

(2004) 08 CAL CK 0018
In the Calcutta High Court
Case No : A.S.T. No. 1381 of 2004

State of West Bengal

APPELLANT

Vs

Debanjan Das and Others

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 439, 73
Penal Code, 1860 (IPC) — Section 120B, 363, 364, 366
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 20

Citation : (2005) 2 CALLT 197 : (2005) 3 CHN 402

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Krishna Ghosh and K. Moitra, for the Appellant; Milan Mukherjee, A.K. Mukherjee, Rita Dutta, K. Bhattacharya and S. Ganguly for the Opposite party Nos. 1 and 2, Sekahr Bose, J. Bagchi and L.V. Kumar for the Opposite party No. 3 and S. Moitra, H. De, D. Chatterjee, S. Sanyal, S. Dhar and Suman De for the Opposite party No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Debiprasad Sengupta, J.—In the present application, the petitioner/State of West Bengal has challenged an order dated 3.8.2004 passed by the learned Sub-Divisional Judicial Magistrate, Alipore in B.G.R. Case No. 1581 of 1995 (arising out of Thakurpukur P.S. Case No. 251 dated 21.6.95 under Sections 363/364/366/120B of the Indian Penal Code. By the impugned order, the learned Magistrate rejected the prayer of the investigating officer for remand of the accused persons to police custody for a further period of 11 days.

2. Six students of Jadavpur University, including the present petitioners, under the guidance of Mr. Biswanath Rana aged about 55 years and Mrs. Ira Rana aged about 45 years went to Chandipur, Orissa during summer vacation for 3 days. The excursion team consisting of eight persons reached Chandipur in the morning of 13.5.95 at about 11.00 A.M. They had their accommodation in Shantinivas Guest House. On 16.5.95 when the team was ready to leave

Chandipur in the morning at about 7.00 A.M. for Calcutta, it came to the notice of other members of the team that Miss Sushmita Dhar was missing. The other members of the team immediately informed the matter to the manager of the Guest House, as also Chandipur Police Station, where a case was registered being FIR No. 272 dated 16.5.95. The missing girl was searched by the officers of Chandipur P.S. but she could not be traced. The defacto complainant also went to Chandipur and requested the officers of Chandipur P.S. to trace out his missing daughter. But no fruitful result came out. The father of the victim, Susmita, thereafter came to Calcutta and on the basis of his complainant, present case was registered with Thakurpukur Police Station. Investigation of the case was taken up by CID West Bengal. The informant thereafter being dissatisfied with the investigation conducted by the CID, preferred a writ application before this Court praying for a writ in the nature of Habeas Corpus. Writ application was disposed of by the Division Bench of this Court on 30.11.95 with an observation that there was no justification, whatsoever, in continuing with the application for Habeas Corpus unless it was found prima facie that the respondents or any other person was guilty of detaining the missing girl unlawfully.

3. On 31.8.95, the accused/opposite parties were granted anticipatory bail by the learned Session Judge after considering the materials in the case diary.

4. The defacto complainant thereafter preferred another writ application being W.P. No. 12772(W) of 1997 alleging improper investigation by the CID, West Bengal regarding disappearance of Sushmita Dhar. On the prayer of the writ petitioner/defacto complainant, the Court directed the CBI to investigate the case. The missing girl could not be traced and the writ application was ultimately disposed of by this Court on 7.5.2003 with an observation that no further order could be passed on the respondents, but the said order would not prevent the respondents and also the CBI authorities from taking necessary steps to trace out the missing girl and to carry on investigation after receiving further information from any quarter in this regard.

5. It is very important to note that the defacto complainant also engaged a private detective agency, who also submitted a report on 13.6.95 stating that they could not find out any clue as regards missing of Sushmita. It is very surprising to note that after a lapse of 9 years the defacto complainant contacted the said private detective agency, who sometime in May 2004 disclosed that on 4.7.95 when they went to Shantinivas Guest House at Chandipur, they found a nighty from the thatched ceiling of verandah of the said guest house. A photograph of the said nighty was also taken by the said private detective agency which was shown to the defacto complainant after 9 years and the same was identified to be the nighty of his daughter. This information supplied by the private detective agency, inspired the CID, West Bengal to take the accused persons in custody again.

6. The accused opposite parties herein were arrested by the officers of the CID on 16.7.2004 and were produced before the learned SDJM, Alipore. The prayer

for bail was rejected by the learned Magistrate and on the prayer of the Investigating Officer of the case, the accused persons were remanded to police custody for 4 days i.e. till 19.7.2004. Against such order of rejection, the accused persons moved an application u/s 439 Code of Criminal Procedure before the learned Session Judge, Alipore. It was brought to the notice of the learned Session Judge that the accused persons were granted anticipatory bail by the then learned Session Judge in the year 1995, but flouting such order of anticipatory bail, police arrested the accused persons. From the order sheet of the learned Session Judge, it appears that the learned Public Prosecutor also admitted the position that the accused persons were on anticipatory bail and their arrest was not justified. In such circumstances by his order dated 17.7.04, the learned Session Judge granted interim bail to the accused persons and called for the case diary on the date fixed i.e. on 22.7.04.

7. On 22.7.04 when the matter was placed before the learned Session Judge for confirmation of interim bail, a prayer was made on behalf of the accused persons that their prayer for confirmation should be taken up on production of the L.C.R. L.C.R. was accordingly called for and the matter was fixed on 23.7.04. Thereafter, the matter was heard on 26.7.04, 27.7.04, 28.7.04 and on 29.7.04. The learned Session Judge thereafter by his order dated 30.7.2004 cancelled the interim bail granted to the accused persons and directed the accused persons to be taken into custody and to be remanded to. Jail custody till 12.8.2004.

8. On 31.7.2004, the Investigating Officer of the case made a prayer before the learned SDJM for further remand of accused persons to Police custody for 11 days more. Such prayer was rejected by the learned Magistrate by the impugned order dated 3.8.04 and hence this revision.

9. The main point which is to be decided by this Court is whether accused persons arrested and produced before the Magistrate can be remanded to police custody even after the expiry of the initial period of 15 days remand.

10. Mr. Goswami learned Additional Public Prosecutor appearing for the State/ petitioner submits that immediately after the arrest of the accused persons, they were produced before the learned SDJM Alipore on 16.7.2004 and on a prayer made by the Investigating Officer, they were remanded to police custody for 4 days and the next date was fixed for production of the accused on 19.7.2003. When the accused persons were in police custody the accused persons moved the learned Session Judge and obtained interim bail on 17.7.2004. The prayer for confirmation of interim bail came up for hearing before the learned Session Judge and after a continuous hearing for few days, the interim bail was cancelled by the learned Session Judge on 30.7.2004. On 31.7.2004 a prayer was made by the Investigating Officer before the learned SDJM for further remand of the accused persons to police custody for 11 days. Such prayer was rejected by the learned Magistrate by the impugned order dated 3.8.2004. It is the contention of the leaned Additional Public Prosecutor that the provision of Section 167(2) Code of Criminal Procedure and the proviso therein make it clear that if for any reason

the police custody can not be obtained during the period of first 15 days even then a remand to police custody can be given after the expiry of first 15 days. According to Mr. Goswami, what is provided in the said section is that such police custody should not exceed a total period of 15 days as a whole. It is submitted that there are cases in which remand to police custody becomes very much necessary, even after the expiry of first 15 days at a later stage for the purpose of investigation when some fresh materials are collected by the Investigating Officer. In the present case, it is submitted by Mr. Goswami, although initially prayer for police custody was allowed for 4 days, i.e., from 16.7.04 to 19.7.04. The Investigating Officer could not make any further prayer for police custody as the accused was on interim bail granted by the learned Session Judge during that period and such prayer could be made on 31.7.2004, after interim bail was cancelled. Since four days" police custody was initially granted by the learned Magistrate, the investigating agency is entitled to get the police custody for the remaining period of 11 days.

11. Mr. Moitra, learned advocate appearing for the defacto complainant supports the contention of the learned Additional Public Prosecutor and submits that under the provision of Section 167(2) Code of Criminal Procedure orders can be passed by the learned Magistrate remanding the accused to custody and nature of custody may be altered, during the first period of 15 days, from judicial custody to police custody and vice-versa. But during the first period of 15 days, the accused must be in custody. If the accused is not in custody during the period of first 15 days, prayer for further police custody for the rest of the period should always be allowed by the learned Magistrate. In support of his contention, Mr. Moitra relies upon a judgment of the Hon"ble Supreme Court reported in 1994 Cr LJ 2121 (Kosanapu Ramreddy v. State of Andhra Pradesh).

12. I have gone through the said judgment which is under the TADA Act, 1987. In the said judgment, it was held by the Hon"ble Apex Court that an accused in judicial custody can be transferred to police custody or vice-versa, if circumstances justify, within the time limit prescribed u/s 167(2) of the Code of Criminal Procedure. By virtue of Section 20 of the TADA Act, 1987 the first period of 15 days was to be read as 60 days. In the said case, the accused who was in judicial custody, was given in police custody, by the Designated Court. Hon"ble Supreme Court was of the view that..... in passing such order as prayer for police custody was made by the Investigating Agency within the period of 60 days as Section 20 of the TADA Act, 1987 enlarges the period of 15 days referred to in Sub-section (2) of the Section 167 Code of Criminal Procedure into 60 days. So in the case referred to above, the prayer made by the Investigating Officer was very much within the stipulated period as prescribed in Section 167(2) Code of Criminal Procedure. In my considered view, the judgment referred to above has got no manner of application in the present case.

13. The next judgment relied upon by Mr. Moitra, learned advocate in the case of Dawood Ibrahim Kaskar. After perusing the said judgment, it appears that the

principal question which fell for consideration before the Hon''ble Supreme Court was when and under what circumstances a Court can invoke the provision of Section 73 of the Code of Criminal Procedure. The said judgment, in my view, is not applicable in the present case as the facts and circumstances in which the said judgment was delivered are totally different from the present case.

14. Finally, it was submitted by Mr. Moitra that the accused persons were remanded to police custody initially for a period of 4 days (16.7.04 to 19.7.04), the Investigating Officer could not make any prayer for further police custody as the accused persons were on interim bail during that period. So, considering all these aspects, the learned Magistrate should have allowed the prayer of the Investigating Officer for police custody of the accused for a further period of 11 days.

15. Mr. Sekhar Bose, learned advocate appearing on behalf of the accused/ opposite parties submits that the mandate of Section 167(2) Code of Criminal Procedure makes it clear that there cannot be any detention in police custody after the expiry of first fifteen days. Referring to proviso (a) to Sub-section (2) of Section 167 Code of Criminal Procedure it is submitted by Mr. Bose that where the Magistrate is satisfied that further detention beyond the period of 15 days is necessary, the Magistrate may authorise the detention of the accused otherwise than in the custody of the police beyond the period of 15 days. The words "otherwise than in the custody of the police beyond the period of fifteen days", make it clear that there cannot be any detention in police custody after the expiry of first fifteen days.

16. In support of his contention, Mr. Bose relies upon a judgment of the Hon''ble Supreme Court reported in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, . From a reading of the said judgment, it appears that one Mr. Kulkarni was arrested on 4.10.91 and was produced before the learned CMM Delhi on 5.10.91. On the prayer of the CBI, Kulkarni was remanded to judicial custody till 11.10.91. On 11.10.91, application was moved by the Investigating Officer seeking police custody of the accused, which was allowed. When he was being taken on the way the accused pretended to be indisposed and he was taken to the hospital where he remained confined upto 21.10.91 and then he was referred to Cardiac Out Patient Department of G.B. Pant Hospital up to 29.10.91. Kulkarni was again remanded to judicial custody. In view of the fact that the police could not take him into police custody all these days, the Investigating Officer again applied to the learned Magistrate for police custody of Kulkarni. The learned Magistrate refused the prayer, for police remand relying on a judgment of the Delhi High Court reported in 1982 Cr LJ 1103 (State v. Dharam Pal). A revision was preferred before the High Court challenging the order of the Magistrate and ultimately the matter was brought to the Hon''ble Supreme Court.

17. Mr. Bose refers to paragraph 8 of the said judgment which is as follows:

"Having regard to the words "in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole" occurring in Sub-section (2) of Section 167 no the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternative in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in Dharam Pal's case (1982 Cri LJ 1103). Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso, it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary can be ordered only during the first period of fifteen days. To this extent, the view taken in Dharam Pal's case is correct."

18. Next judgment relied upon by Budh Singh Vs. State of Punjab, Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, referred to above was also taken into consideration by the Hon'ble Supreme Court and it was held that there cannot be any detention in police custody after the expiry of the first fifteen days.

19. Next judgment relied upon by Mr. Bose is reported in 1986 SCC (Cri) 321 (Chaganti v. State of Andhra Pradesh), in which the Hon'ble Supreme Court examined the scope of Section 167(2) proviso (a) (i) and (ii) of the Code and held that the period of fifteen days, ninety days or sixty days prescribed therein are to be computed from the date of remand of the accused and not from the date of his arrest. It was further held that remand to police custody cannot be beyond the period of 15 days and the further remand must be to judicial custody.

20. Mr. Bose, learned advocate submits that in the present case the collection of fresh material which inspired the Investigating Agency to arrest the accused persons, is a photograph of a nighty which was taken by a private detective agency in the year 1995 and was brought to the notice of the Investigating Officer in 2004, i.e., after a lapse of more than nine years. There is, however, no explanation as to why such photograph was not brought to the notice of the Investigating Officer during this period of nine years. The case was investigated by the CID and also by the CBI. But at no point of time, such fact was brought to the notice of any of investigating agencies. In this context, Mr. Bose relies upon a judgment of the Hon'ble Apex Court reported in 2000 SCC (Cri) 1510 (Navinchandra N. Majithia v. State of Meghalaya and Ors.). In the said judgment, it was held that the Code does not recognise private investigating agency. If any person is interested in hiring any such private agency, he may do so at his own risk and cost, but such investigation would not be regarded as an investigation

made under law. Any evidence collected in such private investigation and any conclusion reached by such investigations cannot be presented by the Public Prosecutor in any trial.

21. Mr. Bose next draws the attention of this Court to the conduct of the Investigating Agency, namely CID, West Bengal. He refers to an order No. 10 dated 30.7.2004 passed by the learned Session Judge. It appears from the said order that on 16.7.04 the accused persons were granted interim bail by the learned Session Judge and after furnishing bail bond, the release orders were sent to the office of the CID, West Bengal, but the concerned officer refused to receive the same. 17.7.04 and 18.7.04 were holidays but attempts were made to hand over the release order to the concerned officer on duty in the control room of CID, but he refused to accept the release orders. Release orders were again sent to CID Bhavani Bhawan on 19.7.04, but the concerned officer again refused to accept the same. It is submitted by Mr. Bose, learned advocate that this was done by the officers of the CID in utter disregard to the order passed by the learned Session Judge. It is recorded by the learned Session Judge in his order that the attitude of the CID officers refusing to receive the release orders on repeated approach was a direct interference in the judicial functioning and CID has shown no respect for the law, and this attitude of CID is highly contemptuous and the at the same time illegal. Mr. Bose submits that as a result of such conduct of the CID officers the accused persons had to suffer wrongful confinement for three days in police custody.

22. Considering all these aspects, the learned Session Judge directed the Special Superintendent of Police, CID, West Bengal to supply the names of all the officers within 7 days from the said date of the order, who were responsible for such illegal activities, for starting appropriate proceeding against those officers for violation of Courts orders. Mr. Bose points out that although such direction was given by the learned Session Judge on 30.7.2004, till date the names of such officers have not been supplied by the S.S., CID, which is again a violation of Court's order.

23. Mr. Bose further points out that after illegal/wrongful confinement of the accused persons when they were produced before the learned Magistrate on 19.7.04, a petition was filed on behalf of the accused Debanjan Das stating that he was mercilessly assaulted by the Investigating Officer of the case on 18.7.2004 and was treated in Bangur Hospital. Medical papers are also produced before this Court.

24. Mr. Bose submits that in the present case admittedly the second prayer for police custody was made after the expiry of first fifteen days and so the learned Magistrate was very much justified in refusing such prayer relying upon the two judgments of the Hon'ble Supreme Court. Mr. Bose further submits that from the conduct and highhanded attitude of the CID officers as referred to above it becomes very much clear that they do not have the slightest respect for the Court's order and they repeatedly acted in utter disregard to Court's order.

Lastly it is submitted that the circumstances on which such police custody was prayed for by the Investigating Officer is totally false, baseless and concocted.

25. I have heard the learned advocates of the respective parties. I have perused the judgments of the Hon'ble Supreme Court relied upon by the learned advocates. I have also gone through all the orders passed by the learned Magistrate as also by the learned Session Judge. I find sufficient merit in the submission made by Mr. Bose, learned advocate of the accused opposite parties. In the two judgments of the Hon'ble Apex Court (1992 Cr LJ 2797 and 2001 Cr LJ 2942) relied upon by Mr. Bose, it has been held that the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso to Sub-section (2) of Section 167 made it clear that the custody after the expiry of first fifteen days can only be judicial custody during the rest of the period of ninety days or sixty days. Police custody if found necessary can be ordered only during the first period of fifteen days. In the present case, second prayer for police remand was made by the Investigating Officer beyond the period of 15 days. So, in my view, the order dated 3.8.2004 passed by the learned Magistrate rejecting the prayer of the Investigating Agency for police custody of the accused persons, does not suffer from any illegality.

26. As it has been held in the case of Anupam J. Kulkarni (1992 Cr LJ 2768) detention in police custody is generally disfavoured by law. Such detention can be allowed only in special circumstances and the scheme of Section 167 Code of Criminal Procedure is intended to protect the accused from methods which may be adopted by some overzealous and unscrupulous police officers.

27. In my view, an accused person cannot be remanded to police custody only because such custody is prayed for by the Investigating Officer. In the present case as it is pointed out by the learned advocate of the accused opposite parties, accused persons were interrogated by the CID officers 46 times and by the CBI officers 36 times. They were remanded to police custody for four days, but nothing came out from such interrogation. The circumstances which inspired the CID to take the accused in police custody is a photograph of a nighty taken by a private detective agency in the year 1995 and supplying such photograph to the Investigating Officer after more than 9 years. In my considered view, it will not be wise and proper to allow the prayer of the Investigating Officer for police custody of the accused person in the circumstances stated above.

28. As regards the highhanded activities of the CID officers in refusing to accept the release order of the accused persons in spite of repeated approach and keeping the accused persons in wrongful confinement, as pointed out by Mr. Bose, learned advocate of the accused, it will not be proper for this Court to make any observation as the matter is under consideration of the learned Session Judge, who will take appropriate steps in that regard if such allegations are found to be correct.

29. In view of the discussion made above, the revisional application fails and the

same is accordingly dismissed. The order dated 3.8.2004 passed by the learned SDJM, Alipore is hereby affirmed.

30. Criminal section is directed to supply the certified copy of this order to the learned advocates of the respective parties in course of this week on urgent basis.