

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.648 OF 2023

Between:

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad ... Petitioner/Complainant

And

Boodati Laxminarayana ... Respondent/ Accused No. 2

DATE OF JUDGMENT PRONOUNCED: 31.01.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K. SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER
+ CRL.P. No. 648 of 2023

% Dated 31.01.2023

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad ... Appellant/Complainant

And

\$ Boodati Laxminarayana ... Respondent/ Accused No.
2

! **Counsel for the Petitioner:** Sri S.Sudershan, Addl. Public
Prosecutor

^ **Counsel for the Respondent:** Sri. P. Roy Reddy

>HEAD NOTE:

? Cases referred

¹ AIR 1992 SC 1768

² (2016) 1 GLR 139

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION No.648 OF 2023

ORDER:

1. The State is aggrieved by the refusal by the Learned Metropolitan Sessions Judge to grant police custody of the respondent for a period of seven days vide order in CrI.M.P.No.107 of 2023 in Crime No.258/2022 of Police Station, CCS, Hyderabad dated 18.01.2023.

2. According to the police, the case is investigated by Assistant Commissioner of Police, CCS, Hyderabad and the respondent/A2 is co-conspirator. He along with other accused, collected huge deposits from customers in the guise of registering commercial space in the proposed commercial complex namely Sahiti Mahita Centro, Road No.12, Banjara Hills, Hyderabad by executing agreement of sale in favour of several persons including the complainant. However, suitable permissions from the relevant departments were not taken. On complaint made by the victims it was found that Sahiti Infratec Venture India Private Limited collected amount of Rs.40,92,20,687/- and the said complaint was registered and

being investigated for the offences under Sections 406, 420, 120-B r/w 34 of IPC and Sections 3 and 5 of TSPDFE Act.

3. The police filed for custody of the respondent/A2 on the ground that police had to find out regarding i) the amounts collected from the victims; ii) number of victims; iii) involvement of accused in the alleged misappropriation regarding other transactions pertaining to the case.

4. Learned Sessions Judge found that apart from this case, the respondent was given police custody in the crime registered by PS Bachupalli, PS Petbasheerabad and PS Madhapur. Further, the learned Sessions Judge had also granted police custody of the respondent in Crime No.158 of 2022.

5. Learned Sessions Judge relying on the judgment of Hon'ble Supreme Court in **CBI v. Anupam J.Kulkarni** reported in AIR 1992 SC 1768 held that detention in police custody could not be granted except under special circumstances and further after expiry of 15 days, there cannot be any police detention though in a case where some

more offences either serious or otherwise in nature were made out and come to light at a later stage.

6. Learned Sessions Judge also relied on the orders in W.P.No.45620 of 2022, wherein this Court held that there shall be joint investigation in the crimes registered which is subject matter of Sahiti Infratech Ventures. Since police custody was already granted four times, learned Sessions Judge found that under the circumstances it will only amount to harassing the respondent/A2, accordingly, dismissed the prayer for grant of police custody.

7. Learned Public Prosecutor appearing for the State would submit that there are several crimes which were registered for serious offence of cheating several persons. The wrongful gain is running into crores and since the case is one of circumstantial evidence, it is necessary that police custody is given by the Court which would come in aid of investigation. He further submits that though the remand was shown in the present crime on 11.01.2023 by way of PT warrant, the period of 15 days would end on 27.01.2023 as 26-01-2023 is a public

holiday. He further submits that Gujarat High Court in Special Criminal Application No.7720 of 2022, vide judgment dated 22.08.2022 in the case of **Yogeshbhai Naginbhai Vora v. State of Gujarat** held that though the police custody was granted after 15 days of arrest, the same cannot be said to be illegal. Learned Judge upheld the order of the learned Sessions Judge granting seven days custody beyond the initial period of 15 days. In the said judgment, learned Judge was relying on the judgment of the same Court in **Kantibhai Devsibhai Patel v. State of Gujarat**¹ and observed that the law declared in the said case that beyond 15 days police custody cannot be granted, was not applicable to the facts on the case on hand and accordingly permitted grant of police custody beyond 15 days. Basing on the Gujarat High Court Judgment in Criminal Application No.7720 of 2022, police custody may be granted by setting aside the order of the Learned Sessions Judge.

8. Section 167 of Cr.P.C reads as follows:

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

¹ (2016) 1 GLR 139

(1).....

(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 sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

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9. A reading of the provision makes it clear that police custody of an arrested person can only be granted in the first fifteen days after his arrest and thereafter only to judicial custody. Under no circumstances the police custody can be granted beyond the period of first fifteen days. There cannot be a staggered arrangement to make up to a total of 15 days of police custody as evident from the wordings in the provision (167 (2)(a)). To illustrate, the Court cannot grant a total of 15

days police custody in installments beyond the first 15 days of arrest.

10. The finding in Special Criminal Application No.7720 of 2022 of Gujarat High Court that Section 167 of Cr.P.C should not obviate the rights of the Police Officer and such police officer has right to investigate in accordance with his discretion and granting police custody beyond first 15 days of arrest is contrary to law. The statutory restriction under 167 CRPC cannot be circumvented by giving any reasons including giving an opportunity to the Investigating Officer to investigate the case. Such reasoning or interpretation which does not confirm to the statutory requirements is wholly illegal. Further, grant of police custody beyond first 15 days is contrary to judgment of the Hon'ble Supreme Court, in the case of **CBI v. Anupam J.Kulkarni**, reported in AIR 1992 SC 1768.

11. In the present case, learned Sessions Judge found on facts that the respondent/accused was being harassed by taking into police custody in several crimes that were

registered, though the High Court has directed for joint investigation in all the crimes. Both on facts and also on law, since first 15 days have expired on 27.01.2023, this Court is not inclined to grant police custody. Accordingly, direction for grant of police custody of Respondent/Accused is refused.

12. Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, shall stand dismissed.

K.SURENDER, J

Date:31.01.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITIOIN No.648 OF 2023

Date: 31.01.2023

