

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

**03.07.2015**

Shri P.K. Kaurav, Additional Advocate General, Shri Piyush Dharmadhikari, Government Advocate and Shri Prakash Gupta, Panel Lawyer for the applicant/State.

Shri Anil Khare, Senior Advocate with Shri Priyankush Jain, Jasneet Hora, Renu Jain, Shantanu Saxena, Advocate for the respondent-accused.

1. Heard counsel for the parties. By consent, matter is taken up for final disposal. The respondent waives notice through counsel for final disposal.

2. This application under Section 482 of the Code of Criminal Procedure (for brevity "Code") takes exception to the order passed by the Additional Sessions Judge, Bhopal dated 30.06.2015 in Crime No.14/2013. By this order, application preferred by the Investigating Officer for granting police custody of the respondent has been disposed of by allowing police custody only till 03.07.2015, on the sole finding that the respondent having been taken in judicial custody on 18.06.2015 in furtherance of the order passed by this Court in M.Cr.C. No.8811/2015 on the same date, the 15 days period provided in Section 167 of the Code would start running from that date; and by efflux of time, expire on 03.07.2015. The Court held that, beyond 03.07.2015, police custody of the respondent cannot be permitted, in law. The

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

Trial Court has relied on the decision of **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi vs. Anupam J. Kulkarni**<sup>1</sup> to answer the point in issue.

3. Before examining the correctness of the opinion recorded by the Trial Court, we may deem it appropriate to advert to some basic facts. The respondent has been named as accused in Crime No.14/2013 for offences punishable under Sections 409, 420, 120-B of I.P.C. and Section 3 (Gha), 1, 2/5 of M.P. Manyata Prapt Pariksha Adhiniyam, 1937. The respondent, however, could not be arrested inspite of the efforts made by the Investigating Agency - because of the processes adopted by him since November, 2014, to which, elaborate reference has been made by us while deciding M.Cr.C. No.8811/2015 (application for bail filed by the respondent in the same crime) vide order dated 29.06.2015. After exhausting all remedies, finally, in view of the liberty given by the Supreme Court, the respondent was required to approach the Sessions Court by way of bail application. Without surrendering before the Trial Court, the bail application filed under Section 439 of the Code was heard and rejected by the Trial Court, because of the protection given to the respondent by the Supreme Court. Even this aspect has been referred to in the order dated 29.06.2015 passed in M.Cr.C. No.8811/2015.

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<sup>1</sup> (1992) 3 SCC 141

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

4. The respondent then approached this Court by way of application under Section 439 of the Code being M.Cr.C. No.8811/2015. When the said bail application was listed for consideration on 16.06.2015, it was made clear to the respondent that prayer for bail of the respondent can be entertained only if the respondent was already in jail or police custody or at-least he surrenders before this Court, in the first instance. The respondent, accordingly, agreed to appear before the Court and surrendered on 18.06.2015. On 18.06.2015, however, the hearing of the bail application could not proceed because of the circumstances already recorded in the order passed on that date and the successive dates till the bail application was closed for orders on 26.06.2015. That bail application was eventually disposed of on 29.06.2015, by a speaking judgment. When the respondent had appeared before this Court on 18.06.2015 and surrendered; and as the hearing of the bail application was required to be deferred for reasons attributable to the respondent himself and also for further adjournment, the Court thought it appropriate to direct to keep the respondent in judicial custody at Jabalpur. Indeed, the Investigating Agency did not apply for grant of police custody of the respondent for the purpose of investigation of the said crime, either before this Court or any other Court until the bail application was finally decided.

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

5. Suffice it to note that the respondent surrendered before this Court on 18.06.2015 and was sent to judicial custody until further order and final decision on his bail application No.8811/2015, which was eventually disposed of as rejected on 29.06.2015. In that order, this Court issued consequential directions whilst rejecting the prayer for bail, to the Investigating Agency to take custody of the respondent in accordance with law. Only thereafter, the Investigating Agency took custody of the respondent on 30.06.2015 at around 7.00 a.m. from the Central Jail at Jabalpur and took him to Bhopal by road; and produced him before the Designated Court at Bhopal between 1.30 to 2.30 p.m. On so producing, the Designated Court by the impugned order limited the police custody period only till 03.07.2015 for the reasons as noted earlier. In substance, the conclusion reached by the Designated Court is on the premise that the 15 days period referred to in Section 167(2) of the Code must be reckoned from the date of surrender of the respondent before this Court, which happened on 18.06.2015.

6. In this backdrop, the core issue that arises for consideration and which also has been adverted to by the Designated Court is: whether 15 days period specified in Section 167(2) of the Code should be reckoned from the date of surrender before this Court on 18.06.2015 or when the

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

accused was first produced by the police before the Designated Court on 30.06.2015 for police remand?

7. On a bare reading of Section 167 of the Code, firstly it envisages about the obligation of the Police, who has arrested the accused by exercising police powers without arrest warrant, to produce him before the Magistrate within the time specified. The second part of Section 167 of the Code refers to the maximum time during which such accused can be allowed to remain in police custody for the purpose of investigation of the concerned crime, which has been specified as 15 days in the whole from the date on which the accused was produced before the Court for the first time by the police for giving police custody. The third facet of Section 167 is of giving discretion to the concerned Magistrate either to send the accused to police custody or judicial custody as may be warranted during the relevant period and before filing of the charge-sheet. The fourth facet is about the outer limit, within which, the charge-sheet/police report must be filed by the Investigating Agency and the date from which the said period should be reckoned as also the effect of failure to do so. Besides this, we need not dilate on the scope of Section 167 further.

8. In the case of **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi** (supra), of the Supreme Court relied upon by the Designated Court, the

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

Court was called upon to consider the question in the context of the accused, who was arrested by the police without arrest warrant on 04.10.1991 and produced before the Magistrate on 05.10.1991. On the request of CBI, the accused was remanded to judicial custody till October 11<sup>th</sup> 1991. On October 11<sup>th</sup> 1991 an application was moved by the Investigating Officer asking for police custody of the accused. When the accused was being taken, on his way, he pretended to be indisposed and was thus admitted in hospital where he remained confined till October, 21<sup>st</sup>, 1991, when he was referred to Cardiac Out-patient Department of G.B. Pant Hospital. Until 29.10.1991, the accused was again remanded to judicial custody by the Magistrate and thereafter sent to jail. The police could not take him in police custody during this period even after his first remand order passed on 05.10.1991; and for which reason applied for police custody of the accused in connection with investigation of the crime registered against him. The issue considered in this judgment was in the context of the fact situation of that case. The question, answered by the Court was whether or not after expiry of initial period of 15 days from the date of production of the accused by the police after his arrest without arrest warrant, before the Magistrate (i.e. on 05.10.1991), request for police custody can be entertained in law. The observations in this judgment, therefore, will have

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

to be considered in the context of those facts and binding precedent for cases where the police has arrested the accused without arrest warrant in connection with alleged crime and produced for the first time before the Court within statutory time for obtaining police remand for investigation of that crime.

9. In the present case, however, admittedly, the police custody of respondent could not be taken by the police in connection with crime No.14/2013, till 30.06.2015. For the first time, police took custody of the respondent on 30.06.2015 and produced him before the Designated Court the same day, pursuant to the liberty given by this Court in its order dated 29.06.2015. The fact that respondent was ordered to be kept in judicial custody from 18.06.2015 in connection with the crime did not provide his access to the Investigating Agency to question the respondent nor such access was availed during that period. Further, no formal arrest of the respondent was effected by the police in connection with the said crime until 30.06.2015. This position is not in dispute.

10. The material fact in the context of Section 167 of the Code is when the accused (respondent) was taken in custody by the police and produced before the Designated Court soon thereafter. No more and no less.

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

11. On plain reading of Section 167 of the Code in particular sub-section (2), it is amply clear that the maximum period of police custody/police remand specified is 15 days in the whole. That is with reference to the production of the accused arrested by the police without arrest warrant, before the Magistrate for the first time for the purpose of police custody/police remand in connection with the Crime in question. The question of producing the accused before the Magistrate by the police will arise, only after the police were to get custody of the accused or his arrest without arrest warrant by invoking police powers under the Code. For, Section 167 of the Code makes reference to the situation arising after the arrest of the accused “by the police” without arrest warrant and corresponding obligation on police to produce that accused before that Magistrate within 24 hours from the time of his arrest. On such production the Magistrate can exercise his discretion to send the accused to judicial custody or allow the police to keep him in police custody till further orders but in any case not exceeding 15 days in the whole from the “first remand” order passed by it – be it of police custody or judicial custody. This legal position is expounded by the Supreme Court in the case of **Chaganti Satyanarayana and others vs. State of Andhra Pradesh**<sup>2</sup>, in the following words :-

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<sup>2</sup> AIR 1986 SC 2130



**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

“12. Keeping proviso (a) out of mind for some time let us look at the wording of sub-section (2) of Section 167. This sub-section empowers the Magistrate before whom an accused is produced for purpose of remand, whether he has jurisdiction or not to try the case, to order the detention of the accused, either in police custody or in judicial custody, for a term not exceeding 15 days in the whole. It was argued by Mr. Rao that the words “in the whole” would govern the words “for a term not exceeding 15 days” and, therefore, the only interpretation that can be made is that the detention period would commence from the date of arrest itself and not from the date of production of the accused before the Magistrate. Attractive as the contention may be, we find that it cannot stand the test of scrutiny. In the first place, if the initial order of remand is to be made with reference to the date of arrest then the order will have retrospective coverage for the period of custody prior to the production of the accused before the Magistrate, i.e. the period of 24 hours’ custody which a police officer is entitled to have under Section 57 besides the time taken for the journey. Such a construction will not only be in discord with the terms of Section 57 but will also be at variance with the terms of sub-section (2) itself. The operative words in sub-section (2) viz. “authorize the detention of the accused..... for a term not exceeding 15 days in the whole” will have to be read differently in so far as the first order of remand is concerned so as to read as “for a term not exceeding 15 days in the whole from the date of arrest”. This would necessitate the adding of more words to the Section than what the Legislature has provided. Another anomaly that would occur is that while sub-section (2) empowers the Magistrate to order the detention of an accused “in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole” the Magistrate will be disentitled to placing an accused in police custody for a full period of 15 days if the period of custody is to be reckoned from the date of arrest because the period of custody prior to the production of the accused will have to be excluded from the total period of 15 days.

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

13. Apart from these anomalous features, if an accused were to contend that he was taken into custody more than 24 hours before his production before the Magistrate and the police officer refutes the statement, the Magistrate will have to indulge in a fact finding inquiry to determine when exactly the accused was arrested and from what point of time the remand period of 15 days is to be reckoned. Such an exercise by a Magistrate ordering remand is not contemplated or provided for in the Code. It would, therefore, be proper to give the plain meaning of the words occurring in sub-section (2) and holding that a Magistrate is empowered to authorize the detention of an accused produced before him for a full period of 15 days from the date of production of the accused.”

(emphasis supplied)

12. Notably, even in this reported case, the accused was arrested by the police without arrest warrant and produced before the concerned Magistrate on the next day within 24 hours and initial judicial custody for a period of 15 days was ordered, which was extended from time to time.

13. In the case of **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi** (supra), in paragraph 7 of this decision, the Supreme Court has reproduced the relevant extract from paragraph 15 of the decision in the case of **Chaganti Satyanarayana** (supra) as reported in (1986) 3 SCC 141 (equivalent paragraph 16 of the report in AIR 1986 SC 2130). The said observations must be understood in the context of the argument canvassed before the Supreme Court by the Counsel for accused in that

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

case as noted in paragraph 3 of the reported decision - that the police custody, if at all, be granted by the Magistrate should be only during the period of first 15 days “from the date of production of the accused before the Magistrate” and not later and that subsequent custody, if any should only be judicial custody and the question of granting police custody after the expiry of first 15 days remand does not arise.

14. As is noted earlier, the 15 days period specified in Section 167 is ascribable to the action taken by the police in compliance of its obligation under Section 57; and as a consequence of production of the accused before the Magistrate, the period specified in Section 167, would start running from the date of first remand order passed by the Magistrate and not otherwise. Further, the outer limit of 15 days provided by Section 167 of the Code is from the date of production of accused arrested by the police without arrest warrant, before the Magistrate and not the earlier period at all. That was the restriction to be borne in mind by the Designated Court, while considering the prayer made by the Investigating Agency for further police remand.

15. Counsel for the respondent was at pains to persuade us to take the view that the order dated 18.06.2015 must be construed as an order of remand for the purpose of Section 167 (2) of the Code and if so read, the 15 days period would expire on 03.07.2015. We are not impressed by this

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

submission. For, the power of remand can be exercised by the Magistrate only after the accused is produced before him by the police after his arrest without arrest warrant, in terms of Section 167 of the Code before filing of the charge-sheet. Whereas, the High Court whilst hearing bail application under Section 439 of the Code, exercises special powers when the person is already in custody – police custody, judicial custody or surrenders before the Court for consideration of his prayer for bail. Further, Section 167 of the Code is a provision stipulating limitation of maximum period of 15 days in the whole for police custody of the accused for facilitating investigation of a given crime. That time starts from the “first remand” order passed by the Magistrate after production of the accused arrested by the police without arrest warrant. The necessity of obtaining order of remand arises because of the arrest made by the police without arrest warrant. However, when it is a case of accused taken in judicial custody as in the present case, being condition precedent for consideration of his prayer for bail, by no stretch of imagination it can be ascribable to an arrest by the police without arrest warrant as such. As it cannot be termed as a case of arrest by the police without arrest warrant, the limitation provided under Section 167 of the Code will not get ignited. The provision such as Section 167 is to ensure that if a person is arrested by the police

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

without arrest warrant or the custody given to the police of the accused pursuant to the order passed by the Court, police is obliged to produce that person before the Magistrate within 24 hours soon thereafter and abide by the directions issued by the Magistrate from time to time – be it in respect of judicial custody or police custody, as the case may be. It is only in that situation the rigours of Section 167(2) of outer limit of police custody of 15 days in the whole would come into play.

16. The question whether the person should be released on bail by the High Court without his arrest by the police is completely independent of the question whether the person should be sent to judicial custody or police custody during the relevant period. Indeed, during the pendency of the bail application before the High Court, the accused surrenders and is ordered to be sent to police custody. The situation may attract the rigours of Section 167 of the Code – of producing the accused before the Magistrate and to which the limitation of 15 days in the whole may be attracted. Further, if upon such production of the accused, the Magistrate directs judicial custody, before the High Court finally decides the prayer for bail and if the High Court finally rejects the prayer for bail of that accused with the finding that custody of the accused deserves to be given to police for the purpose of investigation of the same crime, the High Court being a

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**

**Vs.**

**Vipin Goyal**

Court of superior jurisdiction may also overturn the order of Magistrate of refusing to give police custody, subject to the limitation specified in Section 167 of the Code. However, we need not dilate on this aspect further as the same does not arise for consideration in the present case and leave it open to be considered in an appropriate case.

17. Suffice it to observe that the Trial Court in the impugned judgment has misread and misapplied the dictum of the Supreme Court in the case of **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi** (supra) to the fact situation of the present case.

18. Counsel for the respondent was at pains to persuade us to take the view that recent decision of the Supreme Court in the case of **Sundeep Kumar Bafna v. State of Maharashtra & Anr. (2014) 2 SCC Online SC 257** answers the issue under consideration. Our attention was invited particularly to paragraphs 20 and 23 of the said decision to persuade us to take the view that the order passed on 18.06.2015 by this Court was nothing short of an order to be passed in exercise of power under Section 167(2) of the Code. We reject this submission atleast on two counts. Firstly, because the observations found in the said decision as pressed into service, are in the context of the question answered by the Supreme Court as to whether the High Court is competent to allow the accused to surrender directly

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

before it while considering his prayer for bail under Section 439 of the Code. The observations must be read in that context and would be binding precedent on the question decided by the Supreme Court. It is not possible to suggest that any observation made in paragraph 20 and 23 of this decision, which has been pressed into service, can be said to *obiter dicta* so as to have binding effect for considering the question posed in the present case. In that, the direction given by the High Court to send respondent to judicial custody during the hearing of his bail application after he had surrendered before the Court is ascribable to exercise of powers under Section 167 (2) of the Code by the High Court itself. On the other hand, the observation in paragraph 20 of the this reported decision makes it amply clear that after the bail application is rejected, the High Court may pass further direction of sending the accused to judicial custody or police custody. The question posed in the present application, as aforesaid, however, is the time from when 15 days period specified in Section 167 of the Code for police custody must be reckoned, which as noted earlier and as is explicit from Section 167 of the Code must commence from the date of production of the accused for the first time by the police before the concerned Magistrate in connection with same crime consequent to his arrest by the police without arrest warrant and as in the present case in furtherance of direction

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

given by the High Court whilst rejecting the bail application. Person who surrenders before the Court and is, therefore, directed to be kept in judicial custody during the pendency of his bail application can by no stretch of imagination be said to have been arrested by the police (without arrest warrant in exercise of police powers) or to be in police custody as such. Thus understood, the decisions pressed into service by the respondents will be of no avail.

19. A priori, the opinion recorded by the Designated Court in the impugned order of limiting the period of police custody of the respondent only till 03.07.2015 is untenable.

**ORDER**

1) For the reasons dictated in open Court, we allow this application filed by the State and set aside the impugned order passed by the Trial Court dated 30.06.2015 to the extent of having given police custody of the respondent in respect of Crime No.14/2013 only upto 03.07.2015.

2) We hold that the Trial Court erroneously assumed that the maximum permissible period for police custody of respondent in the present case cannot exceed beyond 03.07.2015. Instead, we hold that in the facts of the present case, the Investigating Agency was entitled to ask for police custody of the respondent in connection with the above noted crime upto 15 days in the whole from 30.06.2015, being the date of “first remand” order passed by the Designated Court



**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

in exercise of powers under Section 167 of Cr.P.C. consequent to production of the respondent by the police before it for the first time, as per the liberty given by this Court vide order dated 29.6.2015 in M.Cr.C. No.8811/2015.

3) Further, keeping in mind the fact situation of the present case, as has been elaborately considered by us while deciding M.Cr.C. No.8811/2015 filed by the respondent for bail in the stated crime vide order dated 29.6.2015, for the time being, we extend the police custody of the respondent till 06.07.2015. The respondent shall remain in police custody till then and to be produced before the concerned Designated Court on or before 06.07.2015.

4) The Investigating Agency will be free to apply for further extension of police custody of the respondent in Crime No.14/2013, for part or for maximum period prescribed therefor, in terms of Section 167 of the Cr.P.C. The Designated Court may consider that request of the Investigating Agency on its own merits and in accordance with law.

5) All concerned to act on the basis of this operative order which is part of the entire order dictated in open Court in the presence of the counsel appearing for the respective parties beyond the Court hours till 5:10 p.m. Inasmuch as, transcription and release of the entire order is likely to take some time and also because of the urgency.

**M.Cr.C. No.10945/2015**  
**State of Madhya Pradesh**  
**Vs.**  
**Vipin Goyal**

6) The operative part of this order be made available to the parties forthwith to enable them to produce the same before the Designated Court for information and compliance.

**(A.M. Khanwilkar)**  
**Chief Justice**

**(K.K. Trivedi)**  
**Judge**

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