

(2023) 04 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petition No. 1168 Of 2023

Anil Jaisinghan And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 03-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(2), 226
Indian Penal Code, 1860 — Section 120(b), 385
Prevention Of Corruption Act, 1988 — Section 8, 12
Code Of Criminal Procedure, 1973 — Section 57, 167

Citation : (2023) 04 BOM CK 0011

Hon'ble Judges : A. S. Gadkari, J;Prakash D. Naik, J

Bench : Division Bench

Advocate : Mrigendra Singh, Parth Singh, Arya Jain, Priyanka Borude,, Mohit Bharadwaj, Manan Sanghai, Dr. Birendra Saraf, A.S. Pai, P.P, Geeta Mulekar

Final Decision : Dismissed

Judgement

A.S. Gadkari, J

1) The Petitioners have filed present Petition under Article 226 of the Constitution of India for their release from custody in CR No.28 of 2023 dated 20th February, 2023 registered with Malabar Hill Police Station, Mumbai under Sections 120(b) and 385 of the Indian Penal Code and under Sections 8 and 12 of Prevention of Corruption Act, on the ground that, from their arrest on 19th March, 2023 at about 11.45 p.m. near Godhra, State of Gujarat, they were not produced before the Magistrate within a period of 24 hours and therefore there is violation of Article 22(2) of the Constitution of India and Section 57 of the Code of Criminal Procedure (for short, " the Cr.P.C.").

2) Heard Mr. Mrigendra Singh, learned Senior counsel for the Petitioners and Dr. Saraf, learned Advocate General for the Respondent-State. Perused record produced before us.

3) Though the Petitioners have prayed for several reliefs in the prayer clause of the Petition, the learned Senior counsel for the Petitioners submitted that, he is restricting his relief for release of the Petitioners from custody of Respondent-State on the ground of breach of Article 22(2) of the Constitution of India and Section 57 of the Cr.P.C..

4) Mr. Mrigendra Singh, learned Senior counsel for the Petitioners submitted that, the Petitioners and in particular Petitioner No.1 was arrested at about 11.45 p.m. on 19th March, 2023 at Godhra, Gujarat and were produced for remand before the 45th Additional Sessions Judge, Mumbai on 21st March, 2023 i.e. after 36 hours of their arrest. That, the Press-Note issued under the signature of Dr. Balsingh Rajput dated 20th March, 2023 and electronic news duly supports the said fact. He submitted that, the Petitioners were not produced before the concerned Magistrate having jurisdiction over the place, where the Petitioners were arrested and were produced before the learned 45th Additional Sessions Judge, Mumbai after 36 hours from their arrest which is in violation of Article 22(2) of Constitution of India and Section 57 of the Cr.p.C. He submitted that, the Respondent-State did not obtain transit remand from the Magistrate in the State of Gujarat for bringing the Petitioners to Mumbai. The directions provided in the decision of Supreme Court in the case of D.K. Basu Vs. State of W.B. reported in (1997) 1 SCC 416 are not followed. That, the learned 45th Additional Sessions Judge, Mumbai has not taken into consideration the said aspect and remanded the Petitioners to police custody till 27th March, 2023. He submitted that, as there is breach of Section 57 of the Cr.P.C., the Petitioners are entitled to be released from custody of Respondent-State forthwith.

Learned Senior counsel tendered across the bar a compilation of six Judgments. However, he fairly submitted that, he is pressing into service only three decisions mentioned therein namely, (i) Gunupati Keshavram Reddy Vs. Nafisul Hasan & Anr. reported in (1952) 1 SCC 343 : 1952 SCC OnLine SC 26; (ii) Manoj Vs. State of M.P. reported in (1999) 3 SCC 715 and (iii) D.K. Basu Vs. State of W.B. reported in (1997) 1 SCC 416.

He therefore prayed that, the Petitioners' arrest and subsequent custody thereof may be declared as illegal and in violation of Article 22(2) of Constitution of India and Section 57 of the Cr.P.C..

5) Learned Advocate General appearing for the Respondent-State opposed the prayers sought in this Petition and at the outset submitted that, the Petitioner No.1 is a proclaimed offender by the learned Metropolitan Magistrate, 64th Court Esplanade, Mumbai in CR No.172 of 2016 registered with Azad Maidan Police Station. That, the Petitioner No.1 after interception was traced out near Bedia Naka within the jurisdiction of Vejalpur Police Station in the State of Gujarat at about 2.25 a.m. of 20th March, 2023 and was detained with the help of police of the said police station. That, the Petitioner No.1 was thereafter immediately brought to Mumbai on 20th March, 2023 at about 2.30 p.m. and after complying with legal formalities he was arrested at about 5.00 p.m.. That, the Petitioner

No.2 and the Driver of the car from which the Petitioners were travelling namely Mr. Pravin N. Parmar accompanied Petitioner No.1 to Mumbai, on their own will. He submitted that, after deducting the time of travel, the Petitioners were produced before the learned Additional Sessions Judge, Mumbai within a period of 24 hours as contemplated under Article 22(2) of the Constitution of India and Section 57 of the Cr.P.C. The requisite station diary entries were made. The guidelines issued by Apex Court regarding arrest of accused were followed. He submitted that, there are no merits in the Petition and the same may be dismissed.

6) In the case of Gunupati Keshavram Reddy Vs. Nafisul Hasan & Anr. (Supra), the detinue therein was arrested on 11th March, 1952 and till 18th March, 1952 he was not produced before a Magistrate but was detained in custody in breach of provisions of Article 22(2) of the Constitution of India and therefore the Supreme Court directed his release forthwith. In view thereof, placing reliance on the said decision by the Petitioners is of no avail to them.

There is no second opinion about the principles enunciated by the Supreme Court in the cases of Manoj Vs. State of M.P. (Supra) and D.K. Basu Vs. State of W.B. (Supra).

7) In the present case, after lodgement of crime No.28 of 2023 i.e. the crime in question, the Petitioner No.1 was not traceable. The record indicates that, the Petitioner No.1 has been declared as a proclaimed offender by the learned Metropolitan Magistrate, 64th Court, Esplanade Mumbai by its Order dated 24th July, 2018 in CR No.172 of 2016 registered with Azad Maidan Police Station, Mumbai. That, as per the technical analysis and investigation, the police team was following Petitioners in the area of Bardoli, Surat. The Vejalpur Police of State of Gujarat located three suspected persons in a car at Bedia Naka and the Mumbai Police were called at the said place for identification and verification. The Mumbai Police team identified one of the suspected person as a Petitioner No.1 who was absconding for many years and was also wanted in the present crime i.e. CR No.28 of 2023. The Petitioner No.1 was detained by the Mumbai Police team on 20th March, 2023 at about 2.25 a.m. at Vejalpur, State of Gujarat. Necessary legal formalities such as entry in the station diary etc. were completed and the Petitioners were initially brought to Talasari, District Palghar at about 9.25 a.m. of 20th March, 2023. The medical check up of the Petitioner No.1 was undertaken at Talasari Rural Hospital, District Palghar. The Petitioner No.2 and the Driver of their car namely Mr. Pravin N. Parmar accompanied Petitioner No.1 at their own will till Mumbai. The police team along with the Petitioners reached Cyber police station at Mumbai at about 2.00 p.m. on 20th March, 2023. Between 2.30 p.m. to 4.50 p.m. of 20th March, 2023, the personal search panchanama and other related legal formalities were complied with and the Petitioners were arrested at about 5.00 p.m. Necessary entry in the station diary has been effected. The Petitioners were thereafter referred for medical check-up which was completed at about 10.30 p.m. on the said date.

8) The Petitioners were thereafter produced before the learned 45th Additional Sessions Judge, Mumbai on 21st March, 2023 at about 11.00 a.m. along with a Remand Report/Application No.329 of 2023 of even date.

The Remand Report mentions that, the Petitioners were arrested on 20th March, 2023 at about 5.00 p.m. and it was a fresh remand. The learned Additional Sessions Judge, Mumbai took up the said Remand Report/Application for hearing at about 3.20 p.m. and after hearing the learned counsel for the Petitioners and the APP, was pleased to remand the Petitioners to police custody till 27th March, 2023. It is thus apparently clear that, the Petitioners were produced before the learned Additional Sessions Judge, at Mumbai within a period of 24 hours from their arrest.

9) A bare perusal of relevant paragraph of the said Press-Note dated 20th March, 2023 indicates that, it nowhere mentions that the Petitioners were arrested at about 11.45 p.m. of 19th March, 2023 at Godhra, Gujarat. From the aforesaid factual matrix, it is apparent that, the Petitioners and in particular Petitioner No.1 was detained in the wee hours between 19th March, 2023 and 20th March, 2023. As per the record, the Petitioner No.1 was located and accordingly detained at Vejalpur near Bedia Naka within the jurisdiction of Vejalpur Police Station, State of Gujarat at about 2.25 am. of 20th March, 2023 and therefore according to us, there is no substance in the contention of the learned Senior counsel for the Petitioners that, the Petitioners were arrested on 19th March, 2023. In the Order dated 21st March, 2023, passed by learned Sessions Judge on the Remand Report, it is observed that, accused were arrested on 20th March, 2023 at 5.00 p.m. after his proper identification as he was absconding in other cases. Except electronic news nothing is on record to show that accused were arrested on 19th March, 2023 at 11.45 p.m. The reasons putforth by Investigating Officer are satisfactory and therefore arrest cannot be said to be illegal. We have perused the Remand Report dated 21st March, 2023, wherein it is stated that, accused were arrested on 20th March, 2023 at 17.00 hrs. Arrest/search panchanama was recorded and reasons for arrest were informed to the accused. The guidelines issued by Supreme Court were followed at the time of their arrest. The information about arrest of accused was given to relative and acquaintance of accused.

10) Article 22(2) of Constitution of India states that, every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate. Whereas Section 57 of the Cr.PC provides that, no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

As noted above, the Petitioners were produced before the Court of competent jurisdiction within a period of 24 hours from the time of their arrest. Assuming for the sake of argument, they were detained at Vejalpur on 20th March, 2023 at about 2.25 a.m. after excluding the period of travel required for the said place to Mumbai, the Petitioners were thereafter produced before the concerned Court of competent jurisdiction within the stipulated period. According to us, in the present case there is no breach of Article 22(2) of Constitution of India and/or Section 57 of the Cr.P.C. is committed by the Respondent-State.

11) Petition being dehors of merits is accordingly dismissed.