# Remand by a Judicial Magistrate if Investigation is not completed within 24 hrs

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The dictionary meaning of the word remand is to return or send back. However, in the legal world, it has two different meanings. Firstly, it is used to send back the accused in the custody of the competent authority. Secondly, it is used to send back the cases from the appellate court to the lower court.

In my research work, I will be dealing with the remand that is ordered under S.167(2) of the CrPC when the investigation is not completed within 24 hours. Remand under S. 167(2) is an important component in the investigation process. It is an aid to the successful completion of an investigation. In other words, it is the remand where we send back the accused into the custody of police or that of the magistrate for collecting evidence and completion of investigation. The purpose of remand is to facilitate completion of investigation.

This power of ordering remand is given to the judicial magistrate under S.167(2) of the CrPC. This power comes into picture when the investigation is not completed within 24 hours of arrest and the accused is further required in custody for the successful completion of investigation. S. 57 of the CrPC mandate that if a person is arrested without warrant, the investigation must be completed within 24 hours. And if it is not done within 24 hours and the police officer needs him in custody for some more time for the successful completion of investigation, he cannot detain him without an order of remand by the court under S.167(2) of the CrPC.

This is the point where this power of a judicial magistrate comes into picture.

**Some Basic Concepts**

### 1. Types of Remand In Custody Under CrPc:

# **On the basis of stage:**
The power of sending back of the accused in the custody of competent authority is given under 3 provisions of the CrPC. One under S. 167(2), S.209(b) and S.309(2) of the CrPC. The difference lies in the stage at which it is ordered. While remand under S.167(2) relates to the stage of investigation and is ordered for furthering the investigation and can be either in judicial custody or police custody, remand under S.209(b) relates to the stage when the magistrate commits the case, he can remand the accused to the custody during and until the conclusion of the trial subject to the provisions of bail under the code and finally remand under S.309(2) relates to a stage after cognizance and can only be sent to judicial custody. The remand under S.209(b) and S.309(2) is for securing the presence of the accused during the trial.[1]

# **On the basis of authority who orders it:**
The power of remand under S.167 can be further classified into 2 heads on the basis as to who is the authority ordering it. The one is given to the judicial magistrate under S167(2) and the other is given to the executive magistrate under S.167(2A) which can be exercised by him only in the absence of a judicial magistrate.

### 2. Object of S. 167

The object and scope of Section 167 is well-settled that it is supplementary to S. 57. It is clear from S. 57 that the investigation should be completed in the first instance within 24 hours and if cannot be done, the arrested person should be brought by the police before a magistrate as provided under Section 167.[2]
In other words, the object of this provision is two-fold; firstly, that the law does not favor detention in police custody except in special cases and that too for reasons to be stated by the Magistrate in writing, and secondly, to enable such person to make a representation before a Magistrate.

### 3. The Term Magistrate Under The Sub Section:

## Following implications can be drawn from the use of term under S. 167(2):

# The term magistrate in the sub section 2 implies judicial magistrate only and not the executive magistrate because sub section 1 clearly provides that the police officer would transmit the material to the nearest judicial magistrate and also special power was given to the executive magistrate in the year 1978 by The Code Of Criminal Procedure (Amendment) Act, 1978 with the insertion of S.167(2A) that can be exercised only in the absence of the judicial magistrate.

# Also, the term used is magistrate and not judicial magistrate first class or judicial magistrate second class or chief judicial magistrate, therefore it can be implied that the right to order remand is conferred to all three of them under S.167(2). But there is a limitation on this power of the judicial magistrate second class under proviso (c) of S.167(2), which provides that he cannot authorize detention in police custody unless specifically empowered by the High Court.[3]

# Also, the provision provides for the word ‘nearest judicial magistrate’ and not the term ‘magistrate who has the authority to take cognizance of the matter’. Also, under S.167(2), expressly lays down that the magistrate to whom the accused is forwarded and the materials are transmitted may have or not have the jurisdiction to try the case. Hence, it is not necessary that the nearest judicial magistrate must have the jurisdiction to try the case but it was held in the case of Bal Krishna v. Emperor[4] that in the absence of any difficulties like long distance etc. the police should approach for the purposes of remand to a magistrate having jurisdiction to try the case.

**4. Who Makes The Remand Application:**
Remand application under S.167(1) is made by the officer in charge of the police station or the person making the investigation, if he is not below the rank of the sub inspector whenever he thinks that the investigation would not be completed within 24 hours as mandated by S. 57 and he has grounds to believe that the accusation or the information is well informed. He must also forward the accused and the transit the copy of the entries in the diary along with the application.

## Parameters To Be Considered Or The Pre Conditions For A Valid Remand Order

**# Parameters:**
There are different parameters that must be considered by the magistrate while granting or refusing remand under S.167(2).

In the case of **Ram Doss v. State of Tamil Nadu**[5], the court has held that while granting remand under S.167 of the CrPC a Magistrate has to see:
1. The grounds why detention beyond 24 hours is sought for which can be decided by him on the basis of the material forwarded to him by the police officer.
The court further held that there can be no doubt to the view that a remand order is a judicial order. Therefore, this power has to be exercised by him in accordance with the well settled norms of making a judicial order. Therefore, for the said reason to also has to see that:
2. There is a report disclosing cognizable offence
3. The case has been registered for investigation.

**# Pre Conditions:**
Apart from these parameters, certain other pre conditions that are necessary for a valid remand order that can be derived from the careful reading of S.167. The pre conditions are as follows:
**1. Arrested and kept in police custody:**
The section starts with the wordings, ‘Whenever any person is arrested and detained in custody’, this means that the section applies only to the cases where the police has arrested the accused and have detained him in their custody and not in any other case.
Also, In section 167(2), the words used are "The Magistrate to whom an accused person is forwarded under this section" and according to sub-section (1) of the section an accused is forwarded by the police along with the copy of the case diary, this indicates that the section applies only to such cases where an accused has been forwarded to the court by the police and not to cases where a person has surrendered before the court.

This can be supported by the case of **The State of Gujarat v. Patel Pramkhlal Gordhandas**[6], where it was held that the section does not apply to cases where the accused has surrendered before the court it only applies to cases where the accused has been forwarded to the court by the police. The same view has been taken by the Allahabad High Court.

## 2. Involved in an ongoing investigation that cannot be completed within 24 hours:

The accused who has been brought before the court must be involved in an ongoing investigation that cannot be completed within 24 hours and his presence is required by the police for the investigation. S. 57 provides that where a person has been arrested without warrant, he cannot be detained in custody for a period exceeding 24 hours without a special order by the magistrate under S. 167. Therefore, from a conjoint reading of S.57 and S. 167, it can be concluded that for an application under S. 167, it is required that the accused who is been forwarded to the magistrate must be involved in an ongoing investigation that cannot be completed within 24 hours.

## 3. Well founded grounds of accusation:

The words used under S. 167(1) are ‘there are grounds for believing that the accusation or information is well founded’, therefore it can be said that before an application is made under the section, there must be well founded grounds for accusation of the person.
The same conclusion can be drawn from the words used in the sub section 1 and 2. S.167(1) begins with the ‘any person’ and later when the section talks about his forwarding to the magistrate after there are well founded grounds of accusation, the words used is ‘accused’ and not ‘any person’. Also, under S. 167(2), the word used is ‘accused’ and not ‘any person’.

**4. Materials must be transmitted:**
The police officer must transmit the entries in the case diary while forwarding the accused to the magistrate when the application for remand is made by the police officer. The object of this condition is that the entries in the diary provides to the Judicial Magistrate information upon which he can decide whether or not the detention of the accused person in custody should be authorized and also to enable him to form an opinion as to whether any further detention is necessary.

In the case of **Gaibidingpao Kabul v. Union Territory of Manipur**[7], it was held that if the Police do not transmit to the Court a copy of the entries in the diary relating to the case, to satisfy the Magistrate that there are grounds for believing that the accusation or information is well founded, and that a remand is absolutely necessary for the purpose of investigation, the Magistrate has no jurisdiction to direct the detention of the arrested person.

But in **Pallasan Heneefa v. State of Kerala**[8] it was held that the case diary must be sent with the remand report, but on a mere violation of this, evidence cannot be discarded. The violation may taint the prosecution in some cases, when the facts justify, but not in all cases. Where there is other material on record, non-production of case diaries will not vitiate the order of police remand.

**5. Forwarding of the accused and his presence when remand order is passed:**
Sub section 1 provides for forwarding the accused to the nearest judicial magistrate when the application is made to him. It is the duty of the police officer to forward the accused to the nearest judicial magistrate if he thinks that the investigation would not be completed within 24 hours. Forwarding is done to ensure his presence when the remand application is heard and decided by judicial magistrate.

It has been specifically provided under proviso (b) to sub section 2 that no magistrate shall authorize detention in any custody unless the accused is produced before him in person for the first time and subsequently every time till he remains in police custody. There is a relaxation to this rule when further detention order in judicial custody is to be obtained, the accused can also be produced through the electronic video linkage.[9]

In order to facilitate the proof that the accused was produced before the magistrate as per S. 167, the magistrate may obtain his signature on the order authorizing detention. The same can also be used as a proof if any question arises as to whether the accused was produced before the magistrate as required by clause (b) of S. 167(2).[10] This is been provided in Explanation II appended to the sub section.

The object of requiring the accused to be produced before the magistrate is to enable the magistrate to decide judicially whether remand is necessary or not and also to enable the accused to make representation to the magistrate to controvert the grounds on which the police officer has asked for remand. This was held in the case of **Bal Krishna v. Emperor[**11]

The production of accused to the magistrate is a mandatory requirement but it can be dispensed with as was done in the case of **Kurra Dasaratha Ramaiah And Ors. vs State of Andhra Pradesh**[12], non-availability of police escort was held to be a valid ground for non-production of the accused before the Magistrate for extending remand under S. 167, CrPC., provided that there are justifiable causes for such non-availability of escort. Further, the court held that whenever it is not possible to produce an accused before the Magistrate, the concerned Investigating Officer or any other responsible Police Officer in charge of the case or the jail Superintendent shall file a detailed report before the Magistrate explaining the circumstances under which it was not possible to produce the accused on that particular day. If the Magistrate is satisfied after going through the report, he may dispense with the production of the accused and pass appropriate order under S. 167, Cr.P.C., as to the detention of the accused. But the Magistrate should not pass an order in this regard mechanically in a routine manner, the order should be a well considered reasoned one.

**6. Adequacy of grounds for the order:**
Before exercising the power under S.167(2), the magistrate must see that adequate grounds subsist for ordering remand. Magistrate’s power to give remand is not mechanical and adequate grounds must subsist if Magistrate wants to exercise his power of remand.[13]
In the case of **Manubhail Ratilal Patel v. State of Gujrat and others**[14], Hon'ble Apex Court observed that, remand is a fundamental judicial function of the Magistrate. While performing this judicial function, Magistrate has to satisfy himself that there are reasonable grounds and that materials placed before him justify remand of accused. While remanding accused it is obligatory on part of Magistrate to apply his mind to facts and not to pass remand order automatically or in a mechanical manner.

Some of these have also been held in the case of **Trilochan Singh v. State (Delhi Administration)**[15], **where the Delhi HC observed that:**
Reading S.57 and S.167 together, one can safely conclude that section 167, comes into play only when
1. the accused is arrested without warrant and is detained by a police officer,
2. it appears that more than 24 hours will be needed for investigation,
3. there are grounds for believing that the accusation or information against him is well founded, and
4. the officer-in-charge of the police station or the investigating officer not below the rank of a sub-inspector forwards the accused before the Magistrate.

**Time Computation**
**The time computation for the remand can be understood under the following heads:**
1. Initial remand
2. Extension of remand
3. From when or from which date the period of remand is computed
4. Change in custody

**Initial Remand:**
S. 167(2)[16] provides that if the magistrate has adequate grounds, he authorize the detention of the accused for 15 days but it should not exceed it. The type of custody depends on the discretion of the magistrate as the words used in the section are ‘in such custody as such magistrate thinks fit’.

In the case of In **Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J.Kulkarni**[17], where the question regarding arrest & detention in custody was dealt with, it was held that the magistrate under S.167(2) can authorise the detention of the accused in such custody as he thinks fit but it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed 15 days in the whole. The custody can be either police custody or judicial custody as the magistrate thinks fit.

There is an exception to this rule, as to where the police custody can be further extended beyond the 15 day period. The exception is the non availability of police for escort duty. In the case of **Kurra Dasaratha Ramaiah And Ors. V. State Of Andhra Pradesh**[18], it was held that non availability of police for escort duty is a valid ground for extending the period of remand of an accused under S. 167(2). It was further held that this can only be done only if there are justifiable causes for non availability of escort.

**Extension of Remand:**
Proviso (a) to S.167(2)[19] provides for the extension of remand period on the request of the police but shall be done only if adequate are provided by the police for the extension. Here the burden to satisfy the magistrate as the requirement of extension of remand period is on the police.
In other words, if the judicial magistrate is satisfied that for the purposes of investigation the accused person be detained beyond the period of 15 days, he can authorize further detention of the accused. But in such a case:
**1. the detention shall be in custody other than the police:**
in the case of **State (Delhi Admn.) v Dharam Pal**[20], it was held that after 15 days mentioned in S.167(2) the accused can only be kept in judicial custody or any other custody as ordered by the magistrate, but not the custody of the police. It was further reiterated in the case of CBI v. Anupam J. Kulkarni[21]. The court in this case held that police custody can be ordered only during the period of first 15 days if found necessary.
There is an exception to this rule. The accused can be remanded in police custody if he is involved in another case and is rearrested after the expiry of 15 days but can also be done only with the permission of the magistrate.[22]

**2. the total time period of detention (including the time period of initial detention of 15 days) shall not exceed:**
a. 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than10 years.
b. 60 days where the investigation relates to any other offence.
The proviso further talks about the right of bail given to the accused after the expiry of the said 60 or 90 days period. This part would be dealt with the section of bail.

## From When or From Which Date The Period of Remand Is Computed:

In the case of **CBI (Delhi) v Anupam J. Kulkarni**[23], the Supreme Court explained as to from when or from which date the time period for remand is to be computed. The court held that the period of first 15 days is to be computed from the date of detention as per the orders of the magistrate and not from the date of arrest by the police and the period of 60 or 90 days is to be computed from the date of such detention order and hence would include the detention period of first 15 days as well.

**Change In Custody:**
The change in custody can take place in the following situations:
1. The words “from time to time" appearing in the S. 167(2) shows that several orders can be passed under Section 167(2) and that the nature of the custody can be altered from judicial custody to police custody and vice-versa during the period of 15 days mentioned in Section 167(2) of the Code and that after fifteen days the accused could only be kept in judicial custody or any other custody as ordered by the magistrate but not in the custody of the police.[24]

This change in custody during the first 15 days can be either pursuant to a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days.[25] This means that the accused can be transferred from the custody of police to judicial and again to police and so on provided the total time period shall not exceed 15 days as a whole.

2. At the end 15 days, there can be an instance in the change of custody. If the accused is in police custody, he must be must be removed from the custody of the police and be shifted to the custody of the authority as ordered by the magistrate. And if the accused in the custody of the authority to which further remand is ordered, there is no need of change in custody.

3. Even after 15 days change in custody can take place. The accused can be shifted from judicial custody to police custody if it is found that the accused is involved in another case, then he can be re arrested and can be remanded back to the custody of the police for the investigation of the new case.[26]

## Application of Mind By The Court And A Reasoned Order

While deciding an application of remand under this section, court must apply its mind on the material produced before it, pass an order rather a reasoned order for the same.
**1. Application of mind**
The magistrate has to exercise his judicial mind while deciding whether or not the detention of the accused in any custody is necessary.[27] The magistrate should consider all available materials including the copy of the case diary before authorizing detention. The order of detention is not to be passed mechanically as a routine order on the request of the police for remand.[28]
The application of judicial mind does not mean that the remand order sheet should like a judgment delivered after full trial but it must be evident from it.[29]

**2. Duty of the police**
It was held in the case of **Artatran Mahasuara And Ors. vs State of Orissa**[30], that it is the duty of the police to satisfy the magistrate that there is sufficient evidence against the accused so as to order remand. The court further stated that further evidence must be obtained by the police if the magistrate is not satisfied on the basis of present evidence for obtaining the order of remand. It is only after the satisfaction of the magistrate that the remand order should be made by him.

**3. Sufficiency of grounds**
Before exercising the power under S.167(2), the magistrate must see that adequate grounds subsist for ordering remand. Magistrate’s power to give remand is not mechanical and adequate grounds must subsist if Magistrate wants to exercise his power of remand.[31]
In the case of **Manubhail Ratilal Patel v. State of Gujrat and others**[32], Hon'ble Apex Court observed that, remand is a fundamental judicial function of the Magistrate. While performing this judicial function, Magistrate has to satisfy himself that there are reasonable grounds and that materials placed before him justify remand of accused. While remanding accused it is obligatory on part of Magistrate to apply his mind to facts and not to pass remand order automatically or in a mechanical manner.

**4. Discretion of the magistrate**
The magistrate has complete discretion to decide the remand application. The magistrate is given the liberty or discretion to detain the accused either in police custody or judicial custody.[33] The discretion of enlarging bail is also given to the magistrate if he is not satisfied with the grounds on which the police asked for remand.[34] The condition precedent being the order must be based on valid grounds and must be reasoned one.

**5. Reasoned order**
Reasoned order is basically an order that provides for the reasons on whose basis the decision was taken by the court. A reasoned order is a desirable condition of judicial disposal.[35] The same is the case with the remand order, it is always desirous to record reasons as why it was taken.
S. 167(3)[36] provides that the magistrate shall record reasons while authorizing detention in police custody under the section. The sub section mandates the magistrate to record reasons while ordering detention in police custody as the word used is ‘shall’ and not ‘may’, but the section is only limited to the cases where detention to police custody is ordered and not judicial custody. But, it is always desirous to do so even in the case of detention in judicial custody.

## Court’s Obligation To Grant Bail

**Accused’s Right To Get Bail:**
Proviso (a) to S. 167(2) provides for the right of the accused to get bail. It provides that on the expiry of the period of 60 or 90 days as the case may be, the accused shall be released on bail. This right is not an automatic one, meaning that just because the time period is over, he is released on bail. He is entitled to be released on bail but for this right, he must be prepared to furnish bail and he actually furnishes it as well. This is also provided under Explanation I[37] the accused cannot be released from the custody even after the expiry of stipulated time if he has not furnished the bail.

But this right of bail under this section can only be claimed if charge sheet is not filed within 60 or 90 days as the case may be, and the right ceases if charge sheet is filed within the 60 or 90 days time period as held in the case of **Uday Mohanlal Acharya v. State of Maharashtra**[38], the Honourable Apex court in this case stated that where a charge sheet is not filed within requisite period of 60 days the accused is entitled to indefeasible right to be released on bail.
It is not that the accused has to make a formal written application for exercising the right to be released on bail.[39] If he intimates the court orally or in writing, the court cannot refuse to pass an order directing his release on bail for want of a written application.

**Court’s Duty To Inform:**
It is duty of the court to inform the accused regarding his right to get bail. In the case of **Hussainara Khatoon v. State of Bihar**[40], it was held that it is the duty of the magistrate to inform the accused that he has a right to get bail under the proviso.
There is an additional duty in the case of an indigent person. It is the constitutional duty of the state to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.[41] Therefore, there is an additional duty on the magistrate to inform the indigent person of his right to get free legal aid from the state on the very stage when he is first produced before the court. The Supreme Court in the case of **Suk Das v UT of Arunachal Pradesh**[42], has ruled that the court’s failure to inform the accused of his right to free legal aid in case of his being indigent, would vitiate the trial and result in the acquittal of the accused.

**Court’s Obligation To Grant Bail:**
In the case of **Suresh Kumar Jain v. State of Maharashtra**[43], the nature of obligation on a magistrate before whom an accused is produced to be released on bail on non filing of the charge sheet within the stipulated period of time is mandatory. In such a case, any detention beyond the stipulated time period except on non filing of bail application would be illegal.

## Application of Provisions of Chapter XXXIII:

Again, proviso (a) to S. 167(2) provides that every person released on bail under this sub section shall be deemed to be so released as under the provisions of Chapter XXXIII i.e. Provisions as to Bail and Bonds. Once the bail is granted under this provision, the provisions of Chapter XXXIII would be applicable for subsequent dealings relating to the matters of bail.
a. This means that the bail under this provision also remains valid until it is cancelled. The filing of charge sheet is not in itself a valid ground for the cancellation of bail.
b. This also means that the special powers of High Court and Court of Sessions under S.439 are also applicable in this as well. Special powers being release of person on bail and direction that any person released be arrested and again committed to custody.

**Re Arrest:**
The accused cannot be re arrested unless his bail has been cancelled. The same has been held in the case of **Mithabhai Pashabhai Patel and others Vs. State of Gujarat**[44], it was observed by the court that the accused who has been granted bail cannot be taken into police custody for further investigation unless bail is cancelled.

**This is the general rule but there can be exceptions to these rules as well. Following are 2 of the exceptions:**
1. In the case of **Pralhad Singh Bhati v. N.C.T. Delhi**[45], it was held that with the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. In this case, the accused was released on bail for an offence under S. 306 of IPC and later on offence under S. 302 was added, it was held that it was wrong on part of the Magistrate to say that for every addition of offence, police cannot arrest the accused.

2. In another case of **Ahamed Basheer and another v. Sub Inspector of police**[46], it was held that if the accused is released on bail for a bailable offence and if later on a non bailable offence is added, then police can arrest the accused without seeking cancellation order of bail.

**Conclusion**
From all the discussion regarding remand by a judicial magistrate when investigation cannot be completed within 24 hours, it can be concluded that the provision is enacted in a manner so as to favour the accused. The intention of the section is to protect the accused from the unscrupulous police officer. This is done by providing the maximum duration for which the accused can be sent to police custody. The detention is police custody is disfavoured by the law as the section provides that the maximum period for which the accused can be sent for remand in police custody and the duration is 15 days that too the initial 15 day period and not after that. Various other protections are also given in the provision like presentation before magistrate before completion of 24 hours time period so that after considering the evidence on record, he can decide as to whether remand should be ordered or not. Remand is ordered only after considering evidence and not on the face of the application. Also, a maximum limit is set for which remand can be ordered. After expiry of that period, the accused is entitled to bail. Therefore, it can be said the provision is framed in a manner that it is favourable to the accused.