

# REMAND WORK ON HOLIDAYS

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# CONCEPT and MEANING OF REMAND

**Literal meaning of remand is to send back or to return.**

**In legal terms, it can be defined as sending the accused back to the custody of the competent authority.**

## MANDATE of LAW

Article 22(2) of the Constitution of India contains provisions that any individual arrested and has been detained in custody should be produced before the magistrate within 24 hours of his arrest.

A provision has been made under section 57 of the Code of Criminal Procedure where the police officer arresting an individual without a warrant shall not detain the accused beyond 24 hours without special permission of the magistrate.

# ROLE OF MAGISTRATE

There shall be no unlawful detention beyond the specified period without the order or permission of the magistrate.

The permission of the magistrate is given under section 167 of the Code of Criminal Procedure.

This special permission taken from the Magistrate is known as the remand where the accused arrested is taken in to custody.

## REMAND WORK ON HOLIDAYS

The courts are remained closed in Public Holidays.

The Chief Judicial Magistrate, in consultation with the Hon'ble District & Session Judge , deposes the Magistrates to discharge the duty of Remand Work on such Holidays .

The deputed Magistrate are generally called as Remand Magistrate or Duty Magistrate .

The Remand Magistrate should not leave the station and must be available for discharging his/her remand duty .

# REMAND WORK AT DISTRICT HEAD QUARTER

The work of committal of cases and remand/bail for offences punishable u/s 302, 304, 304-B and 396 IPC and under the NDPS Act may be retained at the District Headquarter.

# REMAND ON HOLIDAYS IN SPECIAL ACTS

A Special Court is a court that has limited jurisdiction and deals with a specific area of law .

NDPS ACT, 1985

SC ST ACT, 1989

PC ACT, 1988

POCSO ACT, 2012

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986

Other Special Enactments.

## SPECIAL JUDGE COMPETENT TO GRANT REMAND u/s 167 CrPC

A Special Judge under Criminal Law (Amendment) Act, 1952 can exercise powers of Magistrate u/s 167 CrPC. (State of T.N. Vs. V.K. Naidu, AIR 1979 SC 1255).

In absence of the Special Judge Remand Magistrate may do the remand work .

In general, the Remand Magistrate should authorize the custody of accused till next working day.

The Remand Magistrate should also direct the Investigating Officer to produce the accused before Special Judge, along with Case Diary and other relevant materials, like Narcotics Drugs etc.



## REMAND OF JUVENILE/CCL

No remand of CCL/Juvenile can be granted by Remand Magistrate.

CCL/Juvenile should be produced before Principle Magistrate or Member of Juvenile Justice Board even on the holiday .

It is the duty of Principle Magistrate to make arrangement regarding remand work for Juvenile.

## REMAND MAGISTRATE ACTS AS A COURT OF LAW

Bail should be granted in Bailable Cases.

In Non Bailable Cases the Remand Magistrate should proceed as per Law.

In pending cases , custody should be granted till next working day.

If bail application is filed in a pending case, the Remand Magistrate can pass the order on such application to put up before court concerned for further proceedings .

**DUTY OF MAGISTRATES**  
**REGARDING REMAND AND BAIL**  
**FOR OFFENCE u/s 498-A IPC**  
**and u/s 41(1)(b)(ii) CrPC**

***Arnesh Kumar Vs. State of Bihar***  
***(2014) 8 SCC 273***

The Hon'ble Supreme Court, has interpreted the provisions of Section 41 CrPC and issued guidelines regarding remand, where the offence is not punishable with imprisonment exceeding 07 years and the offence is one u/s 498-A IPC.

# Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273

(1) All the State Government to instruct its police officers not to automatically arrest when a case u/s 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above following from section 41, CrPC.

(2) All police officers be provided with a check list containing specified sub-clauses u/s 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention:

# Arnesh Kumar Vs. State of Bihar

## (2014) 8 SCC 273

(4) The Magistrate while authorizing detention of the accused shall pursue the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention:

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy of the Magistrate which may be extended by the Superintendent of police of the District for the reasons to be recorded in writing:

(6) Notice of appearance in terms of section 41-A of CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing:

# Arnesh Kumar Vs. State of Bihar

## (2014) 8 SCC 273

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction:

(8) Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for the departmental action by the appropriate high Court.

(9) We hasten to add that the directions aforesaid shall not only apply to the cases u/s 498-A of the IPC or section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than even years: whether with or without fine.

(10) We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

DUTY OF COURT/MAGISTRATE  
TO PROVIDE LEGAL AID  
TO ACCUSED  
ON STATE EXPENSES  
AT THE TIME OF REMAND

# IMPORTANT LEGAL PROVISIONS

Article 39A Constitution of India

Section 304 Code of Criminal Procedure, 1973

Section 12 of the Legal Services Authorities Act, 1987



**Hussainara Khatoon and others v.**  
**Home Secretary, State of Bihar, Patna**  
**(1980) 1 SCC 98**

The right to free legal services is, therefore, clearly an essential ingredient of “reasonable, fair and just”, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.

**Khatri and others (II) v. State of Bihar**  
**(1981) 1 SCC 627**

In this case, it was noted that the Judicial Magistrate did not provide legal representation to the accused persons because they did not ask for it. This was found to be unacceptable. This Court went further and held that it was the obligation of the Judicial Magistrate before whom the accused were produced to inform them of their entitlement to legal representation at State cost. In this context, it was observed that the right to free legal services would be illusory unless the Magistrate or the Sessions Judge before whom the accused is produced informs him of this right. It would also make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services thereby rendering the constitutional mandate a mere paper promise

Suk Das v.  
Union Territory of Arunachal Pradesh  
(1986) 2 SCC 401

The Hon'ble Supreme Court reiterated that an accused need not ask for legal assistance, the Court dealing with the case is obliged to inform him or her of the entitlement to free legal aid.

**Rajoo Alias Ramakant v.**  
**State of Madhya Pradesh**  
**(2012) 8 SCC 553**

By the Forty-second Amendment to the Constitution, effected in 1977, Article 39-A was inserted. This article provides for free legal aid by suitable legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

# Anokhilal v. State of Madhya Pradesh

## AIR 2020 SC 232

The Hon'ble Supreme Court Before laid down certain norms:-

- i) In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.
- ii) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.
- iii) Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days time may normally be considered to be appropriate and adequate.
- iv) Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in Imtiyaz Ramzan Khan case.

# Roles and Responsibilities of Bail/Remand Advocates

The Remand Advocates are appointed by Legal Services Authorities. They are duty bound-

To remain present during remand hours and as and when directed by the concerned court.

To keep details of the case in which he or she has extended his legal services in remand and bail matters.

To be devoted and dedicated towards his duties and legal services activities.

# Roles and Responsibilities of Bail/Remand Advocates

Bail/Remand Lawyers are expected to be vigilant about the condition of the accused produced from the custody of the police. He should inquire if the accused was subjected to any ill-treatment and the same should be informed to the magistrate and requested to be noted down in the remand order.

# Roles and Responsibilities of Bail/Remand Advocates

Remand hours are fixed on Sundays and Court Holidays.

The Remand Lawyers appointed in court working on the given holiday should therefore be present during the day of production.

The designated lawyers should inform the magistrate/reader when they leave court for the day and ensure that their contact details are available, so that they may be called if required later in the day.



# Important Circulars regarding Remand of accused issued by Hon'ble High Court, Allahabad

C.L. No. 58/VIIb-16 dated 17th April, 1974

C.L. No. 102/VIIb-47 dated 5th August, 1975

C.L. No. 123/VIIh-16 dated 25th September, 1975

C.L. No. 97/VIIb-16 dated 16th August, 1979

C.L. No. 51/VIIb-47 dated 17th August, 1984

C.L. No. 19/2006, dated 10.5.2006

**C.L. No. 58/VIIb-16**  
**dated 17th April, 1974**

In order to avoid harassment to persons arrested by the Police to be produced before a Judicial Magistrate, a time schedule should be fixed by the Judicial Magistrate with Superintendent of Police so that persons detained shall be produced within that schedule and if any Police Officer does not adhere to the time schedule without a reasonable cause, action should be taken against him.

The duty of Magistrates extends even beyond the office hours and they should be available for purposes of remand without showing any reluctance in this regard.

**C.L. No. 102/VIIb-47**  
**dated 5th August, 1975**

District Judges should impress upon all the Judicial Magistrates on duty for granting bails and remands and for the disposal of other urgent matters during holidays or on Sundays to do this work in court at a fixed time duly notified and intimated to all concerned, including the Public Prosecutors.

**C.L. No. 123/VIIh-16**  
**dated 25th September, 1975**

It is also impressed upon them that all provisions of law in respect of remand should also be observed strictly. The Presiding Officers of the criminal courts should carefully examine and scrutinize warrants and remand papers before putting their signatures on them, so that the chances of bail applications being allowed solely on the ground of technical flaw are eliminated.

**C.L. No. 97/VIIb-16**  
**dated 16th August, 1979**

The Court has noticed that the Magistrates have authorized detention of the accused persons in jail custody without the accused being produced before them. Under paragraph (b) of proviso to sub-section (2) of Section 167 of Code of Criminal Procedure, 1973, no such detention order can be passed by a Magistrate unless the accused is produced before him.

All the Judicial Magistrates should act strictly in accordance with the said provision of law.

**C.L. No. 51/VIIb-47**  
**dated 17th August, 1984**

The court has noticed that when an accused is produced before the court for remand, normally the police papers are not available with the court, either because they are sent late or they are withheld by court-moharrir.

In the absence of these papers, the bail application cannot be entertained.

At times this delay in receipt of papers and presence of accused brought for remand, results in non-consideration of application for bail, and often leads to confrontation between the lawyers and the officers.

Attention of all the Presiding Officers is invited towards the provisions of section 167 and 172 of the Code of Criminal Procedure, 1973, and they are directed to see that in future no such violation of the law is permitted.

The Presiding Officers should act in accordance with the provisions contained in section 167 of the Code, while remanding the accused in custody brought before them for remand.

*Thank You!*