

Police Custody Remand & Transit Remand

Article 22(2) of the Constitution of India and section 57 of CrPC states that every person arrested and detained in custody must be produced before the nearest magistrate within 24 hours . No person can be detained for more than 24 hours without the permission of the Magistrate under section 167 and sec. 309 CrPC . Pre cognizance stage-sec. 167, post cognizance-sec .309.

If the investigation cannot be concluded within 24 hours and if further detention of the accused by the police is necessary in the interest of the case , the officer -in -charge of the police station or the investigating officer not below the rank of sub inspector should request in writing the nearest judicial magistrate to order such detention in the police custody of the accused u/s 167(1) of the CrPC , 1973 with a clear indication of the reason thereof and producing the accused person with copy of the entry in the diary before the magistrate.

Police Custody Remand – Under section 167 magistrate can grant Police Custody Remand or judicial Remand . the accused is sent to the remand to the lock up at the police station under the police surveillance . Generally the police remand is requested for the purpose of investigation or questioning the accused .

Grounds for granting Police Custody Remand – Granting or not granting remand to the police custody always depends on the facts and circumstances of the case and requirement of the collection of evidence by the investigating agency . Investigating agency has established that certain evidence has been collected without further custodial interrogation no further investigation is possible .

- a, effective interrogation of the accused to know about other accomplices ;
- b, know the details of the offence ;
- c, performing recovery or collecting physical evidence ;
- d, recovery of stolen items ;
- e, ascertaining the exact place of occurrence;
- f, ascertaining the truth of the statements of the other accused persons involved in the case.

Recovery under the section 27 of the Indian Evidence Act , 1872 is not the sole purpose for detention of an accused person in police custody remand . Police custody of the accused is required for interrogation in order to obtain additional details of the evidence to be collected and for identification of the accused by witnesses who are acquainted with the series of acts of the accused before the commission of the offence , during the commission of offence and after the commission.

State vs Ramsagar yadav 1985) 1 crimes “A remand to police custody should not be given unless the officer making application is able to show definite and satisfactory grounds. Remand order should not be passed mechanically .”

Magistrate`s duty and Authority while Granting remand -

While granting the police custody remand magistrate has to keep in mind-

1,Reasons to be stated in writing by the magistrate and it can be granted only in special cases . If the magistrate other than a CJM authorizing detention in police custody , he shall forward a copy of his order with reason to the CJM.

Jairaj singh Temubha Jadeja vs state of Gujrat 2001 , held that “detention according to section 167(2) CrPC is an exception , not a rule . The law does not impose a duty on the magistrate to record the reasons for not remanding in police custody”.

2,Production of **case diary**- according to sec. 167(2)(b)- no magistrate shall authorise detention in any custody under this section unless the accused is produced before him.

perusal of case diary is a must before remand of any kind – be judicial or police custody (**Chagati Satynarayana vs Andhra Pradesh (1986)3 SCC)**

2,The accused person should be allowed to represent himself before the court....

3, The accused should not be subjected to any kind of torture in police custody. **D.K.Basu VS State of West Bengal**- this case is widely recognised as a landmark judgement in incidents of custodial violence and torture .the Supreme Court laid down 11 guidelines to be followed during the arrest and during police custody .

4, His lawyer should be permitted to visit the accused while he is in police custody.**D.K. Basu vs State of West Bengal ,AIR 1997SC 610**

5,Accused must be medically examined-

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When the police custody remand cannot be granted -when the prima facie the allegations or information are not substantiated .

An accused has been brought before the magistrate to record his confession and who has refused to confess or has given unsatisfactory statements.

An accused entitle for bail and has been released on bail ,even to secure the recovery of stolen articles . In **Mithabhai pashbhai Ptel vs state of Gujrat , the Supreme Court** ruled that “the accuse who has been granted bail cannot be taken into police custody for further investigation unless bail is cancelled.

Approver cannot be sent on remand to police custody .

The power of granting police custody remamd cannot be exercised under sec. 167(2) crpc once charge sheet is filed and cognizance of the offence is taken . But when the accused is arrested during further investigation – **CBI VS Dawood Ibrahim Kaskar AIR 1997 SC 2424** “remand of an accused who is arrested at the stage of further investigation has to be dealt with by sec. 167 (2) not proviso of sec. 309(2) of crpc . As far as that accused investigation is still in progress , the IO cannot be denied the apporutuinity to have his police custody remand .

CBI VS Ratin Dandapat and ors , AIR 2015 SC 3285 The Supreme court applying the principle in Dawood Ibrahim case held that “an absconding accused arrested after filing charge sheet can be remanded to police custody .`

Police custody remand beyond 15 days from the date of arrest . But when the police custody granted in one case cannot be a bar for invoking a fresh remand in respect of altogether different case of the same accused. In the case of State vs **Dharmpal (1982)** it was held that “a person must be sent to police custody within 15 days .”

CBI VS Anupam J. Kulkarni (1992) 3 SCC 141, the Supreme court observed that “ there cannot be police custody remand beyond 15 days from the date of arrest .

But in **CBI VS Vikas Mishra 2023 live law SC 283**

The SC opined that its decision in **CBI VS Anupam J.Kulkarni** ,requires to be re-considered . No accused can be permitted to play with the investigation and or the court process .

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Difference B/W police custody and judicial custody

Transit Remand

The term “transit remand” is neither mentioned nor defined in the CrPC. Simply transit remand can be said to be the remand of the accused, sought by the police, for taking the accused from one place to another in their own custody. It is for the purposes of extending the time mentioned in sec. 57.

The concept of transit remand is in sec. 167 CrPC which is given for the particular purpose to transit the accused from one place to another to be presented before the jurisdictional magistrate.

Sec. 167(2) provides that- **“The magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction 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 15 days in the whole; 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**”

Transit remand may also be sought under sec. 80 crpc when the accused arrested under a warrant issued by a court , out side the district.

Pre requisites for grant of transit remand

it is mandatory to produce the accused before the magistrate in person

copy of the case diary needs to be forwarded ...

application must be filed by officer not below the rank of SI ..

Reasons must be recorded by the magistrate

Gautam Navlakha vs the state of Delhi -The High Court of Delhi set aside the order granting the transit remand on several grounds including non furnishing of the copies of case diary as required u/s 167, not informing the accused about the grounds of arrest and no record of having provided free legal aid in form lawyer to represent the accused .