
(2004) 05 GUJ CK 0027
In the Gujarat High Court

Shashibala Sharma, Trustee and Principal APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 03-05-2004

Acts Referred:

Constitution of India, 1950 — Article 22(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 119, 119, 120(b), 306, 306

Citation : (2004) 2 GLR 1393

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Judgement

C.K. Buch, J.—Rule. Mr. A.D. Oza, learned Public Prosecutor, waives formal service of Rule. The Revision Application is taken up for final disposal in view of the order dated 30th April, 2004 passed by This Court.

2. The petitioner-accused has challenged the order dated 29th April, 2004 passed by the learned Chief Metropolitan Magistrate, Ahmedabad, whereby the learned Magistrate was pleased to grant police remand of the accused persons to the Investigating Agency till 6th May, 2004. It is contended that the said order is illegal and it suffers from vice of non-application of mind, and it is also contrary to the settled principle of law. The petitioner-accused is a lady and even as per the allegations made in the complaint, most of the evidence is required to be collected and recorded either in the nature of documents or from the witnesses concerned to the administration of the school managed by the petitioner-accused. There is no need of custodial interrogation of the petitioner. There is no apprehension of throttling of investigation in absence of the petitioner-accused. The learned Magistrate has, according to the petitioner, committed a gross error on facts as well as on law-point in the background of one fact that all relevant records have been seized by the District Education Officer and if the police is otherwise interested in any other relevant record, it is possible to carry out investigation without obtaining the police remand of the petitioner.

3. To appreciate the contentions and the grounds mentioned in the memo, the petitioner has stated the facts mainly in Paras 3 to 6 of the memo. Undisputedly, the police has registered an F.I.R. on 14th April, 2004 on the complaint made by one Mr. Jashvantkumar Pathak, serving with the office of the District Education Officer, on the strength of the instructions given to him by the District Education Officer for the offences punishable under Sections 306, 119, 420, 409, 467, 468, 471 read with 120(b) of the Indian Penal Code. In the complaint, the present petitioner and three other persons are named as the accused at present. One of the submissions of the petitioner is that she is being victimized by concocting a false story of a criminal wrong placing vague allegations against her because the Gujarat Secondary Education Tribunal at Ahmedabad, on 7th April, 2004 in two different Execution petitions, had made certain observations against the District Education Officer and that too to the effect that the District Education Officer has not complied with the direction of the learned Tribunal amounting to the Contempt of Court and on the very next day i.e., on 8th April, 2004, at about 8-00 a.m., the said District Education Officer Mr. Chavda, along with other staff ransack the school premises and seized all the records of the school, which is a minority institution, without any authority. The entire affair which was started on 8th April, 2004, has resulted into an act of filing a false complaint on vague allegations. Mr. K.S. Nanavati, learned Senior Counsel appearing for Nanavati Associates, has pointed out that as per the case of the prosecution, the petitioner is involved in misappropriating the Government money worth Rs. 12 crores given to the school, wherein the petitioner is a Principal and a Trustee. But in reality, the grant received by the institution for the last 20 years is not even more than Rs. 4 to 6 crores.

4. Mr. Nanavati, learned Senior Counsel appearing for the petitioner, has submitted that no ground for granting police remand is emerging from the report submitted by the Investigating Officer. Merely because the Investigating Agency was entrusted the investigation at a later stage by itself cannot be said to be a ground for asking police custody of the petitioner-accused and the learned Magistrate by passing a small cryptic order has granted seven days police remand without any necessity and the same is contrary to law and the facts which were placed before the learned Magistrate.

5. Mr. Nanavati, in support of his submission, has taken me through various factual aspects and the law relevant in this regard. While canvassing the legal submissions, Mr. Nanavati has placed reliance on two different decisions i.e., (i) *Jairajsinh Temubha Jadeja Vs. State of Gujarat*, , and (ii) *Joginder Kumar Vs. State of U.P. and others*, . Mr. Nanavati has taken me through the relevant Para Nos. 8, 10, 14 and 15 of the decision in the case of *Jairajsinh* (supra). In the same way, he has also placed reliance on Para Nos. 13 and 23 of the decision of the Apex Court in the case of *Joginder Kumar* (supra). According to Mr. Nanavati, there were no facts under which a satisfaction can be recorded that the presence of the accused in the police custody is absolutely necessary. When the police pressed for remand with a view to get support in the process of investigation and

to have custodial interrogation of the accused, the learned Magistrate shall have to look into the evidence and material collected by the Investigating Agency. Therefore, it is imperative for the Police Officer to transmit the case diary to the Magistrate. Remand to police custody should not be granted to collect the material and evidence when there is no prima facie or at least sufficient material collected by the Investigating Officer, especially when it is otherwise possible to collect the evidence from other witnesses and sources by the Investigating Officer. Impossibility for the police authority to go further in the investigation unless emerges from record or other circumstances, the grant of police remand cannot be held to be justified. The submission of Mr. Nanavati, which is based on settled proposition of law, has enough force.

6. However, while resisting the Revision Application, Mr. A.D. Oza, learned Public Prosecutor, has hammered that the petitioner-accused is the king conspirator and a clever white-collar criminal. It is difficult to get any clue as to certain details i.e., the details of certain bank accounts and other missing records, etc. In first 24 hours, the petitioner-accused had not co-operated at all with the Investigating Agency and she was pretending to be a very sick lady. A lady officer was pursuing her to co-operate, and thus, because of conduct of total non-co-operation, the Investigating Agency was compelled to pray for police remand. The nature of allegation made in the complaint is that several dummy teachers have been employed in a grant-in-aid school and as the school headed by the petitioner as a Principal, is having a status of a minority institution, the Trust managing this very school is enjoying many privileges and favours under the relevant law and the rules framed thereunder, and hence, it is difficult for the District Education Officer and the Government machinery to have the details in the area where serious wrong has been committed, and therefore, custodial remand was found bare necessity. The petitioner is required to be confronted in presence of number of prosecution witnesses and their handwritings including the colour photographs which are received by the Investigating Agency from the concerned branches of U.T.I. Bank and State Bank of India, are also required to be investigated. Most of the family members including her son i.e., total four persons, are involved in the said offences and they were employed or given financial advantage from the very school under one or the other pretext. In the same way, the petitioner has attempted to usurp huge amount in the name of a teacher who has expired much earlier and the petitioner is the master-mind, according to prosecution, in preparing the pension papers, and thereby, misappropriating the amount of pension in the name of a deceased employee. The gravity of the offence is undisputedly very high and that too in the field of education. The grant of police remand was not required, but to have an effect of deterrence, the police have prayed for seven days remand and the learned Chief Metropolitan Magistrate considering the totality of facts and circumstances of the case and the methodology adopted and also considering the parents and children concerned with the school in question, has granted police remand. Mr. A.D. Oza, learned Public Prosecutor, has submitted that about 400 to 500 dummy students

are enrolled and the police is not getting the clue even as to the addresses of the teachers, who were on pay-roll on the date of surprise checking, as only 27 teachers were available. Unless the petitioner co-operates with the Investigating Agency during her interrogation by the police, it is not possible for the police to proceed effectively in the investigation of the crime. Mr. Oza has placed reliance on two following decisions: (i) reported in Ram Narain Poply, Pramod Kumar Manocha, Vinayak Narayan Deosthali and Harshad S. Mehta Vs. Central Bureau of Investigation and Others, Ram Narain Poly v. Central Bureau of Investigation (Head Notes B, C and E), and State Rep. by the C.B.I. Vs. Anil Sharma, State Rep. by C.B.I, v. Anil Sharma (Re. Para 6).

These authorities are with regard to either bail or anticipatory bail. It is true that the law on the point of bail and on the point of police remand, both are concerned with the liberty of an individual, but the criteria which is required to be looked into is materially different. So, the decisions cited by Mr. Oza, would not help the Investigating Agency. It is true that looking to the complexity of the crime and interrogation of the accused with regard to several documents and number of witnesses, the police was not wholly justified in asking for police remand, but it would be wrong to say that grant of police remand would create more convenience in investigation or the investigation would run otherwise smoothly, are good grounds to pray for further custody of the accused and not granting police remand on such contingency.

7. Having considered the rival contentions and the facts emerging from record including the reasons for granting seven days police remand of the petitioner-accused and another accused Smt. Chhayaben Bhavsar, it is apparent that grant of police remand for seven days is erroneous. If the averments made in 11 different paragraphs are accepted as they are, even though there was scope to make distinction for two accused persons namely the present petitioner and Smt. Chhayaben w/o. Shreyas B. Bhavsar. The Court is not concerned with the order of grant of police remand so far as Smt. Chhayaben Bhavsar is concerned because she has not challenged the order passed by the learned Magistrate, but this very fact that there was scope to make distinction between the two accused persons, indirectly implicates non-application of mind. The order passed by the learned Magistrate is erroneous also on the ground that the element of justification is not emerging from the reasons assigned by the learned Magistrate for granting seven days police remand of the alleged accused persons, where most of the evidence is documentary and substantial part of such document has been either seized by the police officer or has been collected by the Investigating Agency. The scope of finding out some material part of relevant documents, which are of the nature that can be found out mainly from the custody of some of the prosecution witnesses including the Bank authorities, Government Treasury, Education Department and the officers who have served as the District Education Officer in the district Ahmedabad, it is true that requirement of the petitioner-accused to confront her in presence of some important prosecution witnesses may help the Investigating Agency and to obtain handwriting in

different languages viz. Hindi, English and/or Gujarati, which may also consume some time. Taking of finger-prints of the petitioner, even if required, this exercise can be completed in a couple of hours. It is true that most of the police officials must be busy with the duties of parliamentary election upto 20 to 23 April, 2004, but the learned Magistrate has not even cared to consider as to whether any shorter period would serve the purpose. I am in agreement to the submissions of Mr. Oza, that a white-collar criminal having a sound economic background and some influence in the society direct or indirect have developed tendency not to co-operate with the Investigating Agency under hopes that somebody would rush to rescue and some effect of paralysis in the smooth investigation can be introduced. So, the Courts while dealing with the request to grant police remand in the cases of large financial scam and where public money is involved and the criminal is undisputedly a white-collar, then the principle propounded by the Court in other cases i.e. the cases of the accused involved in offence punishable u/s 302 or other property offences like robbery, theft, etc., should not be applied mechanically. The ratio being well propounded shall have to be applied, but in the background of the facts of each case, so, I am not in agreement to the submission of Mr. Nanavati that in the present case the petitioner ought not have been handed over to the police for custodial interrogation even for an hour. But there is no justification emerging from record as well as reasons assigned by the learned Magistrate that this is a case wherein police remand of seven days is otherwise required to be granted. It is possible in such cases to grant remand for a very short period and to evaluate the situation in the progress of the investigation, when the Court (sic. Code) itself has quantified the period of remand i.e., 15 days under the relevant Section, then grant of remand of seven days at a stretch and that too in a case where most of the evidence is in the nature of documents and the persons involved in the alleged conspiracy are probably in a limited circumference, the grant of seven days remand indicates nothing, but non-application of mind. I would like to reproduce the relevant part of the decision in the case of *Jairajsinh Jadeja (supra)*, which is as under:

This Court, therefore, would be required to go into the principles that when the remand to the police custody can be ordered. The principle of granting or not granting remand is always depending upon the facts and circumstances of the case and collection of evidence by Investigating Agency. On that evidence, the Investigating Agency may ask for the remand of accused persons for further investigation i.e., to say that the Investigating Agency has to make out a case that certain evidence is collected against the accused and without the custodial investigation, no further investigation is possible and if the remand is not granted, the investigation would be throttled. These are the ordinary principle of granting or not granting the remand and it depends upon the facts of each case to grant or not to grant the remand. After keeping in mind the legal principles established by the Court, it will be useful to refer to a decision of This Court on which reliance has been placed by both the side in the matter of *Siyaram Gopichand Gupta and Others Vs. The State of Gujarat*, wherein after referring

many decisions of the Apex Court, This Court quoted in Para 23, the words of Lewis Mayers as under:

To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other hand, is a perennial problem of statecraft.

In the very judgment, it is further observed that:

The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers. Article 22(2) of the Constitution of India and Section 57 of Criminal Procedure Code, give a mandate that every person who is arrested and detained in police custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest." The Apex Court further observed that "these two provisions clearly manifest the intention of the law in this regard, and therefore, it is the Magistrate who has to judicially scrutinise circumstances and if satisfied can order the detention of the accused in police custody. Section 167(3) requires that the Magistrate should give reasons for authorising the detention in the custody of the police. It can be thus seen that the whole scheme underlying the Section is intended to limit the period of police custody." From the above, it is clear that the granting of the remand is an exception and not the rule and for that the Investigating Agency is required to make out a case.

8. There is some strength in the submission of learned senior Counsel Mr. Nanavati that on going through the grounds mentioned in the report submitted by the Investigating Agency for granting remand, it appears that most of the grounds do not disclose any necessity or give details under which it can be concluded that there are sufficient grounds to come to a conclusion that the police custody is necessary for investigation. Referring the case of Nandini Satpathy Vs. P.L. Dani and Another, and in the case of Santokben Sarmon Jadeja v. State of Gujarat, SLP No. 4336 of 1995, decided on 22nd January, 1996 Coram: Hon"ble the Chief Justice of India, Hon"ble Ms. Justice Sujata V. Manohar and Hon"ble Mr. Justice K. Venkataswami in the background of the facts of the present case, the Court finds that there is no justification in granting seven days remand to the petitioner. The remand of a day or two maximum could have served the purpose. The Apex Court in the case of Nandini Satpathy has observed as under:

32. We will now answer the questions suggested at the beginning and advert to the decisions of our Court which set the tone and temper of the "silence" clause and bind us willy-nilly. We have earlier explained why we regard Section 161(2) as a sort of parliamentary commentary on Article 20(3). So, the first point to decide is whether the police have power under Sees. 160 and 161 of the Criminal Procedure Code to question a person, who then was or in the further may incarnate as an accused person. The Privy Council and This Court have held that the scope of Section 161 does include actual accused and suspects, and we

deferentially agree without repeating the detailed reasons urged before us by Counsel.

9. I would like to reproduce Paras 13 and 23 of the decision in the case of Joginder Kumar (supra) because they are relevant for the purpose:

13. The National Police Commission in its Third Report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed thus:

It is obvious that a major portion of the arrests were connected with very minor prosecutions, and cannot therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 percent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.

23. In India, Third Report of the National Police Commission at page 32 also suggested:

....An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is like to abscond and evade the process of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest thereby clarifying his conformity to the specified guidelines....

10. It is true that the facts in the case of Santokben Jadeja (supra) are materially different. But This Court considered the finding recorded as relevant because it is a case wherein the police has attempted to obtain police remand for the custodial investigation of the petitioner and that too on the ground of her alleged involvement in a very serious offence. The Court is given some details by the Investigating Officer, who was present in the Court at the time of hearing this Revision, and the report giving details of non-co-operation by the petitioner-

accused with the signature of a Senior Lady Police Officer i.e. Assistant Commissioner of Police, Crime Branch (Women Cell), City of Ahmedabad. But in response to the query raised by the Court, learned Senior Counsel Mr. Nanavati has submitted that till date the petitioner-accused has cooperated with the Investigating Agency and she will continue to co-operate.

11.1 Today before This Court could pronounce the judgment at 2-15 p.m., the learned Public Prosecutor Mr. A.D. Oza, appeared at 11-00 sharp and submitted that considering the development and the nature of other clues, which have been received by the Investigating Agency, there should not be any curtailment in the period of remand. It is very likely that the Investigating Officer may have to take the accused outside the boundaries of Ahmedabad City and unless the accused is with the Investigating Agency, the Investigating Agency may not be in a position to process further with the investigation in an efficient manner. The stand of the Investigation Officer has been placed before the Court by Mr. Oza, and I have perused the same. It is true that while dealing with the order under challenge of granting police remand, the Court has to consider other aspects vis-a-vis the right of liberty as an individual that of the accused. If it emerges that, considering the fact of a particular case, necessity to investigate further exists, the order of remand or its extension for a reasonable period can be granted. But, simultaneously it is also well settled principle of law that if the interrogation of the accused is possible even when the accused is in judicial custody, then there are possibilities to confront the accused in light of the facts that the Investigating Agency may gather in the process of investigation when the accused is in judicial custody, then the point of necessity or requirement of the custodial remand should not be encouraged.

11.2 As discussed above, there is some element of non-application of mind by the learned Chief Metropolitan Magistrate, Ahmedabad, qua one another accused i.e. Chhayaben Bhavsar and the Court has straightaway granted police remand for seven days in the case of the present petitioner also, the anxiety expressed by the Investigating Agency before the Court is not prima facie well found, and therefore, the order of granting police remand for seven days shall have to be disturbed.

12. The learned Chief Metropolitan Magistrate, Ahmedabad, after granting police remand refused to grant any stay of operation of the order of remand, so while hearing this Revision Application, the petitioner-accused was in police custody and the interrogation was going on and as the order under challenge was implemented obviously, no formal stay was granted by This Court as to operation of the order under challenge.

13. This Court, as observed hereinabove, is clear in opinion that the order of remand suffers from element of non-application of mind and the grant of police remand for seven days is apparently harsh and unwarranted and there was scope to grant police remand for a short or limited period, the Revision is partly allowed holding that the order to grant police remand for more than 72 hours is found

bad in the present case. So, on completion of 72 hours, the Investigating Agency, therefore, shall have been directed to produce her before the concerned learned Magistrate so that she can be sent to the judicial custody, considering the time of arrest.

14. Therefore, the Investigating Officer is directed to produce the petitioner-accused before the learned Chief Metropolitan Magistrate, Ahmedabad forthwith or at the earliest preferably within five hours (i.e. not later than 20-00 hours today) from the pronouncement of this judgment. Further appropriate orders thereafter can be passed in accordance with law by the learned Chief Metropolitan Magistrate, Ahmedabad. It will be open for the Investigating Agency to interrogate the petitioner-accused while she is in judicial custody and the petitioner-accused is directed to co-operate with the Investigating Agency, as and when the Investigating Officer or any other officer, authorised officer, visits her, or as and when ordered by the competent Court.

In view of the aforesaid observations and in above terms, this Revision Application stands disposed of. The Rule is made absolute accordingly.