

(2019) 11 DEL CK 0321

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 6018, 6019 Of 2019

Assistant Director, Directorate Of Enforcement

APPELLANT

Vs

Sunil Godhwani

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Evidence Act, 1872 — Section 145, 155

Code Of Criminal Procedure, 1973 — Section 167, 167(2), 169, 170

Citation : (2020) 266 DLT 255 : (2019) 10 AD(Delhi) 243

Hon'ble Judges : Chander Shekhar, J

Bench : Single Bench

Advocate : Amit Mahajan, Nitish Rana, Sanjana Rajput, Ali Khan, A.R.Aditya, Smriti Tripathi, Rahul Verma, Ramesh Gupta, Rajat Katyal, Naunidh S. Arora, Ajay Tusheer, Karan Jain, Manu Sharma, Ridhima Mandhar, Kartik Khanna, Vijay Singh

Final Decision : Allowed

Judgement

Chander Shekhar, J

1. The petitioner has filed both the petitions under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the

Constitution of India for setting aside the impugned orders dated 23.11.2019 passed in ECIR/05/DLZO-II/2019 by Additional Sessions Judge-02,

South-East, New Delhi (hereinafter referred to as the "Judge").

2. Learned Standing Counsel appearing on behalf of the petitioner submitted that the Judge has not applied its mind while refusing the police custody

for the purpose of custodial interrogation of the respondents and passed the order which is bereft of any sound reasoning.

3. It is the case of the petitioner that the offence started way-back in 2008 and

the offence of money laundering is complicated in nature requiring investigation of various aspects and the money trail. During the course of the investigation/interrogation, some of the proceeds of crime are found to be linked and siphoned off to foreign companies. The money trail which is found during investigation is required to be confronted and further investigated.

4. Learned Standing Counsel submitted that the custodial interrogation of the respondents is required to unearth the conspiracy which has been hatched by the respondents for the last 9/10 years. Hence, in view of the voluminous record, documents and the nature of transactions in the present matters, the Judge ought to have granted police custody of the respondents to the petitioner for the purpose of custodial interrogation.

5. It has also been submitted by the learned Standing Counsel that the matters involve public money and the accused/respondents are required to be confronted with the statements of other Directors, however, in case the police remand is not granted, the investigation would be hampered.

6. Learned Standing Counsel also submitted that the custodial interrogation of the respondents could not be completed during the period of 9 days, when the accused/respondents were in police custody, in view of voluminous record and documents as well as the statements which were required to be confronted to them and the time was not sufficient to confront all the materials collected and required to be confronted to them.

7. It has also been submitted by the learned Standing Counsel that the police custody of the respondents be granted till 28.11.2019.

8. Per contra, learned counsel for the respondents has strongly opposed the prayer of the petitioner for further police remand of the respondents and submitted that the petitioner is unnecessarily harassing the respondents in the false and fabricated case and there is nothing on record in view of the existing facts and circumstances which may justify the police remand of the respondents.

9. In CrI.M.C.6018/2019, learned Senior Counsel for the respondent Sunil Godhwani submitted that a perusal of the successive remand applications demonstrates the fact that no new ground has been surfaced for the extension of police custody of the respondent and the order dated 23.11.2019 passed by the Judge demonstrates substantial application of mind and it cannot

be said that it lacks sound reasoning. Learned Senior Counsel also submitted that in view of the existing Delhi High Court Rules, Magistrate should discourage tendency of Police to take remand to extort confession and Magistrate must be careful not to facilitate this object by readily granting police remand. Learned Senior Counsel also submitted that the money trail purportedly to be investigated by the investigating agency is already in their knowledge and thus, further police custody is unwarranted.

10. To substantiate his case, the learned Senior Counsel for the respondent relied upon certain judgments, such as, *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025; *T.N. Jayadesh v. State of Kerala*, 2015 SCC Online Del 9486; *Manubhai Ratilal Patel through Ushaben v. State of Gujarat & Ors.*, (2013) 1 Supreme Court Cases (Cri) 475; *Harsh Sawhney v. Union Territory (Chandigarh Admn.)*, (1978) 2 SCC 365; *Gaurav Gupta v. Director of Enforcement, Bail Application No.484/2015*; *Shameet Mukherjee v. C.B.I.*, Crl. Misc. Main No.1817/2003 and *State v. NMT Joy Immaculate*, 2004 Cri L J 2515.

11. In Crl.M.C.6019/2019, it was submitted by the learned counsel for the respondent Malvinder Mohan Singh that the contention or averment of the investigation agency that voluminous documents and e-mails were recovered and required to be confronted to the respondent during the period of his police custody, is a false submission and a mere eye-wash. To substantiate the same, the attention of the Court was drawn to the compilation filed by the learned counsel for the respondent wherein it was pointed out at page No.12 that vide seizure memo dated 01.08.2019, laptops, hard disks etc. were already seized from the possession of the respondent and the Managers of the respondent, from his office as well as his residence. Learned counsel further submitted that the afore-mentioned point was also argued before the Judge and the order dated 23.11.2019 was based upon this fact, however, the order could not reflect the same but that does not mean it was not argued before the Judge or the impugned order lacks sound reasoning or suffers from non-application of judicial mind.

12. In Crl.M.C.6019/2019, it has also been submitted by the learned counsel for the respondent that in view of Sections 145 and 155 of the Indian Evidence Act, 1872, the respondent cannot be confronted with the e-mail dumps of his Manager and, therefore, his further police custody is

unwarranted.

13. However, the learned counsels for both the respondents have not rebutted the contention of the petitioner about the voluminous record and/or that

the respondents have to be confronted with the Directors of the Companies and/or other persons who have, allegedly, made material disclosures

during investigation as well as with the documents recovered during searches.

14. It has been held by the Supreme Court in the matter of Satyajit Ballubhai Desai and Ors. v. State of Gujarat, (2014) 14 SCC 434:

“9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find

substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the

investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be

impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities

specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of

law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised

and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is

unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous

police officers which at times may be at the instance of an interested party also. But it is also equally true that the police custody although is not the

be-all and end-all of the whole investigation, yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The

legislature also noticed this and, has therefore, permitted limited police custody.”

15. At this juncture, it is pertinent to mention Section 167(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) which is extracted hereunder:

“(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 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 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 paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.]â??

16. Application of mind is sine qua non at the stage of granting or refusing the police custody of a person to the investigating agency.

17. The foremost question which arises for consideration is whether the Judge has properly applied his mind regarding the material available on record

and has given sufficient reasons in the impugned order or not while rejecting the police remand of the respondents.

18. The remand, admittedly, is a fundamental judicial function of a Magistrate; the Magistrate has to satisfy himself/herself that there are reasonable grounds and that the material placed before him justify the police remand of the accused. There may be circumstances in which the accused may provide intimation leading to discovery of material facts. It may be necessary to detain a person in order to conduct investigation without hindrances and to protect witnesses and persons connected with the victim of the crime. Sometimes, it may be required even to maintain law and order in the locality.

19. The investigating agency is required to bring to the notice of the Court the material collected against an arrested accused to persuade the Court to remand him into police custody for the purpose of further investigation and it is the duty of the Magistrate to satisfy itself that there are reasonable grounds and that the material placed before him, as discussed hereinabove, justify the police remand of the accused.

20. After satisfying himself regarding the adequacy of the grounds for the purpose of police detention or remand before passing the order of detention or remand, the Magistrate shall pass necessary orders only thereafter.

21. The Magistrate authorising remand under Section 167 of the Cr.P.C. can only examine the record to see whether there exists some material to justify the remand, however, the Magistrate cannot conduct a roving enquiry to test the sufficiency of material at this stage for the obvious reason that investigation would be at a nascent stage and the police are yet to file a report either under Section 169 or Section 170 of the Cr.P.C.

22. There is no doubt that while exercising jurisdiction to remand under Section 167 Cr.P.C., the Magistrate is not required to write an elaborate order granting or refusing remand. However, as the Magistrate acts judicially in deciding an application for remand, he is required to briefly set out his reasons. The practice of passing non-speaking order of police remand and mechanically extending or refusing the same is illegal and must be avoided.

23. It has also been held by the Supreme Court in the matter of Satyajit Ballubhai Desai and Ors. (supra) that it was incumbent upon the Magistrate to meticulously examine the facts and circumstances of each and every case before passing any order extending or refusing the police remand.

However, the impugned orders of the Judge, in the present cases, are almost

bereft of any sound and proper reasoning, hence, the same, as is evident, are beyond comprehension. The orders demonstrate that almost no proper and/or reasonable reasons had been assigned while dismissing the applications of the petitioner. The Judge appears to have adopted a casual and a mechanical approach while dismissing the application of the petitioner without scrutinizing the specific contentions of the petitioner.

24. The case of the petitioner, in nut-shell, is that the Judge has not applied its mind while refusing the police custody for the purpose of custodial interrogation of the respondents and passed the order which is bereft of any sound reasoning. The custodial interrogation of the respondents could not be completed during the period of 9 days when the accused/respondents were in police custody in view of voluminous record and documents as well as the statements which were required to be confronted to them and the time was not sufficient to confront all the material collected and required to be confronted to them. The custodial interrogation of the respondents is required to unearth the conspiracy which has been hatched by the respondents for the last 9/10 years; the matter involves public money and further that the accused/respondents are required to be confronted with the statements of other Directors/public persons and in case the police remand is not granted, the investigation would be hampered. The offence stated to have started way-back in 2008 and the offence of money laundering is complicated in nature requiring investigation of various aspects and the money trail. During the course of the investigation/interrogation, some of the proceeds of crime are, allegedly, found to be linked and siphoned off to foreign companies. The money trail which is found during investigation is required to be confronted and further investigated. In view of the voluminous record, documents and the nature of transactions in the present matters, the Judge ought to have granted police custody of the respondents to the petitioner for the purpose of custodial interrogation till 28.11.2019.

25. There is no dispute about the law laid down in the judgments and the rules relied upon by the respondents, however, the judgments are not of much help to the respondents, as the facts of the present case are not *pari materia* with the facts of those cases.

26. Accordingly, in view of the aforesaid grounds, clear, cogent, valid and weighty reasons stated by the petitioner for the enhancement of the period

of police remand, alleged gravity of the offences and to unearth the conspiracy in the matter, the existing facts and circumstances prima facie justify

the police remand of the respondents/accused. The police remand, all the more, is essential in the matter for the purpose of proper investigation, failing

which the investigation may hamper. The application, to my mind, discloses and assigns convincing reasons why investigation cannot proceed further

without seeking police remand of the respondent/accused. Hence, this Court is of the opinion that the custodial interrogation of the respondents is

required for the purpose of further investigation in the matter.

27. In view of the above, the impugned orders dated 23.11.2019 are set aside and the respondents are remanded to the custody of the Directorate of

Enforcement till 28.11.2019. The Jail Superintendent concerned is directed to handover the custody of the respondents to the Investigating Officer of

the case for custodial interrogation.

28. The respondents shall be produced before the concerned competent Court immediately after the expiry of the remand period by the Investigating

Officer for passing appropriate orders in accordance with law.

29. The petitions are accordingly allowed.