

(1983) 04 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No's. 6975, 9894 and 10131 of 1981

Elumalai

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 30-04-1983

Acts Referred:

Constitution of India, 1950 — Article 21, 22(1), 22(2), 3
Criminal Procedure Code, 1973 (CrPC) — Section 106, 107, 108, 109
Madras City Police Act, 1888 — Section 64(2)
Penal Code, 1860 (IPC) — Section 225B, 420

Citation : (1983) LW(Cri) 121

Hon'ble Judges : Ratnavel Pandian, J;Natarajan, J

Bench : Division Bench

Advocate : N.T. Vanamamalai, K.V. Sankara, A. Packiaraj, R. Raghupathi and M. Jagadeesan, for the Appellant; The Public Prosecutor assisted by Mr. N. Dinakaran, Govt. Advocate No. II (Crl. Side), for the Respondent

Judgement

Ratnavel Pandian, J.—Of these three writ petitions, W.P.6975/81 is filed by Elumalai, Remand Prisoner No.7330 confined in the Central

Prison, Madras, W.P. No. 9894/81 by Mr. Raghupathi, Advocate placed in the "A" Panel of the Madras District Committee for Legal Aid and

Advice, on the instruction of Mr. P. Santiagorajan, Advocate of the Tirunelveli Bar, who has been appointed as duty counsel to visit the Central

Prison, Palayamkottai, by the Tamil Nadu Legal Aid Board, and W.P. No. 10131/81 by Mr. Jagadeesan, Advocate of the Madras Bar, placed in

the "A" Panel of the Madras District Committee For Legal Aid and Advice, OH the instruction of the abovesaid Mr. P. Santiagorajan. The

petitioner (Elumalai) in W.P.6975/81 has prayed for the issuance of a writ of Habeas corpus directing the respondents to set him at liberty,

whereas the prayer in W.P.9894/81 is for the issue of a writ of habeas corpus directing the respondents to set at liberty one Shanmugayya, son of

Subba Reddiar, detained in the Central Prison, Palayamkottai, and W.P.10131/81 is for the issuance of a writ of habeas corpus directing the

respondents to set at liberty one V. Nagarajan, son of Venkatarama Iyer, the accused in Crime No. 40 of 1980 of Sankarankoil Police Station,

and detained in the Central Prison, Palayamkottai. In all these three petitions, the first respondent is the State of Tamil Nadu, represented by the

Secretary, Home Department, and the other respondents are the Superintendent of the Central prison and the Inspector General of Prisons, and in

W.P. No. 9894/81 the Sub Inspector of Police, Courtallam Police Station, is an additional respondent.

2. As a common question of law is involved in all these writ petitions, the decision of which would determine the validity of the detentions of the

innumerable prisoners detained in the various prisons of the State of Tamil Nadu for a considerable length of time, we are disposing of these three

writ petitions by a common order.

3. Before discussing the law involved, we shall briefly set out the facts of each case. W.P.6975/81 : The writ petitioner was arrested by the Police

under S. 41(2) of the CrI.P.C., (hereinafter referred to as the Code), two months before the filing of this writ petition, and detained in the Central

Prison, Madras. The case pending against him consequent upon the arrest was adjourned from time to time and the remand was extended without

his being produced before the court except on the date of the initial remand. The reason for his non-production from the Central Prison before the

court is stated to be the non-availability of escort. The petitioner contends that his detention is contrary to the provisions of law and the principles

of natural justice and as such it is illegal.

4. W.P.No.9894/81: The petitioner, who is an "A" Panel Advocate in the Legal Aid Board, on instruction from Mr. Santiagorajan, duty counsel

appointed to visit the Central Prison, Palayamkottai, states that the duty counsel when he visited the Central Prison on 27th August, 1981, was

informed that one Shanmugayya was arrested on 18th June, 1981 under S. 41(2) of the Code by the Sub Inspector of Police, Courtallam Police

Station, in Crime No. 235/81, and the case has been pending before the Judicial

Second Class Magistrate, Tenkasi, who has been adjourning the case periodically, and the case ultimately posted to 31st July, 1981 on which date, as understood, the Magistrate had mechanically extended the date of remand without the production of the Prisoner, for the reason that no escort was available. Hence it is submitted that the detention of the petitioner is illegal.

5. W.P. 10131/81 : The petitioner herein, who is also an Advocate coming in the "A" Penal of the Madras District Committee for Legal Aid and

Advice, has filed this writ petition on the instruction of the duty counsel Mr. P. Santiagorajan who had visited the Central Prison, Palayamkottai, on

21st August, 1981. As per the instruction of the duty counsel, when he interviewed one Nagarajan, a prisoner confined in the Central Prison, he

came to know that the said prisoner is a graduate confined in the jail since 24th April, 1980 for an alleged offence under S. 420, I.P.C., on a case

registered in Crime No. 40/80 of Sankarankoil Police Station, and that the said case is pending before the Sub Divisional Judicial Magistrate,

Kovilpatti, and that the prisoner is kept in custody. The case was adjourned periodically and was posted on 6th August, 1981 for production of

the prisoner. But, on the said date, for want of police escort, he was not produced before the court and the Magistrate, notwithstanding the non-

production of the accused, had mechanically extended the date of remand without assigning any reason, which order is contrary to the mandatory

provisions of the code as well as the principles of natural justice and hence the order of remand should be held invalid.

6. In W.P. 6975/81, a counter affidavit is filed by the Sub Inspector of Police, Tcynampet, swearing that the petitioner was arrested on 1st July

1981 as he was found in suspicious circumstances as set out in the first information report and that he has been released on 3rd September, 1981

from detention.

7. The second respondent, the Superintendent of Central Jail, has filed a separate counter stating that the petitioner who was remanded under S.

41(2) of the Code, was first remanded on 2nd July, 1981, but for want of escort, he could not be produced before the Magistrate on 16th July,

1981, on which date the learned Magistrate extended the remand till 30th July, 1981, on being informed of the non-availability of escort, and

hence the petitioner continued to be a remand prisoner only under the orders of the Court. Further, he would state that on 30th July, 1981, the petitioner was produced before the court and the remand was extended till 13th August, 1981, on which date also, for want of escort, the petitioner could not be produced. However, the learned Magistrate extended the remand for a further period of fourteen days. According to him, the detention of the petitioner in the Central Jail was not illegal.

8. The third respondent, the Inspector-General of Prisons, has filed a separate counter giving certain particulars gathered from the records of the Central Prison, Madras, in a tabular form, viz., the dates and the strength of the remanded undertrial prisoners in jail, the number of prisoners to be produced before the Court, and the number of prisoners not produced for want of police escort on the particular dates. This respondent would, however, add that in all these cases the remand periods were extended by the Magistrate.

9. In W.P. 9894/81, the Sub Inspector of Police, Courtallam, has filed a counter stating that he arrested Shanmugayya, the detenu concerned, under S. 41(2) of the Code and produced, him before the Judicial Second Class Magistrate Tenkasi, who remanded him to judicial custody, that the finger prints of the said Shanmugayya were taken for verification of his antecedents that the Finger Print Bureau sent its report on 23rd September, 1981, stating that the finger prints of Shanmugayya do not tally with any of the recorded impressions available in the office of the Finger Print Bureau, that on the same day he filed a charge-sheet against the accused under S. 64(2) of the Madras City Police Act, and that in the mean time, at his request, the remand was periodically extended so as to enable him to find out whether the accused had any bad antecedents.

10. In W.P. 10131/81, a common counter is filed by the Superintendent of the Central Prison, on his behalf and on behalf of the State represented by the Home Secretary, stating that the detenu Nagarajan was remanded by the Sub Divisional Judicial Magistrate, Kovilpatti, on 24th April, 1980 in connection with Crime No. 40 of 1980 of Sankarankoil Police Station under S. 420, I.P.C., that the prisoner was produced before the court on all the subsequent 36 hearings out of 38 hearings, and that the reason for the non-production of the accused on the two hearings was the non-

availability of police escorts in spite of his requisition given to the police. Therefore, it is stated that there was no infringement of any fundamental right given to the prisoner under the Constitution.

11. Thus, it is clear from all the counters filed on behalf of the respondents, that the remands were extended periodically without the production of

the prisoners before the remanding Magistrate, as contemplated under proviso (b) to S. 167(2) of the Code. It was brought to the notice of this

Court by Mr. N.T. Vanamamalai and Mr. K.V. Sankaran, Learned Senior Counsel of this Bar, who appeared at the request of the Tamil Nadu

Legal Aid Board on behalf of M/s. R. Raghupathi and M. Jagadeesan, learned counsel who filed W.P. Nos. 9894/81 and 10131/81 respectively,

and on behalf of Mr. A. Packiaraj, counsel, who initially appeared for the petitioner in W.P. 6975/81, that similar to the case of the detenus in

these cases there are a large number of prisoners kept detained in the various prisons in the State of Tamil Nadu, suffering incarceration for several

months consequent upon the prisoners being whisked away by the police in the pretext of arrests effected under S. 41(1) and (2) of the Code and

consequent upon arrests made for various offences inclusive mostly of offences of trivial nature, or arrests made on suspicion, which prisoners are

all languishing in cellular confinement for a considerable length of time without actually facing any trial and without any hope of their cases being

disposed of, and that their remands are being extended by the Magistrates without the prisoners being produced before them as contemplated

under the Crl. P.C. and as such the remands of these prisoners are quite contrary to the provisions of the Constitution and the Code and also

against the principles of natural justice.

12. Having regard to these submissions, we thought of making a detailed enquiry about the alleged lamentable state of the unfortunate prisoners

who are allegedly deprived of their personal liberties guaranteed under Art. 21 of the Constitution, which insists that no man shall be deprived of

his life or personal liberty except according to the procedure established by law. In this connection, reference can be had to the decision of the

Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, which elaborately deals with the rule of law vis-a-vis personal

liberty, by insisting on the procedure contemplated in Art. 21 of the Constitution.

Hence, following the procedure adopted by the Supreme Court in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, ; Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, . and Gopalanachari Vs. State of Kerala, we directed the learned Public Prosecutor to collect the data regarding the under-trial prisoners kept under detention in the various jails in Tamil Nadu, with all necessary particulars. Accordingly, the learned Public Prosecutor has produced the charts furnished to him by the various jail superintendents in the State, giving, in a tabular form, the following particulars available with them, viz, the names of the under-trial prisoners, the sections under which they were arrested, the Courts which remanded them, the dates of their entry into jail custody, the dates on which the accused were actually produced, the dates on which they were not produce and the reasons therefor, etc. Some of the jail superintendents have also given the total periods of remand of the under-trial prisoners arrested under S. 41 (1) and (2) of the Code and under the various penal provisions of the various enactments, as on the date of submission of the charts.

13. It is apparent from these charts that a number of under-trial prisoners arrested under S. 41(1) and (2) of the Code and initially remanded to Judicial custody, have been subsequently produced from time to time before the Magistrates for extension of remands and on many occasions the remands have been extended even without the production of the accused before them. Similarly, the remands of the under-trial prisoners arrested for commission of offence under various enactments have also been extended without their being produced before the Magistrates. The reasons assigned in the charts for such non-production of the accused is the non-availability of the escorts to take the prisoners to the courts from the jail. It is also alarming to note that a vast majority of under-trial prisoners have been kept for a considerable length of time, and in some cases extending upto two years, in cellular confinement without any trial, obviously due to the fact that the charge-sheets have not been filed or that the enquiries or trials have not commenced. We are also very doubtful whether, on the expiry of 90 days or 60 days, as the case may be, from the date of the arrest, the attention of the under-trial prisoners was drawn to the fact that they are entitled to be released on bail as contemplated under proviso (a)

to S. 167(2) of the Code, or whether the remanding Magistrates pointed out to the under-trial prisoners that they are entitled to be released on bail

despite the fact that the Supreme Court in *Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi, .* has ruled that-

When an under-trial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days as the case may be the

Magistrate must, before making an order of further remand to judicial custody, point out to the under-trial prisoner that he is entitled to be released

on bail.

As the charts reveal that countless extensions of remands have been granted, we find it difficult to believe that on each occasion on which the

under-trial prisoners were produced before the Magistrates, the Magistrates made the orders of remand after applying their judicial minds to the

necessity of extending their remand periods. Hence, in view of the highly regrettable state of affairs prevailing in the various prisons, viz., the lives of

the under-trial prisoners suffering incarceration for several months or years, we feel that a detailed examination with regard to the scope and import

of S. 41(1) and (2) of the Code, with reference to its allied provisions, and of S. 167(2) of the Code and other provisions connected therewith, is

necessary.

14. Sub-S.(1) and (2) of S. 41, coming under Chapter V, of the new Code correspond to Ss. 54 and 55 respectively of the old Code. This S. 41

gives the police wide powers of arresting persons falling in any one of Cl.(a) to (i) of S. 41(1), or persons belonging to one or more of the

categories of persons specified in S. 109 or S. 110 of the Code, as contemplated under S. 41(2), without any order from the Magistrate and

without a warrant. It is, however, not a matter of caprice, limited only by the police officers' own view as to what persons they may arrest without

such order or warrant. The powers of the police officers are strictly defined by the Code, and being an encroachment on the liberty of the subject,

an arrest purporting to be made under the section would be illegal, unless any one of the circumstances specified in the various clauses exists. As

the power of arrest under S. 41 is wide and drastic, it has to be exercised with caution and circumspection and for substantial reasons. See *Gulam*

Mohammed Azimuddin v. State AIR 1957 M.P. 147.

15. Sub-S.(2) of S. 41 deals with matters which are not offences, and it is independent of Chapter VIII of the Code covering Ss. 106 to 124 of the

Code, viz., sections relating to security proceedings for keeping the peace and for good behaviour, although the proceedings under Chapter VIII

follow such arrests under S. 41(2) as a natural sequence. However, as already mentioned, only a person belonging to one or more of the

categories specified in S. 109 or S. 110 of the Code can be arrested under this section.

16. Arrest under S. 41(1) and under S. 151 of the Code : While S. 41(1) enacts that a police officer can arrest, without an order from a

Magistrate and without a warrant, any person in any of the specified circumstances mentioned therein, S. 151, which is preventive in nature,

empowers a police officer to arrest without orders from a Magistrate and without a warrant, any person designing to commit any cognizable

offence, the commission of which cannot otherwise be prevented. Under the present Code, a new sub-S.(2) has been added to S. 151, limiting the

detention of the person so arrested under sub-S.(1) to a period of 24 hours from the time of his arrest, unless his further detention is required or

authorized under any of the provisions of this Code or of any other law for the time being in force. The moment a person is arrested without a

warrant under any of the various sections inclusive of Ss. 41 and 151 of the Code, it is the bounden duty of the police officer or any other person

so arresting, to forthwith communicate to the person arrested, the full particulars of the offence for which he is arrested or other grounds for such

arrest, as envisaged in S. 50(1) of the Code, which is a corollary to Art. 22(1) of the Constitution of India. See *Madhu Limaye In re* (1969) 3

S.C.C. 154 : AIR 1969 S.C. 1014 : 1971 L.W. CrL. (S.N.) 20. If the arrest is made without a warrant in a bailable case, the person should be

informed of his right to be released on bail as required in sub-S.(2) of S. 50. S. 56 requires the police officer making such an arrest without

warrant, to take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of a police station

without unnecessary delay. S. 57, which is in consonance with Art. 22(2) of the Constitution, provides that no police officer shall detain in custody

a person arrested without warrant for a longer period than under all circumstances is reasonable and such period shall not, in the absence of a

special order of a Magistrate under S. 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the

Magistrate's Court. When an investigation cannot be completed-within the period of 24 hours fixed by S. 37 and if it appears that there are

grounds for believing that the accusation or information against the arrested person is well-founded, the officer in charge of the police station or the

police officer making the investigation should immediately transmit to the nearest judicial Magistrate a copy of the entries made in the diary and

forward the accused to such Magistrate as required in S. 167(1) which is supplementary to S. 57. In this connection, it is to be noted that no

person arrested under S. 151(1) can be detained in custody for a period exceeding 24 hours from the time of his arrest, that is to say, he can be

kept under police custody without obtaining orders from the Magistrate for a maximum period of 24 hours. Thus, ordinarily a person arrested

under S. 151 can be detained only for a period of 24 hours from the time of his arrest, unless further detention is required or authorized under any

other provision of the Code. It follows, therefore, that the detention of the arrested person under S. 151 also can be extended by the application of

S. 167(2) if there are exceptional circumstances warranting such a detention, in view of the newly introduced sub-S.(2) of S. 151, which provision

has now settled the conflict of judicial opinion as to the applicability of S. 167(2) to arrests made under S. 151(1).

17. In *Om Prakasha Gupta In re* AIR 1949 Mad. 744 : 62 L.W. 394 an application under S. 491 of the old Code to issue an order in the nature

of Habeas Corpus for setting at liberty the petitioner therein (detenu) was filed. In that case, the petitioner was arrested by the police and was

produced before the Commissioner of Police who remanded him to custody for a period of ten days. A Division Bench of this Court consisting of

Satyanarayana Rao and Viswanatha Sastry, JJ., rejected the contention urged on behalf of the petitioner that the arrest under S. 151 was illegal

and dismissed the petition, impliedly holding that the remand by the Commissioner of Police, of the petitioner who was arrested under S. 161 was

not illegal.

18. A single Judge of the Kerala High Court in *Chakkappan and Others Vs. State of Kerala*, relying upon the decision of this Court in *A.K.*

Gopalan Vs. State of Kerala and Others, observed that the correctness of the knowledge of the police officer as to the design of a person to

commit a cognizable offence cannot ordinarily be scrutinized by a court of law and that there is no justification for limiting the scope of S. 167(2)

where arrest is made under S. 151 of the Code, and held:

The conditions required to attract that section (S. 167) are that there must be a person arrested and detained in custody and that it must appear to

the police officer that investigation against the arrested person cannot be completed within a period of 24 hours of his arrest and that there are

grounds for believing that the accusation or information against the arrested person is well founded, the arrest need not necessarily be in connection

with a case for the actual commission of a cognizable offence. The arrest may as well be under S. 151 of the Code in order to prevent the

commission of a cognizable offence. In either case, a reasonable time maybe required for investigating into the accusation of the person concerned

and it is to enable the conduct of such an investigation in an effective manner that the Magistrate has been empowered under sub-S.(2) of S. 167

to pass an order remanding the accused to custody.

19. A Division Bench of the Kerala High Court in A.K. Gopalan v. State of Kerala, 1963 Manipur 12 had occasion to consider the applicability of

S. 167(2) to arrests made under S. 151 of S.54(1) (of the old Code) (corresponding to S. 151 and 41(1) of the new Code) Govinda Menon, J.,

who agreed with the conclusion of Anna Chandy, J., in his separate Judgment, held that½

Whether the arrest was under S. 151 or under S. 54, is not relevant for the purpose of remanding the accused under S. 167.

20. In Gaibidingpao Kabui v. Union Territory of Manipur, 1957 All. 189 it has been held that in cases of arrests made either under S. 151 or S.

54(1) (of the old Code) (corresponding to S. 151 and 41(1) of the new Code) there is to be investigation and the arrested person has to be

produced before a Magistrate under S. 167, CrI.P.C, if his detention is desired pending the investigation.

21. Contrary to the view taken in the above cases, a Division Bench of the Allahabad High Court in Shravan Kumar v. Superintendent, District

Jail, Order of this Court in CrI. M.P. 3073 of 1963, dated 22nd November, 1963

had held that S. 167 could not apply to arrests made under S. 151.

22. Kailasam, J., of this Court as he then was, in Kannan In re, 1963 Manipur 12 had held that S. 167 could not be invoked for remanding a person arrested under S. 151 of the Code.

23. In view of the insertion of Sub-S.(2) in S. 151, about which we have made a discussion in the preceding paragraph, the opinion expressed by the Allahabad High Court and Kailasam, J., of this Court (as he then was) in Kannan In re 1963 Manipur 12 is no more good law and therefore, as pointed out in the other decisions, S. 167(2) would apply even to arrests made under S. 151, but under exceptional circumstances.

24. Thus, it is clear that when an arrest is made under S. 41(1) or under S. 151(1) of the Code, relating to a cognizable offence and if a case is registered and there are grounds for believing that the accusation or information against the arrested person is well-founded and the investigation cannot be completed within a period of 24 hours, the police officer has to comply with S. 167(1) for obtaining further detention of the accused and the Magistrate, on being satisfied from the entries in the diary transmitted to him, that a further detention is necessary, can extend the detention of the person in custody. But, the remand should not be made mechanically and as a matter of routine, and such routines should be deprecated.

Particularly in the case of a person arrested or mere suspicion under S. 41(1), the Magistrate has to be watchful as the power to arrest without warrant on suspicion under that provision is liable to be abused. Needless to say that when a person is thus arrested under S. 41(1), it is the duty of the police officer to carry out prompt investigation without unnecessary delay, as provided in S. 173, and collect evidence to satisfy the court that there is sufficient evidence to raise a suspicion that the arrested person may have committed an offence and that it is likely that further evidence may be obtained and collected by such a remand.

Arrests Effected under S. 41(2) : Sub-S.(2) of S. 41 reads thus:

Any officer in charge of a police station in like manner, may arrest or cause to be arrested any person belonging to one or more of the categories of persons specified in S. 109 or S. 110.

The above provision empowers any police officer to arrest, without an order from a Magistrate and without a warrant, only a person belonging to

one or more of the categories of persons specified in S. 109 or S. 110 of the Code and thus it deals with matters which are not offences. These

two sections, viz., Ss. 109 and 110, are preventive and not punitive in nature and they are aimed at protecting the society from dangerous

characters against the preparation of crimes by placing them under security as would prevent them from resorting to evil forces since their acts,

which do not amount to substantive offences, are such as to make it difficult to deal with them under the ordinary provisions of law. In cases of

arrests made either under S. 41(1) or under S. 151 of the Code, there have to be investigations and hence the persons arrested under S. 41(1) or

S. 151(1) have to be produced before the Magistrate in compliance with S. 167(1) for obtaining the order of detention either in police custody to

a maximum period of 15 days or in judicial custody-as warranted by the facts and circumstances of each case. In this connection, we would like to

add that the procedure to be followed in making the arrests under S. 41(1) should not be arbitrary, unfair or unreasonable.

25. A plain reading of S. 41(2) shows that this provisions for arrest is quite different from the provision for the arrest either under S. 41(1) or under

S. 151(1). In cases of arrests made under S. 41(2), there is no question of trial of any criminal case and there is no consummation of the case by

its ending in any conviction or in acquittal, and as such no investigation is required. As pointed out in *Rex v. Ram Dayal*, AIR 1950 All. 135 a

person proceeded against under the preventive sections like S. 109, CrI.P.C, is not accused of any offence, nor is he prosecuted. So, wren the

arrested person is produced before a Magistrate under S. 57 and S. 167 of the Code, no question of his detention—either police or

judicial—would arise at all. In fact, there is no provision in S. 109 or S. 110 of the Code to detain a person in jail pending the proceedings under

the said preventive sections. If a person is produced before a Magistrate in connection with a proceeding either under S. 109 or under S. 110,

what the Magistrate may do is to make an order under S. 111 setting forth the substance of the information received, the amount of the bond to be

executed, the term for which it is to be in force, and the number, character and class of the sureties (if any) required. Thus, it is apparent that the

Magistrate has no authority under S. 167 to order detention of the person arrested under S. 41(2) into custody, whether police or judicial. But, the Magistrate is empowered under S. 116(3) to order detention of the person against whom an order of detention under S. 111 is made to execute a bond after the commencement and before the completion of the inquiry under sub-S. (1) of S. 116, until such bond is executed, or in default of its execution, until the inquiry is concluded, for the reasons to be recorded in writing. However, as per the proviso to sub-S.(6) of S. 116, such detention shall not exceed six months Further, as per S. 122, if a person ordered to give security under S. 106 or under S. 117, does not give security, he can be committed to prison until such period expires or until within such period he gives the security ordered. It may be clear that the order of detention or committal to prison, as contemplated under S. 116 or S. 122, as the case may be, is entirely different from the order of detention to be made under S. 167(2) of the Code.

26. Hitherto the power of taking security in the proceedings initiated under S. 109 or S. 110 of the Code, vested only with the Presidency Magistrate, District Magistrate, Sub Divisional Magistrate or the Magistrate of the First Class under the old Code, and with a Judicial Magistrate of the First Class under the new Code. But, by Ss. 2 and 3 of Central Act 63 of 1980, the expression ""an Executive Magistrate"" is substituted for the words ""a Judicial Magistrate of the First Class,"" which came into effect from 23rd September, 1980, and hence, as both the sections stand at present, the power of initiating the proceedings is vested with the Executive Magistrates, and the Judicial Magistrates have no authority to initiate security proceedings under Ss. 109 and 110. But, an Executive Magistrate has no power, except under S. 167(2-A) introduced by Act 45 of 1978, to order detention to custody of a person brought or produced before him in a proceeding taken under S. 109 or S. 110 of the Code, by availing of S. 167, since the power to order detention or to extend the detention is given only to a Judicial Magistrate. In fact, as pointed out in Ram Dayal's case AIR 1918 Mad. 1186, persons to be proceeded against under Ss. 109 or 110 need not be arrested under S. 41(2) before the initiation of the proceedings, and Ss. 109, 110 and 55 are independent proceedings.

27. The charts furnished by the Public Prosecutor show that almost all the persons arrested under S. 41(2) are shown to have been remanded and sent to jail and such remands have also been periodically extended and in some cases, the extensions have been made even without the production of the remand prisoners before the Magistrate. Therefore, in view of our finding that S. 167 would not apply to arrests made under S. 41(2) the remands of all the persons arrested under S. 41(2) are to be held illegal and contrary to law. It is appropriate to refer to the decision in Subbaraya, In re, AIR 1918 Mad. 1186 in which a Division Bench of this Court has observed that a Stationary Sub Magistrate has no power to remand the accused to custody and keep him in the sub-jail as a prisoner with a view to proceedings being taken against him-under S. 110, CrI.P.C, and that such a remand being illegal, the escape from custody was not illegal and so it would not amount to an offence under S. 225-B, I.P.C. The abovesaid observation still holds good as a correct proposition of law and hence we hold that a person arrested under S. 41(2) cannot be produced before a Judicial Magistrate for obtaining an order of remand, and no Judicial Magistrate has the power to remand such a person so produced or brought before him, to custody, as a prisoner, with a view to take proceedings against him under S. 109 or S. 110, CrI.P.C, and the person arrested under S. 41(2) cannot be characterised as an accused within the meaning of that term occurring in S. 167(1), nor can it be said that he is accused of any offence so as to direct him to furnish bail in compliance with the provisions relating there to. In security proceedings, a person arrested is termed only as a counter-petitioner. The duty of the Police officer after making the arrest under S. 41(2) is to place the information before the Executive Magistrate so as to enable him to take proceedings under S. 109 or under S. 110, under the mode prescribed in the various provisions relating to security proceedings under Chapter VIII of the Code.

28. In this connection, it is necessary to stress the point that the Executive Magistrates in order to protect the innocent and economically depressed people belonging to the poor strata of society from being harassed by misuse of its preventive sections, must insist on specificity of facts for being satisfied that the informations received by them do really require initiation of security proceedings, and bear in mind the observation by Krishna

Iyer, J., in *Gopalanachari Vs. State of Kerala*, while dealing with the validity of a proceeding taken under S. 110, of the Code, which observation

leads thus:

But, liberty is a prized value and that is why we have insisted not merely upon the police having to be careful before marching poor people into

Court under S. 110, but the Court itself having to be gravely concerned about using preventive provisions against helpless persons, not on formal

testimony readily produced to order as we have noticed in a recent case *Prem Chand v. Union of India*, 1981 Cri.L.J. 5 S.C. : W.P. No. 3050 of

1980 : 1981 L.W. (Cri.) 43 but on convincing testimony of clear and present danger to society.

In this connection, it would be useful to refer to the following observation of the Supreme Court in *Khatri v. State of Bihar*, AIR 1981 S.C. 929 :

1981 L.W. (Cri.) 45 (S.N.):

The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police

investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed come down

heavily upon the police.

29. Import of S. 167(2) of the Code : S. 167 of the new Code, corresponds to S. 167 of the old Code. Apart from certain minor changes from

the old provision, provisos (a) and (b) and Explanations 1 and 2 under the provisos (a) to (c) have been added to sub-S.(2). Sub-S.(5) and (6) of

this section are new introductions. This S. 167 comes under Chapter XII of the Code under the heading "Information to the Police and Their

Powers to Investigate" covering Ss. 154 to 176. As pointed out supra, S. 57 provides that no person shall be detained in custody by a police

officer without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a

special order of a Judicial Magistrate under S. 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest of the

Magistrate's Court. Therefore, if the police wants to detain the accused for a longer period for the purpose of investigation, the police has to

follow the procedure prescribed in this behalf under S. 167, which provides that if any person is arrested and detained in custody and it appears

that the investigation cannot be completed within a period of 24 hours fixed by S. 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the officer making the investigation" shall forth-with transmit to the nearest Judicial Magistrate a copy of the entries in the diary relating to the accused and shall at the same time forward the accused to such Magistrate. The Magistrate, to whom the accused is thus forwarded, may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody—½ police or judicial as such Magistrate thinks fit, for a term not exceeding 15 days in the whole. If the Magistrate has no jurisdiction to try the case or commit for trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Thus, it follows that under sub-S (2) the duration of detention, police or judicial—½ to be ordered by the Magistrate with or without jurisdiction, is limited to a maximum period of 15 days in the whole and not sine die Under the old Code, in cases involving serious and complicated offences, where investigation could not be completed within fifteen days, the police developed a practice of filing an incomplete report known as preliminary report before the Magistrate having rustication and then moving for further remand of the accused and getting his judicial detention extended from time to time by resorting to S. 344 (corresponding to S. 309(2) of the new Code) See *Matabar Parida, Bisnu Charan Parida, Batakrushna Parida and Babaji Parida Vs. The State of Orissa*, . The validity of this procedure was very much doubted because that S. 344 was intended to operate only after the Magistrate had taken cognizance of the offences which could be properly done only after a final report under S. 173 had been received and not while the investigation was still proceeding. Therefore, on the recommendation of the Law Commission, proviso (a) to S. 167(2) was introduced, empowering the Magistrate, having jurisdiction to authorise detention of the accused person, otherwise than in the custody of the police, beyond the period of 15 days and the Magistrate being satisfied that adequate grounds exist for so doing, for a maximum period of (sic) days if the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years, and for a period of 60 days if he investigation relates to any other offence.

On the expiry of the period of 90 days or 60 days, as the case may be, the accused is entitled to be released on bail subject to the conditions

contemplated therein. Of course, as per Explanation 1, notwithstanding the expiry of the above-mentioned period, the accused is liable to be

detained in custody so long as he does not furnish bail. Therefore, from the above position of law, it is held that an accused person can be detained

by the police for a period of 24 hours without any authority from the Magistrate and for 15 days in the whole under the order of the Magistrate. A

Magistrate with or without jurisdiction can order detention of the person police detention or judicial detention-for a maximum period of 15 days in

the whole, and the Magistrate having jurisdiction can extend the period of judicial detention either to 90 days or 60 days, as envisaged in proviso

(a) of S. 167(2), the underlying object being to enable the police to complete the investigation within that period of detention, so that the

investigation may not be hampered by the accused. But, the Code has not specifically fixed any period of limitation within which the investigation of

any case has to be completed and the final report under S. 173(2) has to be submitted before the Court. In this connection it may be noted that for

the first time in the new Code, S. 468 has prescribed periods of limitation for taking cognizance of offences of the categories specified in sub-S. (2)

of that section, viz., (a) six months, if the offence is punishable with fine only (b) one year, if the offence is punishable with imprisonment for a term

not exceeding one year, and (c) three years, if the offence is punishable with imprisonment for a term exceeding one year and not exceeding three

years. Of course, no period of limitation is prescribed for taking cognizance of offences punishable with imprisonment exceeding three years or

with death. But to this, S. 473 is an exception, whereunder the Court is given the discretionary power to extend the period of limitation in certain

cases. Thus, the periods of limitation prescribed under S. 468(2)(a) to (c) impliedly suggest that the investigation has to be completed within the

periods relevant to the particular categories of cases. Sub-Ss.(5) and (6) are newly introduced, whereunder a Magistrate trying a summons case is

vested with the power of stopping further investigation unless the officer making the investigation has obtained an order for continuation of the

investigation beyond the period of six months. In a number of cases, the question arose whether the remand of an accused can be extended

without his being produced before the Magistrate.

30. In *In Re: V. Venkataraman*, a Bench of this Court has observed:

. . .it does seem certain that an illegality was committed by the Magistrate in issuing an order of remand without having the prisoners produced before him and (without) asking them whether they wished anybody to represent their cause and (without) giving them an opportunity of showing cause why they should not be further remanded.

31. The Supreme Court in *Gouri Shankar Jha Vs. The State of Bihar and Others*, following the judgment in *Raj Narain v. Superintendent. Central*

Jail, New Delhi held that the orders of remand could be passed in the absence of the accused if his presence at the time could not be secured. The

above view was reiterated in *Raj Narain Vs. Superintendent, Central Jail, New Delhi*, holding thus:

The petitioner's complaint is that he and other accused have not been produced before a Magistrate for remand, as required by the CrI.P.C., but

have been kept in jails and the remand orders have been passed in their absence, which, according to the petitioner, is illegal. This contention,

however, is not sustainable having regard to a Full Bench decision of seven Judges of this Court, reported in *Rajan Narain v. Superintendent,*

Central Jail, New Delhi AIR 1973 S.C. 850 which by a majority of five to two, has held that the remand cannot be considered to be invalid merely

because an accused has not been produced before the Magistrate.

32. The above two decisions were rendered by the Supreme Court while construing the scope of S. 344 of the CrI.P.C., 1898. The validity or

otherwise of an order extending the remand without the accused being produced before the Magistrate, came once again for consideration before

the Supreme Court in *Sandip Kumar Dey Vs. The Officer-in-charge, Sakchi P.S., Jamshedpur and Others*, . In this case, the Supreme Court,

after having referred to all the decisions pointed out above, expressed its view as follows:

The counter-affidavit filed on behalf of the respondents is not dear on the question whether the petitioner was produced before the Magistrate

when the various orders of remand were passed and therefore, we asked the respondents counsel to furnish to us a copy of the proceedings of the

Magistrate's Court at Jamshedpur. Those proceedings also do not indicate clearly

whether the petitioner was produced before the Magistrate

when the remand orders were passed. This is a highly unsatisfactory state of affairs and must be deprecated. Orders of remand ought not to be

passed mechanically and even though this Court has ruled that the non-production of the accused will not vitiate an order of remand, the

Magistrate passing an order of remand ought, as far as possible, to see that the accused is produced in the Court when the order of remand is

passed.

The last mentioned ruling was rendered while considering the scope of S. 167 of the 1898-Code.

33. The production of the person before the Magistrate is now clearly made a condition precedent in the newly introduced proviso (b) of S.

167(2), with Explanation 2 thereto, which we extract below:

167. (1) . . .

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from

time to time, authorised the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole

: and 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:

Provided that-

(a) . . .

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) . . .

Explanation 1. . .

Explanation 2. If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the

production of the accused person may be proved by his signature on the order authorising detention.

The above proviso and the explanation are introduced by the Parliament for the first time in the new Code obviously for the purpose of affording

an opportunity to the accused of being heard by the Magistrate in person as to

whether he wishes to make any representation and also giving him an opportunity of showing cause why he should not be remanded. Therefore, as per the new provision of law, the production of the accused before the remanding Magistrate is a condition precedent for an order of detention to any custody being passed by the Magistrate. Explanation 2 makes it clear that if any question arises regarding the production of the accused before the Magistrate as required under proviso (b), the production of the accused may be proved by his signature on the order authorising detention. It follows that the order of remand cannot be made in the absence of the production of the accused before the remanding Magistrate and if such an order is made mechanically contrary to the provision, that order of remand or extension of remand is not legally sustainable, and as such the accused cannot be kept in jail custody even for one minute after the expiry of the period of remand already ordered by the court and the jail authorities cannot keep them inside any longer. Under sub-S.(2) of S. 309, the Court is given power to postpone the commencement of or adjourn any inquiry or trial from time to time after taking cognizance of the offence and also to remand the accused, being in custody, by a warrant. From the Bar it was represented that instances are not rare wherein Magistrates, on requisition, go to jails, hospitals, etc., to make an initial order of remand and also to pass extension of the remand already passed. According to them while proviso (b) of S. 167(2) would specifically state that the accused should be produced before the Magistrate, the Magistrate going to the jails merely because sufficient escorts are not available or because the authorities concerned entertain an apprehension that there will be law and order problem in a turmoil situation when large number of accused persons are to be taken to the Court, for example, persons arrested in agitations, etc., would not satisfy the requirements of S. 167(2), proviso (b), and such a procedure should be highly deprecated as in such circumstances the accused persons would not be having an opportunity of freely making any complaint or statement before the remanding Magistrates. In this connection, it would be appropriate to refer to the decisions rendered by M.N. Moorthy, J., in *Mrs. Bartley v. State* 1983 L.W. CrL. 71 wherein the learned Judge, holding that a remand is essentially a judicial function, has observed:½

The object of requiring the presence of the accused before the Magistrate for purpose of remand is only to enable him to make representation he wishes to make in the matter.

34. R.76 (4) of the Criminal Rules of Practice, which alone deals with the mode of ordering an extension of remand of the prisoners detained in the hospital, reads thus:

Where an accused, detained in hospital, is not in a position to be moved and produced before the Magistrate concerned the appropriate

procedure would be for the Magistrate to proceed to the hospital, see the accused person and order an extension of the remand...

A plain reading of the above rule would show that it speaks only of the extension of remand, and does not speak of the initial remand to be made

of an accused person admitted in the hospital. Similarly the rule also does not provide for the mode of passing an order of extension of the remand

of the prisoners kept in jail or any other place and the rule is conspicuously silent about it. It is true that there may be some grave and explosive

circumstances when it would become practically difficult to bring the arrested accused persons to Court for their being produced before the

Magistrates and there may be a possible apprehension of the disturbance of the law and order when leaders of some organizations or political

parties or huge numbers of persons arrested in connection with agitations, etc., involved, and the question may arise as to the procedure to be

adopted in passing the orders of remand or extension of remand in their case. This position, in our view, has to be examined by the Rules

Committee and necessary amendments to the Criminal Rules of Practice have to be made taking into consideration the various circumstances and

also at the same time complying with the mandatory provisions or S. 167(2).

35. It is very alarming to note that a huge number of prisoners arrested under S. 41(1) or S. 151(1) or arrested in connection with penal offences

coming under various enactments, are kept in jail custody under the periodical orders of extension of remand passed by the Magistrates½in

many cases even without the production of the prisoners½but also the commencement of the inquiry or trial is delayed or such an inquiry or trial

is prolonged and consequent upon the failure of the speedy inquiry or trial, the accused persons are kept in cellular confinements behind the bars

for months together, and especially persons who are poor, have no other option except to spend their lives in jail¹² custody. This kind of situation

came for serious comments by the Supreme Court in a number of cases. Yet, this sorry state of affairs has not come to an end.

36. In *Sunil Batra Vs. Delhi Administration and Others etc.*,¹³ the Supreme Court has held as follows:

The detention of any person in jail without any reasonable cause is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively

counterproductive. It is unarguably unreasonable and arbitrary if the arrests of these persons are inflicted.

With procedural unfairness, it falls foul of Art. 21. Part III of the Constitution does not part company with prisoner at the gates and judicial

oversight protects the prisoner's shrunken fundamental rights if flouted, frowned upon or frozen by the prison authority. Is a person under trial

unilaterally dubbed dangerous, liable to suffer extra-ferment too deep for tears? Emphatically no, lest social justice, dignity of the individual,

equality before the law, procedure established by law, would become chimerical constitutional clap-trap. The prisoners have got every right to

repel the deadening impact of unconscionable incarceration inflections based on some lurid legislative test or untested tradition.

It has further been pointed out in that decision thus:

Prisoners are built with stones of law (sang William Blake) and so when human rights are hashed behind bars, constitutional justice impeaches such

law. In this sense Courts which sign citizens into prisons have an onerous duty to ensure that, during detention and subject to the Constitution,

freedom from torture belongs to the detenu.

37. In *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*,¹⁴ Bhagwati, J., speaking for the Bench of the Supreme Court,

has emphasized the need for a speedy trial which is a fundamental right to life and liberty as enshrined in Art. 21 of the Constitution of India, in the

following words:

If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his

fundamental right under Art. 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure

prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for

determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as "reasonable, fair or

just" and it would feel foul of Art. 21. There cant therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious

trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art. 21.

38. In another case in the series of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, it has been pointed out that it is

absolutely essential that persons accused of offences should be speedily tried, so that in cases where bail, in proper exercise of discretion is

refused, the accused persons have not to remain in jail longer than it absolutely necessary.

39. In yet another case coming in the series of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Bhagwati, J., speaking

for the Bench has expressed his grief over certain unpleasant facts which were brought to the Bench (as in the batch of cases before us and as may

re-gathered from the charts produced before us). As we feel that the observation made in that case would to certain extent apply to the facts of

these cases, we extract the same below:

It is highly regrettable that those under-trial prisoners should have remained in jail without trial for periods longer than the maximum term for which

they could have been sentenced if convicted. We fail to see what moral or ethical justification could the State have to detain these unfortunate

persons for such unreasonably long periods of time without trial. We feel a sense of relief that they should once again be able to breathe the air of

freedom. But we find that there are still many more under-trial prisoners who fall within this category of persons than the maximum term without

their trial periods having been commenced.

40. See also another case falling in the series in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, and Thirumari Baskara

Reddy v. State of Andhra Pradesh 1983 M.L.J. CrL. 74 : 1979 L.W. (CrL.) 20 S.N.

41. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment of the

Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...". Similarly, Art. 3 of the

European Convention of Human Rights provides that

...everyone arrested or detained shall be entitled to trial within a reasonable time or to release pending trial

Lord Denning, in his book "Due Process of Law", published in 1980, speaks about the role of the police in the following terms:

In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police

whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to

justice.

In the introduction to Part III "Arrest and Search" in Chapter I of which the above observation occurs, it is stated by Lord Denning thus:

Every society must have means to protect itself from marauders, it must have powers to arrest, to search and to imprison those who break its laws.

So long as those powers are properly exercised, they are the safeguards of freedom. But powers may be "abused, and if those powers are

abused, there is no tyranny like them.

The Supreme Court in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, has pointed out thus:

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep

and content of Art. 21 as interpreted by this Court in *Indian Hard Metals (P) Ltd. Vs. Union of India (UOI)*, .

For a speedy trial, the prosecuting agencies also must take a prompt step in completing their investigations and filing their final reports as

contemplated under the Code as expeditiously as possible. In case the investigating officer fails to take speedy action in a case registered against

any person arrested under S. 41(1), S. 151(1) or any other penal provision of the law, and keeps it in cold storage, forgetting his obligation to the

society and in contravention of the principles of natural justice and allow, by his conduct, the arrested persons to be kept behind the bars, or

months together and if the Courts without being conscious of the mandatory provisions of S. 167(2), mechanically authorise repeated detentions

and also do not show any diligence in completing the trial of the case speedily, the result would be that prisoners, especially those coming from the

society of have-nots, have to suffer untold physical and mental agony and spend their lives in the jail without having any ray of hope of their release.

Krishna Iyer, J., in *Mantoo Majumdar and Dasdev Singh v. State of Bihar* W.P. 1149 of 1979, dated 27th February, 1980 S.C. : 1980 L.W.

(Crl.) 17 (S.N.) in noting this kind of situation existing in the country, has observed thus:

. . .and yet the Magistrates concerned have been practically authorizing repeated detentions, unconscious of the provisions which obligated them to

monitor the proceedings which warrant such detention.

In short, the Police have abdicated their function and of prompt investigation. The prison staff have not bothered to know how long these internees

should be continued in their custody and, most grievous of all, the judicial officers concerned have routinely signed away orders of detention for

years by periodically appending their incarceratory authorizations. "If the salt hath lost its savour, wherewith shall it be salted?". If the law officers

charged with the obligation to protect the liberty of persons are mindless of constitutional mandates and the Code's dictates, how can freedom

survive for the ordinary citizen?.

42. In view of the above proposition of law laid down by the Supreme Court, we hold that all possible breach that may result from delays between

the time a prosecuting officer discovers sufficient evidence to proceed against one and the time of instituting those proceedings, is to be guarded

against by Courts which are obliged to the society. The invocation of the right of any arrested person need not wait indictment, information or other

formal charge, but begins with the actual restraints imposed by arrest and the court can grant relief either for the purpose of testing the legality of

the arrest or for preventing the long delay for the arraignment and formal charging of the arrested persons.

43. In view of all the above discussions, we make the following propositions:

(1) S. 167(2) of the Code would apply to arrests made under S. 41(1) and in exceptional circumstances, to arrests made under S. 151(1). But the

Judicial Magistrates, while remanding or passing extensions of remands, should be very watchful to see that the liberty of a citizen is not violated by

the police arbitrarily and unreasonably.

(2) S. 167(2) is not at all applicable to arrests made under S. 41(2) of the Code and as such no court can order remand or extension of remand of

persons arrested under S. 41(2).

(3) The Courts should not mechanically pass orders of remand without verifying the entries in the diaries and satisfying themselves about the real

necessity for granting the remand or extension of remand.

(4) Under no circumstance a Magistrate can order the detention of any person in custody or extend such detention without the production of the

accused before him in violation of the provisions of the Code, viz., proviso (b) to S. 167(2), whatever may be the reason stated by the authorities

concerned for the non-production of the accused before the Court, such as the non-availability of police escorts, etc., as shown in the charts, given

by the learned Public Prosecutor in pursuance of the directions of this Court.

(5) The jail authorities, who are also very much concerned in the matter, of keeping the prisoners in cellular confinement, should not keep any

person without orders of remand from the concerned Judicial Magistrates even for a moment beyond the period of detention already ordered,

because, if the jail staff keep any person inside the prison, without proper orders of the court, such keeping would be tantamount to an illegal

detention.

44. In the result, we conclude that all the Magistrates concerned in the State should examine and verify the records of all those persons arrested

under Ss. 41(1) and 151(1) of the Code and take prompt actions for the expeditious disposal of the cases in the light of the observations made by

us in this judgment. We also direct all the Magistrates who have passed the orders of remand of all the persons arrested under S. 41(2), to

withdraw or cancel the said warrants of remand and set the concerned persons at liberty forthwith, since the detentions of those arrested persons

under S. 41(2) and the extensions of remands periodically are all not legally sustainable, and no Magistrate should entertain an accused and pass

orders of remand for the purpose of taking proceedings under S. 109 or S. 110, Cr.P.C., as they stand at present. We also direct the State

Government and the Inspector-General of Prisons to take prompt actions in getting the orders from the Courts for release of all those persons

arrested under S. 41(2) of the Code.

45. All the writ petitions are ordered accordingly.

46. Before parting with this judgment, we would like to record our deep appreciation of the services rendered by Mr. N.T. Vanamamalai and Mr.

K.V. Sankaran, learned Senior Counsel, who appeared on behalf of the petitioners and also Mr. A. Pakkiaraj, counsel on record in W.P.

No.6975 of 1981, by taking us through the various decisions of the Supreme Court and other courts and in assisting this Court by giving a lucid

interpretation of Art. 21 of the Constitution and the various provisions of the Crl. P.C., and we proceed further to register our profound satisfaction

at the fair and frank submissions made by Mr. P. Rajamanickam, learned Public Prosecutor. We also record our appreciation of the valuable

service rendered with a high civic sense of duty by M/s. R. Raghupathi and M. Jagadeesan, in filing two of these petitions as petitioners but for

which this lamentable state of the prisoners confined in the various prisons of Tamil Nadu would not have come to light and this Court would not

have been given this opportunity to call for the reports from the various jails and to deeply examine the case of the hundreds of unfortunate

prisoners who are unconscious of their fundamental right to life and personal liberty guaranteed under the Constitution and who, in our view, but for

the assistance of the Legal Aid Board, would not have the means to enter into the portals of this Court, present their grievances and secure their

release.