
- (3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding [Section 437](#), are implicit therein and must be read into [Section 438](#).
- (4) In addition to the limitations mentioned in [Section 437](#), the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.
- (5) Where a legitimate case for the remand of the offender to the police custody under [Section 167\(2\)](#) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under [Section 27](#) of the Evidence Act can be made out, the power under [Section 438](#) should not be exercised.
- (6) The discretion under [Section 438](#) cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.
- (7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under [Section 438](#) of the Code should not be exercised; and
- (8) Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.

10. From this, now coming to the land mark expression of the Apex Court it clarifies by interpreting Section 167(2) Cr.P.C of police custody must be if at all facts entitled to be granted is within the first 15 days from accused produced and accepted the remand to take to judicial custody to grant. The expression in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kuklarni² by the two Judge Bench of the Apex Court is very clear that the total period of remand to police or judicial custody shall be at initial 15 days, either by single order or several orders of judicial Magistrate or 7 days by order or orders of Executive Magistrate as the case may be and in the case the accused initially produced before the Executive Magistrate as remanded to judicial custody for 7 days in the first remand before judicial custody by the judicial Magistrate that 7 days in computing 15 days not to be excluded is clearly laid down. It is observed that the 1st period of detention shall be computed from the date of order of initial remand by Executive Magistrate or judicial Magistrate as the case may be and after expiry of period of first 15 days of custody, further remand for 90/ 60 days under sub-section (2) of Section 167 Cr.P.C only to be in judicial custody. It is, however, clarified that too, in connection with a different offence alleged

² 1992 (3) SCC 141

against some accused in any other case, there can again be an order of remand to police custody. If the investigation remains incomplete even after expiry of 90/60 days of custody, accused shall be released on bail.

11. In this context, it is also necessary to refer Section 57 Cr.P.C. which says no police officer, who arrested the accused shall detain custody a person arrested without warrant for a longer period other than under all the circumstances of the case is reasonable and said period shall not, in the absence of a special order of a Magistrate under Section 167 Cr.P.C, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest from the Magistrate court. It is also necessary to refer in this context Section 169 Cr.P.C which says if upon an investigation under this chapter it appears to the in-charge officer of the police station that there is no sufficient evidence or reasonable ground of suspension to justify for forwarding of the accused to a Magistrate, such officer shall, if such person is in custody release him of his executing a bond, with or without sureties, such officer may direct, to appear, and if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try accused or commit him for trial.

12. In this context coming to Section 41-A Cr.P.C. the procedure contemplated is provided for offences punishable for 7 years and below by giving of notice of appearance before the police officer and in case of failure to comply or where it is essential and lawful to arrest by mentioning can arise despite complied with the notice. It is needful to say, in this context, the police officer, in a bailable offence shall release the accused and in case accused failed to produce the solvency shall submit the accused to judicial custody before the Magistrate concerned. The remand report invariably must mention that despite in a bailable offence, accused informed of his right to bail and to produce solvency failed to produce solvency thereby could not be released and essential from the time stipulated in Section 57 expires to take him to judicial custody from the prima facie accusation for arrest and production and otherwise only compliance of Section 169 Cr.P.C. is suffice with no need of arrest leave about the compliance of Section 41-A Cr.P.C for the offence punishable upto 7 years. No more discussion is required on the scope of law in this regard before coming further of the six propositions right from Anupam J. Kuklarni (supra).

13. In Anupam J. Kuklarni (supra) referring to the earlier expression of the Apex Court in Chaganti Satyanarayana v.

State of A.P.³, Natabar Parida v. State of Orissa⁴, the distinction between Sections 167 and 309 Cr.P.C was well drawn and in computing the period of 60/ 90 days, one day to be excluded as provided in the General Clauses Act. No doubt, it was taken care of by amendment in Section 167 Cr.P.C subsequently and it is observed that after the expiry of the first period of 15 days the further remand during the period of investigation can only be in judicial custody. Police Custody if found necessary can be ordered only during the first period of 15 days. If a further interrogation is necessary after the expiry of the period of first 15 days there is no bar for interrogating the accused who is in judicial custody during the periods of 90 days or 60 days. The detention in police custody is generally disfavoured by law. The whole scheme underlying Section 167 Cr.P.C is intended to limit the period of police custody in order to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers. For more clarity paras 12 to 15 of Anupam J. Kuklarni (supra) are reproduced hereunder:

“12. As the points considered above have an important bearing in discharge of the day-to-day magisterial powers contemplated under [Section 167\(2\)](#), we think it appropriate to sum up briefly our conclusions as under :

13. Whenever any person is arrested under [Section 57](#) Cr.P.C. he should be produced before the nearest Magistrate within

³ 1986(3) SCC 141

⁴ 1975(2) SCC 220

24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under [Section 167\(2\)](#) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to [Section 167\(2\)](#). The period of ninety days or sixty 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.

14. We may, however, in the end clarify that the position of law stated above applies to [Section 167](#) as it stands in [the Code](#). If there are any State amendments enlarging the periods of detention, different consideration may arise on the basis of the language employed in those amendments.

15. The appeals are accordingly dismissed.”

14. No doubt, what was clarified in para-14 supra is interpretation of Section 167 Cr.P.C. by clarifying the position of law of the Section as it stands as on that day.

15. There is nothing from the amendment till 2009 covered by Section 167 Cr.P.C reproduced initially to say police custody can be given beyond first 15 days period of remand.

16. From this coming to the next expression which is of the three-Judge Bench of the Apex Court in *Kosanapau Ramreddy v. State of A.P.*⁵, it was observed particularly at para-2 that legality of the order dated 03.06.1992 made by the Designated Court directing accused person, Ashok Reddy, who is facing accusation under the Terrorists and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA Act'), under investigation, be handed over from judicial custody to police custody for a period of 3 days for purposes of investigation of the case assailed and came in question. There the learned Magistrate, before whom accused initially produced for detention ordered to judicial custody of him. Thereafter an application made before the Designated Court for police custody for the purpose of investigation. It is not disputed that the impugned order made by the Designated Court was well within 60 days by virtue of the specific wording of Section 20 of the TADA Act, which is a special law when

⁵ AIR 1994 SC 1447

compared to the general law under Section 167(2) Cr.P.C of 15 days to be read as 60 days within which, police custody can be granted. In para-4 of the order it is observed that a person held in judicial custody could, if circumstances justify, be transferred to police custody or viceversa within 15 days under Section 167(2) Cr.P.C equally to 60 days under Section 20 of the TADA Act cannot be disputed. There must of course, be sufficient grounds for such a change of custody. It is there from referring to the case on hand observed from the nature of offence and stage of investigations it cannot be said that grounds for such custody do not exist.

17. Even three-Judge Bench expression is crystal clear that a case under Section 20 of the TADA Act of police custody can be granted within 60 days by also referring to Section 167(2) Cr.P.C of the police custody can be granted only in the initial period of remand or subsequently only within the first 15 days. Though Anupam J. Kuklarni (supra) not referred by the three-Judge Bench expression, the principle laid down is one and the same.

18. Coming to another three-Judge Bench expression of the Apex Court in Budh Singh v. State of Punjab⁶ where Anupam J. Kuklarni (supra) placed reliance by the Constitution Bench. On facts, after dismissal of the anticipatory bail application of

⁶ 2000(9) SCC 266

the accused by order dated 20.01.1999 in Crime No.43 of 1999 dated 04.05.1999 from surrender of the accused before the Chief Judicial Magistrate by remand order dated 23.12.1999 remanded to judicial custody and it is, while in judicial custody by posting the matter to 02.01.2000, a request was made by the prosecution agency/investigating agency on 02.01.2000 for grant of police custody. One day police custody was granted by the learned Chief Judicial Magistrate and another one day also extended from 03.01.2000 to 04.01.2000. It is, to say from 02.01.2000 to 03.01.2000 and again continuation of police custody for another day till 04.01.2000, on 04.01.2000 the investigating officer made another application seeking further police remand for a period of 7 days. The learned Judicial First Class Magistrate declined the request of further police remand and remanded him to judicial custody till 18.01.2000. From 23.12.1999, the first 15 days expired on 04.01.2000. Aggrieved by the dismissal of the further police custody by the impugned order dated 04.01.2000, on the last day of first 15 days though initially for two days given as referred supra, impugned the said order of the Magistrate, a revision was unsuccessfully made before the learned Sessions Judge vide dismissal order dated 17.01.2000 and again, the investigating agency moved the High Court invoking Section 482 Cr.P.C. It is where the single-Judge of

the High Court of Punjab and Haryana directed the Judicial First Class Magistrate, Ludhiana, to grant police custody for a further period of 7 days. It is, in the factual scenario when the matter impugning the correctness and legality of the order of the High Court came before the Apex Court, the Apex Court observed in para-5 as follows:

“5. In the face of facts, as noticed above, the order of the learned Judicial Magistrate, dated 4.1.2000, in our opinion, did not require any interference. The man date of [Section 167](#) Criminal Procedure Code, 1973 postulates that there cannot be any detention in police custody, after the expiry of the first 15 days, so far as an accused is concerned. That period of 15 days had in this case admittedly expired on 4.1.2000. The impugned order of the High Court violates the statutory provisions contained in [Section 167](#) Cr.P.C. Since it authorises police remand for a period of seven days after the expiry of the first fifteen days period. In [C.B.I., Special Investigation Cell - I, New Delhi v. Anupam J. Kulkarni](#) this Court considered the ambit and scope of [Section 167](#) Cr.P.C. and held that there cannot be any detention in police custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise committed by an accused in the same transaction come to light at a later stage. The Bench, however clarified that the bar did not apply if the same arrested accused was involved in some other or different case arising out of a different transaction, in which event the period of remand needs to be considered in respect to each of such cases. The impugned order of the High Court under the circumstances, cannot be sustained. The direction to grant police remand for a period of seven days by the High Court is, accordingly, set aside. The appeal, therefore, succeeds and is allowed to the extent indicated above.”

19. The above order of the Apex Court is crystal clear by reiterating what is the principle laid down in Anupam J. Kulkarni (supra) do not refer by same principle reiterated by another Constitution Bench in Kosanapu Ramreddy (supra) that after expiry of first 15 days from the initial taking of accused produced to judicial custody sent interchangeable police custody or judicial custody as the case may be, which

includes even initial remand by any Executive Magistrate for 7 days as part of it, after first 15 days, the Magistrate has no power. It was observed that the impugned order of the High Court violates the statutory provision contained in Section 167 Cr.P.C since it authorizes police remand for a period of 7 days after expiry of first 15 days period. Thus, from the Constitution Bench expression in *Budh Singh*(supra) even invoking Section 482 Cr.P.C of inherent power by the High Court it cannot grant police custody after expiry of first 15 days but for if at all it is in between.

20. Now coming to two more, two-Judge Bench expressions of the Apex Court viz. *Devender Kumar v. State of Haryana*⁷ by relying upon *Anupam J. Kuklarni* (supra), it is observed particularly at para-15 that what is clear from *Anupam J. Kuklarni* (supra) case is the fact that police remand can only be made during first period of remand after arrest and production before the learned Magistrate but not after expiry of the said period even then 15 days maximum period of first remand.

21. Coming to the other expression in *Satyajit Ballubhai Desai v. State of Gujarat*⁸, it is observed that grant of police remand is an exception and not a rule, as it can be allowed in

⁷ 2010 (6) SCC 753

⁸ 2014 (14) SCC 434

special circumstances and for reasons to judicially scrutinized and for such limited purposes only as to the necessities of the case may require. It is observed that a case before the Magistrate to be made out of essential to undertake further investigation, such police custody as order permitting police remand cannot be treated lightly or casually without strict adherence to the statutory provision which mandates in Section 167(2) Cr.P.C. There is a further observation that police custody of accused particularly when he has been enlarged on bail cannot be granted for an undisclosed or a flimsy reason. This expression thereby clarifies what is initially mentioned of even after grant of bail there is no bar for police custody provided the grant of police custody must be even first 15 days maximum period of remand provided for within that 15 days there can be interchangeable police custody to judicial custody and viceversa which includes any order of custody by Executive Magistrate. The Apex Court for that conclusion referred sections 57, 167 and 439 Cr.P.C and observed that once superior court granted bail invoking section 439 Cr.P.C it is not the Magistrate that has to grant police custody after accused released on bail granted by High Court or Court of Sessions but to approach the High Court that is also important to be taken care of from the expression in Satyajit Ballubhai Desai (supra), particularly at para-22.

22. Having regard to the above, once the law is well settled by catena of expressions which include the two Constitution Bench expressions of 1994 and 2000 respectively, the application before this Court though otherwise impugnant sustainable, no way entitles to consider even by invoking Section 482 Cr.P.C to grant police custody as the period of first remand maximum 15 days expired. Here, that is not the end of the matter from arguments advanced by both sides but to clarify further as follows.

23. One of the contentions raised by the learned Special Public Prosecutor is that if there is a suspension of the order by superior Court of police custody granted by the learned Magistrate within 15 days subsequent to that, is that order ceases by virtue of the suspension granted by any superior Court concerned, it is not for the reason that it is based on a latin maxim, *actus curiae neminem gravabit* that act of court shall prejudice no man not sanctioned by law. Once that is the settled law and basic principle of law that by the order of suspension or stay the running of the period of 15 days suspends automatically from computation from the time of suspension till seizure of suspension. It is once understood of the period of 15 days, once police custody granted and even by any superior Court order, it was suspended that suspends the order vis-avis the period of running time

particularly from the day when the order was suspended. Once such is the case, there is no any difficulty much less any clarification from the Court but for as a general guidance to the judicial Magistrates or the Special/ designated courts or District-courts, to take note of the above.

24. Coming to the other submission of the learned Special Public Prosecutor that if the Courts go on, keep pending the police custody applications of investigating agency till expiry of the first period of 15 days and ultimately rejects, the doors of the investigating agency were compulsorily shutting down for investigating agency is barring from the expressions referred supra to seek police custody from any superior Court. No doubt, there is a force in the submission that even if it is a strong case to the entitlement of police custody by judicial discretion of the order of the Magistrate which for one or the other reason or without proper appreciation, dismissed the application either at the fag end of first 15 days remand or subsequently even application filed within first 15 days period, the prosecution agency or investigating agency is practically preventing by virtue of that judicial order to knock the doors of the superior Court if at all to indicate their grievance to seek for police custody, if the facts permit to the judicial discretion of the superior Court including by invoking Section 482 cr.P.C. of the High Court.

25. Having regard to the above, it is advisable by virtue of this order, to direct the learned Magistrates and District courts of original jurisdiction, where any police custody application filed within the first remand of 15 days to dispose of the same after hearing both sides either on next day or at least within four days and shall not exceed the outer limit so that anybody aggrieved can move the superior court, impugning the same.

26. With the above observations, the Criminal Petition rather than dismissal, is disposed of without going into other merits, as even invoking section 482 Cr.P.C. this Court cannot grant even any merits made out from the facts of entitlement to the police custody, such police custody for the first 15 days period expired already.

27. The Registry is directed to circulate this order to all the Courts.

28. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.12.2018
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Note : L.R. copy to be marked-Yes