

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 49307 of 2021 (O&M)
Date of Decision: 14.12.2021

Directorate of Enforcement

.....Petitioner

Versus

Sukhpal Singh Khaira

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. S.V.Raju, Addl. Solicitor General with
Mr. Vishal Gupta, Advocate and
Mr. Zoheb Hossain, Advocate
for the petitioner.

Mr. Vikram Chaudhri, Senior Advocate with
Mr. Keshavam Chaudhri, Advocate,
Ms. Hargun Sandhu, Advocate and
Ms. Zaheen Kaur, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. For the commission of an offence under Section 3, and, punishable under Section 4, of the Prevention of Money Laundering Act, 2002, the Directorate of Enforcement, is making investigations into ECIR No. 02/STF/2021 dated 21.1.2021, against accused-respondent Sukhpal Singh Khaira.

2. The learned Additional Sessions Judge/Duty Judge concerned, through an order made on 11.11.2021, remanded the afore to ED custody for a day. Through the order (supra), he also directed that the respondent-accused be produced on 12.11.2021, at 10.00 A.M sharp before the learned CBI Judge, Mohali. On 12.11.2021, the learned Court concerned, further made an order hence remanding the accused-respondent, to E.D., custody

for a period extending upto 07 days. Subsequently, the Special Public Prosecutor concerned, asked through an application, for a further remand upto seven days, of the accused, to E.D. custody. The afore prayer as carried in Annexure P-4, became declined by the learned Court concerned, through an order made on 18.11.2021. The afore made order is challenged by the Directorate of Enforcement, through its casting the instant petition before this Court.

3. The learned senior counsel for the respondent-accused, has contended with much vigour, before this Court that since Section 167, of the Cr.P.C., carries a mandate that the total period of police custody lasts, only upto a period of 15 days. Therefore, he further contends that since from the date of the initial production, on 11.11.2021, of the accused, before the Court concerned, as became necessitated, on his arrest, by the petitioner herein, the respondent-accused became remanded, for a day, to the custody of the Enforcement Department. Furthermore, he also submits that since thereafter the Court concerned, through an order made on 12.11.2021, further ordered the remand of the accused-respondent to E.D., custody, for a spell extending upto seven days. Therefore, he contends that since the total length or the period of custody of the accused-respondent, to the enforcement department, extended upto a period of 08 days. Consequently, he argues that with the impugned order becoming pronounced on 18.11.2021, therefore, the total statutorily contemplated spell of police custody, inasmuch as its duration lasting, only upto a period of 15 days, and, rather to become reckonable from 11.11.2021, hence expired on 25.11.2021. He also argues that after making of the impugned order on 18.11.2021, the accused-respondent is in judicial custody. Consequently, there cannot be

any valid claim, by the petitioner herein, for his being transposed from judicial to police custody. In making the afore submissions, the learned counsel for the respondent-accused has made dependence, upon a verdict of the Hon'ble Apex Court, pronounced in case titled as ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi versus Anupam J. Kulkarni (1992) 3 Supreme Court Cases 141***. He makes a vehement contention before this Court, that relevant paragraphs 13 and 14, as are carried therein, paragraphs whereof are extracted hereinafter, impose a blanket injunction, upon the Court concerned, against the transposition of the accused concerned, from judicial, to police custody, imperatively upon elapse of 15 days, since the initial production of the accused concerned, before the Court concerned.

“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.

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.”

4. In other words, he has emphasized upon the existence in the hereabove extracted paragraphs, the sentence occurring therein, as becomes hereafter extracted.

“After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody.”

5. On the other hand, the learned Additional Solicitor General of India, appearing on behalf of the petitioner, has contended, that the afore made argument(s) before this Court, by the learned senior counsel, for the respondent-accused, are unmerit worthy, as it has emerged, from the counsel for the respondent-accused, being oblivious to the facts, as are embodied in the judgment (supra), rendered by the Hon'ble Apex Court. He submits that the *ratio decidendi* or the binding legal principle, as is carried therein, has to be culled out, only from the facts, which were existing in case (supra) before the Hon'ble Apex Court. Therefore, he argues that the emphasis as laid with much vehemence, by the learned senior counsel for the respondent, upon, the afore singular expression as occurring therein, is a gross departure from the apt mode of culling, the *ratio decidendi* carried in verdict (supra), whereas, and rather the guiding legal principle enshrined therein, is to be marshalled only after a scrutiny of the facts borne thereins. Therefore, he argues that hence the impact of the singular expression (supra), is to be gauged from readings there alongwith of the facts carried thereins.

6. Furthermore, he submits with extreme vigour before this Court that the total spell of 15 days of police custody, as contemplated in Section 167 Cr.P.C., if interrupted or halted by the Court concerned, rather declining the request of the Public Prosecutor concerned, to remand the

accused concerned to police custody are legally inconsequential, in making the relevant statutory computation. Therefore, if the afore made interruptions or halts rather lead to the accused being put to judicial custody, they would not also curtail, the revisional or supervisory jurisdiction(s) of superior Courts, to test the legality and propriety of the afore declinings of police remand, by the Court concerned. In case the afore jurisdiction is permitted to be fettered, on the strength of the afore made arguments, thereupon, the very purpose of provisions carried in Section 397 Cr.P.C., or, in Section 482 Cr.P.C., would become impermissibly redundant. In consequence, he submits that for keeping alive, the afore exercising(s) of supervisory jurisdiction of the High Court concerned, in its making apposite testings, with respect to the validity and propriety of the impugned order concerned, as appertains extantly hence to the order declining to remand to police custody rather of the accused concerned, obviously the date whereons, the impugned order is made, does assume conspicuous relevance. He submits that when on the afore date, the period of 15 days of police custody, has not elapsed, thereupon it becomes the reckonable date for the relevant purposes, and, also if this Court interferes with the impugned order, its order of interference would relate back to the date of making of the impugned order, and, obviously therefrom the statutory period of 15 days remand to police custody, of the accused, would remain, yet alive. Therefore, he contends that there would be no impermissible transposition of the accused-respondent hence from judicial to police custody, nor also, the prohibition, as cast in case (supra), would be attracted against the petitioner herein.

7. The nutshell or the substratum, of the rival contentions

addressed before this Court, by the learned counsels appearing for the contesting litigants, is that whether the afore singular expression, as existing, in judgment (supra), rendered by the Hon'ble Apex Court, does capture the *ratio decidendi*, and, that hence qua their being a complete prohibition against the transposition of the accused from judicial to police custody, as is contended to purportedly happen, in the instant case, after the request of the Public Prosecutor concerned, before the Court concerned, for his after 18.11.2021, being remanded to further police custody for seven days, rather being declined.

8. For determining whether the judgment (supra), makes the afore *ratio decidendi*, imperatively hence reiteratedly the facts as carried therein, assume relevance and importance. Conspicuously only upon the facts carried in verdict (supra), becoming incisively delved into, would this Court determine whether the singular expression (supra), as relied upon by the learned counsel for the respondent-accused becomes the binding dicta or not. Necessarily also the facts therein are to be evidently similar to the facts at hand.

9. In the afore endeavour this Court, has made an in-depth and circumspect reading of the facts carried therein. A reading of the factual matrix carried therein, unfolds that one Kulkarni was arrested on 4.10.1991, and, was produced before the Chief Metropolitan Magistrate on 05.10.1991. On date (supra), on the request of the CBI, he was remanded to judicial custody on 11.10.1991. However, on 10.10.1991, a test identification parade was arranged, but one Kulkarni refused to cooperate, and, his refusal was recorded by the Magistrate concerned. Moreover on 11.10.1991, an application was moved by the investigating officer seeking the police

custody of the afore Kulkarni, and, it was allowed. However, when Mr. Kulkarni was being taken, on the way, he pretended his indisposition, and, was taken to hospital, and, the same evening, he remained confined on the ground of illness upto 21.10.1991, and, thereafter he was referred to Cardiac Out-patient Department of G.B. Pant Hospital. Subsequently, upto 29.10.1991, Mr. Kulkarni was again remanded to judicial custody by the learned Magistrate concerned, and, thereafter was sent to jail. Though, the police applied for taking Mr. Kulkarni into police custody. However, the request of the police was declined by the learned Chief Metropolitan Magistrate concerned. The order of the learned Chief Metropolitan Magistrate concerned, was challenged before the High Court of Delhi. The learned Single Judge at the first instance considered whether there was material to make out a case of kidnapping or abduction against Mr. Kulkarni, and, observed that even the abducted persons, namely, the four diamond merchants do not point an accusing finger against Mr. Kulkarni, and, that at any rate Mr. Kulkarni himself has been interrogated in jail for almost seven days by the CBI, and, nothing has been divulged by him. Therefore, it is not desirable to confine him to jail, and, in that view of the matter, he granted him bail. Since the High Court did not decide the question whether or not after the expiry of the initial period of 15 days, a person can still be remanded to police custody by the Magistrate concerned, before whom he was produced. Therefore, the afore order became challenged before the Hon'ble Apex Court.

10. The stark fact which emerges from the hereabove unfoldments, and, from the facts carried therein, is that since at the initial stage of production, of one Mr. Kulkarni, before the Court concerned on 05.10.1991,

the afore hence on the afore date, rather on the request of the CBI, became remanded to judicial custody upto 11.10.1991. Therefore, it is evident from the afore factual matrix carried in verdict (supra), that the CBI in verdict (supra) had rather initially made a request before the Chief Metropolitan Magistrate concerned, for the afore Mr. Kulkarni, being initially put to judicial custody from 05.10.1991 upto 11.10.1991. In consequence, since thereafter on 11.10.1991, despite the application of the police, seeking police custody of Mr. Kulkarni hence being allowed, yet when on account of Mr. Kulkarni feigning illness, he became hospitalized, and, thereafter, upto 29.10.1991, he was put to judicial custody. Therefore, when at the outset or at the time of production of Mr. Kulkarni, before the Court concerned, the CBI had asked not for the police custody of Mr. Kulkarni, rather had asked for his judicial custody, and, which request rather became accepted by the learned Chief Metropolitan Magistrate concerned. In sequitur, when there was an apparent and visible attempt on the part of the CBI, to thereafter untenably transpose the hitherto judicial custody of Mr. Kulkarni to police custody, therefore, obviously the afore untenable transposition became deprecated by the Hon'ble Apex Court.

11. Therefore, the relevant stage for computing whether there is an untenable transposition from judicial to police custody, is the incipient stage, inasmuch as, upon, the initial production of the accused before the Court concerned, the latter remanding him to police or judicial custody. If at the incipient stage (supra), the accused is put to judicial custody, thereupon the learned Court concerned cannot thereafter put him to police custody. Doing so would attract the prohibition (supra) carried in verdict (supra).

12. In the wake of afore factum probandum, inasmuch as the initial

custody into which Mr. Kulkarni was put, being judicial custody, and, thereafter it being strived, to be converted or transposed into police custody, that the Hon'ble Apex Court, made expressions (supra) that the afore transposition from judicial to police custody, is illegal and, also is not within the provision(s) of Section 167 Cr.P.C. The implied reason(s) being that, if the Public Prosecutor concerned, has not initially asked for police custody, rather had asked for judicial custody of the accused concerned, and, when hence thereupons, the police custody of accused concerned, is waived or abandoned, by the Public Prosecutor concerned. Therefore, it hence brings to the fore consequential legal sequels, that the Public Prosecutor concerned, is subsequently inventing or creating grounds, for seeking the police custody of the accused concerned, and, also that if his request is allowed, rather the legal prudence, as contemplated, within the ambit of Section 167 Cr.P.C., would become breached, by the remanding Court concerned.

13. Now keeping in mind the afore factual matrix, as carried in the verdict (supra), it can be with completest confidence, rather concluded, that the above singular expression, as occurring therein, as becomes relied, upon by the learned counsel for the respondent-accused, if becomes blended with, the factual matrix carried therein, thereupons obviously it does not make any inflexible dicta, upon the remanding Court concerned, to even when the apposite facts, are distinct from the facts therein, i.e. in the verdict (supra), yet it be rigorously applied in every distinct thereto case. Moreover, also even if 15 days elapse, from the date of declining of police remand, and, the accused being put to judicial custody, yet the supervisory jurisdiction of the High Court, can yet become availed to test the validity of the impugned

order concerned, and, also upon annulling it, this Court may not within the ambit of verdict (supra) for reasons hereafter mentioned, make any impermissible transposition of the accused from judicial, to E.D. custody.

14. The reason being the facts at hand are contrary to the facts (supra). The accused-respondent was initially put to police custody upto 18.11.2021, and, thereafter to judicial custody. There has been no spell of time, since 11.11.2021 upto 18.11.2021, when the accused-respondent was ever put to judicial custody, rather the declining of police custody of the accused, through the impugned order, if interfered with by this Court, would make it relate back to the date of making of the impugned order, as thereupon alone the revisional or other supervisory jurisdiction of the High Court rather would remain intact. In consequence also, there will be no impermissible or unjust transposition of the accused from judicial to police custody, reiteratedly when the principle of law postulated in verdict (supra), is *stricto sensu* applicable only with the domain of facts above, as contained therein, and, when the facts herein are distinct, and, contrary to the facts therein, hence the verdict (supra) becomes rather distinguishable, and, is inapplicable to the extant lis. Therefore, on applying the doctrine of relating back, for ably facilitating this Court, to test the validity of the impugned order, the running of the spell of 15 days from 11.11.2021, cannot be taken to become halted or paused, only by the making of the impugned order, rather when through a valid interference being made, qua it, by this Court, the broken spell of E.D custody becomes reanimated, and, lasts upto the spell of 15 days, to be reckoned since the date of initial production of the accused before the remanding Court concerned, becoming completed. In consequence, the arguments addressed before this Court, by the learned

counsel for the petitioner, are accepted, and, the arguments, addressed before this Court, by the learned counsel for the respondent-accused, are rejected.

15. Be that as it may, this Court has yet to determine, whether the impugned order, is ridden with any vices of illegality or gross impropriety. In that endeavour, this Court has to be infused with a judicial conscience, laden with legal wisdom, to be drawn from the judgments of the Hon'ble Apex Court. Moreover, the claim for remand, as put, is to be in tandem with the verdicts of the Hon'ble Apex Court, and, also hence established to be well founded, and, befitting. Therefore, this Court proceeds to allude to the application, as became preferred by the petitioner herein, before the Court concerned, wherethrough it claimed the police custody, of the respondent-accused rather for seven days. The foundation of the claim, is set-forth, in relevant portion of the apposite application, portion whereof becomes extracted hereafter.

“A Determining the role of various other persons and aides who facilitated the offence of money laundering in the instant case.

B. That further custodial interrogation of accused is required to quantity the proceeds of crime pertaining to the bank transactions and to further ascertain all the entities/accounts linked to accused which have been used in the commission of offences of money laundering in the instant case.

C. That further custodial interrogation of accused is required as he is still to be confronted with the voluminous evidence on record, in order to facilitate an effective investigation of the case.

D. One out of the seven days custody of the accused happened to be Saturday and Sunday, i.e. Bank Holiday

wherein the task of obtaining further details from various departments and other relevant documents from authorities as per the course of investigation could not be possible.

E. That further custodial interrogation of accused is required to confront him with various other persons whose role has cropped up during the course of investigation, which will be helpful to unearth the entire trail of money. Denial of further custodial remand is going to seriously prejudice the investigation being conducted under PMLA.

F. That further custodial interrogation of accused is required for revisiting the questions, with the evidence on record which is contrary/conflicting to his stand.

G. That the further custodial interrogation of accused is required to determine the entire modus operandi. While crucial progress has been made in the case, certain facts and developments need to be investigated into, which would not be possible without the custodial interrogation of accused.

H. That the non-cooperation shown by accused demonstrates his deliberate concealment of material evidence. As narrated above, his conduct is only with the intent to jeopardize the investigation. His custodial interrogation is therefore required for an effective investigation to bring the instant case to its logical conclusion.

16. Bearing in mind the afore grounds, as carried in the application, as made for the relevant purposes, by the petitioner herein before the Court concerned, it has to be determined whether all of them became borne, in mind by the learned Judge concerned, in his making the impugned order. A reading of the impugned order, unfolds that even prior to the accused being arrested, he had been repeatedly summoned on 11 occasions, by the Enforcement Directorate, and, it also reveals that during the afore period of time, 88 hours were spent by the officials of the Enforcement Directorate with the respondent-accused. Moreover, a reading of the impugned order

also details, that the accused-respondent, had argued before the Court concerned, while making opposition to the demand of the Public Prosecutor, for his being put to E.D. custody, that in the previous 08 days, only 38 questions were put to him, and, that only 1½ hours, per day, became utilized by the officials of the Enforcement Directorate, to interrogate him. The afore echoings borne in the impugned order, coupled with the factum that the learned Court concerned, has also traversed through all the relevant records appertaining to the bank accounts, and, statements of all concerned, rather naturally and tenably led the/remanding Court, to make a valid conclusion, that the claim for police remand, as made by the Special Public Prosecutor concerned, was unmeritworthy.

17. During the course of arguments, being addressed before this Court, the learned counsel for the petitioner, has not been able to produce before this Court any material suggestive, that any of the afore echoings, carried in the impugned order, are false. The consequence of the afore, is that the learned Court concerned, had tenably declined the claim of the Special Public Prosecutor, to put the accused-respondent to E.D. custody, as *prima facie* it would give a tool to the E.D., to unnecessarily harass the respondent-accused. Moreso despite abundant relevant opportunities being made available to the officials of the Enforcement Directorate, yet theirs failing to utilize all the time, as became accorded to them for all the relevant purposes. Therefore, merely for the indolence, and, lethargy of the E.D. officials, the respondent cannot be put to E.D. custody. The afore lethargy is also personificatory about unavailability, of any further relevant queries being put to the accused, than the ones already put to him.

18. Though the learned counsel for the petitioner argues, that the

respondent, has been evasive in his giving the answers, to the interrogatories put to him, during the course of his custodial interrogation, and, also submits, while relying upon a verdict, made by the Hon'ble Apex Court in *P. Chidambaram versus Directorate of Enforcement (2019) 9 SCC 24*, wherein it has been expostulated, that it is singularly within the domain, of the investigating officer concerned, to draw a conclusion, that whether the answers meted to his queries, by the accused, are satisfactory, or evasive. Therefore, he contends that since the accused has not meted satisfactory answers, or has meted evasive answers, to the queries, as put to him, by the officials concerned, during the course of his custodial interrogation. Consequently, he argues that the E.D. custody of the accused is imperative. However, for supporting the afore submission, no notes or case diaries, as maintained by the officials of the Enforcement Directorate, became placed before the learned Court concerned, nor obviously hence, the afore argument became dealt with, nor was required to be given a finding, nor also the afore made argument is meritworthy. Moreover, even in the application for remand, no detailings in respect thereof, are carried. Therefore, the afore ground is contrived, and, also is disingenuous. Consequently, it is rejected. Therefore, the apposite application is only cast in a most perfunctory, and, mechanical mould, than in an iron cast, required by the law hence mould.

19. Accordingly, the instant petition is dismissed, and, the impugned order is maintained.

(SURESHWAR THAKUR)
JUDGE

December 14, 2021
Gurpreet/Ithlesh

Whether speaking/reasoned : Yes
Whether reportable : Yes