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CrI.O.P.No.8883 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.8883 of 2023

State represented by
The Taluk Circle Inspector of Police
Kaveripattinam Police Station
Krishnagiri District
(Crime No.153 of 2023)

... Petitioner

Vs.

1. Nagaraj
2. Murali

... Respondents

This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records relating to CrI.M.P.No.4390 of 2023 dated 10.04.2023 on the file of the learned Judicial Magistrate Court No.1, Krishnagiri, set aside the same and grant police custody of the respondents/accused (A2 and A3) for a period of three days.

For Petitioner : Mr.S.Santhosh

Government Advocate (Crl. Side)

For Respondents : Mr.R.Rajan

ORDER



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This Criminal Original Petition is filed challenging the order passed by learned Judicial Magistrate No.1, Krishnagiri in CrI.M.P.No.4390 of 2023 on 10.04.2023.

2. It is the submission of learned Government Advocate (Criminal Side) that First Information Report in Crime No.153 of 2023 for the offences under Sections 341, 302 and 506(ii) IPC was registered against one Shankar and unidentified male persons. During the course of investigation, Investigation Officer came to know that one Nagaraj and Murali had also involved in the commission of offence. Both of them had surrendered before learned Judicial Magistrate No.IV, Salem on 23.03.2023 and were remanded to judicial custody till 30.03.2023. Their surrender and remand to judicial custody was not known to Investigating Officer. Only during the course of investigation and enquiry of first accused Shankar, Investigating Officer knew about the involvement of accused Nagaraj and Murali. These accused were produced before learned Judicial Magistrate No.I, Krishnagiri on 30.03.2023 and their judicial custody was extended till 12.04.2023. On 05.04.2023, within a period of 15 days of first remand, Investigating Officer



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filed a petition for seeking police custody of accused Nagaraj and Murali.

However, learned Judicial Magistrate No.I, Krishnagiri, without considering the gravity of offences and necessity of enquiring the accused, dismissed the petition stating that police custody of accused cannot be granted after the completion of 15 days of first remand. Challenging this order, this petition is filed.

3. When the matter came up before this Court on 21.04.2023, this Court ordered notice to respondents 1 and 2/accused, who are lodged in Central Prison, Salem, through proper channel and posted the matter on 25.04.2023. On 26.04.2023, the matter was listed and Mr.R.Rajan, learned counsel submitted that he would appear for respondents and prayed time for filing vakalath. Therefore, the matter was adjourned to 27.04.2023 for filing vakalath and counter. On 27.04.2023, it appears that vakalath and counter were not filed and therefore, this Court heard learned Government Advocate (Criminal Side) and posted the matter 'for orders' today (28.04.2023).



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4. When the matter is taken up today, learned counsel for respondents submitted that petitioner wants police custody of the respondents for finding out the persons involved in the offence and for recovery of material objects like weapons, etc,.. It is also submitted that A1 was already taken on police custody and was enquired. Investigating Officer should have gathered all the necessary information from A1 and it is not necessary for granting police custody of the respondents to the petitioner for the purpose of knowing the accused persons involved in the offence and also for the recovery of material objects like weapons, etc,. .

5. Another submission of the learned counsel for respondents is that when there are two conflicting judgments expressed by two coordinate Bench, the Judgment of the earlier one has to be followed.

6. Reading of the order of learned Judicial Magistrate shows that respondents 1 and 2 / accused surrendered before the learned Judicial Magistrate No. IV, Salem on 23.03.2023 and were remanded to judicial custody till 30.03.2023. They were produced before learned Judicial



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Magistrate No. I, Krishnagiri on 30.03.2023 and the judicial custody was extended till 12.04.2023. Finding that the petition seeking police custody was filed after completion of 14 days, learned Judicial Magistrate No.I, Krishnagiri, dismissed the petition stating that respondents 1 and 2 were in judicial custody for 19 days and therefore, police custody cannot be given. To reach this conclusion, he relied on the judgment of the Hon'ble Supreme Court in ***CBI ..vs.. Anupam J.Kulkarni*** reported in ***(1992) 3 SCC 141*** and some other judgments.

7. Learned Government Advocate (Criminal Side) further submitted that in ***CBI ..vs.. Vikas Mishra*** reported in ***MANU/SC/0342/2023***, the Hon'ble Supreme Court permitted the police custody even after completion of 15 days and also made an observation that the decision in ***Anupam J.Kulkarni*** case requires reconsideration.

8. It is no doubt that in ***CBI ..vs.. Anupam J.Kulkarni*** reported in ***(1992) 3 SCC 141 (cited supra)***, it was held that police custody could not be given once the first 15 days of judicial custody is over. However, in a case



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reported in **MANU/SC/0342/2023 (CBI ..vs.. Vikas Mishra)**, the issue came up was as to whether police custody can be given after completion of first 15 days of judicial custody. The Hon'ble Supreme Court has taken a positive view of the matter in the light of the facts and circumstances of the case. In the said case, police custody was given for a period of 7 days from 16.04.2021 to 22.04.2021. During the period, accused fell ill and subsequently also he fell ill and therefore, CBI could not take his custody for investigation. When the matter came up before the Hon'ble Supreme Court, relying on the judgment in **CBI ..vs.. Anupam J.Kulkarni** reported in **(1992) 3 SCC 141 (cited supra)**, it was contended that police custody cannot be given once the first judicial remand period of 15 days is completed. While dealing with this matter, the Hon'ble Supreme Court observed as follows:--

“7.1 It is true that in the case of Anupam J. Kulkarni (supra), this Court observed that there cannot be any police custody beyond 15 days from the date of arrest. In our opinion, the view taken by this Court in the case of Anupam J. Kulkarni (supra)



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requires re-consideration. When we put a very pertinent question to Shri Neeraj Kishan Kaul, learned senior counsel appearing on behalf of the respondent-accused that in a given case it may happen that the learned trial/Special Court refuses to grant the police custody erroneously which as such was prayed within 15 days and/or immediately on the date of arrest and thereafter, the order passed by the trial/Special Court is challenged by the investigating agency before the higher Court, namely, Sessions Court or the High Court and the higher Court reverses the decision of the learned Magistrate refusing to grant the police custody and by that time the period of 15 days is over, what would be position? The learned senior counsel is not in a position to answer the court query.”

9. The judgment of the Hon'ble Supreme Court in **CBI ..vs.. Vikas**



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Mishra (*cited supra*) squarely applies to this case in all fours. This case is identical case in the sense that though Investigating Officer filed petition seeking police custody within 15 days ie., on 14th day, ie., 05.04.2023, learned Judge has not passed order immediately on the same day and he passed order of dismissal on 10.04.2023. Considering the gravity of the offence and requirement of police custody for unearthing the truth, learned Judicial Magistrate should have disposed the petition seeking police custody in Crl.M.P.No.4390 of 2023 on the same day of filing ie., on 05.04.2023 itself. However, without doing so, he passed order only on 10.04.2023. It is not correct and legal. He should have decided the matter on 05.04.2023 itself. Without deciding the petition on 05.04.2023 and dismissing the petition on 10.04.2023, on the ground that 15 days of judicial custody is over, is nothing but an erroneous order requiring interference from this Court. In this view of the matter, the order passed by learned Judicial Magistrate No.1, Krishnagiri, in Crl.M.P.No.4390 of 2023 on 10.04.2023 is set aside.



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10. In the result, this Criminal Original Petition is allowed and the order passed by learned Judicial Magistrate No.1, Krishnagiri, in CrI.M.P.No.4390 of 2023 on 10.04.2023 is set aside. Learned Judicial Magistrate No.1, Krishnagiri is directed to give police custody of the respondents to Investigating Officer for the purpose of investigation for 24 hours, by following necessary procedure within a period of one week from the date of receipt of a copy of this order.

28.04.2023

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Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate No.1
Krishnagiri.
2. The Taluk Circle Inspector of Police
Kaveripattinam Police Station
Krishnagiri District
(Crime No.153 of 2023)
3. The Public Prosecutor,
Madras High Court,
Chennai.

G.CHANDRASEKHARAN,J.

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order in
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