

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 420 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

JAYRAJSINH TEMUBHA JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 420 of 2004
MR SV RAJU with MR PS CHAUDHARY for Petitioner No. 1-9
MR AY KOGJE, APP PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/04/2004

ORAL JUDGEMENT

#. Rule. Mr.Kogje, learned APP waives service of rule for the respondent - State.

#. By filing this petition, the petitioners have prayed for the direction for quashing and setting aside the judgment and order dated 22.04.2004 passed by the learned Additional Sessions Judge at Gondal in Criminal Revision Application No.25 of 2004 whereby the learned Additional Sessions Judge partly allowed the Criminal Revision Application preferred by the State.

#. The petitioners are the accused who have been arrested in connection with the offence being C.R.No.I 25 of 2004 lodged with Gondal Police Station. The petitioners were arrested on 28.03.2004 in connection with the aforesaid offence and they were produced before the learned Chief Judicial Magistrate at Gondal on 29.03.2004. At the time when the petitioners were produced before the learned Chief Judicial Magistrate, the remand application seeking fourteen days remand of the petitioners was preferred. Learned Chief Judicial Magistrate, Gondal vide order dated 29.03.2004 was pleased to grant two days remand to police custody of the petitioners i.e. till 31.03.2004. Further on 31.03.2004, the accused were produced before the learned Magistrate and further remand of seven days was asked for. The learned Chief Judicial Magistrate vide order dated 31.03.2004 was pleased to reject the said application. Against the said order of rejecting further remand for a period of seven days of the petitioners, the respondent preferred revision application before the Sessions Court being Criminal Revision Application No.25 of 2004. As stated above, the learned Sessions Judge vide his order dated 22.04.2004, partly allowed the revision application. It is this order which is challenged under this petition at the instance of the petitioners.

#. Mr.S.V.Raju, learned counsel appearing for the petitioner submitted that so far as the remand application is concerned, it was partially allowed since it was rejected for 12 days. He submitted that the prosecution accepted the first order of remand since neither the prosecution has challenged the same before the Sessions Court nor the prosecution obtained stay against the order of the learned Magistrate refusing the remand for 12 days and waited for 13 days and on 31.3.2004 second application for remand was given wherein grounds are almost identical except one ground. He therefore submitted that by reasoned order the learned Magistrate rejected the second application for remand. He submitted that the prosecution waited for 13 days and thereafter filed a revision application before the

Sessions Court on 12.04.2004. In his submission, the prosecution cannot prefer the second application for remand since it is essentially seeking to review of the order of the learned Magistrate and therefore the prosecution ought to have challenged the first order of the learned Magistrate. He submitted that filing of second application for remand would amount to abuse of the process of Court as well as it would amount to circumventing so many provisions of the Act. He submitted that if the police remand is granted against the petitioners, it would violate the provisions of Section 167 of the Code of Criminal Procedure. He submitted that even on merits there is no case made out by the prosecution for granting the remand and therefore the impugned judgment and order passed by the learned Additional Sessions Judge deserves to be quashed and set aside.

#. In support of his arguments, Mr.Raju relied upon the decision in the case of Budh Singh V/s State of Punjab reported in (2000)9 S.C.C.266, head-note of which reads as under :

"Criminal Procedure Code, 1973 - S.167 - After expiry of period of 15 days of police remand, order for police remand for a further period of 7 days, held, violated S.167."

He also placed reliance on the decision in the case of C.B.I. Vs. New Delhi, reported in (1992) 3 SCC 141, head of which reads as under.:

"Criminal Procedure Code, 1973-S.167-Total period of remand to police or judicial custody shall initially be 15 days by a single order or several orders of Judicial Magistrate or 7 days by order/orders of Executive Magistrate, as the case may be - Period of remand ordered by Executive Magistrate shall be deducted in computing total period of custody - First period of detention shall be computed from the date of order of remand - After expiry of the period of first 15 days of custody, further remand for 90/60 days under proviso of sub-s.(2) shall only be to judicial custody - But in connection with a different offence alleged against the same accused in any other case there can again be an order of remand to police custody - If investigation remains incomplete even after expiry of 90/60 days of custody, accused shall be released on bail."

#. Mr.Kogje learned A.P.P., on the other-hand strongly opposed this petition. He submitted that the petitioners are involved in serious offences which are punishable, even by a capital punishment. He submitted that the petitioners preferred anticipatory bail before the learned Sessions Court at Gondal on 17.02.2004 which was granted. Thereafter, the State moved this Court challenging the order granting anticipatory bail on 21.02.2004 wherein this Court allowed the application of the State, whereby this Court cancelled the anticipatory bail granted in favour of the petitioners. He submitted that after 05.03.2004, neither the petitioners were available for investigation nor they have approached any of the Court. He submitted that petitioners were arrested on 28.03.2004 i.e. almost after 20 days and therefore the petitioners were not available for investigation in the intervening period. He submitted that first remand application was filed on 29.03.2004 and on that very day remand of two days was granted i.e. till 31.03.2004 and again on 31.03.2004, another application for extension of remand was preferred since the investigation was not completed. The said remand application was rejected by the learned Magistrate. He submitted that against that rejection of extension of remand, the prosecution preferred revision application on 12.04.2004, meaning thereby, 11 days after the rejection of the first extension or 13 days after the first remand, therefore it cannot be said that 15 days period from the date of first day of remand is expired before the State Government approaches the Sessions Court in revision. He submitted that granting of remand for two days does not amount to rejection of the application for remand for 12 days as well as it does not foreclose the right of the State for all time to come. He submitted that since there was progress in the investigation, it was brought to the notice of the learned Magistrate and considering the said fact, the learned Magistrate ought to have granted the extension of remand which rightly the learned Sessions Court has done it. He submitted that the order of granting the remand is always discretionary and since for 21 days the petitioners were not available for investigation, will this Court exercise its discretion in favour of the petitioner. He submitted that the petitioners are having criminal antecedents and therefore no discretion can be exercised in favour of the petitioners. He submitted that since for investigating the new facts, remand is required and therefore rightly the Sessions Court has granted remand against the petitioners and therefore the impugned judgment and order is just and proper which does not require any

interference by this Court, more particularly when the petitioners are not entitled to invoke any discretion from this Court.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and perused the material placed on record.

#. Section 167 of the Code provides that :

"(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 not 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 sub-section 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 in any custody under this section unless the accused is produced before him ;

(c) no Magistrate of the second class, not especially 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.]"

#. From the bare reading of Section 167 of the Code clearly suggests that there cannot be any detention in police custody, after the expiry of the first 15 days, so far as an accused is concerned. The Judicial Magistrate can in the first instance authorise the detention of the accused in either police or judicial custody from time to time but the total period of detention cannot exceed fifteen days in the whole. In CBI Vs. Anupam (supra) the Apex Court considered the scope and ambit of Section 167 of the Code and held that there cannot be any detention in police custody after the expiry of the first 15 days even in a case where some more offences either serious or otherwise committed by an accused in the same transaction come to light at a later stage. The Apex Court also clarified that the bar did not apply if the same arrested accused was involved in some other or different case arising out of a different transaction in which event the period of remand needs to be considered in respect to each of such cases.

##. Considering the facts of the case, it appears that the petitioners are involved in serious offences. It is pertinent to note here that the order granting the

anticipatory bail by the Sessions Court was cancelled by this Court. It also emerges on record that after 05.03.2004, the petitioners were neither available for investigation nor they have approached any of the Court. The first remand application was filed on 29.03.2004 and on that very day remand of two days was granted i.e. till 31.03.2004 and again on 31.03.2004, another application for extension of remand was preferred since the investigation was not completed as submitted by the learned APP. The prosecution preferred revision application on 12.04.2004, meaning thereby, 11 days after the rejection of the first extension or 13 days after the first remand, and therefore, in my opinion, it cannot be said that 15 days period from the date of first day of remand is expired before the State Government approaches the Sessions Court in revision. Considering the facts and circumstances of the case, more particularly the conduct of the petitioners to the effect that the petitioners were not available for 21 days for investigation, as well as for investigating the new facts, remand is required and therefore rightly the Sessions Court has granted remand against the petitioners. In the present case, having regard to the nature of offence and the stage of investigation, it cannot be said that grounds for such custody do not exist.

##. At this stage, reference is required to be made to the decision in the case of Kosanapu Ramreddy Vs. State of Andhra Pradesh and others, reported in AIR 1994 SC 1447, wherein in para 4, the Apex Court has observed as under.:

"4.We have considered the submissions of learned counsel on both sides. That a person held in judicial custody could, if circumstances justify, be transferred to police custody or viceversa within a period of 15 days referred to in S.167(2) of the Criminal Procedure Code, 1973 which by virtue of S.20 of the Terrorists and Disruptive Activities (Prevention) Act, 1987, is to be read as 60 days in this case - cannot be disputed. There must, of course, be sufficient grounds for such a change of custody. In the present case, having regard to the nature of offence and the stage of the investigations it cannot be said that grounds for such custody do not exist."

##. In that view of the matter and considering the judgment referred to above, this petition fails and the

same is rejected. The petitioners shall now be handed over from judicial custody to police custody on 3rd May 2004 at 11.00 a.m. for a period of five days, i.e. from 3rd to 7th May 2005 at 11.00 a.m. (both days inclusive) and they shall be produced before the concerned Magistrate on completion of the remand period. Rule is discharged.

(Sharad D.Dave,J)
(pathan)

After pronouncement of the aforesaid order, Mr.Raju, learned counsel appearing for the petitioners prays for the stay of this order for a period of four weeks. Mr.Kogje, learned APP opposed the prayer made by the learned counsel for the petitioners for stay of this order. In the facts and circumstances of the case, I am of the opinion that no stay should be granted as the investigation is at very crucial stage. Hence, request made by Mr.Raju for stay of this order is rejected.

(Sharad D.Dave,J)
(pathan)