PETITIONER:
GOURI SHANKAR JHA

Vs.

RESPONDENT:
THE STATE OF BIHAR AND ORS.

DATE OF JUDGMENT20/01/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
1972 AIR 711 1972 SCR (3) 129
1972 SCC (1) 564
CITATOR INFO :
R 1974 SC 871 (3)
R 1975 SC1465 (6)
D 1983 SC 439 (15)

ACT:
Habeas Corpus-Remand order-Magistrate can pass order if for some reason the accused cannot be produced-Order sheet showing wrongly that person in custody was produced before magistrate-Such wrong entry does not mean that remand order was not in fact passed.
Code of Criminal Procedure, 1898-Ss. 167, 344-Scope of-Power under s. 34 can be exercised even before submission of charge-sheet.

HEADNOTE:
In the appeal against the order of the High Court dismissing the appellant's petition for a writ of habeas corpus the appellant urged that he was not produced before a magistrate within 24 hours after his arrest as required by s. 167 of the Code of Criminal Procedure or even later; that he was never informed of the grounds for his arrest; that no custody warrant was ever issued warranting the jail authorities to keep the appeal]ant in jail custody; that the remand orders passed by the magistrate were tinder s. 167 and not under s. 344 of the Code, as the latter section did not apply at the stage of investigation and that even if s. 344 applied the magistrate could not order detention for more than 15 days in the whole. He also urged that the Jail Superintendent did not produce before the High Court the jail records but only produced his report, thus disabling the appellant from establishing his case. Dismissing the appeal,
HELD : (1) The order sheet produced before the High Court showed that the appellant was produced before the magistrate within 24-hours after his arrest and that the magistrate remanded him to jail custody. Though the order sheet had entries showing that on subsequent occasions when remand orders were made the appellant was produced before the magistrate, the High Court has found that the Magistrate had wrongly recorded that the appellant was produced before him on those occasions. However, the wrong entries made by him do not mean that the remand orders were not in fact passed

by him though he did so in the absence of the appellant. Such orders can be lawfully passed if an accused person cannot for some reason or the other be brought before the magistrate. [134 E-F]
Rai Narain v. Superintendent, Central Jail, New Delhi, Writ Petition No. 330 of 1970, decided on Sept. 1, 1970, referred to.
(ii) The facts negative the suggestion of the appellant being kept in ignorance of the reasons for his arrest. [135 F]
(iii) There is no reason to think that the magistrate ordered the appellant to lie taken into jail custody without custody warrant. [136 A]
(iv) S. 167 operates at a stage when a person is arrested and either an investigation has started or is yet to start, but is such that it cannot be completed within 24 hours. Section 344, on the other- hand, shows that investigation has already begun and sufficient evidence has been obtained raising a suspicion that the accused person may have committed the offence
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and further evidence may be obtained, to enable the police to do which a remand to jail custody is necessary. The fact that s. 344 occurs in the Chapter dealing with inquiries and trials does not mean that it does not apply to cases in which the process of investigation and collection of evidence is still going on. Therefore, it is not as if the stage at which the Magistrate passed the remand orders was still the stage when s. 167 applied and not s. 334. The Magistrate, provided he complied with the condition to the Explanation, was competent to pass remand orders from time to time subject to each order being not for a period exceeding 15 days. The Magistrate had satisfied that Condition. [136 G]
View contra in Artatran v. ATR 1956 Orissa 129 disapproved.
A Lakshamanrao v. Judicial Magistrate, A.I.R. 1971 S.C. 186, Chanaraatn v. State, (1953) 3 B.L.J.R., 323 and Ajit Singh v. State, (1970) 76 Crl.L.H. 1075, referred to
The appellant was content with the production of the superintendent's report. No prejudice was caused to the appellant's case since the jail record could not have proved anything more than what the jail superintendent's report proved.

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 123 of 1968.
Appeal by special leave from the judgment and order dated May 3, 1968 of the Patna High Court in Criminal W.J.C. No. 17 of 1968 and Criminal Miscellaneous Case No. 447 of 1968.
B. C. Ghose, S. N. Misra and A. K. Nag, for the appellant.
D. Goburdhun, for the respondent.
The Judgment of the Court was delivered by-
Shelat, J. This appeal, by special leave, is. against the dismissal by the High Court of Patna of the Writ Petition and an application under S. 561A of the Code of Criminal Procedure, for a writ of habeas corpus and an order of a like nature. filed by the appellant. Both of them were heard together as they contained common allegations and both were dismissed by a common judgment.
In the two aforesaid proceedings, the case of the appellant was that he was arrested on February 18, 1968, that since then he had been detained in custody without being informed

of the grounds for his arrest and detention and also without having been produced before a Magistrate either within 24 hours after his detention as required under the Code, or even thereafter. On February 21, 1968, he was removed to Darbhanga jail where he was threatened that he would be falsely involved in several cases of dacoity unless he made certain incriminating statements which the police wanted him to make. He made two applications from jail one on February 25, 1968, and the other on February 28,

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1968 to the Sub-Divisional Magistrate. The first was not received at all by the Magistrate, while the second was received but after 'a long time, and was rejected. He also alleged that thereafter he made two further applications, one dated March 22. 1968 and the other dated March 27, 196,8 wherein he applied for directions to the police to 'furnish him with particulars of offences charged against him and for bail, but that he received no order on either of them. On these allegations, he claimed release forthwith from detention and the quashing of the criminal proceedings against him.

In the counter-affidavit filed by the State before the High Court, it was stated that one Bilat Sahni and one Baleshwar Paswan made confessions before the Magistrate at Samastipur on 23rd and 24th January, 1968 confessing their own guilt and implicating the appellant and certain other persons, in about eight dacoity cases, all having been committed in that locality, Thereupon, the appellant was arrested on February 17, 1968 He was produced before the Sub-Divisional Magistrate of Samastipur on February 18, 1968, but was remanded to police custody by the said Magistrate for four days on an application by the police therefore. On February 21, 1968, the appellant was once again produced before the same magistrate and on an application by the police he was remanded to jail custody. The affidavit alleged that the appellant was involved in as many as nine dacoity case; wherein remand orders had been passed from time to time and that that was how he had, since February 21, 1968, been detained as an under trial prisoner. On April 19, 1968, an identification parade was held in connection with one, of the said nine cases whereat the relevant complainant identified the appellant. The case of the State was that the appellant was one of the three leaders engaged with certain hardened criminals in the aforesaid several dacoity cases, that it Was not true that he was unaware of the case against him or that he was not produced before the magistrate or that he was kept in prison without proper remand orders having been passed by the Magistrate.

Five contentions were raised before the High Court, viz., (1) that the appellant was never produced before any magistrate within 24 hours after his arrest or even thereafter; hence his detention was in breach of Art. 22 of the Constitution, (ii) that although the order-sheet, in respect of Laheriasarai Police Station Case No. 1 of 1968, records that the appellant had been produced before the Magistrate on several days set out therein, that order-sheet had been falsely made; (iii) that the magistrates had no power to detain the appellant in jail in excess of 15 days in all, (iv) that even if he had the power to remand him in excess of 15 days in all, the condition for passing such orders was not

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satisfied, and (v) that no remand order was factually ever passed. None of these contentions was accepted by the High Court, and the High Court, therefore, dismissed, as

aforesaid, both the applications on May 3, 1968.
Mr. Ghose, who appeared for the appellant before the High Court and who appeared before us also raised the following points: (1) that the appellant was not produced before any magistrate either on February 18, 1968 or on any other date thereafter, (2) that the appellant was never informed of the ,,rounds for his arrest, and detention thereafter, (3) that no custody warrant was ever issued warranting the jail authorities to keep the appellant in jail custody, and (4) that assuming that the said remand orders were passed, the appellant could not be kept in jail custody for more than 15 days in the whole. On the basis of these four points he urged that the appellant's arrest .and detention were illegal and that therefore he was entitled to be released forthwith and the criminal proceedings instituted against him by the police quashed. Mr. Ghose also made a point that the jail Superintendent did not produce before the High Court the jail records which would show his having been taken out of the jail for being produced before the Magistrate when the magistrate decided the applications for remand by the police and passed the remand orders said to have been passed by him and that instead the jail Superintendent produced his report, thus disabling the appellant from establishing his case as laid in his writ petition.
We may at this stage dispose of Mr. Ghose's last point in regard to the non-production of the jail record before the High ,;Court. It is true that the appellant did ask for production of that record first in the writ petition, and then on April 22, 1968 to which date the hearing of the writ petition was adjourned. But the order-sheet maintained by the High Court in connection with the writ petition and the said application under s. 561A of the Code shows that when the writ petition came up for admission, the learned Judges called for the record of the Magistrate's Court and report from the jail superintendent regarding the dates on which the appellant was said to have been produced before the Magistrate for the purpose of the hearing of the remand applications. It appears that on April 22, 1968, to which date the writ petition was made returnable, neither the record of the Magistrate's Court nor the report of the jail Superintendent had arrived. On that day, the appellant made an application for his production in Court at the time of the hearing and for the production of the jail record. The High Court, how-ever, rejected the prayer for his production in Court and as regards the jail record ordered as follows:

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> so far as the production of the record of the jail is concerned, an express reminder by telegram may be sent to the Superintendent of jail to send the report already called for immediately, if possible by a special messenger. A reminder may also be sent to the Court concerned to send the records immediately, if possible, by a special messenger."

The High Court does not seem to have pressed for the production of the jail record as it presumably thought that the Court's record would show the dates when the appellant was produced before it and the Superintendent's report would make that point clear. It 'appears from that order that the appellant also was content with the production of the Superintendent's report and did not press for the calling of jail record. The judgment of the High Court also shows that that was also the case when the High Court heard the writ

petition and the said s. 561A application. Neither the order-sheet nor the judgment of the High Court seems to warrant the allegations made in para 28 of the Special Leave Petition that repeated prayers were made for the production of the jail record. In any event, no prejudice appears to have been caused to the appellant's case since the jail record could not have proved anything more than what the jail Superintendent's report proved.

The report, which was before the High Court, clearly pointed out that the appellant was remanded to jail custody on February 21, 1968 by the Sub-Divisional Magistrate, Sadar in the case under s. 395 of the Penal Code. The next date for his appearance was fixed on March 5, 1968, but the appellant refused to go to the Magistrate's Court on that day as also on March 20, 1968 and April 4, 1968, on the ground that the identification parade for him had not yet been held and his going to and appearing in the Court would expose him to possible witnesses. 'Me Magistrate, therefore, had to postpone his production before him to April 18, 1968 when the appellant was produced and once again remanded to jail custody till the, next date, that is, May 2, 1968. The report of the jail Superintendent, thus, frankly conceded that the appellant could not be produced on the dates above-stated and that the Magistrate, therefore, had to pass remand orders in his absence. It is clear from the report that the appellant himself had refused to appear and be present before the Magistrate when he heard the remand applications. therefore, cannot legitimately make a grievance that those orders were passed in his absence. Those orders could be passed validly in his absence if his presence at the time could not be secured. This has been held by the majority judgment of this

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Court recently in Rai Narain v. Superintendent, Central jail, New Delhi. (1)

We now proceed to consider the remaining points in the order in which Mr. Ghose raised them. The first point urged before us was that the appellant was not produced before a magistrate within 24 hours after his arrest as required by S. 167 of the Code of Criminal Procedure, or even later and that therefore his arrest and the detention were bad in law. The order-sheet of the Laheriasarai Police Station Case No. 1(i)68 produced before the High Court shows that the appellant was produced before the Magistrate on February 18, 1968, that is, within 24 hours after his arrest and that the Magistrate remanded him to jail custody on the application by the police until March 5, 1968. So far there is no difficulty because these entries in the order-sheet are corroborated by the report of the Superintendent of jail. The order-sheet, however, has entries dated March 5, 1968, March 20, 1968 and April 4, 196 8 when remand orders are shown to have been made, each for a period of 15 days, and further that the appellant was produced before the Magistrate on each of those three occasions. That, as the High Court has rightly observed, was not correct as the jail Superintendent's report clearly showed that the appellant had refused to go from the jail for fear that he would be seen or be shown to probable witnesses. No reason has been shown as to why we should not agree with the aforesaid observation of the High Court, viz., that the Magistrate had wrongly recorded that the appellant was produced before him and that the remand orders were passed in his presence. The wrong entries made by him, however, do not mean that the remand orders were not in fact passed by him though he did so in the absence of the appellant. Such orders, as already

pointed out, can be lawfully passed if ail accused person cannot for some reason or the other be brought before the Magistrate. It is, therefore, not possible to say that remand orders were not passed or that consequently his detention in the jail was without a valid basis. In the High Court no such contention, viz., that remand orders were not passed on those three dates appears to have been raised. Indeed, the allegation that the appellant was never produced before the Magistrate is belied by an elaborate order made by the Magistrate on March 28, 1968 when the appellant was represented by counsel. At that stage his counsel did not argue that the appellant was never produced before the Court or that no remand orders were ever, passed. The argument urged at that time was that the proceedings at that stage attracted s. 167 of the Code, that the stage had not yet reached when s. 344 would operate and that therefore the Magistrate bad no power to remand the appellant to jail custody for more than 15 days in the whole. That contention was

(1) Writ Petition No. 330 of 1970, dcc. on September 1, 1970.

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rejected by the Magistrate holding that there was an inquiry before him, and that therefore, s. 344 applied and he was competent, therefore, to pass remand orders from time to time so long as each of those orders was not for a period in excess of 15 days. By that very order, the Magistrate rejected the bail application made by the appellant's advocate holding that the investigation in the cases of dacoity in which the appellant was concerned was going on at that stage and that release of the appellant on bail would hinder its progress.

The next contention was that the appellant was never informed of the grounds of his detention and that that being so, his detention was invalid. Paras 3, 4 and 35 of his writ petition did not charge that at the time of his arrest he was not informed of the grounds for his arrest and that even when he filed his writ petition he was not informed of those reasons, and that that constituted breach of Art. 22(1). This allegation is without any foundation. All throughout, his case was that the police had tortured him and threatened to involve him in a number of dacoity cases unless he made certain incriminating statements which they wanted from him. What were those incriminating statements which the police were trying to get from him ? From the fact that the police were wanting him to make those statements, he must have realised that those statements were related to the cases for which he had been arrested. Next, in the application he made from jail to the Magistrate on February 28, 1968, he alleged that the senior Sub-Inspector of Police came to him on February 19, 1968, first abused him and then later on asked him "to admit that offence and promised that by doing so I would be discharged". According to that application he refused to admit the offence whereupon he was assaulted by the police. It also appears that he knew that an identification parade was going to be held and therefore had refused to be taken out of jail for being produced before the Magistrate. All these facts negative the suggestion of his being kept in ignorance of the reasons for his arrest or the cases charged against him.

The third contention was that no valid custody warrant was issued by the Magistrate enabling the jail authorities to detain the appellant in the Darbhanga jail and licence the detention must be held to be without any legal authority. In support of the argument, counsel pointed out the custody

warrant dated February 18, 1968 which according to him must be deemed to have been cancelled is at the foot of it there is the Magistrate's endorsement that the appellant was instead remanded to police custody. Assuming that to be so, there is nothing to show that on February 21, 1968 when the Magistrate ordered the appellant to be taken into jail custody, a fresh custody warrant had not been issued by him. The Magistrate, while passing that order, must have known that the

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jail authorities would not accept the appellant in jail unless the police taking him there produced a custody warrant. There is no reason to think first that the Magistrate had not issued such, a warrant, and secondly, that the jail Superintendent inducted the appellant in the jail without such a warrant. The contention, in our view is wholly without any basis.

The last contention of Mr. Ghose was, firstly, that the remand orders passed by the Magistrate were under s. 167 and not s. 344, as the latter section did not apply at that stage, and secondly, that even if s. 344 applied, the Magistrate could not order detention for more than 15 days in the whole. Sec. 167 appears in Ch. XIV which deals with information and investigation. As its language shows, it deals with the stage when a person is arrested by the police on information that an offence has been committed. In providing that such a person must, in terms of s. 61, be produced before a magistrate within 24 hours after his arrest, the section reveals the policy of the legislature that such a person should be brought before a magistrate with as little delay as possible. The object of the section is two-fold, one that the law does not favour detention in police custody except in special cases and that also for reasons to be stated by the magistrate in writing, and secondly, to enable such a person to make a representation before a magistrate. In cases falling under s. 167, a magistrate undoubtedly can order custody for a period at the most of 15 days in the whole and such custody can be either police or, jail custody. Sec. 344, on the other hand, appears in Ch. XXIV which deal with inquiries and trials. Further, the custody which it speaks of is not such custody as the magistrate thinks fit as in s. 167, but only jail custody, the object being that once an inquiry or a trial begins it is not proper to let the accused remain under police influence. Under this section, a magistrate can remand an accused person to custody for a term not exceeding 15 days at a time provided that sufficient evidence has been collected to raise a suspicion that such an accused person may have committed an offence and it appears likely that further evidence may be obtained by granting a remand

Thus, s. 167 operates at a stage when a person is arrested and either an investigation has started or is yet to start, but is such that it cannot; be completed within 24 hours. Sec. 344, on the other hand, shows that investigation has already begun and sufficient evidence has been obtained raising a suspicion that the accused person may have committed the offence and further evidence may be obtained, to enable the police to do which, a remand to jail custody is necessary. The fact that s. 344 occurs in the Chapter dealing with inquiries and trials does not mean that it does not apply to cases in which the process of investigation and

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collection of evidence is still going on. That is clear from the very language of sub-s. 1-A under which the magistrate has the power to postpone the commencement of the

inquiry or trial. That would be the stage prior to the commencement of the inquiry or trial which would be the stage of investigation. (see A. Lakshamanrao v. Judicial Magistrate(1). Therefore, it is not as if the stage at which the Magistrate passed the remand orders was still the stage when s. 167 applied and not s. 344. The decision of the Orissa High Court in Artatran v. Orissa(2), to the effect that s. 344 does not apply at the stage of investigation and can apply only after the Magistrate has taken cognizance of and issued processes or warrant for the production of the accused if he is not produced before him cannot, in view of A. Lakshamanrao's case(1) be regarded as correct. The power under s. 344 can be exercised even before the submission of the charge-sheet, (cf. Chandradip v. State(3) and Ajit Singh v. State(4), that is, at the stage when the investigation is still not over. If the view we hold is correct that s. 344 operated, the Magistrate, provided he complied with the condition in the Explanation, was competent to pass remand orders from time to time subject to each order being not for a period exceeding 15 days. There can be no doubt that the Magistrate had satisfied that condition. The judgment of the High Court in para 11 points out that the prosecution case was that the appellant had himself made a confession before the police. That was in addition to a confession by two others which implicated the appellant in the commission of offences under s. 395 of the Code.

In our view none of the contentions raised on behalf of the appellant can be sustained. The appeal, therefore, fails and has to be rejected.

K.B.N. Appeal dismissed.

(1) A.I.R. 1971 S.C. 186.
(2) A.I.R. 1956 Orissa 129.
(3)(1955)Bihar Law Journal Reports, 323.
(4) (1970) 76 Cr. L.J. 1075.

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