



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.7294 of 2020

A.Jebarshan Joyal

... Petitioner/Respondent/
Accused No.10

Vs.

State Rep.by
The Inspector of Police,
Sathankulam Police Station,
Sathankulam,
Thoothukudi District.
(In Crime No.273 of 2020)

... Respondents/Petitioner/
Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records of the order in Cr.M.P.No.2082 of 2020, dated 01.06.2020, passed by the learned Judicial Magistrate, Sathankulam and set aside the same as illegal and declare all the consequential acts done by the respondent, pursuant to the impugned order as non-est in the eye of law.

For Petitioner	: Mr.C.Arul Vadivel @ Sekar
For Respondent	: Mr.S.Chandrasekar
	Additional Public Prosecutor

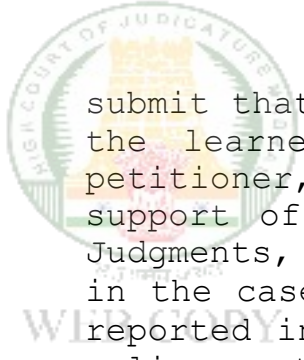
O R D E R

The petitioner herein is the 10th accused in Crime No.273 of 2020, on the file of the respondent Police, registered under Sections 147, 148, 341, 294(b), 302 and 506 (ii) IPC. He was formally surrendered on 21.05.2020, before the learned Judicial Magistrate No.2, Thoothukudi and thereafter, the learned Judicial Magistrate No.2, Thoothukudi remanded the petitioner to Judicial custody till 04.06.2020. Subsequent to that on 28.05.2020, the respondent herein filed a petition under Section 76 of Criminal Rules of Practice, before the learned Judicial Magistrate, Sathankulam in CrI.M.P.No.2082 and seeking the relief to handover the petitioner for Police custody. On due enquiry and having considered the said request, on 01.06.2020, the learned Judicial Magistrate, Sathankulam authorized the detention of the petitioner in Police custody for two days ie., from 01.06.2020 at 4.00 p.m., to 03.06.2020 at 4.00 p.m.,

2. Aggrieved over the same, the petitioner is now before this Court with this Criminal Original Petition under Section 482 of the Code of Criminal Procedure.

3. The learned counsel appearing for the petitioner would

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submit that allowing the application filed by the respondent, before the learned Judicial Magistrate, is against the liberty of the petitioner, as guaranteed under the Constitution of India. In support of his contentions, the learned counsel relied on various Judgments, particularly, relying on the Judgment of this Court made in the case ***the Deputy Superintendent of Police Vs. Sundaramoorthy*** reported in ***(2008 Cr1. L.J 898)***, wherein in respect to granting of police custody, this Court observed as follows:-

"15. Before considering the second submission it would be appropriate to consider the last submission viz., whether the application for police custody has to be granted automatically or any order passed for such police custody should be supported by materials. The police custody is concerned about the infringement of right of an individual, more particularly fundamental right guaranteed under Article 21 of the Constitution of India. There are certain exceptions by way reasonable restrictions and one such restriction is the grant of police custody while investigation is pending. Therefore, any application for grant of police custody must be strictly considered on materials as it involves the fundamental right and personal liberty of an individual. The provisions are to be strictly understood and complied with. When an application for police custody is contemplated within a period of 15 days on the initial remand, such an application for police custody ought to have been made only during the period of initial remand and when the investigation was pending. As we have held on the facts of this case that the investigation was already over and final report also filed and the case was split up and in the absence of any application for further investigation for the purpose of the respondent, the investigation is completed, we are of the considered view that the application if entertained would amount to infringement of the fundamental right guaranteed under Article 21 of the Constitution of India. Even going by the averments made in the affidavit in support of the petition for police custody, we could only see para 14 of the affidavit in which, the reasons are stated to be on two fold. Firstly, it is the apprehension of the investigating agency that the respondent might have connection with the other three absconding accused. Secondly, that the respondent might have known the hiding places of three accused and places where arms, ammunitions and explosives were hidden."

4. Therefore, it is obvious before granting the Police custody, the Court, which passed the order, must be strictly considered the



materials, as it involves the Fundamental Rights and Personal Liberty of the individuals. Further, the provisions are to be strictly understood and complied with. In this case, on go through the averments made in the FIR, it is made clear that there was clear overt act against the petitioner.

5. The learned Additional Public Prosecutor appearing for the respondent would submit that since the petitioner was surrendered before the learned Judicial Magistrate, Thoothukudi, the respondent Police was not in a position to interrogate the petitioner and find out the truth. Therefore, only in the said circumstances, to find out the truth, the respondent herein filed the petition before the learned Judicial Magistrate, Satankulam and therefore, the impugned orders passed in favour of the respondent.

6. Now, on go through the submissions made by either side, it is not in dispute that after the occurrence, the petitioner voluntarily surrendered before the learned Judicial Magistrate, Thoothukudi and availed himself for judicial custody. Therefore, the respondent Police not in a position to interrogate the petitioner. In this occasion, it is relevant to see the Judgment of our Hon'ble Apex Court in **CBI Vs. Anupam J.Kulkarni** reported in **(1992 (3) SCC 141)** wherein our Hon'ble Apex Court has held that the procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.

7. Therefore, considering the facts and circumstances of the case, permitting the accused for police custody, by the learned Magistrate, for a limited period, is not an illegal. Moreover, in this case, the respondent has filed an application before the Magistrate before the completion of 15 days. In the said circumstances, since the offence under Section 302 IPC has also been registered against the petitioner, it is necessary for the respondent to find out the truth involved in the said offence. In this occasion, it is also necessary to see the Judgment of this Court made in **Crl.O.P No.13615 of 2011**, dated 14.10.2011, wherein it was held as follows:-

"29. In view of the above settled position of law, whenever any request for custody of the police is sought for, irrespective of the fact that the

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statement, in the event the Court is satisfied on evaluating the factors like gravity, seriousness, magnitude, the absolute necessity etc., after recording the said reasons, as provided in Section 167(3) of the Code of Criminal Procedure, the Magistrate shall authorize the detention of the accused in police custody during the initial period of 15 days of remand for any appropriate period. This is what is reiterated in Rule 76 of the Criminal Rules of Practice. In a given case, whether it is absolutely necessary to grant police custody or not is a matter to be decided depending upon the facts and circumstances of each case and the same cannot be put into a straightjacket formula."

8. Therefore, as already observed, granting of police custody is a matter to be decided depending upon the facts and circumstances of the case. In this case, the necessary reasons has to be categorically mentioned in the affidavit filed by the petitioner and therefore, the reasons stated by the petitioner to authorize the detention of the accused in police custody is well within the law.

9. In the light of the above discussions, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Inspector of Police,
Sathankulam Police Station,
Sathankulam,Thoothukudi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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