

CENTRAL BUREAU OF INVESTIGATION

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v.

RATHIN DANDAPAT AND OTHERS

(Criminal Appeal No.1081 of 2015)

AUGUST 21, 2015

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[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Code of Criminal Procedure, 1973: s.167(2) – Power of Magistrate to authorise detention of accused in police custody – Killing of 9 persons and injuring large number of villagers – Investigation transferred to CBI – Charge sheet against 21 accused including arrested ones and absconders – CBI seeking remand of accused in police custody – Whether no remand in police custody can be given to the investigating agency in respect of the absconding accused who is arrested only after filing of the charge sheet – Held: Police remand can be sought u/s.167(2) in respect of an accused arrested at the stage of further investigation if the interrogation is needed by the investigating agency – Expression ‘accused if in custody’ in s.309 does not include the accused who is arrested on further investigation before supplementary charge sheet is filed – Refusal of police remand against principle of law – Impugned orders declining the police remand set aside – Penal Code, 1860 – ss.148, 149, 307, 302.

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State through CBI v. Dawood Ibrahim Kaskar and Ors. (2000) 10 SCC 438: 1997 (1) Suppl. SCR 212; Dinesh Dalmia v. CBI (2007) 8 SCC 770: 2007 (9) SCR 1124 – relied on.

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Case Law Reference

1997 (1) Suppl. SCR 212 relied on. Para 11

2007 (9) SCR 1124 relied on. Para 12

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A CRIMINALAPPELLATE JURISDICTION: Criminal Appeal
No. 1081 of 2015.

From the Judgment and Order dated 15.5.2014 of the
High Court of Calcutta in Criminal Revision No. 1510 of 2014.

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WITH

CRL. A. NOS. 1082 and 1083 OF 2015.

C Maninder Singh, ASG, Neeraj Kishan Kaul, Atreyi
Chatterjee, Binu Tamta, B. Raghunath, B.V. Balaram Das for
the Appellant.

Pradip Kumar Ghosh, Biswajit Manna, Debarpita Basu
Mukherjee, Sarla Chandra for the Respondents.

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The Judgment of the Court was delivered by

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PRAFULLA C. PANT, J. 1. A common question of law is
involved in these three appeals as to whether no remand in
police custody can be given to the investigating agency in
respect of the absconding accused who is arrested only after
filing of the charge sheet.

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2. We have heard learned counsel for the parties and
perused the papers on record.

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3. The instant case from which these appeals have arisen,
relates to killing of nine persons and injuring large number of
villagers of Village Netai of District Paschim Medinipore in
West Bengal. It is alleged that the respondents in the present
appeals and other accused, on 07.01.2011, after forming an
unlawful assembly in the rooftop of respondent No. 1, Rathin
Dandapat, committed the crime. First Information Report was
lodged on the same day at Police Station Lalgargh in respect
of offences punishable under Sections 148, 149, 326, 307,

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302 of Indian Penal Code (IPC), and also in respect of offences

punishable under Section 25/27 of Arms Act. The investigation A
of the case was initially done by regular police, but later
transferred to Criminal Investigation Department (CID) of the
State. Vide order dated 18.2.2011, passed by the High Court
of Judicature at Calcutta in Writ Petition Nos. 1170(W) of 2011,
1172(W) of 2011 and 1181(W) of 2011, the investigation was B
transferred to Central Bureau of Investigation (for short "the
CBI"), the appellant before us.

4. During investigation accused, namely Abhani Bhusan
Singha, Subhendu Mondal, Aswani Chalak, Nabagopal Sanki, C
Pintu Roy, Gandib Ban Roy, Lob Duley, Banamali Duley,
Niranjan Kotal, Rupchand Ahir, Raju Roy and Swapan Roy were
arrested. On completion of investigation, the CBI submitted
charge sheet dated 4.4.2011 against 21 accused, including D
the arrested ones and the absconders. It was mentioned in
the charge sheet that further investigation of the case was kept
open for the purposes of collection of further evidence and the
arrest of the absconders. It was also mentioned that further
collected evidence during investigation would be forwarded E
by filing supplementary charge sheet.

5. The respondents, namely, Rathin Dandapat, Md.
Khaliluddin, Dalim Pandey, Joydeb Giri, Tapan Dey (all
respondents in Criminal Appeal arising out of S.L.P. (Cri.) No.
3611 of 2015), Chandi Karan (respondent in Criminal Appeal F
arising out of S.L.P. (Cri.) No. 3612 of 2015), Anuj Pandey
(respondent in Criminal Appeal arising out of S.L.P. (Cri.) No.
4241 of 2011), and one Kanai Dey, were declared proclaimed
offenders. Meanwhile, the trial proceeded and, after providing G
necessary copies to the accused, as required under Section
207 of the Code of Criminal Procedure, 1973 (for short "CrPC"),
the Additional Chief Judicial Magistrate, Jhargram, on
9.8.2011, committed the case to the Court of Sessions,
Paschim Medinipore. The Court of Sessions on 10.12.2011
framed charge against accused Abhani Bhusan Singha, H

A Subhendu Mondal, Aswani Chalak, Nabagopal Sanki, Pintu Roy, Gandib Ban Roy, Lob Duley, Banamali Duley, Niranjan Kotal, Rupchand Ahir, Raju Roy and Swapan Roy. The last two accused, namely, Raju Roy and Swapan Roy were later declared juveniles and their cases were sent to Juvenile Justice Board, Paschim Medinipore. The present case, as against said two juveniles, is said to be lying stayed vide order dated 8.9.2014, passed by this Court in S.L.P. No. 5699 of 2014. In respect of other accused against whom charge was framed, trial further proceeded and ten Prosecution Witnesses were examined. However, their cross-examination was deferred at the instance of arrested accused persons, other than the juveniles.

6. Out of eight proclaimed offenders, five, namely, Rathin Dandapat, Md. Khaliluddin, Dalim Pandey, Joydeb Giri and Tapan Dey, were arrested on 29.4.2014, whereafter on 30.4.2014 the CBI sought their remand in police custody. The Additional Chief Judicial Magistrate, Jhargram rejected the prayer of the CBI, aggrieved by which said investigating agency submitted Revisional Application (C.R.R. No. 1510 of 2014) before the Calcutta High Court. Absconder-accused Chandi Karan was arrested on 9.5.2014 by CID of the State, which informed the CBI about his arrest and meanwhile vacation Magistrate remanded judicial custody of said accused up to 12.5.2014. The CBI on 12.5.2014 sought remand in police custody in respect of Chandi Karan, but the same was also rejected by the Additional Chief Judicial Magistrate, Jhargram, against which Revisional Application (C.R.R. No. 1641 of 2014) was filed before the High Court. As to the absconder-accused Anuj Pandey too, CID, West Bengal, on 7.5.2014 informed the CBI about his arrest from Chandrapura in Jharkhand, and he was produced on 8.5.2014 before the Additional Chief Judicial Magistrate, Jhargram where CBI sought remand in police custody but the same was also refused. Aggrieved by

said order dated 8.5.2014, passed by the Additional Chief Judicial Magistrate, Revisional Application (C.R.R. No. 1640 of 2014) was filed before the High Court. All the three Criminal Revisions were disposed of by the High Court by separate orders of the same date, i.e., 15.10.2014, against which these criminal appeals are filed through special leave. A
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7. Before further discussion, we think it just and proper to quote the relevant provisions of law.

8. Proviso to sub-section (2) of Section 167 CrPC, which empowers a Magistrate to authorize detention of an accused in the custody of police, reads as under: - C

“Provided that, -

- (a) The Magistrate may authorize 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 authorize the detention of the accused person in custody under this paragraph for a total period exceeding, - D
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- (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; F
- (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 G
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- A the provisions of Chapter XXXIII for the purposes of that Chapter;
- (b) No Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before
- B him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production
- C of the accused either in person or through the medium of electronic video linkage;
- (c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall
- D authorize detention in the custody of the police.”

9. Sub-section (8) of Section 173, under which investigating agency has power to further investigate the matter in which the report/charge sheet has already been filed, is reproduced hereunder: -

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“(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

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10. Relevant provision of sub-section (2) of Section 309 CrPC, empowering remand of an accused, provides as under: -

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“(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: A
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Explanation 1. – If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.” C

11. In ***State through CBI v. Dawood Ibrahim Kaskar and others***¹, a three judge bench of this Court has laid down the law on the issue relating to grant of police custody of a person arrested during further investigation. In paragraph 11 of said case, this Court has held as follows: - D
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“11. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above sub-section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof F
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¹ (2000) 10 SCC 438

A would not apply to a person who comes to be later
arrested by the police in course of such investigation. If
Section 309(2) is to be interpreted — as has been
interpreted by the Bombay High Court in *Mohd. Ahmed
Yasin Mansuri v. State of Maharashtra* [1994 Cri LJ 1854
B (*Bom*)], — to mean that after the Court takes cognizance
of an offence it cannot exercise its power of detention in
police custody under Section 167 of the Code, the
Investigating Agency would be deprived of an opportunity
C to interrogate a person arrested during further
investigation, even if it can on production of sufficient
materials, convince the Court that his detention in its
(police) custody was essential for that purpose. We are,
therefore, of the opinion that the words “accused if in
D custody” appearing in Section 309(2) refer and relate to
an accused who was before the Court when cognizance
was taken or when enquiry or trial was being held in
respect of him and not to an accused who is subsequently
arrested in course of further investigation. So far as the
E accused in the first category is concerned he can be
remanded to judicial custody only in view of Section
309(2), but he who comes under the second category
will be governed by Section 167 so long as further
investigation continues. That necessarily means that in
F respect of the latter the Court which had taken
cognizance of the offence may exercise its power to
detain him in police custody, subject to the fulfilment of
the requirements and the limitation of Section 167.”

G 12. The case of *Dinesh Dalmia v. CBI*², which is relied
upon by the High Court, relates to granting of bail under Section
167(2) CrPC. In said case, the accused/absconder (Dinesh
Dalmia) after his arrest was produced before the Magistrate,
and on the request of CBI police custody was granted on

H ² (2007) 8 SCC 770

14.2.2006 till 24.2.2006, whereafter on another application further police custody was granted till 8.3.2006. Said accused was remanded to judicial custody, and the accused sought statutory bail under sub-section (2) of Section 167 CrPC as no charge sheet was filed against him by CBI within sixty days of his arrest. The Magistrate rejected the application for statutory bail on the ground that it was a case of further investigation after filing of the charge sheet, and the remand of the accused to judicial custody was under Section 309 CrPC, after police remand came to an end, granted under Section 167(2) CrPC. The High Court upheld said order and this Court also affirmed the view taken by the High Court.

13. In view of the above facts, in the present case, in our opinion, the High Court is not justified on the basis of *Dinesh Dalmia* (supra) in upholding refusal of remand in police custody by the Magistrate, on the ground that accused stood in custody after his arrest under Section 309 CrPC. We have already noted above the principle of law laid down by the three judge bench of this Court in *State v. Dawood Ibrahim Kaskar* (supra) that police remand can be sought under Section 167(2) CrPC in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified in said case that expression 'accused if in custody' in Section 309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge sheet is filed.

14. For the reasons, as discussed above, we find that the refusal of police remand in the present case is against the settled principle of law laid down by this Court. Therefore, the impugned orders passed by the High Court, affirming the orders of the Additional Chief Judicial Magistrate, Jhargram, are liable to be set aside. Accordingly, the impugned orders passed by the High Court and the orders passed by the Magistrate, declining the police remand, are set aside. The

A Magistrate is directed to pass fresh orders on the applications made by the appellant before it relating to granting of police remand of the respondents in accordance with law.

15. All the three appeals stand allowed.

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Devika Gujral

Appeals allowed.