

**HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**  
**Crl. Petn. No.36 of 2021**

Shri Goutam Kundu

.....Petitioner(s)

V E R S U S

Union of India and another

.....Respondent(s)

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For Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate,  
Mr. Sajit Chandra Sen, Advocate.

For Respondent(s) : Mr. Biswanath Majumder, CGC,  
Mr. A. Roy Barman, Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

**ORDER**

**30/09/2021**

Petitioner has challenged an order dated 15.12.2020 passed by the learned Special Judge of Prevention of Money Laundering Act refusing the request of the petitioner for production through video conferencing.

**[2]** Brief facts are as under :

The petitioner was the chairman of M/S Rose Valley group of companies. Against him and others an FIR was lodged by CID Tripura Police Station for offence punishable under Section 402 of IPC and pursuant to such FIR the Special Judge under the Prevention of Money Laundering Act initiated proceedings against the petitioner. In such proceedings production warrant was issued against the petitioner on

03.08.2018 dispatched to Superintendent of Presidency Correctional Home, Alipur, Kolkata where the petitioner was lodged in connection with other criminal cases. For variety of reasons, the petitioner could not be produced before the Special Court. In the meantime, as is well known coronavirus spread across the country. The petitioner's physical movement was, therefore, very difficult. On 03.09.2019 the petitioner made a prayer to the Superintendent of Presidency Correctional Home for his production before the Special Judge, West Tripura through video conferencing. The Special Judge by the impugned order dated 15.12.2020 rejected the request of the petitioner. In this order the learned Judge has referred to and relied upon Section 167(2), proviso clause (b) of Cr.P.C to come to the conclusion that when such production is taking place for the first time, the accused must be physically present. On subsequent occasions production through video conferencing may be permissible. Before the learned Judge, reliance was placed on Tripura Video Conferencing (Conduct of proceedings including recording of Evidence and Remands of accused in the Trial Courts) Rules, 2018 (hereinafter to be referred to as the said Rule). However, in view of the provisions contained in Cr.P.C the learned Judge was not impressed.

[3] Having heard learned counsel for the parties and having perused documents on record, in my opinion, the learned Judge has committed an error in refusing the request of the petitioner for production

through video conferencing. Section 267 of the Cr.P.C pertains to power to require attendance of prisoners. Sub-section (1) of Section 267 provides that whenever in the course of an inquiry, trial or other proceedings under the Code it appears to a criminal court that the person confined or detained in a prison should be brought before the Court for answering to a charge of an offence or for the purpose of any proceedings against him, or it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court. This provision does not contain any embargo with the aid of which applicability of the said Rules can be ruled out. If we peruse the said Rules, the preamble provides that in exercise of powers under Article 227 of the Constitution and Section 477 of the Cr.P.C the High Court had framed the Rules for the purpose of conducting proceedings including recording of evidence of witnesses and remand of accused in criminal cases through video conferencing. Sub-rule (4) of Rule 2 defines the term person to be examined in an inclusive manner as to include a person whose deposition or statement is required to be recorded or in whose presence certain proceedings are to be conducted. Sub-rule (2) of Rule 3 provides that video conferencing facility can be used in all criminal or civil or matrimonial matters including remands, bail hearing of the accused persons and examination of witnesses including the parties when they are residing at distance location in or outside the State or abroad

or when the witness happens to be a Medical Officer. Sub-rule (3) of Rule 3 also permits production of accused for remand in terms of Section 167(2)(b) of Cr.P.C through video conferencing. Rule 5 provides that the Court may either suo moto or on application of the party to the proceedings before it or by a witness for reasons to be recorded in writing direct that any person may give evidence or otherwise take part in the proceedings through video conferencing.

[4] The intention of framing of the Rules thus is to enable smooth conduct of judicial proceedings be it civil, criminal or matrimonial with the aid of the video conferencing facility. It can be used for various purposes including as noted above for examination of witnesses and production of the accused. Nothing contained in the said Rules limits the power of the criminal court to permit production of the accused through video conferencing, particularly when the accused so desires. Sub-rule 3 of Rule 3 refers to production of the accused for remand in terms of Section 167(2)(b) of Cr.P.C and therefore the powers contained in the said sub-rule can be exercised only subject to the limitations provided in the said section. To that extent, the learned Judge is right in referring to the requirement of the said provision. We would refer to the contents of the said provision later. For the time being it may be concluded that the limitations for production contained in Section 167(2)(b) of Cr.P.C need to be applied

only when the concerned Judge is resorting to the powers under sub-rule 3 of Rule 3 of the said Rules.

[5] We may now refer to Section 167 of Cr.P.C which pertains to procedure when investigation cannot be completed within 24 hours. Sub-section 1 of Section 167 requires the police authority to produce a person arrested or detained in custody before the nearest Judicial Magistrate within 24 hours of such arrest if investigation cannot be completed within such time. Sub-section (2) of Section 167 provides as to what would the Magistrate do when such production is made. The main body of sub-section (2) gives power to the Magistrate to authorize detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days in the whole. Clause (b) of the proviso to sub-section (2) of Section 167 reads as under :

“No Magistrate shall authorize 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.”

[6] As per this proviso thus no Magistrate can authorize detention of the accused in custody of the police unless the accused is produced before him in person for the first time and subsequently every time till the

accused remains in custody. The Magistrate may extend further detention in judicial custody upon production of the accused either in person or through the medium of electronic video linkage. This provision thus requires physical production of the accused for the first time before the Magistrate who may authorize his detention. Subsequent production can be through video linkage. However, the fundamental question is, does this provision in the present case apply at all?

[7] Section 167 of Cr.P.C as correctly pointed out by the counsel for the petitioner provides for a procedure when investigation cannot be completed within 24 hours. This provision would have no applicability when the investigation is complete and the trial has commenced. In the present case, upon completion of investigation against the petitioner, the trial had to commence which could not proceed without the presence of the petitioner. The petitioner being lodged in a jail in a different state and also looking to the coronavirus spread, he himself had requested that such production may be done through video conferencing. Section 167(2)(b) would not prevent the Court from granting such request. In fact, as noted, elaborate provisions have made in the said Rules to enable such production.

[8] Under the circumstances, impugned order dated 15.12.2020 is set aside. It is provided that the petitioner shall be produced before the

Special Court through video conferencing and without insisting on his physical presence before the Court on the future occasions, unless for reasons to be recorded in writing at an appropriate stage, the learned Judge may insist on his presence through video conferencing.

[9] Petition disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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