



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

Criminal Application [APL] No.7 of 2024

*State of Maharashtra, through Police Station Officer, Bhandara Police Station,
 District Bhandara*

vs.

Ratnapal @ Kalu Hemraj Mate and others

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Mr. N.B. Jawade, A.P.P. for the Applicant/State.
 Mr. A.M. Chandekar, Advocate for the Non-Applicants.*

CORAM : M.W. CHANDWANI, J.
DATE : 8th JANUARY, 2024.

By this application, the State has challenged the order dated 27/12/2023, whereby the request of the prosecution for Police Custody Remand (P.C.R.) of the non-applicants has been turned down and the non-applicants are sent to the Magisterial Custody Remand (M.C.R.).

02] The non-applicants were arrested on 27/12/2023 on allegation of having committed offences punishable under Sections 302, 353, 143, 147, 148 read with Section 149 of the Indian Penal Code, under Section 3 read with Section 25 of the Indian Arms Act and under Section 135 of the Maharashtra Police Act. On 27/12/203 The non-applicants were produced before the learned Judicial Magistrate First Class, Bhandara. The prosecution prayed for P.C.R. of the non-applicants, but the learned Magistrate refused to grant the P.C.R. and remanded the non-applicants to M.C.R. Feeling aggrieved with the impugned order, the present application under section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for short) is filed.

03] Before proceeding further, let me deal with the objection regarding maintainability of the application under Section 482 of the Cr.P.C. raised by the learned Counsel for the non-applicants. There is no dispute that the order of remand is an interlocutory order as held in the decisions of **Madhu Limaye Vs. State of Maharashtra**¹ and **State and others vs. N M T Joy Immaculate**². The relevant paragraph 13 of the decision in **N M T Joy Immaculate** (*supra*) is reproduced here.

*13. Section 167 Cr.P.C. empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209 Cr.P.C. confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Sessions and also until the conclusion of the trial. Section 309 Cr.P.C. confers power upon a Court to remand all accused to custody after taking cognizance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in **Madhu Limaye's case** {(1977) 4 SCC 551}, it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by Sub-section (2) of Section 397 Cr.P.C., a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6.11.2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."*

04] About a year ago, the Apex Court in a decision in **Gautam Navlakha vs. State of Maharashtra**³, while dealing with the objection over remand of the accused, has observed that the order of remand is interlocutory order and, therefore, the revision can not lie. But, the

1 1978 AIR (SC) 47; 1978 Cri.L.J. 165

2 2004(5) SCC 729

3 (2022) 13 SCC 542

application under Section 482 of the Cr.P.C cannot be ruled out. In view of the observation made in the decision of Gautam Navlakha (*supra*), the jurisdiction of this Court can be invoked under Section 482 of the Cr.P.C. against the order of remand in absence of the remedy of the revision. Thus, the objection raised by the learned Counsel for the non-applicants is sans merit.

05] Axiomatically and as canvassed by the learned Counsel for the non-applicants that the an application for police custody has to be considered strictly on the basis of the material collected, as it involves the fundamental rights and the personal liberty of an accused. However, if the substantial facts are recorded to establish the nexus between the accused and the crime in question, the request for police custody remand is to be granted for furthering the investigation in the proper direction.

06] Perusal of the remand papers reveals that the complainant, who is a Police Inspector, along with his Senior had been to Bhandara in connection with investigation of a crime and while returning to Tumsar, they saw the non-applicants along with other co-accused were proceeding in a vehicle viz. Breeza to Tumsar. On suspicion, when the said vehicle was intercepted by police, non-applicant No.3 pointed pistol to the complainant and threatened him for life. The police over powered and apprehended the non-applicants. Some of the co-accused fled away from the spot. The non-applicants were brought in Police Station. Later, they were arrested. The pistol and an amount of Rs.1,00,000/- were seized from the non-applicant Nos.3 and 1, respectively.

07] The impugned order shows that in paragraph 2, the learned Magistrate noted the differences between the learned A.P.P. and the

Investigating Officer and further noted that it is not the case of the Investigating Officer that there was use of pistol in the crime, which prompted him to refuse the P.C.R. The other reasons mentioned in the order are that nothing is remained to be seized from them and the names of the absconding accused are also ascertained.

08] Perusal of the F.I.R. goes to show that there are allegations of pointing pistol by non-applicant No.3 with threatening remarks. So, *prima facie*, it appears that the pistol was used by non-applicant No.3, which itself appears from the F.I.R. The learned Magistrate did not bother to see the F.I.R. Further, it appears that an amount of Rs.1,00,000/- is seized from non-applicant No.1. These facts *prima facie* establish the nexus between the non-applicants and the crime. The P.C.R. was sought for furthering the investigation. It is to be noted here that custodial interrogation of apprehended accused is qualitatively more elucidation oriented. They were arrested in the crime at 02.30 a.m. and on the same day, were produced before the learned Magistrate and were remanded to M.C.R. The police could not get sufficient time to interrogate, particularly, to non-applicant Nos.1 and 3, from whom amounts and pistol respectively, were seized. The learned Magistrate ought to have granted P.C.R. to non-applicant Nos.1 and 3 for furthering the investigation in the crime. The impugned order of the learned Magistrate in respect of non-applicant Nos. 1 and 3 does not stand.

09] Needless to mention that, the P.C.R. only can be granted for the initial 15 days as held in the case of *CBI vs. Anupam J. Kulkarni*⁴, which are yet to be expired. Therefore, a case is made out for grant of P.C.R. with regard to non-applicant Nos.1 and 3.

10] So far as the decision in the case of *Arnesh Kumar vs. State of Bihar and another*⁵, is concerned, their Lordships were considering arrest by Police Officers in offences punishable up to seven years. Therefore, it will not help the learned Counsel for the non-applicants.

11] I do not find force in the submission of the learned A.P.P. that a case is also made out for P.C.R. of non-applicant Nos.2 and 4. In the result, the following order is passed :

- I. The application is partly allowed.
- II. The order dated 27/12/2023 passed by the learned Judicial Magistrate First Class, Court No.1, Bhandara, refusing Police Custody Remand in respect of non-applicant No.1 and non-applicant No.3 is set aside.
- III. The application for police custody remand in respect of non-applicant No.1 and non-applicant No.3 is allowed. Non-Applicant No.1 and non-applicant No.3 shall be given in the custody of the Investigating Officer forthwith till 10th of January, 2024.
- IV. Authenticated copy of this order be supplied to the learned A.P.P. to act upon.

JUDGE

**sandesh*