

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13373 of 2018

ORDER:

The petitioner is accused No.2 among two accused in crime No.25/RCA-CR-II-ACB/2018 of City Range-II, Hyderabad, which is a case registered for the offences punishable under Sections 13(1)(b) r/w 13(2) & 12 of Prevention of Corruption Act, 1988 (as amended in 2018). The crime registered was on 13.11.2018. The petitioner-A.2 was taken to judicial custody having been produced on PT warrant on 06.12.2018. It is immediately later CrI.M.P.No.1078 of 2018 within 14 days therefrom as contemplated by Section 167 Cr.P.C. filed seeking police custody for 7 days and the same was allowed by the impugned order dated 12.12.2018 with the following conditions:

“In the result, the petition is allowed and respondent/A.2 is given for police custody on the following conditions:

1. The police custody of respondent/A2 is given for 4 days i.e., from 10.30 am of 13.12.2018 to 10.30 am of 17.12.2018.
2. The police is directed to produce A.2 on 17.12.2018 at 10.30 am before the Court.
3. The Superintendent of Jail shall hand over the prisoner to the ACB officials at 10.30 am on 13.12.2018.
4. The police is directed not to use 3rd degree methods.
5. The respondent/A2 shall be examined medically before and after the investigation.”

Undisputedly there is another order passed on 13.12.2018 by the learned Special Judge in SR.No.2544 of 2018 by permitting the presence of the advocate however between 03.00 PM to 05.00 PM at the place of interrogation by saying advocate cannot be permitted present throughout the interrogation nor A.2 cannot consult the advocate in the course of interrogation for his giving response, but for the advocate can watch the proceedings from a distance preferably beyond the hearing distance.

Coming to the impugment concerned, it is one of the contentions that there are no grounds to take the extreme step of permitting police custody for interrogation during police custody of the petitioner and that too the order granting 4 days without even time gap, without even specifying what is the period of interrogation each day is unsustainable.

Heard both sides.

From the merits at length discussed in 29 Paras running in 14 pages of the impugned order by the learned Special Judge, there is nothing to interfere with the need to grant the police custody concerned.

Now coming to the sustainability of the conditions imposed in the police custody. The Constitution Bench of the Apex Court in **Nandini Satpathy Vs. P.L.Dani & Another**¹, vividly laid down as also concerned by the learned Special Judge in the continuation order to the impugned order, on

¹ (1978) 2 SCC 424

13.12.2018 however, could not have been limited the presence of the advocate only during partial interrogation and not throughout the interrogation and there is no justifiable reason assigned including by referring to the expression of the Apex Court in **D.K. Basu vs. State of West Bengal**². The condition of the advocate to be kept beyond the hearing of the answering concerned, law is squarely covered by the expression in **Senior Intelligence Officer Vs. Jugal Kishore Sharma** that is rightly referred in imposing the condition.

Having regard to the above, this Criminal Petition is partly allowed only by modifying the conditions to the effect that the petitioner can be in the police custody between 09.00 AM to 05.00 PM by securing from the jail and in the remaining time of each day to be sent back to the jail and secure with necessary escort and the continuous interrogation shall not exceed six (6) hours without at least half an hour time gap and the advocate is permitted to watch the proceedings throughout the interrogation, but for that there is nothing to interfere and modify the order of the learned Special Judge.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 14.12.2018

Note: Issue C.C. immediately

(B/o)

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² 1997 (1) SCC 416