

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

CRIMINAL APPEAL No.829 OF 2023

JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Sri Hussain Aamir, learned counsel, representing Sri T.Rahul, learned counsel for appellant and Sri P.Vishnuvardhan Reddy, learned Special Public Prosecutor, appearing for National Investigation Agency (NIA).

2. Feeling aggrieved and dissatisfied with the order dated 22.09.2023 passed in CrI.M.P.No.1204 of 2023 by learned IV Additional Metropolitan Sessions Judge – cum – Special Court for NIA Cases, Nampally, at Hyderabad (hereinafter referred to as Designated Court) arising out of RC-03/2022/NIA/HYD, the appellant/A.31 preferred the present appeal.

Facts:-

3. The appellant herein is A.31 in the aforesaid crime. Investigation was entrusted to NIA on 26.03.2022. The Investigating Officer has arrested the appellant/A.31 on 13.06.2023 and he was sent to judicial custody on 14.06.2023.

4. The Investigating Officer had filed an application vide CrI.M.P.No.799 of 2023 seeking police custody of the appellant herein for a period of seven (7) days. Vide order dated 04.07.2023, learned Designated Court allowed the said application and police custody of the appellant/A.31 was given for a period of 5 days from 06.07.2023 to 10.07.2023. The said application was filed within thirty (30) days from the date of arrest of the appellant and also remand.

5. The Investigating Officer in the said crime had filed another application vide CrI.M.P.No.1204 of 2023 on 01.09.2023 seeking custody of the appellant for a further period of five (5) days on the ground that the appellant/A.31 was thoroughly interrogated during the police custody wherein he was confronted with his banking transactions with other associates and Popular Front of India (PFI) and his links with other accused persons in the case. However, the accused could not give satisfactory reply towards the same and investigation in the said case is under progress. During the investigation, some new evidence has come forth against the accused which needs to be confronted with the accused to find out his role in commission of offence and to identify the other suspects involved in the case which

cannot be otherwise done without one-to-one interrogation of the accused person.

6. The said application was opposed by the appellant/A.31 contending that the Investigating Agency cannot file second application seeking police custody beyond thirty (30) days. The Investigating Agency having contended that they have thoroughly interrogated the appellant during police custody, cannot file second application on the ground that some new evidence has come forth against him which needs to be confronted with him to find out his role in commission of the offence and to identify the suspects involved in the case. The reasons mentioned by the Investigating Agency are not satisfactory. Therefore, the application is liable to be dismissed.

7. Vide impugned order dated 22.09.2023, learned Designated Court allowed the said application and granted five (5) days police custody of appellant from 10.00 A.M. of 25.09.2023 till 4.30 P.M. of 29.09.2023 on certain conditions. Challenging the said order, the appellant preferred the present appeal.

8. Learned counsel for the appellant would contend that the respondent/Investigating Agency cannot file second application beyond thirty (30) days and that too, without mentioning satisfactory

reasons. Without considering the said aspects, the Designated Court allowed the said application erroneously. They have also placed reliance on the judgment of the Apex Court in **Gautam Navlakha vs. National Investigation Agency**¹ and the judgment of Delhi High Court in **National Investigation Agency vs. Owais Ahmad Dar**².

9. Whereas, learned Special Public Prosecutor appearing for NIA would contend that second application filed by Investigating Agency seeking police custody beyond thirty (30) days is maintainable. The Investigating Officer has specifically mentioned the reasons for custody of the appellant. On consideration of the said aspects only, learned Designated Court allowed the said application on certain conditions. He was taken to custody on 25.09.2023 and the Investigation was almost completed. There are serious allegations against the appellant which needs to be investigated into by the Investigating Officer. With the said submissions, he sought to dismiss the appeal.

10. In the light of the aforesaid discussion, the issue falls for consideration before this Court in the present appeal is as to whether

¹ 2021 SCC OnLine SC 382

² Crl.M.C.3493/2021 and Crl.M.A.20845 of 2021(Stay)

the Investigating Agency can file a second application seeking police custody beyond 30 days of remand of the accused?

11. To answer the said issue, it is relevant to extract Section 167 Cr.P.C. and Section 43(D)(2)(b) of the Unlawful Activities (Prevention) Act, 1967 (for short, 'UAPA') which are as follows:-

167. Procedure when investigation cannot be completed in twenty-four hours.

(1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :Provided that –

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) No Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.

(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II. - If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:

Provided further that in case of woman under eighteen years of is, the detention shall be authorised to be in the custody of a remand home or recognized social institution.

(2-A) Notwithstanding anything contained in sub-section or (1) sub-section (2), the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the diary, hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order, and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2) :

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the investigation as the case may be.

(3)A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4)Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date

on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

43D (2) (b) of the UAPA:- after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

12. Section 43(C) of UAPA says that the provisions of Code of Criminal Procedure are applicable to the offences under UAPA.

13. Thus, as per Section 43(D) (2)(b) of the UAPA, the following are mandatory requirements. :-

- i. Filing of an affidavit stating the reasons for doing so.
- ii. Explain the delay, if any, for requesting such police custody.

14. In **Goutam Navlakha** (supra), the Apex Court held as follows:-

85. There is a scheme which is unravelled by the Code regarding detention of an Accused. The starting point appears to be the arrest and detention of the person in connection with the cognizable offence by a police officer without a warrant. He can detain him and question him in the course of the investigation. However, the officer cannot detain the Accused beyond 24 hours excluding the time taken for the journey from the place of arrest to the place where the Magistrate who is competent to try the case sits. If he cannot so produce the Accused and the investigation is incomplete, the officer is duty bound to produce the arrested person before the nearest Magistrate. The nearest Magistrate may or may not have jurisdiction. He may order the continued detention of the arrested person based on the request for remand. He would largely rely on the entries in the case diary and on being satisfied of the need for such remand which must be manifested by reasons. The Magistrate can order police custody during the first 15 days (in cases under UAPA, the first 30 days). **Beyond such period, the Magistrate may direct detention which is described as judicial custody or such other custody as he may think fit.** It is, no doubt, open to a Magistrate to refuse police custody completely during the first 15 days. He may give police custody during the first 15 days not in one go but in instalments. It is also open to the Magistrate to release the arrested person on bail.

127. Under Section 43(D)(2)(a), it is clear that the maximum period of police custody which is permissible has been increased from 15 days to 30 days. The further modification is that which is relevant which is incorporated in the second proviso. It contemplates that the investigating officer can seek with reasons and explaining the delay obtain the police custody of a person who is in judicial custody.

128. We would think that the position Under Section 167 as applicable in cases under UAPA is as follows: Undoubtedly, the period of 30 days is permissible by way of police custody. This Court will proceed on the basis

that the legislature is aware of the existing law when it brings the changes in the law. In other words, this Court had laid down in *Anupam Kulkarni* (supra), inter alia, that Under Section 167 which provides for 15 days as the maximum period of police custody, the custody of an Accused with the police can be given only during the first 15 days from the date of the remand by the Magistrate. Beyond 15 days, the remand can only be given to judicial custody. Ordinarily, since the period of 15 days has been increased to 30 days, the effect would be that in cases falling under UAPA applying the principle declared in *MANU/SC/0335/1992 : (1992) 3 SCC 141*, the investigating officer in a case under UAPA, can get police custody for a maximum period of 30 days but it must be within the first 30 days of the remand. In this regard, the number of days alone is increased for granting remand to police custody. The principle that it should be the first 30 days has not been altered in cases under UAPA. As far as the second proviso in Section 43(D)(2)(b) is concerned, it does bring about an alteration of the law in *Anupam Kulkarni* (supra). It is contemplated that a person who is remanded to judicial custody and NIA has not been given police custody during the first 30 days, on reasons being given and also on explaining the delay, Court may grant police custody. The proviso brings about the change in the law to the extent that if a person is in judicial custody on the basis of the remand, then on reasons given, explaining the delay, it is open to the Court to give police custody even beyond 30 days from the date of the first remand. We may notice that Section 49(2) of Prevention of Terrorism Act is parimateria which has been interpreted by this Court in *MANU/SC/0567/2004 : AIR 2004 SC 3946* and the decision does not advance the case of Appellant though that was a case where the police custody was sought of a person in judicial custody but beyond 30 days.

15. In **State of Maharashtra Vs. Pawankumar Fakrichand**

Uikey³, the Apex Court held as follows:-

“14. The Supreme Court while considering the effect of second proviso observed that, it does bring an alteration of the law in **Anupam J.Kulkarni** case. It is explained that as per proviso, if a person is remanded to Judicial Custody and the National Investigating Agency has not been given Police Custody during the first 30 days, then on reasons being given, Court may grant Police Custody”

16. Relying on the principle laid down in **Goutam** (supra), the Delhi High Court in **National Investigation Agency vs. Owais**

³Criminal Appeal No. 22 of 2023, dated 18.01.2023

Ahmad Dar held that second application filed seeking police custody by the Investigating Agency beyond thirty (30) days is not maintainable. Feeling aggrieved by the said judgment, the NIA has filed SLP vide Special Leave to Appeal (Crl.) No(s) 6599-6600/2022,. The said SLP is pending. There are no interim orders.

17. It is relevant to note that in **Central Bureau of Investigation vs. Vikas Mishra**⁴, the Apex Court, on examination of the facts of the case therein, held that second application filed seeking police custody is maintainable. In the said case, the accused was arrested on 16.04.2021, the police custody was given for a period of seven days i.e. till 22.04.2021. During the said period, the accused was admitted in hospital and thus, he could not be interrogated by CBI despite police custody remand. He was enlarged on interim bail on 21.04.2021. The same was extended from time to time till 08.12.2021. The said bail was cancelled on 09.12.2021 by the NIA Court. The CBI arrested him on 11.12.2021. He was remanded to judicial custody. From 12.12.2021 to 08.04.2022 he was in judicial custody and he got admitted into the hospital again from 07.05.2022 to 08.09.2022. He has filed default bail application. The same was dismissed by the

⁴ (2023) 6 SCC 49,

Special Court. On 19.07.2022, the CBI filed charge sheet, cognizance was taken against the accused. Challenging the said order of the Special Court rejecting the default bail application, he approached High Court. The High Court allowed the said application with direction to release the accused on statutory bail in terms of Section 167 (2) of Cr.P.C. on the ground that the CBI completed investigation and laid charge sheet within 90 days from the date of re-arrest on 11.12.2021. The charge sheet was not filed which came to be filed only on 19.07.2022. Challenging the said order, CBI approached the Apex Court by filing SLP. On examination of the said facts and also principle laid down by it in **CBI Vs. Anupam J. Kulkarni**⁵, the Apex Court held that second application filed by the CBI seeking Police custody is maintainable since the accused misused the bail granted to him and the bail was cancelled.

18. In **Abdul Raheem vs. State of Telangana**⁶, a Coordinate Bench of this Court, referring to Section 167 and 43(D) of NI Act and also relying on the principle laid down in **Goutam Navlakha** (supra), held that the application for police custody beyond 30 days is maintainable if there are good reasons for delay in moving such

⁵ (1992) 3 SCC 149,

⁶ (2023) SCC Online TS 508

application. The only embargo is that the application has to be moved, if the accused is in the judicial custody is completed, the application is not maintainable.

19. We respectfully agree with the view taken by the Coordinate Bench. Therefore, in our considered view, the second application filed by NIA in the present case seeking police custody of the accused beyond thirty days is maintainable.

20. It is apt to note that in the second application filed by the Investigating Officer, it is stated that pursuant to police custody given by Designated Court, the Investigating Officer has thoroughly interrogated the appellant during the police custody wherein he was confronted with his banking transactions with other associates and PFI and his links with other accused persons in the case. However, the accused could not give satisfactory reply towards the same and investigation in the said case is under progress. During the investigation, some new evidence has come forth against the accused which needs to be confronted with the accused to find out his role in commission of offence and to identify the other suspects involved in the case which cannot be otherwise done without one-to-one interrogation of the accused person. Thus, having contended that the

Investigating Officer has thoroughly interrogated the appellant during police custody, it cannot file second application contending that some new evidence has come forth against the accused which needs to be confronted with him. The said ground mentioned by the respondent/NIA is not a good ground for delay in moving the said application. The first police custody was expired on 10.07.2023 and the appellant was sent to judicial custody for a period of 14 days which was ended on 24.07.2023 and the same was further extended from time to time. Second application was filed only on 01.09.2023 that too, without mentioning good/satisfactory ground.

21. It is relevant to note that with regard to the contention of the respondent/Investigating Agency that during interrogation the appellant could not give satisfactory reply towards the transactions and he was silent, it is apt to note that to remain silent during the investigation is a fundamental right guaranteed to the appellant/A.31 as per Article 20(3) of the Constitution of India. Therefore, the respondent/Investigating Agency cannot contend that the appellant could not give satisfactory reply towards certain transactions and he was silent. The said aspects were not considered by the Designated Court in the impugned order dated 22.09.2023.

22. It is also apt to note that pursuant to the impugned order dated 22.09.2023, the appellant was taken to police custody on 25.09.2023 at 10.00 A.M. and this Court granted interim suspension of the impugned order on 27.09.2023. It is brought to the notice of this Court that the appellant was sent to judicial custody from police custody pursuant to the said order dated 27.09.2023. Thus, they have completed interrogation/ police custody for three days.

23. According to the appellant, the Investigating Officer in the subject crime tortured the appellant during first custody period. On the complaint made by him, the learned Designated Court has issued a memo dated 11.07.2023 to the Investigating Officer with a direction to submit explanation. One suspect in the said crime was committed suicide due to the unbearable torture by the Investigating Officer.

24. In the light of the aforesaid discussion, this appeal is allowed in part holding that second application filed by NIA seeking police custody beyond 30 days of remand of the accused is maintainable. However, the impugned order to the extent of granting 5 days police custody from 10.00 A.M. of 25.09.2023 to 4.30 P.M. of 29.09.2023 is set aside. Since the Investigating Officer has already interrogated the appellant in police custody for three days, the

Investigating Officer in the subject crime is not entitled for further interrogation of the appellant/A.31 for the remaining period of two days.

As a sequel, the miscellaneous applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

K. SUJANA, J

Date:29.02.2024

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