

# The Law of Police Custody under the Code of Criminal Procedure, 1973

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**Abstract:** As soon the Law enforcement agencies set in to motion through lodging of FIR (The First Information Report) their very first object is to find or trace the culprit or the offender and to bring it before the Competent Court. Thereafter seeking his police custody or remand, so that information relating to commission of crime can be acquire from him. But as per Constitutional mandate the arrested person is to be produced before the Magistrate before expiry of 24 hour from his arrest excluding the time of journey as per section 57 of the Code of Criminal Procedure.

**Keywords:** Code of Criminal Procedure, 1973

## I. INTRODUCTION

Section 50 of the Code of Criminal Procedure mandates that the police officer should tell the arrested person about the offence for which he has been arrested and if he is arrested for bailable offence, then he can be released on bail. Further Section 50A of the Code of Criminal Procedure mandates that it is duty of magistrate before whom the arrested person is produced, to satisfy himself that police informed arrested person of his right to inform his relative or next friend about his arrest and place of arrest. The Magistrate should invariably note down time of production of arrested person and put the question to him in regards to verify the compliance of Article 22 of the constitution before ordering remand of the arrested person.

## II. MEANING OF POLICE CUSTODY

The term has not been defined by the Criminal Procedure Code but it generally understood in reference to "Remand" under section 167 of the Code of Criminal Procedure. Whenever a person is arrested and it appears that the investigation as regards his involvement cannot be completed within the period of 24 hours provided in Section 57 of Cr.P.C., the Investigating Officer should produce him before the Magistrate with an application for Police custody as per the provisions of Section 167 Cr.P.C. The Magistrate may authorize detention of the accused in such custody for a term not exceeding 15 days and thereafter send the accused to judicial custody as per section 167 Cr.P.C. The Magistrate must ensure that in every remand application, the date of arrest of the accused is recorded. It is the duty of the Magistrate to ensure that provisions of Section 167(2) Cr.P.C are not violated. Before a Magistrate authorizes detention under Section 167, Cr.P.C, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the

requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused.

## III. SEEKING CUSTODY OF ACCUSED

A careful reading of S. 167(1), show that an investigating officer can ask for custody / remand only when there are grounds for believing that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57. Therefore, a remand by a Magistrate is not an automatic act and sufficient grounds must exist for the Magistrate to exercise his powers of remand. Section 167 requires that a copy of the entries in the diary should be forwarded to the Magistrate along with the arrested persons. If the prima facie accusation or information is not well founded and sufficient grounds do not exist for the Magistrate to exercise his power of remand, in such cases, remand of accused can be refused.

## IV. GUIDELINES FOR GRANTING POLICE CUSTODY

Following are the guidelines issued by High Courts:-

1. Magistrates should observe the great distinction between a remand to Police custody and an ordinary remand to the Magistrate's lock-up under section 344 of the adjournment of an inquiry or trial owing to the absence of a witness or from any other reasonable cause.
2. The non-completion of the enquiry or trial justifies the latter, but the former requires something more, as it is expressly provided by section 167 that the non-completion of the investigation shall not, in the absence of a special order of a Magistrate be deemed to be a sufficient case for the detention of an accused person by the Police. Magistrates should ensure that, whenever a person arrested and detained in custody is produced before them by the police for a remand,

the police places before them copies of the first information report and the Zimnis and other necessary papers as required by sub -section (1) of Section 167.

3. Ordinarily when an Investigation is incomplete the proper course is for the accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible and then adjourned for further evidence. In the opinion of the High Court a remand to Police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the Police in elucidating the case.
4. The Police are too often desirous of retaining the accused in their custody for the longer period than twenty-four hours merely in the hope of extracting some admission of guilt from him. This is contrary to section 163 and the following section of the Code of Criminal Procedure, and to the spirit of the Code generally; and Magistrates must be careful not to facilitate this object by too great a readiness in granting remands.

#### V. PERIOD OF CUSTODY

According to section 167 (2) of the Code : where the magistrate to whom the accused is presented after arrest, not having jurisdiction to try the case, may authorize the detention of accused in police custody but not exceeding 15 days. Provided that he may authorize more than 15 days if he is satisfied that adequate ground is there to proceed with. And where the investigation relates to an offence punishable with death, imprisonment of life or for a term not less than 10 years in such a situation a magistrate may authorize detention of accused in police custody for 90 days. Further where the investigation relates to any other offence in such a case a magistrate may authorize detention of accused in police custody for 60 days. Provided further that on the expiry of the said period of 90 or 60 days as the case may be , the accused person shall be released on bail under section 176 (2) shall be deemed to be released under provisions as to bail bonds. Also when a warrant of arrest is executed outside the district in which it was issued, and the court which issued the warrant is not within 30 km of the place of arrest, then the person arrested may be produced before Executive Magistrate, District Superintendent of Police or Commissioner of Police who shall direct his removal in custody to such court. In case of bailable offence such Magistrate/ DSP/ CP shall release the accused on

bail, and if the offence is non-bailable it shall be lawful for Chief Judicial Magistrate or Session Judge to release accused on bail, by invoking powers under Section 81 proviso II, subject to the provision of Section 437 of Cr. P.C. In State of Delhi Administration v Ravindar Kumar,<sup>1</sup> it was states that in counting the day of remand or remand period then it will be 1<sup>st</sup> 15 days of PCR has to counted from the date of first remand and not from the date of arrest. In Arjun Singh v State,<sup>2</sup> it was clarified that the period of 90 days and 60 days of Remand has to be computed from the date of 1<sup>st</sup> remand made my the Magistrate and the period of police custody piror to the production of accused before Magistrate, shall not be Computed. In Ramesh Kumar v State of Bihar,<sup>3</sup> it was held that even though the physical production of the accused is desirable yet failure to do so would not per se vitiate the order of remand if non – production was beyond the control of police or jail authorities. But sufficient grounds have to be shown to the Magistrate justifying the non – production. In State of W.B v. Falguni Dutta,<sup>4</sup>it was observed that filling of charge sheet after 6 months is not illegal. There is nothing in section 167(5) to suggest that the police is absolved from submitting the police report under section 173(2) if the investigation has not been completed within six months of the date of arrest of the accused. In Aatif Nasir Mulla v. State of Maharashtra,<sup>5</sup> it was observed that where no recovery was mentioned in the remand papers, mere not mentioning of the fact of recovery or a wanted recovery in the remand papers, cannot come in the way of police or prosecution. In C.B.I. v Anupam Kulkarni,<sup>6</sup> The police custody after first 15 days is not permissible. However if complicity of accused is found in some other transaction while in judicial custody, then aforesaid limitation will not apply. The accused, who would be arrested during the further investigation after filing of the charge-sheet and taking cognizance of case, would be governed by section 167 of Cr.P.C and the accused can be remanded to police custody.<sup>7</sup> If a person surrendering before session court or High Court, he is in custody of Court. So he can be released on bail or if court finds that he is not entitled to bail, Court could pass necessary order for police or judicial custody.<sup>8</sup>

#### VI. CONCLUSION

It is the statutory right of the investigating authorities to approach the Court for seeking Police Custody of the arrested person having link with the commission of the actual offence in order to find facts and material behind the crime. But at the same time this is also have to be kept in mind that it is one on the cardinal principle of criminal justice that till the guilt is proved beyond reasonable doubt the person is considered to be innocent thus the Magistrate is the first court to strike balance

<sup>1</sup> 1982 Cr.L.J 2366

<sup>2</sup> 1987 Cr.L.J 1236 (Bom)

<sup>3</sup> AIR 1988 Pat 199

<sup>4</sup> (1993) 3 SCC 288

<sup>5</sup> 2006(1) Mh.L.J. ( Cri ) 679

<sup>6</sup> AIR 1992 SC 1768,

<sup>7</sup> State Trough CBI Vs. Dawood Ibrahim and others (2000) 10 SCC 438

<sup>8</sup> Uday Mohanlal Acharya v. State of Maharashtra, AIR 2001 SC 1910

between the needs of law enforcement on the one hand and protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other. He has to discharge this duty very carefully and cautiously by adhering provisions of law and secure the rights of accused.

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