

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WP 56 OF 2013
COMMONWEALTH HUMAN RIGHTS INITIATIVE

Versus

THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble CHIEF JUSTICE MR. ARUN MISHRA

The Hon'ble JUSTICE JOYMALYA BAGCHI

Date : 22nd January, 2013.

Mr.D.Banerjee, Advocate
Mr.Debrup Bhattacharyya, Advocate
...for petitioner
Mr.P.Sinha, Advocate
Mr.S.Chakraborty, Advocate
...for State

The Court :- A prayer has been made in the writ petition to issue a Writ of Mandamus upon the respondents to ensure that all persons arrested or detained are mandatorily produced before the Magistrate or Court concerned in person that is physically produced before the Court than a mere paper production, when an order of remand is passed. An accused may also be apprised that he/she has right to consult and be defended by a legal practitioner and in case he has no means to engage a lawyer of his/her own choice then one would be provided at the expenses of Legal Aid Services authority. Prayer has

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also been made that in all concerned Courts panel of legal aid lawyers is made available on a daily basis during remand being made.

We have heard the Counsel for the parties.

As Section 167(2) proviso (b) of the Code of Criminal Procedure makes a provision that accused has to be produced before the concerned Magistrate. Explanation II of Section 167 of the Code of Criminal Procedure also provides that the production of accused person may be proved by his signature on the order authorising detention or by the order which is certified by the Magistrate the production of the accused person through the electronic media linkage is also permitted.

However, at the same time when accused is not produced through video linkage his physical presence is necessary, it cannot be made merely on the paper production. For that concerned Magistrate has to ensure that remand is made as per provisions contained in Section 167 Cr. P.C. Explanation II makes it clear when any question arises whether the accused has been produced before the Magistrate or not as required under Clause (b) of Sub section 2 of Section 167 the signature of the accused on the order authorising detention is sufficient proof.

In D.K.Basu Versus State of West Bengal the Hon'ble Supreme Court (1997) 1 Supreme Court Cases 416 Hon'ble Supreme Court has decided on various safeguards which should be observed by the concerned Magistrate in paragraph 35 thus;

"35. We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the arresting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be

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communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

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In the event of failure to comply with the directions there is a penal consequences of violation of the order of the Hon'ble Supreme Court for which appropriate action can be taken.

It is incumbent on the part of respondents to follow the provisions contained in Section 167 of the Code of Criminal Procedure and also the guidelines laid down by the Apex Court in the aforesaid decision.

With respect to free legal aid at the time of remand obviously the Magistrate has to apprise the accused persons of his/her right to be defended and in case he/she has no means to engage a lawyer, a lawyer is to be made available at the expenses of the State through Legal Services Authority/Committee. It is bounden duty of the concerned Magistrate, while making remand, to carry out the aforesaid obligation also. It is also to be pertinent to mention that the availability of the panel of lawyers should also be ensured by the concerned bodies/committees.

Since no affidavit-in-opposition has been called upon to be filed we make it clear that the averments contained in the petition are not admitted.

In view of the decision of the Apex Court and the Statutory Provisions let all Magistrates observe all legal formalities aforestated.

Let photostat/certified copy of this order be made available to the parties, if applied for, upon compliance of all requisite formalities.

J. A. B. S.