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DETAILED NOTES ON SECTION 167 | CRIMINAL PROCEDURE CODE

How to exercise the power of arrest? Explain the duty of Judicial Magistrate in exercise of power under section 167 CRPC? MPJS 2014

STEP 1 : UNDERSTAND THE BARE ACTS IN SIMPLIED WAY.

SECTION 167 | PROCEDURE WHEN INVESTIGATION CANNOT BE COMPLETED IN TWENTY-FOUR HOURS.

Section 167(1) After a person is arrested without warrant, an investigation by the police ought to be completed within 24 hours. When (*i*) the investigation cannot be completed within twenty-four hours (section 57), and (*ii*) there are grounds to believe that the charge is well founded it is obligatory upon the investigating officer, under section 167, to produce the accused with a copy of his diary (under section 172) before the nearest Judicial Magistrate (with or without jurisdiction) for a remand to custody to enable him to continue or complete the investigation.

Section 167(2) The Judicial Magistrate to whom an accused person is so forwarded may, whether *he has or has no jurisdiction* to try the case, from time to time, authorise the *detention of the accused person in such a custody* as such a Magistrate may think fit, for a term not exceeding 15 days on the whole. If the Judicial Magistrate before whom the accused is so forwarded *has no jurisdiction* to try the case or commit it for trial, and considers further detention (that is, beyond the total period of 15 days) unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having jurisdiction.

Proviso (a) to Section 167(2) A power has been conferred on the Magistrate with jurisdiction who can order remand to extend the said period of detention beyond 15 days when he is satisfied that adequate grounds exist namely

(1) that the total period of detention in custody of an accused together with this extension should not exceed

- *90 days*[If the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years]
- *60 days* [If the where the investigation relates to any other offence]

as the case may be and

(2) that this extended period of detention **must be otherwise than in police custody.**

And a further provision has been made that if the investigation is not completed within the period of 90 days or 60 days, as the case may be, after the expiry of this period of 90 days or 60 days, as the case may be, the Magistrate shall be bound to release an accused on bail if he is prepared to and does furnish bail.

Proviso (b) Detention of the accused for the first time cannot be authorised by magistrate through the medium of electronic video linkage, however the extension of the detention can be done through the same.

Proviso (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 1.— For the avoidance of the 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 clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

BY EXECUTIVE MAGISTRATE

Section 167(2-A)

- Where a Judicial Magistrate is not available, the copy of the entries in the case diary as well as the accused person as mentioned above may be transmitted to the *nearest Executive Magistrate* on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred.
- If the accused is produced before an Executive Magistrate, such an Executive Magistrate may, for reasons to be recorded in writing, authorise the detention of the accused person in such a custody as he may think fit for a term not exceeding seven days in the aggregate.
- Before the expiry of the said period, the Executive Magistrate is required to transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the case diary, which was transmitted to him by the police as abovementioned.(*Proviso).*
- If the period of detention so authorised expires and no further detention of the accused person is authorised by a competent Judicial Magistrate, the accused person shall be released on bail.

Section 167(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

Recording of reasons for remand to police custody is imperative. Detention shall be allowed only in special cases and for reasons recorded and not as a matter of course whenever asked, the object being that the Magistrate shall consider whether on the facts placed there were good grounds.[1]

Section 167(4) Any Magistrate other than the Chief Judicial Magistrate making such order of detention under Section 167(2) shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate

Section 167(5) If in any case triable by a Magistrate as a summons case,315 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.

Section 167(6) empowers the Sessions Judge to direct further investigation by vacating the order of the magistrate stopping investigation under sub-section (5) on *his own satisfaction on an applicatio*n notwithstanding an application was not filed earlier before the Magistrate. The power is to be exercised by the Sessions Judge as a Court of original jurisdiction and he is required to consider the grounds raised in the application to satisfy himself whether further investigation should be made or not and give his own reasons.[2]

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[1] Artatran Mahasuara v State of Orissa, AIR 1956 Ori 129
[2] Superintendent and Remembrancer of Legal Affairs, WB v Nasima Ranga Rao, 1978 Cr LJ 1830 (Cal)

STEP 2 : UNDERSTANDING THE INTERPRETATION

SCOPE OF SECTION 167

On production of the arrested person by the police officer who effected arrest, before the Magistrate, it is open to the Magistrate under **sub-section (2) of *section 167, Code of Criminal Procedure, 1973*** to authorize detention of the accused person to such custody as such Magistrate thinks fit for a prescribed term. Without such authorization from the magistrate under *section 167(2), Code of Criminal Procedure, 1973* the police officer who arrested the accused person cannot keep the accused person in his custody *either in police station or in his house or in a hospital or in any other place.*

The Magistrate can under section 167(2) authorise the detention of the accused in such custody as he thinks fit but it should not exceed fifteen days in the whole. The words "such custody" and "for a term not exceeding fifteen days in whole" are very significant. [3]

REMAND UNDER CRPC : The word "remand" connotes "a re-committal to custody of a person who has been brought up in custody". There are two provisions in the Code which provide for remand, i.e., **sections 167 and 309.**

PURPOSE OF REMAND : The Magistrate has the authority under section 167(2) of the Code to direct for detention of the accused in such custody, i.e., police or judicial, if he thinks that further detention is necessary.

- The purpose of remand as postulated under section 167 is that *investigation cannot be completed within 24 hours*. It enables the Magistrate to see that the remand is really necessary.
- This requires the investigating agency to send the case diary along with the remand report so that the magistrate can appreciate the factual scenario and apply his mind
  - ✓ *whether there is a warrant for police remand or*
  - ✓ *justification for judicial remand or*
  - ✓ *there is no need for any remand at all.*

- It is obligatory on the part of the magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. [4]

NATURE OF POWER : The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under section 167 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 is satisfied. [5]

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[3] CBI v Anupam J Kulkarni, AIR 1992 SC 1768
[4] Manubhai Ratilal Patel Tr Ushaben v State of Gujarat, AIR 2013 SC
[5] Arnesh Kumar v State of Bihar, AIR 2014 SC 2756 : 2014 (8) Scale 250 : (2014) 8 SCC 273

RIGHT TO BAIL : An accused person against whom charge-sheet is not presented within the period of 90 or 60 days, is entitled to be offered bail as a matter of right. He need not apply. No discretion whatsoever is left to the Magistrate and it is obligatory on his part to release the accused on bail provided the accused furnishes bail [Public Prosecutor High Court of AP v Chaganti Satyanarayana, 1986 Cr LJ 1134 AP : 1986 (2) Crimes 609 : 1986 (1) Andh LT 150 : 1986 APLJ 310].

CANCELLATION OF BAIL UNDER SECTION 167 : An order of release on bail under section 167(2) proviso is not defeated by lapse of time or by the filing of charge-sheet or by remand to custody under section 309(2).[6]It has been held that indefeasible right of accused to be released on bail after detention in custody for 90 days cannot be withdrawn after the charge-sheet has been submitted.[7]

The prosecuting agency must realise that if it fails to show a sense of urgency in the investigation of the case and omits or defaults to file a charge-sheet within the time prescribed, the accused would be entitled to be released on bail and the order passed to that effect under section 167(2) would be an order under section 437(1) or 439(1) of the Code. **Since section 167 does not empower cancellation of the bail**, the power to cancel the bail can only be traced to section 437(5) or 439(2) of the Code. The bail can then be cancelled on considerations which are valid for cancellation of bail granted under section 437(1) or (2) or 439(1) of the Code.[8]

ARREST BY MAGISTRATE HIMSELF : A Magistrate arresting a person under section 44 does not act as a "Court". It is an arrest without warrant. His detention beyond 24 hours would be illegal if a remand order to custody is not obtained under section 167 by producing him before another Magistrate.[9]

An accused of murder is in custody. Police could not forward challan against him within 90 days of his committal to custody. On the 91st day the accused applied for bail before the lunch hours of the Court. On the same day, after the lunch, police submitted the report (challan) against him. Can the application for bail be rejected?.

In Uday Mohanlal Acharya v/s State of Maharashtra, (2001) 5 SCC 453 while elaborating on the rights of an accused, who is in custody, pending investigation and where the investigation is not completed within the period prescribed under Section 167 (2) of Code of Criminal Procedure, 1973 held that on the expiry of said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate.

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[6] Raghubir Singh v State of Bihar, (1986) 4 SCC 481 (SC)
[7] Bahadur Singh Sirka v State of Jharkhand, [2011 Cr LJ (NOC) 442 (Jhar)],
[8] Aslam Babalal Desai v State ofMaharashtra, JT 1992 (6) SC 21: AIR 1993 SC 1
[9] State of Punjab v Ajaib Singh, AIR 1953 SC 10

Police officer failing to produce a person before a Magistrate within 24 hours of arrest is guilty of wrongful detention[10]

COMPARISON OF SECTION 167 WITH OTHER PROVISIONS

The scheme of the provisions in sections 167, 209 and 309 is that while section 167 provides for detention during the pendency of investigation, section 209 provides for detention during pendency of commitment proceedings and section 309(2) provides for detention during pendency of trial or inquiry[11]

STEP 3 : UNDERSTAND THE RECENT DEVELOPMENTS

RECENT CASE LAWS

Achpal @ Ramswaroop and anr. v. *State of Rajasthan* AIR 2018 SC

Issue in this case was: investigation was completed and challan was filed under Section 173 on 5th July, 2018. Two days before that, an order had been passed by the High Court recording submission of the public prosecutor, that investigation in that case would be conducted by Gazetted Police Officer. The investigation which led to the filing of report on 5th July, 2018 was not in conformity with statement made before the High Court. Due to this reason that magistrate returned the papers. All this had happened before the expiry of 90th day. The questions before the court were:

- Can it be said that the investigation was complete for the purposes of Section 167(2) of the Code so far as to deny the benefit to the accused in terms of said provision.
- Whether the order passed by the High Court could be construed as one under which the period for completing the investigation was extended.

Therefore, the Bench, held that provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of such eventuality. The bench also held that an accused is entitled to default bail under Section 167(2) of the Code even if the chargesheet filed by the police was returned by the Magistrate for technical reasons.

Pardeep Ram v. *State of Jharkhand & anr.* AIR 2019 SC

In his case, issue before the court was that whether the power under Section 167 CrPC be exercised when the cognizance has already been taken by the court or the accused could have been remanded only under Section 309(2).

The bench summarized the law on this point as under:

- The accused can be remanded under Section 167(2) of CrPC during investigation till cognizance has not been taken by the court.

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[10] Sharifbai Mehmoob v Abdul Razak, AIR 1961 Bom 42

[11] Benimadhava v State of Rajasthan, 1983 Cr LJ 633

- That even after taking cognizance when an accused is subsequently arrested during further investigation, the accused can be remanded under Section 167(2) of CrPC.
- When cognizance has been taken and the accused was in custody at the time of taking cognizance or when inquiry or trial was being held in respect of him, he can be remanded to judicial custody only under Section 309(2) of CrPC.

S. Kasi v. *State through IG of Police, Tamil Nadu* AIR 2020 SC
It was held that lockdown due to Covid-19 will not affect the rights of the accused for default bail under Section 167(2) of CrPC. Extention of limitation period by the Supreme Court in certain cases in view of lockdown in the Nation will not affect the right of accused for default bail.

