

2023 LiveLaw SC 283

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
M.R. SHAH; J., C.T. RAVIKUMAR; J.**

CRIMINAL APPEAL NO. 957 OF 2023; APRIL 10, 2023

Central Bureau of Investigation *versus* Vikas Mishra @ Vikash Mishra

Code of Criminal Procedure, 1973; Section 167(2) - It is true that in the case of *Central Bureau of Investigation v. Anupam J. Kulkarni*, reported in (1992) 3 SCC 141, 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) requires re-consideration. (Para 7, 7.1)

Code of Criminal Procedure, 1973 - No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/ investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process. (Para 8)

(Arising out of impugned final judgment and order dated 30-09-2022 in CRM(DB) No. 1638/2022 passed by the High Court t Calcutta)

For Petitioner(s) Mr. Tushar Mehta, Solicitor General Mrs. Aishwarya Bhati, A.S.G. Mr. Kanu Agarwal, Adv. Mr. Vatsal Joshi, Adv. Ms. Ameyavikrama Thanvi, Adv. Ms. Deepabali Dutta, Adv. Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. Neeraj Kishan Kaul, Sr. Adv. Mr. Rajat Sehgal, AOR Mr. Abhir Datt, Adv. Mr. Anurag Rawal, Adv. Mr. Debayan Gangopadhyay, Adv. Ms. Aarzo Aneja, Adv. Samyak Jain, Adv.

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.09.2022 passed by the High Court of Calcutta in Criminal Miscellaneous Application No. 1638/2022, by which the Division Bench of the High Court has directed to release the respondent – accused on statutory/default bail under Section 167(2) of the Code of Criminal Procedure (Cr.P.C.), the Central Bureau of Investigation (CBI) has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That on 27.11.2020, an FIR/complaint came to be registered by the CBI (ACB, Kolkata) against inter alia the officials of Eastern Coalfield Limited, CISF, Railways and others for the commission of offences under sections 120B/409 of the IPC and the relevant provisions of the Prevention of Corruption Act. That on 16.04.2021, the respondent – accused Vikas Mishra came to be arrested by the CBI and was remanded to the CBI custody for a period of seven days i.e., till 22.04.2021. However, during the said period of remand to CBI custody, the respondent – accused Vikas Mishra was admitted in the hospital and thus could not be interrogated by the CBI despite police custody remand.

2.1 That on 21.04.2021, the respondent-accused was enlarged on interim bail by the learned Special Court which came to be extended from time to time. On 08.12.2021, the

learned Special Court cancelled the interim bail of the respondent-accused on the ground that he did not appear before the Special Court despite specific directions and also did not cooperate with the CBI investigation. That on 09.12.2021 and pursuant to the interim bail being cancelled, the respondent-accused came to be arrested again on 11.12.2021 and was remanded to judicial custody. That again from 12.12.2021 to 08.04.2022, while in judicial custody, the accused got admitted to the hospital and then again from 07.05.2022 to 08.09.2022.

2.2 That the accused submitted an application for default bail under Section 167(2) Cr.P.C. on the ground of non-filing of the charge sheet/report within the prescribed period of 90 days. The learned Special Judge rejected the said application inter alia on the ground that the accused was not remanded to custody under Section 167(2) Cr.P.C. after cancellation of his bail on the grounds that the accused was granted interim bail under the provisions of Chapter XXXIII Cr.P.C. and his detention pursuant to cancellation of bail was on the strength of warrants issued by the Court. That on 19.07.2022, the CBI filed a charge sheet against the accused and the cognizance was taken by the learned Special Court on the same date.

2.3 Against the judgment and order passed by the learned Special Judge rejecting the application submitted by the accused – Vikas Mishra for statutory/default bail under Section 167(2) Cr.P.C., the respondent-accused preferred the present application before the High Court. By the impugned judgment and order, the High Court has allowed the said application and has directed to release the respondent on statutory/default bail under Section 167(2) Cr.P.C. as even within 90 days from the date of rearrest, i.e., from 11.12.2021, the charge sheet was not filed and which came to be filed only on 19.07.2022. Against the impugned judgment and order passed by the High Court directing to release the respondent-accused Vikas Mishra on statutory/default bail, the CBI has preferred the present appeal.

3. While issuing notice on 27.02.2023, this Court passed the following order:

“Issue notice to consider the prayer of the Investigating Agency to have the custodial interrogation of the accused, making it returnable on 13.03.2023.

Shri Rajat Sehgal, learned counsel accepts notice on behalf of the respondent, who is on caveat. To be notified within first ten items.”

4. Ms. Aishwarya Bhati, learned ASG appearing on behalf of the CBI has vehemently submitted that as such the CBI got the police custody remand for a period of seven days on 16.04.2021 till 22.04.2021. It is submitted that however the accused got himself first admitted to hospital and thereafter got interim bail which came to be subsequently cancelled on 08.12.2021, the CBI could not exercise the police custody remand which as such was allowed by the learned Special Judge on 16.04.2021.

4.1 It is submitted that as such the order granting seven days police custody remand attained finality and therefore the CBI should be given the police custody remand of the accused for the remainder period of seven days.

4.2 It is submitted that as such all throughout the respondent-accused managed to get himself hospitalised on one ground or the other and therefore as such successfully frustrated the order of police remand allowed by the learned Special Judge. It is submitted that nobody can be permitted to frustrate the court’s process.

4.3 Making above submissions, it is prayed to grant the police custody remand of the respondent-accused for the remainder period of seven days which the CBI could not

exercise because of the respondent got himself hospitalised and was released on interim bail.

5. The present application and the prayer of the CBI for further police custody remand is vehemently opposed by Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the respondent – accused.

5.1 Relying upon the decisions of this Court in the case of **Central Bureau of Investigation v. Anupam J. Kulkarni, reported in (1992) 3 SCC 141** and the subsequent decision in the case of **Budh Singh v. State of Punjab, reported in (2000) 9 SCC 266**, it is vehemently submitted by Shri Neeraj Kishan Kaul, learned senior counsel appearing on behalf of the accused that as such no police custody can be granted/allowed beyond the first 15 days from the date of arrest. It is submitted that therefore now the police custody which shall be beyond the period of 15 days from the date of arrest is not permissible.

5.2 It is further submitted that even otherwise in the present case the respondent-accused was hospitalised from time to time due to his grave and fragile medical condition. That on 18.04.2021, the health of the respondent heavily deteriorated due to which he had to be admitted in the hospital by the appellant agency itself. It is submitted that thereafter on 20.04.2021 he was transferred to another hospital – a government hospital for better treatment and medical facilities. It is submitted that therefore there is no substance in the submission on behalf of the investigating agency that on 18.04.2021 the accused got himself admitted to the hospital to evade his custody.

5.3 It is further submitted that even otherwise between 08.04.2022 to 18.04.2022 when the respondent was remanded to police custody in another case, during that time, he was extensively interrogated in the present RC as well. It is submitted that even while on interim bail the respondent accused was interrogated. It is submitted that therefore the prayer on behalf of the CBI made now to have the police custody of the respondent-accused may not be granted.

5.4 Shri Neeraj Kishan Kaul, learned senior counsel appearing on behalf of the accused has drawn our attention to the pendency of the Special Leave Petition(Criminal) Nos. 1620-1621/2021 filed by the coaccused in which the investigation by the CBI itself is under challenge and this Court passed an interim order that no coercive steps be taken against the petitioner of that special leave petition.

5.5 Making above submissions, it is prayed to dismiss the present appeal.

6. We have heard learned counsel for the respective parties at length.

While considering the prayer of the CBI for police custody for the remainder period of seven days, it is required to be noted that as such the learned Special Judge granted seven days police custody of the respondent-accused on 16.04.2021. The order granting seven days police custody as such had attained finality. However, it so happened that before the seven days police custody is over and before the CBI exercises the power of interrogation for full seven days which as per the order passed by the learned Special Judge was available to the CBI, the respondent-accused got himself hospitalised on 18.04.2021. On 21.04.2021, the learned Special Judge granted interim bail to the accused. As per the settled position of law therefore once on bail/interim bail, during that period there cannot be any police custody. Therefore, the CBI could not interrogate the respondent-accused for full seven days under the police custody remand, which otherwise the CBI was entitled to. That thereafter, the accused remained in the hospital from time to

time during the interim bail which also came to be extended from time to time. That thereafter, by order dated 08.12.2021, the learned Special Judge cancelled the interim bail by observing that the respondent accused has misused the interim bail and has not cooperated with the CBI in investigation and that there was no valid reason for his hospitalisation. The learned Special Judge also observed that in view of the non-cooperation by the accused, the interrogation of the accused under judicial custody/police custody has necessitated. Some of the observations made by the learned Special Judge made in the order dated 08.12.2021 cancelling the interim bail are relevant, which are as under:

“Heard both sides, perused the materials in the CD and in the case record and considered.

Following propositions were submitted and seems to be admitted that neither the accused person has attempted to tamper any evidence nor he is likely to flee from justice. The only aspect on which the present prayer under adjudication seems to be banked upon is that the accused person willfully halted the progress of the investigation by not cooperating the investigating agency during his attendances before them. For that I am here to decipher how genuine the allegation is and as to whether such alleged noncooperation on the part of this accused person is a sufficient ground to curb his bailed freedom and commit him back to custody invoking section 437(5) Cr. P.C. I have carefully gone through the transcribed conversations on different dates between the 10 and this accused person while on bail and the 10. The answers given to questions put to him are by no means in the direction of corroborating the contents of the documentary evidence collected by the 10 during the investigation. The statements of the witnesses recorded u/s 161 and 164 Cr. P.C. and the documentary evidence like account statements etc. collected disclose direct involvement of this accused person in transmitting huge sums, to yet unknown or unidentifiable entities. This money trail also bears a direct linkage to the other FIR named accused persons, whether or not public servants, as it transpires from the CD. Any man of common prudence would understand that unless these details are elicited the investigation would be badly hampered and the total truth will never be unearthed. In such circumstances I feel that judicial detention and custodial interrogation of the accused person have to be resorted to. I also am convinced to say that this non-cooperation is consciously active and pre-designed and this is sufficient to presume willful misuse of liberty of bail on the part of the accused person which he obtained exclusively on medical ground. In my appreciation allowing furtherance of this liberty would certainly defeat the cause of public justice. The nature and seriousness of the offence, the character of evidence collected before and after the interim bail was granted as against this accused person, the present circumstances and shown gesture of designed reluctance of the accused person in assisting the investigation to progress, and the larger interest of the public and the nation - all at a time, impel me to jump to the judicial inference that the accused person should no more be allowed to enjoy the liberty of the interim bail granted to him on 21.04.2021 and which has been extended from time to time till date. The precedents relied upon by the Ld. Advocates for the accused person are all dissimilar to the factual matrix of the present case and hence require no separate mentioning. So far as the present health condition of the accused person is concerned from the documents supplied on behalf of the accused person, it is definitely evident that his health is in condition than what he was in at the time of obtaining the Interim Bail, of course with advice by the doctors to keep away from physical and mental stress. But only that should not save him from the rigours of incarceration which he was supposed to be in, had the illness of that not there at the time of getting magnitude been not person the interim bail. There is nothing in the medical documents to assume that the accused is not fit enough to move, think or talk properly, as was urged by the Ld. Advocate for the accused person. In the contrary it is found that the accused person is suffering from cirrhosis of liver since before this case was initiated and there had been ups and downs in his health condition. For that this court cannot let the truth submerge in the plea of his chronic ailments.

Coming to the medical reports submitted today it is found that today at 12.10 am he shifted himself to Apollo Hospital where he was examined and was readily admitted in some medically

unspecified ward (Deluxe) under treatment of a specialist pulmonologist. Notable that the documents produced show that the emergency admission advice form has been struck down by hand making it a direct admission advice form and the bed number there is also illegible due to repeated overwriting. The admission form submitted shows that expected length of stay of the patient at the hospital is nil. Even if it is accepted that the accused person is admitted in hospital for a suspected pulmonary tract infection, that does not take away the adverse inferences already drawn by this court hereinabove. For the sake of precise investigation coercive participation of the accused person by way of judicial detention now appears to be imminent and indispensable.”

7. In light of the aforesaid facts and circumstances and the observations made by the learned Special Judge while cancelling the interim bail, the decision of this Court in the case of **Anupam J. Kulkarni (supra)** is required to be considered.

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)** 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.

8. Be that as it may, the facts in the present case are very glaring. Despite the fact that on 16.04.2021, the learned Special Judge allowed police custody of the respondent-accused for seven days i.e., up to 22.04.2021, the respondent-accused got himself admitted in the hospital during the period of police custody, i.e., on 18.04.2021 and obtained interim bail on 21.04.2021 which came to be extended till 08.12.2021 when his interim bail came to be cancelled by the learned Special Judge by observing that the accused has misused the liberty shown to him and during the interim bail he has not cooperated with the investigating agency. At the cost of repetition, it is observed that initial order of grant of seven days police custody attained finality. However, due to the aforesaid reasons of having got the accused himself hospitalised on 18.04.2021 and thereafter obtaining the interim bail on 21.04.2021, the CBI could not interrogate the accused in the police custody though having a valid order in its favour. Thus, the respondent-accused has successfully avoided the full operation of the order of police custody granted by the learned Special Judge. No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process.

9. Now so far as the submission on behalf of the accused about the pendency of Special Leave Petition (Criminal) Nos. 1620-1621/2021 by the co-accused before this Court and the interim order that “no coercive steps be taken against the petitioner therein” is concerned, it is required to be noted that the pendency of the special leave petitions at the behest of the co-accused has nothing to do with the present proceedings. It is required

to be noted that the accused in the present case - Vikas Mishra in fact filed a similar special leave petition, however, this Court declined to grant the permission to the respondent-accused to file the special leave petition by reserving liberty in his favour to pursue the remedies which were available in law.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The appellant-CBI is permitted to have the police custody remand of the respondent for a period of four days (taking into consideration that pursuant to order dated 16.04.2021 passed by the learned Special Judge the police custody remand of seven days of the respondent-accused was granted, however for the reasons stated above, the CBI could interrogate the respondent-accused only for a period of two and half days and therefore could not exercise the right of interrogation for the full period of seven days of police custody remand).

11. The instant appeal is accordingly allowed to the aforesaid extent.

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