

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 246 OF 2021

Chetan Madhukar Meshram,
Aged 43 years, Occ. - Business,
R/o Plot No.161, Sangarsh Nagar,
Kamptee Road, Nagpur.

.... **PETITIONER**

VERSUS

State of Maharashtra,
through PSO of PS Jaripatka, Nagpur.

.... **RESPONDENT**

Mr. R.H. Rawlani, Counsel for the petitioner,
Mr. S.A. Ashirgade, Addl.P.P. for the respondent/State.

CORAM : ROHIT B. DEO, J.
DATED : 23rd MARCH, 2021

ORAL JUDGMENT :

The petitioner is arraigned as accused 1 in Crime 34/2021, registered with Police Station, Jaripatka, Nagpur, for offence punishable under section 3/25 of Arms Act and section 135 of Maharashtra Police Act.

2. The petitioner was allegedly traveling in the vehicle which was intercepted by the patrolling squad and was found in possession of

illegal arms, which the petitioner disclosed to have purchased in Madhya Pradesh.

3. The police produced the petitioner before the remand Magistrate on 17.1.2021 and applied for police custody. The learned Magistrate remanded the accused to Magisterial custody. Immediately, the petitioner preferred an application for release on cash security of Rs. 4,000/- and self bond, which prayer was allowed and the petitioner walked out of the Court room a free man. The prosecution was dissatisfied. The revisional Court was approached in Criminal Revision Application 30/2021. The revisional Court allowed the revision, and set aside the order of the learned Magistrate and cancelled the bail. The revisional Court further directed that the accused be remanded to police custody from 29.1.2021 till 2.2.2021.

4. The issue involved has twin facets. The first i.e. the legality of the revisional order impugned to the extent the petitioner is remanded to police custody from 29-1-2021 till 02-2-2021 and the second is the legality of the order of the learned Magistrate granting bail.

5. The learned Counsel Mr. R.H. Rawalani for the petitioner submits, and not without justification, that in view of the law laid down

in *Central Bureau of Investigation, Special Investigation, Cell-I, New Delhi v. Anupam J. Kulkarni (1992) 3 SCC 141*, the revisional Court erred in remanding the petitioner to police custody. The petitioner was arrested on 17-1-2021 and produced before the learned Magistrate on the same day. The police sought custody till 21-1-2021, which the learned Magistrate declined to grant and remanded the petitioner to judicial custody till 29-1-2021. Immediately the petitioner preferred an application seeking release on cash security and self bond, which application was allowed. The revisional Court, by judgment dated 29-1-2021 set aside the order of judicial custody and bail and remanded the petitioner to police custody from 29-1-2021 till 02-2-2021. It appears that the said judgment was pronounced in the absence of the petitioner. In any event, it is not in dispute that notwithstanding the revisional judgment, the petitioner did not surrender to custody.

6. In *Central Bureau of Investigation, Special Investigation, Cell-I, New Delhi v. Anupam J. Kulkarni*, the Supreme Court enunciates the law thus :

“13. Whenever any person is arrested under Section 57 Cr.P.C. he should be produced before the nearest Magistrate within 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 day 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.”

7. In ***Budh Singh v. State of Punjab (2000) 9 SCC 266***, the Supreme Court reiterates that there cannot be any detention in police custody after the expiry of the first fifteen days, and the relevant observations read thus :

“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 mandate of Section 167 of the 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. 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 Section 167 Cr.P.C. police custody after the expiry of the first 15 days even in a case where some more offences, either serious or other wise 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.”

8. In the factual matrix, if the period of fifteen days is calculated

from 17-1-2021, the period expires on 31-1-2021. The revisional Court clearly erred in ordering police custody till 02-2-2021. That apart, the said period has expired without the investigating agency taking custody. In that view of the matter, the issue is rendered purely academic in the sense that in connection with the crime in question, the petitioner cannot now be remanded to custody.

9. Adverting to the bail order, the learned Magistrate observes that the weapons are recovered and, therefore, the petitioner is released on furnishing cash security. The learned Magistrate clearly erred in granting bail merely at the askance of the petitioner. The investigation was ongoing. The punishment for offence punishable under Section 3/25 of the Arms Act is enhanced upto five years by amending the Statute. The offence, which was bailable, is now non-bailable in view of the enhanced punishment. The only reason discernible in the cryptic order is that the weapons are recovered, and the learned Magistrate clearly ignored the submission of the investigating agency that several facets of the crime would have to be unearthed.

10. It would be apposite to note certain observations in the judgment dated 21-1-2021 rendered by the Division Bench in Criminal Writ Petition 633/2020 preferred by the petitioner challenging the

externment order. The petitioner challenged the externment and the Division Bench was pleased to stay the order of externment. The crime in question is committed during the pendency of the criminal writ petition. Paragraph 2 of the Division Bench judgment reads thus :

“2. Today reply has been filed by the State and its copy has also been furnished to the learned counsel for the petitioner. On going through the reply, a relevant fact is noticed. It is stated quite elaborately in paragraph No.8 of the reply. It transpires now that after this Court granted ad interim stay to the effect and operation of the impugned order dated 26.09.2017 on 08.12.2020, the petitioner indulged himself in criminal behaviour and as a result, offence punishable under Section 25 read with Section 3 of the Arms Act and also Section 135 of the Maharashtra Police Act vide Crime No.34 of 2021 came to be registered against him in Police Station Jaripatka on 17.01.2021, and there is no dispute about it. This instance, in our view, speaks of misuse of liberty granted to the petitioner by this Court during pendency of this petition. Question is, should we or should be not hear a petitioner who has misused the indulgence shown to him by this Court. Let us hear what learned counsel for the petitioner and learned Addl.PP have to say about it.”

While the Division Bench did hear the petitioner on merits and upheld the externment order, the conduct which is noted by the Division Bench is indeed relevant.

11. The externment order, which is placed on record by the petitioner, reveals that he has faced/is facing as many as 21 prosecutions. It is not in dispute that despite the cancellation of bail by

the revisional Court, the petitioner did not surrender to custody. These aspects shall have to be considered by the learned Magistrate afresh.

12. For reasons spelt out supra, criminal writ petition is partly allowed.

13. The revisional order, to the extent the bail granted by the learned Magistrate is cancelled, is upheld. The order, to the extent police custody is granted, is set aside.

14. The petitioner is directed to surrender before the jurisdictional Magistrate within seven days, failing which the respondent shall take the petitioner in custody and produce him before the jurisdictional Magistrate, who shall consider the petitioner's entitlement to bail afresh, on its own merits.

JUDGE

belkhede/adgokar