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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 01.04.2024

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W.P.(C) 4599/2024 & CM No.18829/2024

ANANDITA BHARGAVA

..... Petitioner

Through: Mr Nishant Nain, Adv.

versus

REGISTRAR GENERAL DELHI HIGH COURT Respondent

Through: Dr Amit George, Mr Arkaneil Bhaumik, Mr Rayadurgam Bharat, Mr Adhishwar Suri, Mr Shashwat Kabi, Mrs Suparana Jain, Mr Piyo Harold Jaimon and Mr Rishabh Dheer, Advs.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****ORDER**

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01.04.2024**[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This writ petition seeks to assail the correctness of the answer provided by the respondent to Question No.176 (Booklet 'A') incorporated in the question paper framed for the Delhi Judicial Service (Preliminary) Examination, 2023.
2. It is the petitioner's case that the answer provided in the revised and final answer key was not the most appropriate option; a test prescribed by the respondent.
3. For convenience, the question in issue, i.e., Question No.176 is set



forth hereafter:

“176. An Individual is facing charges under section 376 IPC and section 302 IPC. He avoided police arrest. Later, he surrendered to a Magistrate before whom neither report under Section 157 (1) Cr.P.C., nor copies of entries in the police diary were filed, who remanded him to judicial custody. Can such person claim default bail after 90 days if no police report is filed?

1. Yes
2. No
3. Yes but after 60 days if no police report is filed.
4. None of the above.”

4. Concededly, the petitioner entered option No.2 in the answer sheet. However, according to the respondent the correct answer was the one provided in its revised and final answer key i.e., option No.1.

4.1 In sum, as per the respondent, given the facts alluded to in Question No.176, the accused who had been remanded to judicial custody by the Magistrate could obtain default bail after 90 days.

5. Mr Nishant Nain, learned counsel, who appears on behalf of the petitioner, contends to the contrary. To buttress his submission, he relies upon the judgment dated 25.04.2007 passed in SLP(Crl.)No.5124/2006 by the Supreme Court in ***State of West Bengal v. Dinesh Dalmia***, (2007) 5 SCC 773.

5.1 In a nutshell, Mr Nain argues that since the accused had been remanded to judicial custody after he had surrendered before the Magistrate, the period of 90 days would not commence from the date of remand as he had not made himself available for investigation by the police.

5.2 Furthermore, Mr Nain argued that a perusal of the facts adverted to in Question no. 176 would show that at the time of surrender, neither a report under Section 157(1) of the Code of Criminal Procedure, 1973 [in short, “Code”] nor the copies of the entries made in the police diary were filed



before the Magistrate.

5.3 It is, thus, Mr Nain's contention that because neither the occurrence report under Section 157(1) nor the case diary were filed as required under Section 167 of the Code, quite obviously, the police had no opportunity to carry out an investigation, which is the purpose of arresting and detaining an accused.

5.4 Mr Nain submitted that instead, the accused was placed in judicial custody and since he was not made available for investigation, the 90 days period had not commenced for enabling grant of default bail.

5.5 In other words, the answer given by the petitioner that the accused, who had been remanded to judicial custody, could not apply for default bail was the correct answer.

6. On the other hand, Dr Amit George, learned counsel, who appears on behalf of the respondent, has argued to the contrary. Dr George submitted that irrespective of whether or not the conditions contained in Section 167 of the Code are fulfilled, as long as the person was in judicial custody, i.e., he remained in detention, his right to apply for default bail after 90 days of custody would get triggered.

6.1 It is, therefore, Dr George's contention that the answer provided by the respondent *via* its revised (final) answer key was correct or at least, was the most appropriate answer given the facts set forth in Question No.176.

7. We may note that Dr George has also taken a preliminary objection *qua* the maintainability of the writ petition. It is Dr George's contention that, although the revised (final) answer key was released on 02.02.2024, the petitioner chose to move the court only on 27.03.2024.

7.1 Dr George, thus, contends that interference, at this stage, would



disrupt the timetable put in place by the respondent to hold the Main Written Examination.

8. It is not in dispute that the Main Written Examination is slated for 13th and 14th April 2024.

8.1 As far as the question of delay is concerned, Mr Nain has attempted to navigate this hurdle by contending that since the cut-off mark fixed in the first instance was 160.75, had the petitioner approached the Court earlier, it would have served no purpose as the marks obtained by the petitioner were well below the cut-off mark. In other words, even if the petitioner was awarded marks for Question no. 176, the difference between the marks obtained by her and the cut-off could not be bridged.

8.2 However, this position, according to Mr Nain, changed when because of certain decisions rendered by this court concerning questions, other than Question no. 176, the cut-off mark fell to a bridgeable number i.e., 155.25 marks.

8.3 It is when this situation arose that the petitioner decided to move the court. Success in the instant writ action, would result in the petitioner qualifying for the Main Written Examination to be held on 13th and 14th April 2024.

9. In our view, on both counts, the petitioner is not right.

10. Delay is not always looked at by the courts from the point of view of the expanse of time involved in a given case. In certain matters, even a day's delay may attain criticality. Examinations are one such area.

10.1 The petitioner, in our opinion, should have asserted her right at the earliest. The record shows, and about which there is no contestation, that in the first instance, the respondent released the model answer key on



20.12.2023. *Qua* the said model answer key, the petitioner filed her objections. The objections raised by the petitioner did not find favour with the respondent; a fact which emerges upon perusal of the revised (final) answer key which was released, concededly, by the respondent on 02.02.2024.

11. We may note that the petitioner had filed objections not only vis-a-vis the question in issue, i.e., Question No.176 but other questions as well. The total number of questions *qua* which objections had been filed by the petitioner was eight (08) in number.

12. Therefore, as indicated above, in our view, the petitioner ought to have approached the court immediately after the release of the revised (final) answer key. Any interference, at this juncture, as rightly argued by Dr George, would disrupt the timetable for holding the Main Written Examination.

12.1 This view is taken not necessarily from the point of view of the respondent, but also from the point of view of other candidates who have qualified the preliminary examination and are waiting patiently to take the Main Written Examination, which, as noted above, is going to be held on 13th and 14th April 2024. The petitioner, in delaying the institution of the writ action has, in a sense, done a disservice to the other candidates who are understandably eager to get to the next stage.

12.2 That said, even on merits, we are not persuaded by the submissions advanced by Mr Nain.

13. A close perusal of the question in issue would show that the accused was remanded to judicial custody upon surrendering before the Magistrate. Although at the time when the accused surrendered, neither a report under



Section 157(1) of the Code nor the copies of the entries in the police diary were filed- the accused was remanded to judicial custody.

14. The judgment rendered by the Supreme Court in ***Dinesh Dalmia***, which was relied upon by Mr Nain, has one crucial distinction when compared to the facts set out in Question No.176. In that matter, the accused had surrendered in a different case, i.e., not in the case in which the investigation had to be carried out.

14.1. There is no such clue given in Question No.176.

15. A plain reading of Question No.176 seems to indicate that the accused had surrendered in the case in which he had to be investigated.

15.1 Thus, what had to be construed while answering the question was : whether the detention of the accused [as per the facts set out in Question No.176] would qualify the accused for default bail? This issue appears to have been answered in the judgment rendered by the Supreme Court in ***Gautam Navlakha v. National Investigation Agency***, (2022) 13 SCC 542. For convenience, the relevant observations made in the said judgment by the Supreme Court are extracted hereafter:

“Effects of illegality in the order under Section 167 CrPC

107. Now, it is necessary to make one aspect clear. An order purports to remand a person under Section 167. It is made without complying with mandatory requirements thereunder. It results in actual custody. The period of custody will count towards default bail. Section 167(3) mandates reasons be recorded if police custody is ordered. There has to be application of mind. If there is complete non-application of mind or reasons are not recorded, while it may render the exercise illegal and liable to be interfered with, the actual detention undergone under the order, will certainly count towards default bail. Likewise, unlike the previous Code (1898), the present Code mandates the production of the accused before the Magistrate as provided in clause (b) of the proviso to Section 167(2). Custody ordered without complying with the said provision, may be illegal. But actual custody undergone will again count towards default bail.

108. Take another example. The Magistrate gives police custody for 15 days but



after the first 15 days, (not in a case covered by UAPA) it is not challenged. Actual custody is undergone. Will it not count? Undoubtedly, it will. The power was illegally exercised but is nonetheless purportedly under Section 167. What matters is “detention” suffered. The view taken in the impugned judgment [Gautam P. Navlakha v. NIA, 2021 SCC OnLine Bom 767] that sans any valid authorisation/order of the Magistrate detaining the appellant there cannot be custody for the purpose of Section 167 does not appear to us to be correct. The finding that if any illegality afflicts the authorisation, it will render the “detention” not authorised is inconsistent with our conclusion as aforesaid.

109. Therefore, if the Court purports to invoke and act under Section 167, the detention will qualify even if there is illegality in the passing of the order. What matters in such cases is the actual custody.

110. However, when the Court does not purport to act under Section 167, then the detention involved pursuant to the order of the Court cannot qualify as detention under Section 167.

Judicial custody and police custody

111. Now, we must squarely deal with the question as to whether house arrest as ordered by the High Court amounts to custody within the meaning of Section 167CrPC. Undoubtedly custody in the said provision is understood as ordinarily meaning police custody and judicial custody. The period of custody begins not from the time of arrest but from time the accused is first remanded (Chaganti Satyanarayana v. State of A.P. [Chaganti Satyanarayana v. State of A.P., (1986) 3 SCC 141 : 1986 SCC (Cri) 321]). Police custody can, in a case falling under the CrPC (not under the UAPA), be given only during the first 15 days (CBI v. Anupam J. Kulkarni [CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141 : 1992 SCC (Cri) 554]). During the first 15 days no doubt the Court may order judicial custody or police custody. No doubt the last proviso to Section 167(2) provides that detention of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

112. What is the distinction between police custody and judicial custody? When a person is remanded to police custody, he passes into the exclusive custody of the police officers. “Custodial interrogation” as is indispensable to unearth the truth in a given case is the substantial premise for such custody. The Magistrate must undoubtedly be convinced about the need for remand to such custody. Reasons must be recorded. Judicial custody is ordinarily custody in a jail. It is referred to also as jail custody. Thus, jail custody and judicial custody are the same. The jails come under the Department of Jails and staffed by the employees of the said department. The person in jail custody is therefore indirectly, through the jail authorities, under the custody of the Court. The police officer does not have access to a person in judicial custody as he would have in the case of a person in police custody. Unless permission is sought and obtained which would apparently be subject to such



conditions as a court places the person in judicial custody cannot be questioned by the police officers. Now in a case, ordinarily, instead of ordering a remand a person can be released on bail. As to whether a case is made out is a question to be decided in the facts of each case. There may be restrictions put in regard to the grant of bail by law which must be observed. But if bail is not granted then a person arrested by the police in connection with the cognizable offence must be remanded to custody. This is inevitable from the reading of Section 167CrPC.”

16. A close perusal of the observations made by the Supreme Court would show that if the court purports to invoke and act under Section 167 of the Code, any illegality committed in passing the order will not render the detention undergone by the accused, as a result of such an order, unviable for the purpose of grant of default bail. What counts for the purpose of default bail is the period of custody/ detention undergone by the accused.

17. Given this position, we are not persuaded by the submission advanced by Mr Nain that the answer to Question No.176 was not the most appropriate answer.

18. Thus, having regard to the foregoing discussion, we are not inclined to entertain the writ petition.

19. The writ petition is, accordingly, dismissed. Consequently, the pending application shall stand closed.

20. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

APRIL 01, 2024

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