
(2016) 04 CAL CK 0003

In the Calcutta High Court

Case No : C.R.M. 2439 of 2016 and C.R.R. 1107 of 2016

Parimal Kumar Lodh and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)(i)
Penal Code, 1860 (IPC) — Section 380

Citation : (2016) 2 CalCriLR 566 : (2016) 3 CalHCN 528

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : K.J. Tewari and M.K. Das, Advocates, for the Appellant; Pawan Kr. Gupta, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Joymalya Bagchi, J.—1. The two applications are taken up together for hearing and are disposed of by a common judgment and order.

2. In CRM 2439 of 2016 the accused seeks bail whereas in CRR 1107 of 2016 order dated 18th March, 2016 rejecting the prayer for police remand has been assailed at the behest of the de facto complainant.

3. The factual matrix giving rise to the aforesaid proceedings is that a first information report was registered under Section 380 of the Indian Penal Code by the de facto complainant alleging that the petitioner who was an employee of the de facto complainant had committed theft of Rs. 25 lakhs from the room of the de facto complainant while he had gone abroad. In course of investigation, the accused was arrested on 19th November, 2015 and on 20th November, 2015 he was remanded to police custody for a day. On the next day, that is on 21st November, 2015 the prayer for further police remand was not considered and the learned Magistrate released the accused on bail. Such order of bail was assailed before this Court in CRM 11243 of 2015 and by order dated 02.02.2016 a learned Single Judge of this Court cancelled the order of bail and directed the

accused to surrender before the Court below within a week from date. In the said order, this Court observed that the learned Magistrate shall pass a reasoned order on the prayer of the investigating officer for further police custody. The accused did not appear before the learned Magistrate as directed by this Court and on 16.02.2016 a prayer was made for issuance of warrant of arrest against him. Finally on 15.03.2016 the accused surrendered before the learned Magistrate and was remanded to judicial custody till 29.03.2016. On 18.03.2016 the investigating agency renewed its prayer for further police custody in terms of the liberty given by this Court in CRM 11243 of 2015 vide order dated 02.02.2016. However, such prayer for police custody was turned down by the Magistrate, inter alia, holding that no police custody could be granted after completion of 14 days from date of production of the accused in terms of Section 167(2)(i) Cr.P.C. Such order came to be challenged before this Court in CRR 1107 of 2016.

4. Mr. Tewari, learned counsel appearing for the accused submitted that there is an inordinate delay in lodging the first information report. Such delay has not been explained and the allegation of theft of Rs. 25 lakhs from a room which was under lock and key is patently absurd and inherently improbable. He further submitted that no worthwhile purpose will be served in permitting police remand at such belated stage and in the factual matrix of the case the petitioner is entitled to be released on bail. He relied on , (2010) 6 SCC 753 (Devender Kumar & Anr. v. State of Haryana & Ors.); , (1992) 3 SCC 141 (Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni); and , 2005 Vol. 1 Calcutta Criminal Law Reporter 52 (State of West Bengal v. Debanjan Das & Ors.) in support of his contention.

5. Per contra, Mr. Bhattacharya, learned counsel for the de facto complainant submitted that the order dated 18.03.2016 was not only perverse but contrary to the direction of this Court in CRM11243 of 2015. He further submitted that the prayer for police custody was illegally refused inasmuch as the first 15 days of detention of the accused in custody had not lapsed on 18.03.2016 and the learned Magistrate misdirected himself on that score. He further submitted that in the event prayer for police custody was illegally turned down by the Court due to no fault on the part of the investigating officer, there is ample power in the Court to set aside the order and remedy the wrong by directing remand of the accused to police custody. He relied on , 2008 (3) All India Criminal Law Reporter 452 (The State of West Bengal v. Aftab @ Aftab Ansari & Anr.) and , (2016) 1 SCC 507 (Central Bureau of Investigation v. Rathin Dandapat) (paragraph 14).

6. Mr. Pawan Kr. Gupta, learned counsel appearing for the investigating agency supported the prayer of the de facto complainant and submitted that progress of investigation required further police remand for recovery of stolen money.

7. First let me consider as to whether the prayer for police custody was rightly turned down by the learned Magistrate or not. The bail of the accused was cancelled in CRM 11243 of 2015 by order dated 02.02.2016 and he was directed

to surrender before the Magistrate within a week from date. By the self-same order the learned Magistrate was directed to pass reasoned order on the investigating officer's application for the further police remand dated 21.11.2015.

8. Pursuant to such direction, the accused surrendered before the Magistrate as late as on 15.03.2016. Hence, first 15 days of detention of the accused had not lapsed on 18.03.2016 when the learned Magistrate considered the prayer for further police remand in terms of the direction of this Court, as aforesaid. The learned Magistrate, however, completely misdirected himself and came to a patently erroneous finding that he had no jurisdiction to grant police remand inasmuch as first 15 days of detention of the accused had already lapsed. Such order of the Magistrate being wholly perverse and contrary to the materials on record is, therefore, liable to be set aside. The consequential question is whether the investigating agency is entitled to seek police remand after lapse of 26 days of detention of the accused in custody in the factual matrix of this case. On this score, Mr. Tewari has strenuously argued that the law declared in *Anupam J. Kulkarni* (supra) and *Devender Kumar* (supra) categorically prohibits a Court from granting police remand after first 15 days" of detention. He also relied on a Single Bench decision of this Court in *Debanjan Das* (supra).

9. On the other hand, Mr. Bhattacharya submitted that in the event the prayer for police custody had been sought for within first 15 days of detention and had been illegally turned down, such erroneous act of the Court cannot deny a valuable right to the investigating agency to utilize custodial interrogation of the accused for the purposes of investigation. In this regard he has referred to various authorities, as aforesaid.

10. It is trite law that an act of Court shall prejudice no man. The interrogation of an accused in closed police custody is an essential feature of investigation particularly in a case relating to recovery of stolen articles. Under such circumstances, the investigating agency had in fact made a prayer for further police custody of the accused on 21st November, 2015 after he had been arrested on 19th November, 2015. Such prayer was turned down and the accused was enlarged on bail. This Court had cancelled the prayer for bail by order dated 02.02.2016 and directed the accused to surrender and further directed the learned Magistrate to consider the prayer for further police remand as made on 21st November, 2015. Upon surrender of the accused on 15.03.2016 the learned Magistrate considered the prayer for police remand and turned it down on the erroneously finding that the first 15 days of detention had already passed and accordingly he had no jurisdiction to entertain such prayer. Such finding is wholly perverse inasmuch as the accused was hardly in custody for more than 5 days on 18.03.2016 when the prayer for police remand was considered by the learned Magistrate. Such illegal order was promptly challenged by the de facto complainant on 28th March, 2016 and has also been supported by the investigating agency. It is, therefore, clear that the denial of police custody to the investigating agency in the instant case was not due to any fault

on the part of such agency or due to operation of any supervening circumstance beyond the control of the parties, namely, state of health of the accused person etc. On the other hand, the denial of such right was due to an erroneous order passed by the Court below. Hence, merely setting aside the impugned order dated 18.3.2016 rejecting police remand would not cure the prejudice caused to the entitlement of the investigating agency to seek police remand which was scuttled by the said illegal order of the Magistrate. Investigating agency had rightly availed of its valuable right to seek police remand within the first 15 days of detention of the accused but was denied the same due to a wrong order passed by the Court. Applying the maxim "*actus curiae neminem gravabit*" to the facts of the case, it is held that such erroneous order cannot defeat the right to seek police remand and the matter is accordingly remitted to the Magistrate for consideration of the prayer for further police remand as if such consideration is being made as on 18.3.2016.

11. The authorities relied upon by Mr. Tewari are factually distinguishable. In *Anupam J. Kulkarni (supra)*, the prayer for police remand, in fact, was granted by the Magistrate but could not be availed of due to the health condition of the accused. Under such circumstances, the Apex Court held that further prayer for police remand could not have been entertained and granted after lapse of 15 days of detention. In the instant case further prayer for police remand was within the stipulated period but was illegally denied by the Court. Hence, the ratio of the aforesaid report is of no assistance to the petitioner. Similarly, in *Devender Kumar (supra)* initially police remand was given within first 15 days of detention. Subsequent police remand was sought for by the investigating agency after the expiry of first 15 days of detention. Such is not the factual situation in the instant case wherein the investigating agency having made its prayer for further police remand within the stipulated time was illegally denied of the same due to erroneous order by the Court. In *Debanjan Das (supra)* the prayer for police remand was considered after the period of 15 days of initial detention and hence, the said authority is also factually distinguishable from the instant case where the prayer was considered and illegally turned down within the aforesaid stipulated period. On the other hand, in *C.B.I. v. Rathin Dandapat (supra)*, the Apex Court at paragraph-14 of the said report directed police custody of the accused much after 15 days of initial detention after setting aside the illegal order refusing such custody.

12. For the aforesaid reasons, I am not inclined in granting bail to the accused. I direct the learned Magistrate to consider the prayer for further police remand of the accused forthwith positively by Friday i.e. 08.04.2016 and pass appropriate order thereon in accordance with law in the light of the observations made in this order.

13. With the aforesaid directions, both the applications are disposed of.

14. Let a Plain Copy of this order, duly countersigned by the Assistant Registrar (Court) be given to the parties upon usual undertakings.