

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 437 OF 2022
State of Maharashtra...Versus...Upendra Gunwant Mule

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr.VA.Thakre, APP for the applicant/State.
Mr. Anil Mardikar, Senior Advocate assisted by Mr. VR.Deshpande, Advocate for non-applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 01/04/2022

1] Heard Mr. Thakre, learned APP for the applicant/
State and Mr. Mardikar, learned Senior Advocate for the non-
applicant.

2] The challenges is to the order dated 24.3.2022,
whereby the request of the prosecution for police custody
remand of the non-applicant has been turned down and the
non-applicant was sent to MCR.

3] Mr. Thakre, learned APP for the applicant/State
contends that the non-applicant was arrested on 17.3.2022 at
Gurgaon and was produced before the Court at Washim on
17.3.2022 itself, on which date the learned Sessions Court
remanded him to police custody till 24.3.2022. On 24.3.2022
when further PCR was sought, the same was refused by the
learned Sessions Court and the non-applicant was sent to

MCR.

4] Mr. Thakre, learned APP for State submits that since the application before this Court came to be filed within the period of 15 days from the date of production i.e. on 29.3.2022, the applicant would be entitled to seek PCR for the period remaining out of 15 days permissible under Section 167(2) of the Cr.P.C.

5] Mr. Mardikar, learned Senior Advocate appearing for non-applicant opposes the same and contends that the total permissible period for PCR is 15 days, which can be availed of in bits and pieces, however, such availment has to be within the first 15 days from the date of production. He places reliance upon (1) **CBI vrs. Anupam J. Kulkarni, (1992) 3 SCC 141** (paras 2, 3, 4, 5, 10, 11 & 13); (2) **Budh Singh vrs. State of Punjab, (2000) 9 SCC 266** and (3) **Satyajit Ballubhai Desai vrs. State of Gujarat, (2014) 14 SCC 434** (paras 11 to 15).

6] Mr. Thakre, learned APP in rebuttal relies upon **State of Maharashtra Vrs. Varsha Shankarrap Phadke, 2017 (1) Mh.L.J (Cri) 774**, to contend that the same can be done.

7] Perusal of Section 167(2) of the Cr.P.C. indicates that the total period for which the magistrate can authorize

the detention of the accused in police custody is for a term not exceeding 15 days in the whole. The provision has been interpreted by the Hon'ble Apex Court in **Anupam Kulkarni** (supra), to mean that the PCR can be granted in bits and pieces, however, such total period should not exceed 15 days. The question as to how this 15 days period is to be reckoned has been considered and answered in para 8 thereof, which is quoted as under;

"8. Having regard to the words "in such custody as such Magistrate thinks fit a term not exceeding fifteen days in the whole" occurring in sub-section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in *Dharam Pal* case. Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary can be ordered only during the first period of fifteen days. To this extent the

view taken in *Dharam Pal* case is correct”.

In para 13, this position has been elaborated as under

“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 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.”

It is thus held that the first period of 15 days as mentioned in Section 167(2) of Cr.PC has to be computed from the date of detention and after the expiry of the period of first 15 days, it could be only judicial custody. This position has been reiterated in **Budh Singh** as well as **Satyajit Ballubhai Desai** (supra). It is thus apparent that the 15 days period in the present matter having expired on 30 March, 2022, the request

for grant of further PCR cannot be considered.

8] **Varsha Shankarrao Phadke** (supra), relied upon by learned APP does not take into consideration either **Anupam Kulkarni, Budhsingh** or **Satyajit Desai** (supra) and therefore, cannot be applied in the present case.

9] The contention of learned APP that since the court was already approached on 29.3.2022, it had the authority to consider the application for grant of PCR, in my considered opinion is misplaced, as there is no provision pointed out which would confer such a power upon the Court to extend the grant of PCR beyond the period of first 15 days, in case within the period of first 15 days from the date of production, the High Court was approached. I therefore, do not see any substance in the present application, the same is accordingly dismissed.

JUDGE

Rvjalit