

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 7720 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO
5	<i>CIRCULATE THIS JUDGEMENT TO ALL THE COURTS BELOW.</i>	YES

YOGESHBHAI NAGINBHAI VORA
 Versus
 STATE OF GUJARAT

Appearance:

MR JAL SOLI UNWALA, SENIOR COUNSEL WITH MR VIJAY H PATEL(7361) for the Applicant(s) No. 1
 NOTICE SERVED BY DS for the Respondent(s) No. 2
 MR MITESH AMIN PUBLIC PROSECUTOR WITH MS MOXA THAKKAR, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 22/08/2022

ORAL JUDGMENT

[1] By way of this petition, the petitioner challenges the order dated 22nd July 2022 passed by the learned Sessions Judge, Jamnagar in

Criminal Revision Application No.64 of 2022, whereby, the Criminal Revision Application preferred by the respondent No.2 herein – State Tax Officer – original complainant came to be partly allowed by quashing and setting aside the order dated 6th July 2022 passed by the learned Chief Judicial Magistrate, Jamnagar passed in S.G.S.T. File No.1 of 2022 rejecting the remand application and the order passed by the learned Sessions Judge ordering seven days remand of the petitioner – original accused.

[2] Brief case of the prosecution can be stated as under:

[2.1] The petitioner – original accused is facing the criminal prosecution for the offences punishable under Section 132(1)(c) of the Gujarat Goods and Services Tax, 2017. It is alleged that on the basis of spot visit from time to time and on the basis of the information available on GSTN portal, it is brought to the notice that the petitioner along with mastermind accused namely Mohammad Abbas Rafikali Meghani have created bogus firm, through which, without transportation of any goods and only by issuing of invoices and duty bills, passed on the Input Tax Credit and indulged into the economic offences. It is further alleged that the petitioner – accused, in connivance with other co-accused, have operated the bogus firm and credited bogus invoices / bills to the extent of Rs.74,07,63,818/- and thereby, has caused loss to the government

treasury to the extent of Rs.11,29,97,870/-. It is further alleged that the accused has admitted that he has got the bills/invoices from the certain firms for the purpose of showing purchase.

[3] Thus, the petitioner came to be arrested on 6th July 2022 and produced before the concerned learned Magistrate, Jamnagar on the same day with an application for seeking remand for 14 days to find out the real truth and from where the petitioner – accused got bogus invoices / bills and with a view to unearth the big racket of economical offence, the custodial interrogation of the petitioner is required. However, the learned Magistrate, Jamnagar, vide its order dated 6th July 2022 rejected the said application.

[4] Being aggrieved by the aforesaid, the State Tax Department approached the learned Sessions Judge, Jamnagar on 8th July 2022 by way of Criminal Revision Application No.64 of 2022, which came up for hearing before the learned Sessions Judge, who, vide its order dated 22nd July 2022, has partly allowed the said Criminal Revision Application by granting seven days remand of the petitioner.

[5] Being aggrieved and dissatisfied with the aforesaid, the petitioner – original accused, by way of this Special Criminal Application, approached this Court for quashing and setting aside the order passed by

the learned Sessions Judge dated 22nd July 2022.

[6] I have heard Mr. Jal Soli Unwala, learned Senior Counsel assisted by Mr. Vijay H. Patel, learned advocate for the petitioner and Mr. Mitesh Amin, learned Public Prosecutor for the respondent – State of Gujarat.

[7] Mr. Unwala, learned Senior Counsel has mainly contended that the order passed by the learned Sessions Judge, Jamnagar is not tenable in law in the eyes of law inasmuch as the same was passed after completion of the initial period of 15 days of arrest. Mr. Unwala submitted that the petitioner was arrested on 6th July 2022 and the order granting remand came to be passed on 22nd July 2022 by the learned Sessions Judge, which is clearly beyond the initial period of 15 days. According to Mr. Unwala, the petitioner – accused cannot be remanded to police custody after expiry of the period of 15 days from the date of arrest. He further submitted that the police custody can only be given for initial period of 15 days and beyond that period, the custody can only be a judicial custody. According to Mr. Unwala, the learned Sessions Judge could not have passed an order granting remand, when, in the interregnum period, the initial period of 15 days is over. Mr. Unwala, to substantiate his submissions, has heavily relied upon the decision in the

case of **Kantibhai Devsibhai Patel vs. State of Gujarat** reported in (2016) 1 GLR 139.

[8] By making the above submissions, Mr. Unwala, learned Senior Counsel for the petitioner has prayed this Court to allow the petition as prayed for.

[9] *Per contra*, Mr. Mitesh Amin, learned Public Prosecutor has vehemently opposed the present petition contending, *inter alia*, that the order passed by the learned Sessions Judge is perfectly justified and within the four corners of the provisions of Section 167 of the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”), and thereby, Mr. Amin requested this Court not to interfere with the order passed by the learned Sessions Judge. Mr. Amin submitted that the order dated 6th July 2022 not granting police custody was challenged within one day i.e. on 8th July 2022 and the said application was fixed on 11th July 2022 and on that date, the matter was partly heard and then, adjourned to 15th July 2022. Mr. Amin submitted that on 15th July 2022, again, the matter was heard and the State Tax Officer submitted his written submissions and thereafter, on request of both the sides, the matter was adjourned to 20th July 2022. On 20th July 2022, the matter was finally heard and was kept for orders on 22nd July 2022. Mr. Amin, accordingly, submitted that

the State has not wasted any undue time and acted promptly and precipitated the matter almost day-to-day, therefore, merely because the order passed after completion of initial period of 15 days of arrest would not take away the crucial right of the investigation to investigate the matter effectively and would not preclude the Investigating Officer to ask for police remand. Mr. Amin further submitted that it is not the case that the State has not acted promptly, thus, merely because for one or another reason, the initial period of 15 days is over, it would not take away the right of the investigation to investigate the case effectively. Mr. Amin further submitted that the present case pertains to economical offence, and thereby, relevant information, documents and transaction are known to the present petitioner only, and therefore, with a view to investigate the economical offence effectively, the police custody of the present petitioner is much needed.

[10] Mr. Amin has heavily relied upon the decision in the case of **Gopalbhai Chaturbhai vs. State of Gujarat** reported in (2005) 4 GLR 3103.

[11] By making the above submissions, Mr. Amin has prayed this Court to dismiss the present petition.

[12] I have heard learned advocates for the respective parties and have

gone through the materials produced on record in details. No other and further submissions have been canvassed by the learned advocates appearing for the respective parties, except what are stated hereinabove.

[13] Having heard the submissions of the learned advocates for the respective parties and having gone through the materials on record, the only question that falls for consideration of this Court is whether the police custody / remand of the petitioner – accused can be ordered by the Court pending adjudication and in an interregnum time, when the initial period of 15 days is over?

[14] The remand of an accused is contemplated in two stages: (a) pre-cognizance and (b) post-cognizance. Section 167 (2) of the Cr.P.C. is attracted where cognizance has not been taken and Section 309 of the Cr.P.C. is attracted only after the cognizance has been taken. In the present case, since the case is under the investigation, the provisions of Section 309 (2) would not be applicable and only relevant provision at this stage is Section 167 of the Cr.P.C. Accordingly, it would be apt to consider the provisions of Section 167 of the Cr.P.C. and thereby, the same are extracted hereunder:

"Section 167 : Procedure when investigation cannot be completed in twenty four hours.

(1) Whenever any person is arrested and detained in custody and it

appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 subsection 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.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in

computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons- case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub- section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub- section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

[15] Considering the provisions of Section 167 of the Cr.P.C., it provides for cases where investigation cannot be completed within 24

hours fixed by Section 57 and the police require more time to investigate. In such a case, the police officer is required to produce the accused before a Magistrate and the Magistrate is given discretion to detain the accused either in police custody or judicial custody. The period during which a Magistrate can remand an accused either in judicial custody or in police custody has been limited for a term not exceeding fifteen days in the whole. The proviso to Section 167 provides for detention of an accused in judicial custody beyond the period of fifteen days, if a Magistrate is satisfied that adequate reasons exist for doing so. However, such a detention is limited to 90 days where the offence is punishable with death, imprisonment for life or for a term not less than ten years and the period is limited to 60 days where the investigation relates to any other offence. The proviso further provides for a right of the accused to be enlarged on bail after the aforesaid period of 90 days or 60 days is over. The proviso further gives a mandate that no accused shall be kept in custody unless the accused is produced before a Magistrate and the power of ordering detention in custody is restricted to a Magistrate of the First Class. Such a power has not been granted to a Magistrate of a Second Class who is not specially empowered in this behalf by the High Court to authorise detention in custody of the police. Thus, sub-section (2) of Section 167 makes it clear

that a Magistrate can grant such custody as he thinks fit which means he can grant either police custody or judicial custody.

[16] While considering the aforesaid provisions of Section 167 of the Cr.P.C., in my considered opinion, one should not be obliterated the rights of the Investigating Officer. Once the offence is disclosed, then it is the right of the police and/or Investigating Officer to investigate such offence and further, it is the discretion of the Investigating Officer to adopt the mode of investigation. It is needless to say that the right to investigate the offence is the statutory right of the Investigating Agency. Thus, the Investigating Officer is empowered with the provisions of law to investigate thoroughly. Thorough investigation is the base on which the superstructure of the entire criminal jurisprudence exists. The entire criminal trial depends on a material evidence collected during the course of investigation. If, by any means, the investigation is not allowed to be made thoroughly, in that event, the Court would not be in a position to arrive at a just conclusion. In my view, therefore, the investigation is the heart of the criminal jurisprudence based on which the Criminal Court proceeds to do justice. Thus, the investigation is considered to be the most crucial element in criminal trial. In other words, with the assistance of the able and effective investigation, the Criminal Court can achieve its paramount goal to impart substantial justice.

[17] In view of the above, statutory right of the Investigating Agency to investigate the matter, therefore, cannot be taken away if the said right is exercised with due diligence. In the instant case, from the facts as noted hereinabove, it appears that the petitioner was arrested on 6th July 2022 and was produced before the concerned learned Magistrate, Jamnagar on the same day with an application seeking remand for 14 days. The learned Magistrate has refused to grant remand vide order dated 6th July 2022. The said order immediately carried before the Revisionist Court on 8th July 2022, which, came to be allowed on 22nd July 2022. It would be relevant to note that from the date of arrest i.e. 6th July 2022 till the date of order i.e. 22nd July 2022, the petitioner was in a judicial custody, however, with no order of remand. Considering the facts of the present case, indisputably, the Investigating Officer has, without any delay, sought to enforce its statutory right, however, the said right could not be adjudicated upon by the competent Court within first 15 days. In such circumstances, in my considered opinion, no faults can be attributed to the Investigating Agency, by which, their statutory right can be taken away. Thus, if the argument canvassed by the learned Senior Counsel for the petitioner that there cannot be any remand after expiry of first 15 days is accepted, then it would be opening of gateway for those unscrupulous accused, who can, by any means, dodge the

Investigating Agency and/or Trial Court within those initial 15 days and then, render the Investigating Agency helpless. Such situation should not be allowed to occur. The arms of the investigation cannot be made weaken. It is pertinent to note that at the time of refusal of remand in police custody by the learned Judicial Magistrate, Jamnagar, the petitioner was not even subjected to remand in judicial custody. In my view, there cannot be any intention of law that once the initial period of 15 days of arrest is over without there being any order of remand either in judicial or police custody, the accused can claim that no remand be ordered as of right. In my view, recognising the initial period of 15 days has to be from the date of arrest and first remand of the accused. In such peculiar facts, in my view, expiry of the initial period of 15 days would not be any help to the present petitioner. Thus, the submission of the learned Senior Counsel for the petitioner – accused that there cannot be any order of remand on expiry of 15 days from date of arrest, is not acceptable. I say so because there can be many situations where the question of remand may not be decided initially for 15 days either by the learned Magistrate or by the Revisionist Court or even by the High Court for whatsoever reasons. In my considered opinion, there is no any absolute bar that once the 15 days are over, the Court cannot grant an order of remand. In the instant case, the Investigating Agency appears to

have acted all through out very promptly, however, merely because the Revisionist Court passed an impugned order after 15 days are over, the said order of the Revisionist Court cannot be termed as illegal order. In my view, if the argument of the learned Senior Counsel for the petitioner is accepted, then it would be amounting to affecting the statutory right of the Investigating Agency to investigate the offence.

[18] So far as the reliance placed by the learned Senior Counsel for the petitioner in the case of **Kantibhai Devsibhai Patel (supra)** is concerned, upon a close scrutiny, this Court has found that the ratio laid down by the Coordinate Bench of this Court was in a different set of facts and circumstances. In the said case, the facts were as under:

“2. The facts giving rise to this application may be summarised as under :

The petitioner was arrested in connection with an FIR being CR-I No.37 of 2013 registered with the DCB Police Station, Surat city, for the offence enumerated above, on 15th September 2014. On 16th September 2014, he was produced before the learned Special Judge along with the production report, and on the very same day, an application seeking police remand was also filed.

3. The petitioner raised objections as regards the legality and validity of his production before the learned Special Judge. The objections raised by the petitioner herein as regards his production were considered by the learned Special Judge and the same came to be overruled. On the very same day i.e. on 16th September 2014, he was remanded to the judicial custody. The matter was carried further before

this Court. The challenge of the petitioner so far as his production before the learned Special Judge was concerned, failed even before this Court.

4. *It appears that the application filed by the Investigating Officer seeking police remand on 16th September 2014 was taken up for hearing on 10th March 2015, and vide order dated 25th March 2015, the petitioner was ordered to be handed over from judicial custody to police custody for a period of 4 days i.e. between 26th March 2015 and 30th March 2015.”*

[19] Considering the aforesaid facts, the distinguishing feature in the said case was that the learned Magistrate was pleased to order remand in judicial custody instead of police custody. What is relevant to note is that the accused therein was ordered to be on remand in judicial custody. Whereas, in the instant case, the learned Magistrate, while rejecting the application for remand in police custody, has not passed any order granting remand even in judicial custody. Thus, by virtue of the order of the learned Magistrate, in a way, remand of an accused either in police custody or in a judicial custody completely denied, which, in my view, would be prejudicial to the statutory right of the Investigating Officer to investigate the matter thoroughly. It would also be apt to note that the Coordinate Bench of this Court in the case of **Kantibhai Devisibhai Patel (supra)** has observed in para 39 as under:

“39. It has been made clear by the Apex Court that the application seeking police custody is not maintainable after the expiry of fifteen

days from the date of arrest and first remand of the accused. As contemplated under Section 167 of the Code, the Magistrate may remand the accused either to judicial custody or grant police custody for limited days if he is satisfied, but once the period of fifteen days of first remand expires, as per the rulings of the Apex Court, the Magistrate is not empowered to pass an order granting police custody.”

[20] The aforesaid observation, in no uncertain terms, clears the position of law that the application seeking police custody is not maintainable after expiry of 15 days from the date of arrest and first remand of the accused. In other words, initial period of 15 days would start to run from the date of arrest and first remand either in judicial custody or in police custody. Whereas, in the case on hand, the learned Magistrate, while rejecting the demand of remand in police custody, has not even granted remand in judicial custody, in that event, completion of initial period of 15 days, would not be fatal to the Investigating Agency.

[21] In view of the aforesaid discussion, the reliance placed by the learned Senior Counsel for the petitioner in the case of **Kantibhai Devsibhai Patel (supra)** is the law declared substantially in a different set of facts, and thereby, cannot be made applicable to the facts of the case on hand and therefore, shall not be any assistance to the petitioner.

[22] In view of the aforesaid discussion, the order passed by the

learned Sessions Judge, Jamnagar granting seven days remand cannot be said to be illegal and is hereby upheld and thereby, does not require to be interred with. I answer the question accordingly.

[23] Resultantly, the present Special Criminal Application is, accordingly, dismissed. The interim relief granted earlier is vacated forthwith.

CHANDRESH

(NIRAL R. MEHTA,J)

