

(1990) 03 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 2895 of 1990

G.K. Moopanar, M.L.A. and others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-03-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22, 226

Criminal Procedure Code, 1973 (CrPC) — Section 151, 167, 41, 482, 57

Evidence Act, 1872 — Section 114

Citation : (1990) CriLJ 2685

Hon'ble Judges : S.T. Ramalingam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

**Advocate : P. Chidambaram for Mrs. Nalini Chidambaram, for the Appellant;
Advocate General for Public Prosecutor, for the Respondent**

Judgement

Sivasubramaniam, J.—This writ petition has been filed for issue of a writ of Habeas Corpus or any other appropriate writ to set at liberty an alleged 20,000 (Congress-I) party members.

2. This writ petition is filed by seven petitioners the first, sixth and the seventh petitioners being M.L.As. and the other petitioners, being M.Ps. as a public interest litigation, on their own behalf and on behalf of

20,000 Congress (I) party members who have have arrested during the recent agitation to name a Railway Station after the late Sri Kamraj, former Chief Minister of Tamil Nadu. The petition singed by the said

seven petitioners was treated as a writ of Habeas Corpus in view of the fact that all of them were under custody and the matter relates to thousands of persons who are under custody. The writ petition was

admitted as a public interest litigation taking into consideration of the fact that the question involved in this writ petition is a matter of public importance and the question raised in the writ petition cannot be

agitated by each individual person who is kept under detention in various jails.

3. In the petition submitted by the petitioners, the following contentions have been raised :- The seven named persons in the writ petition represent over 20,000 members of the Congress (I) Party who intended

to participate or have participate in a purposeful political Satyagraha on 10-3-1990. The congress (i) party had earlier announced a peaceful protest at various Railway stations throughout Tamil Nadu in support

of their demand that a Railway Station should be named after the late Sri Kamraj, former Chief Minister of Tamil Nadu. More than 20,000/- persons have been arrested either as a preventive measure or for

allegedly attempting to violate certain laws which are bailable offences or for alleged actual violation of certain laws which are also bailable offences. Following a practice which has unfortunately gained ground

in Tamil Nadu during the past two decades, in all these cases, the Executive Government sought remand of the arrested persons and judicial custody for a period of 15 days. Many Magistrates have passed

orders in a routine and mechanical manner remanding the arrested persons for 15 days. In some cases, after hearing arguments, some Magistrates have passed orders of remand for periods ranging from 2 days

to 7 days. This practice is repressive, oppressive and has no sanction in law. It is in violation of the arrested persons fundamental rights under Arts. 19(1)(a) and (b) and 21 of the Constitution as well as the

provisions of the Criminal Procedure Code. Further, this procedure is directly contrary to the principles laid down by a Division Bench of this Court in *Elumalai v. State of Tamil Nadu*, 1983 MLW 121. The

following fundamental questions of law arise in the cases involving the arrest of 20,000 persons :

1. Can remand to custody, especially judicial custody, be made by a Magistrate in a routine and mechanical manner mainly because the Executive Government seeks an order of remand ?

2. What is the true scope of Sections 57 and 167 of the Criminal Procedure Code and what is the duty cast upon the Magistrate who is required to pass an order of remand ?

3. Is there not a duty cast upon the Public Prosecutor, as an Officer of the Court, to satisfy himself that there is justification to seek such an order of remand to judicial custody ?

4. What are the circumstances in which the Executive Government may seek an order of remand to judicial custody ?

5. Before passing an order of remand to judicial custody, should not the Magistrate be satisfied ?

(i) that there is something to be investigated and that the investigation cannot be completed within the normal period of 24 hours; and

(ii) that unless the arrested persons are remanded to judicial custody, they would hamper the investigation ?

6. Should not the Magistrate pass a speaking order ? In a civilized society, wedded to the principles of democracy and which cherishes human rights, the practice and procedure followed by the Courts in Tamil

Nadu is wholly unconstitutional and illegal. The petitioners prayed that the said petition may be treated as a writ of Habeas Corpus.

4. The sixth petitioner Mr. S. R. Balasubramanian, M.L.A., since released, filed a supporting affidavit setting out in details as to what had happened after their arrest. It is unnecessary to extract the entire

averments in this order, since they have no relevance for the points raised in this writ petition. The brief facts set out in the affidavit are as follows :- The petition filed by the petitioners was heard by a Special

Bench on 11-3-1990 and after hearing the petitioners, the matter was adjourned to 12-3-1990 for hearing at 2.15 p.m. Afterwards, when they were taken to the Central Prison, Madras, they were stopped

and told that they had been released and, therefore, they were refused admission to the prison. The order's of release passed by the learned Magistrate in respect of 4 M. Ps., were shown at that time and not

earlier. They sat in front of the prison in protest claiming to be still in judicial custody. Subsequently, the orders of release relating to three M.L.As. also were shown to them. Thereafter, they had to leave the

place. The learned Additional Chief Metropolitan Magistrate was nominated as the Magistrate to hear the cases of those who were initially remanded up to 12-3-1990. The seven petitioners were present at the

prison gate from 12 noon in order to represent the cause of the remaining prisoners whose cases were due to be heard by the Magistrate. Mr. P. Chidambaram, learned Counsel was instructed to argue the

case, who was present till 1.30 p.m. Since the prisoners were not produced before the learned Magistrate, he left the place after informing the before this Court. Similarly, all the other counsel also left. This writ

petition was heard by this Court till 4.30 p.m. and it was adjourned to next day. Meanwhile, the learned Magistrate took up the case at 3.00 p.m. in spite of the objections raised by the Junior Counsel present

on the ground that it should be taken at 5.00 p.m. to enable Mr. P. Chidambaram to argue. However, his request for a further period of 15 days up to 26-3-1990. The initial remand came to an end on 12-3-

1990 and, therefore, the further remand for 15 days is a nullity. The State has deliberately caused the production of the accused before the learned Magistrate at 3.00 p.m. in order to deny a full and fair

represented by a counsel of their choice. This Court is entitled to ignore the order of the learned Magistrate and it cannot stand in the way of this Court granting suitable relief in this petition.

5. Originally, a counter was filed on behalf of the State raising the following contentions :- The writ petition is not maintainable for various reasons. The persons alleged to have been arrested and remanded have

not been named in the petition and the exact number of the persons and their names and relevant particulars have not been furnished and, therefore, it would not be possible for the respondent to produce them

before this Court. Since large number of persons were arrested, a single writ petition without any particulars cannot be maintained. Under the provisions of the Criminal Procedure Code, the duty of the police

officer is to produce the arrested persons before the concerned Magistrate within 24 hours along with their remand report and a copy of the diary maintained by him at the time of the remand as required under

S. 167, Cr.P.C. Thereafter, it is for the concerned Magistrate to apply his mind and satisfy himself that the accused should be remanded to judicial or police custody. There are no particulars to show that the

Magistrates have passed orders mechanically. It is a case where the presumption under S. 114(e) of the Evidence Act would come into play. It is always open to the arrested persons to avail of the remedies

available under the Code of Criminal Procedure and, therefore, the writ petition filed by them at this stage is liable to be dismissed in limine. Most of them have been released on bail. But the petitioners and

others did not move for any bail. But on the other hand they had let know their intention not to move for bail. It is not, therefore, open to them to file a writ of Habeas Corpus. They have not made out any case

of illegal arrest and detention, in violation of Art. 21 of the Constitution of India. Since no bail was moved, the learned Magistrates, after being satisfied about the necessity for remand, had no option, but to

remand them to judicial custody. It was purely within the desecration of the learned Magistrates, and therefore, it is not open to the petitioners to complain of illegal detention. The points raised in this writ petition

have been settled by a decision of a Division Bench of this Court in *Elumalai v. State of Tamil Nadu*, 1983 MLW 121 and the directions of the Division Bench are being scrupulously followed. There is no

necessity to once again consider the same question of law. There is no basis for the allegation as a general proposition that there is a practice all over this State in passing orders in a routine and mechanical

manner remanding the arrested persons for 15 days without any applications of mind. Specific answers were given for the six points raised in the writ petition. On this basis, it was contended that there is to

quarrel over the general proposition of law. The petitioner 2 to 5 were released by the judicatory and they, with an ulterior motive, refused to receive the order when it was sought to be served on 11-3-1990.

6. After the arguments were over, a counter-affidavit was filed by the investigation officer in reply to the supporting affidavit filed by the sixth petitioner, above referred to raising the following contentions :

Again, it is unnecessary to refer to all the averments contained therein, as they are not unnecessary to refer to all the averments contained therein, as they are not necessary for the disposal of this writ petition.

The following are the main contentions. 20,000 persons have not been arrested in connection with the peaceful protest as alleged by the petitioners. The Judicial orders of release passed in respect of four M.Ps.

were shown too them on the morning of 11-3-1990 before they were taken to the special Bench. After they were brought back to the prison, they were informed that they were left outside the gate. They

demanded that they should be permitted to go inside the prison, but they were not allowed to do so. The orders relating to the release of three M.L.As. also were shown to them. The Assistant Commissioner of

Police, Crimes (General), Egmore, gave a requisition to the Chief Metropolitan Magistrate, Egmore, Madras on 11-3-1990 requesting him to direct any one of the Magistrates to take up further proceedings in

the 12 cases concerning the city of Madras in which as many as 980 accused were involved, as it was felt that it was difficult to produce all of them. Accordingly the learned Magistrate, who was nominated to

hear the cases, held the Court near the central Jail Complex. As there was a very large crowd of nearly 2,000 people, they proceeding had to be conducted inside the jail, and the counsel representing the

petitioners and others were allowed to make their representations to the relevant Magistrates. One of the arrested persons Mr. P. Srinivasan made representations on behalf of the petitioners followed by three

other advocates appearing for most of the petitioners. After hearing the learned Counsel and the learned Public Prosecutor, the learned Magistrate, passed orders extending the remand of the arrested orders

extending the remand of the arrested persons for a further period of 15 days till 26-3-1990. It is clearly provides in Rule 4 of the Criminal Rules of practice that in exceptional circumstances, the Court can have

a sitting in place outside the Court house. Though, initially, a request was made to wait till the arrival of Mr. P. Chidambaram, later on Mr. Srinivasan one of the accused and also a lawyer, represented that he

would represent the case on behalf of all the petitioners. The hearing was not in contravention of S. 167, Cr.P.C. various other allegations made against the police and jail authorities are denied. The pendency of

the habeas corpus petition cannot be a ground for adjourning the case or for restricting the executions of the order of demand by only one or two days, as there was no order of stay granted by this Court. The

orders had to be passed on 12-3-1990 itself since the earlier order of remand was to expire on that date. At the request of the petitioners records in 12 cases were sent for and they show that the learned

Magistrate, has applied his mind both at the time when he passed the initial order of remand and also at the time when he extended the order of remand.

7. The congress (I) Party in Tamil Nadu State announced a peaceful protest at various Railway stations throughout Tamil Nadu on 10-3-1990 in support of their demand that a Railway Station should be named

after the late of Sri Kamraj, former Chief Minister of Tamil Nadu. It appears that since 8-3-1990 several persons were arrested as a preventive measure, and remanded to custody. On 10-3-1990, they

resorted to an agitation which, according to the petitioners, is a peaceful political Satyagraha. It is claimed by the petitioners that 20,000 members of the party, who had participated in the agitation, were

arrested by the police at various places in Tamil Nadu. The claim of the petitioners regarding the number of persons arrested is disputed by the state. As far as the persons, who were arrested as a preventive

measure before 10-3-1990 are concerned, they have been subsequently released and, therefore, it is unnecessary for us to consider their cases in this writ petition. When we took up this writ petition for

hearing, we found that no particulars are available regarding all the persons arrested throughout Tamil Nadu, and therefore, we felt that it is not possible to consider the case of all the arrested persons at this

stage, as in each case, the nature of the order of remand has to be scrutinised. Therefore, Mr. P. Chidambaram learned senior counsel appearing for the petitioners and others represented that out of the case in

the City of Madras one case of Avadi Police Station and another case of Maraimalai Nagar Police station can be considered, as some urgent orders have to be passed for release of the arrested persons.

Therefore, we sent for the records of the 14 cases the details of which are furnished hereunder :

Sl. No. Crime No. Time Accused Offence

1 2 3 4 5

1. 371/90 CCB. 8.45 a.m. Tr. Balaraman and 161 143 IPC 41 MCP

others (including 50 Act 100 (b) I.R

ladies) Act 7(1) (a) of

Crl. Law

Amendment Act.

2. 372/90 -do- 9.00 a.m. Tr. Anbarasu and 116

others (Including 23

ladies)

3. 373/90 -do- 9.15 a.m. Tr. Singaravelu and 33

others (including 8

ladies)

4. 374/90 -do- 9.30 a.m. Tr. Ranganathan and 43

others (including 37 ladies)

5. 375/90 -do- 9.45 a.m. Tr. Kuppuswamy and 79 others

(including 37 ladies)

6. 376/90 -do- 10.00 a.m. Tr. G. K. Moopanar and 195

others (including 52 ladies)

7. 377/90 -do- 10.00 a.m. Tr. Jothi and 45 others

(including 7 ladies)

8. 378/90 -do- 10.25 a.m. Tr. Desari Pandma and 93 others (including 49 ladies)
9. 379/90 -do- 10.30 a.m. Tr. Senji Rajendran and 32 others (including 5 ladies)
10. 380/90 -do- 11.00 a.m. Tr. S. H. Krishnan and 32 others (including 8 ladies)
11. 381/90 -do- 11.00 a.m. Tr. K. V. Thangabalu and 33 others (including 8 ladies)
12. 382/90 -do- 11.30 a.m. Tr. Vijayan and 106 others (including 25 ladies)
13. 189/90 Avadi 10.30 a.m. Tmt. Maragatham Chandra- 143 I.P.C. P.S. sekar and others 188 I.P.C. 100(b), I.R.
- Act read with
section 7(1)(a),
Cri. Law
Amendment Act.
14. 49/90 Mariah 9.28 a.m. Tr. Thindivanam malai Ramamoorthy and 22 nagar others
P.S.

8. Mr. P. Chidambaram, learned counsel, who is also one of the petitioners herein appearing for the other petitioners, elaborately argued on the procedure followed in this State in remanding the arrested

persons and the unsatisfactory manner in which the Courts have been passing orders without understating the purport and significance of remand orders passed under S. 167, Cr.P.C. According to him, the

entire exercise of power of arrest and remand must be under the control and jurisdiction of the Courts under S. 167, Cr.P.C. Further, he made the following submissions :

A practice has gained ground in Tamil Nadu during the past two decades by

which the Executive sought remand of the arrested persons to judicial custody for a period of 15 days. Many Magistrates have been

following the practice and passing orders in a routine and mechanical manner remanding the arrested persons for 15 days. This practice followed in Tamil Nadu is repressive and oppressive and they had no

sanction of law. The said procedure violative the fundamental rights of the arrested persons guaranteed under Arts. 19(1)(a) and (b) and 21 of the Constitution as well as the provisions of the Code of Criminal

Procedure. The issue in this writ petition is a fundamental legal principle affecting the administrations of justice in this State. The conditions inherent in S. 167(1), Cr.P.C. were not observed in all the cases where

Congress (I) Party workers were arrested. Learned counsel referred to the provisions contained in Sections 57 and 167(2), Cr.P.C. It is only in a case where the investigating officer pleads that the investigation

cannot be completed within 24 hours, he can send the arrested persons for remand and the circumstance for the police officer to reach this conclusion must stand the test of scrutiny by a Magistrate. Apart from

that, the accusation of information must also be well-founded. It is only when these two conditions are satisfied, the police officer is empowered to transmit the case diaries to the Magistrate and also forward

accused to the Magistrate. Such records were not forwarded in all these cases. The initial order of remand in have been passed in the vast majority of cases in total contravention of S. 167(2), Cr.P.C. There are

four stages governing the exercise of power under S. 167(2), Cr.P.C. and this distinction has not been borne in mind at the time when the orders of remand and extension of remands were passed by the

Magistrate concerned. Since vast powers have been conferred on the judiciary, the Magistrates must exercise the power after a careful applications of their minds. In majority of cases, they were passed orders

within a few seconds, without case diaries, without adverting to the character and background of the accused, in a routine and mechanical manner. It has been laid down by this Court in *Elumalai v. State of*

Tamil Nadu, 1983 MLW 121 that he accused must have an opportunity to represent why they should not be remanded and this right should not be confused with their right to seek bail. It is only in some cases

where counsel took up the case of some of the accused that the period of remand was restricted from 2 days to 7 days, and in all other cases, the period of remand was fixed in a routine manner as 15 days.

This Court has held that the underlying object of remand to custody is to enable investigations to be carried on in an effective manner and without the accused hampering investigation. If the State is not in a

position to ensure that there are enough Magistrates who will give a genuine and fair hearing to the accused before remand, then the State is obliged to resolve the difficulty not by an illegal remand but by

refusing to remand the peaceful agitators. There is a duty cast upon the State not to seek remand if they cannot ensure procedural justice or incarceration in humane and civilised conditions. The initial remand

report in the cases in question made no whispers of any investigation nor was there any material to show the progress made in the investigation within the first 24 hours. However, the report seeking extension of

remand gives 4 reasons and each one of them is untenable in law. Since the M.Ps. and M.L.As. have already been released, it is not known how the others been released, it into known how the others can alone

be remanded for the said 4 reasons, as it would apply to the M.Ps. and M.L.As. also, There must be equal treatment in the matter of dealings with the liberties of citizens and there cannot be one standard for

the rich and the mighty and another standard for the poor and the humble. In support of his contentions, he relied on the decisions reported in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, .

9. Mr. P. Chidambaram further submitted that there are 485 women including two mothers with babies in their arms in the Central Prison, Madras. None of the four reasons given by the precaution would apply

to those helpless women and they have no relevance to the continued incarceration of the women prisoners. The conditions in the central Prison, Madras are inhumane and opposed to all notions of justice and

equity. The capacity of the Central Prison is 1457 and while so, 4218 prisoners were lodged in the prison on 10-3-90. There is no infrastructure in the Central Prison for making food for all of them. There are

inadequate facilities for toilet, bathing, drinking water and sleeping quarters. Food was not served on the night of 10-3-90 and until 2.30 p.m. on 11-3-1990. These inhumane conditions would amount to

deprivation of the liberty and violation of the constitutional and legal rights to which the prisoners are entitled. All the offences for which the prisoners are charged are bailable offences. As the State itself is

prepared to release them on kept in remand. No materials were placed before the learned Magistrate, who have extended the remand, to enable them to come to the conclusion that 15 days more is required

for completing the investigation. It is not made clear how the arrested persons are going to stand in the way of the police examining the staff members of the Railways and the passengers whose names are not

known to the arrested persons. The reasons set out by the police are nothing but imaginary. Finally, it was submitted that the understanding of the legal position in the matter of remand and extension of remand

by the Executive Wing of the Government and the subordinate judiciary is perverse and illegal. Further the Executive cannot dictate terms for remanding the arrested persons and it is entirely for the judiciary to

determine the need for remand. Mr. Chidambaram finally pleaded that there are 485 women languishing in jails and since justice brooks no delay, the arrested persons should be released at the earliest point of

time.

10. The learned Advocate General appearing for the State reiterated the contentions raised in the counter statement filed on behalf of the State and took a preliminary objection that the present writ petition filed

as a public interest litigation is not maintainable, since 20,000 persons mentioned in the writ petition are all unidentifiable persons and there are no details as to the name of the persons, name of the police

stations or the names of the Court before whom they were produced. In the absence of such details, it is not possible for the State to meet the several allegations made in the Writ portion, and during the course

of arguments. Secondly, it was contended that a public interest litigation cannot be maintained on behalf of rich and well-placed people in the society like the Congress Party-men who have been arrested in

several places. It is meant only for giving relief to certain class of persons who are poor and disadvantaged. The reason is that the weaker sections of Indian humanity have been deprived of justice for long and

they have had no access to justice on account of their poverty, ignorance and illiteracy. In support of his contentions, he relied on the decision of the Supreme Court in *Bihar Legal Support Society Vs. Chief*

Justice of India and Another, wherein the Supreme Court held that the strategy of public interest litigation has been evolved by the Supreme Court with a view to bringing justice within the easy reach of the poor

and disadvantaged sections of the community. According to him the people concerned in these cases have voluntarily resorted to agitation and committed offences. They have refused to go out of bail and some

of them refused to go out of bail even after they were released and, therefore,

they do not deserve any sympathy or concession in this writ petition. The Judicial Magistrates have passed orders of remand in

exercise of their judicial functions and, therefore, the petitioners have got an alternative remedy of filing appeals against those orders, if they are aggrieved. Since the exercise of power under Art. 226 of the

Constitution is discretionary the petitioners are not entitled to maintain this writ petition without exhausting the alternative remedy without exhausting the alternative remedy available in law. Apart from that,

person in remand cannot be said to be in illegal custody and, therefore, a Writ of Habeas Corpus cannot be filed.

11. On merits learned Advocate-General made following submissions :

He contended that the investigation officer has given four reasons for extending the remand and the learned Magistrate has given reasons for extending the remands in all the 12 cases called by this Court.

Therefore, it cannot be said that the learned Magistrates have passed orders mechanically and without applying their minds. Under S. 167(1), Cr.P.C. it is not necessary for the police officer to detain the

arrested persons for 24 hours before producing them in courts. All that the sections requires is, that if it appears that investigation cannot be completed within the period of 24 hours fixed by S. 57, Cr.P.C. and

there are grounds for believing that the accusation for information is well-founded, the officer-in-charge of the police station can transmit the accused to the nearest judicial Magistrate for remand. In these cases,

since large number of persons were involved in the agitation they were produced before the Magistrates within a short time for investigation. It was further submitted that the reasons given by the investigation

officer have been considered by the learned Magistrate and he has passed orders on merits and, therefore, it is not open to this Court to question the correctness of the order passed by the learned Magistrate

in these proceedings. The petitioner have made vague allegations that the remands have been made in all cases relating to 20,000 persons in a mechanical manner and without the learned Magistrates applying

their minds. The twelve cases that have been sent for by this Court have presuming that the same procedure has not been followed in all other cases. Therefore, on that basis, no orders can be passed in a

general manner affecting the remand in all the other cases. The power of remand under S. 167(1), Cr.P.C., is not restricted to fifteen days only and the Magistrates have powers to extend the period of remand

upto 60 or 90 days as the cases many be under sub-section on (2) of S. 167. There is no scope for compartmentalising the periods of remand and the period of fifteen days found in S. 167(1) relates to only the

period of police custody. The decision of the Supreme Court in Chaganti Satyanarayana and Others Vs. State of Andhra Pradesh, was relied on in support of his contention. There is no illegality in the orders of

remand for a further period of 15 days, S. 167, Cr.P.C. contemplates release of the remanded person on the conditions of bail. Even if the initial remand was bad, the orders extending the period of remand,

which are valid in law, cannot be characterised as illegal on that ground. An unreported judgment of this Court in W.P. No. 1638 of 1980 dated 21-4-1980 was relied on by the learned Advocate-General.

12. Before going into the merits of the case we proceed to dispose of the preliminary objections taken out by learned Advocate-General According to him the petitioners being persons well-placed in society

are in a position to defend their right individually. Apart from that, their conduct in courting arrest voluntarily and committing breach of law would disentitle them to approach this Court by way of public interest

litigations. The law relating to locus stand in the matters of filling writ petitions has been well established by now. The traditional rule was that judicial redress in available only to persons who have suffered certain

legal injury as result of violation of his legal rights by the State or any Public Department or to obtain relief in cases of threatened violations to such rights. The earlier approach was that the basic requirement was

personal injury to the property or to persons of the petitioner coming to Court, The Supreme Court took note of the changed circumstances and it was held that the principles that were applicable at a time when

public law was not in vogue are no longer applicable law has given most importance to the personal liberties and rights of the citizens. The Supreme Court evolved a principle by which where a legal wrong or a

legal injury is caused to a person or to a determinate class of persons by reasons of violation of any constitutional or legal right or any burden is imposed in contravention of any constitution or legal province or

without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason or determinate class of persons is by reason of

property, helplessness or disability or socially or economically disadvantageous positions unable to approach the Court for relief, any member of the public can maintain an application for appropriate order

under Art. 226 of the Constitution of India. This principle was highlighted in the famous case *S.P. Gupta Vs. President of India and Others*, the Supreme Court has indicated that where the weaker sections of

the community are concerned such as under-trial prisoners languishing in jails without trial, inmates of the protection home, harijan workers etc., are entitled to a special treatment. In such cases, the Courts will

not insist on a regular writ petition to be filed by public spirited individuals espousing their causes and seeking relief for them. The courts will readily respond even to a letter addressed by such individual acting

PRO BONA PUBLICA. The basic principle that is followed is that the procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities as

observed by the Supreme Court. However, the Supreme Court has given a word of caution in entreating such petitioners in the following words :

But the individual who moves the Court judicial redress in cases of this kind must be acting bona fide with a view to vindicating the causes of justice and if he is acting for personal gain or private profit or to of

political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his applications at the threshold, whether it be in the form of a

letter addressed to the Court or even in the form of a regular writ petition filed in Court. As a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases

where wrong or legal injuries caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain

cases of judicial redress. This rule in regard to locus stands thus postulates a right - duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a

few exceptions to it which have been evolved by the courts over the years (Case law discussed)".

Again the Supreme Court dealt with this question in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, wherein it was held as follows (at Pp 1476-77 of AIR) :

Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation but it is intended to promote and

vindicate public interest which demands that violations of constitutional or legal

rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position or economically

disadvantaged position would not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the Democratic form of Government. The Rule of Law does not mean that

the protections of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of

enforcement of their civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.

In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, the Supreme Court again said that public interest litigation is not in the nature of adversary litigation is not in the nature of adversary litigation but

it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them justice. Further, the

Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic

entitlements. The Supreme Court pointed out that when the Court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to titling at executive authority

or seeking to usurp it, but its attempt is only to ensure observance of rule of law and protect the people against violation of their basic human rights, which is also the constitutional obligation of the executive. The

Court is thus merely assisting in the realisation of the constitutional justice. In *M.C. Mehta and another Vs. Union of India and others*, the Supreme Court observed that while dealing with such applications the

Court should not adopt a hypertechnical approach which would defeat the ends of justice and the Court while dealing with an application for enforcement of fundamental right must look at the substance and not

the form. We find that even in the decision cited by learned Bihar Legal Support Society Vs. Chief Justice of India and Another, the said principles have been endorsed. Applying the above said principles to the

facts of the present case we find that hundreds of volunteers of a political party have been arrested and remanded to custody and it is not possible to hold that all those volunteers are rich and influential people in

the society. After all every political party is fighting for certain principles of their

own purporting to before the benefit of common people. It is not for us to decide whether the cause for which they had courted

arrest is good or not. It cannot be denied that the points raised in this writ petition are common to all those innumerable persons who are in jail custody now. It may be many of them may not be able to go to

Court individually and defend their rights. The basic question is, whether they are handicapped in any matter either physically economically or socially in approaching the courts for speedy and effective remedy.

As all of them are confined in prison, we do not find any impropriety on the part of the seven named petitioners in this writ petition filing this writ petition as a public interest litigation in order to redress the

grievance of an alleged 20,000 people. It is significant to note that the seven named petitioners herein were also arrested along with others and, therefore, it cannot be stated that there is no bona fide in their

approaching this Court by way of public interest litigation for their won benefit and for the benefit of the other arrested persons. The main objection was that the vast majority of the people are not identifiable

and, therefore, no relief can be granted in their favour. It is not case wherein the case of each individual has to be considered separately. The main questions that are raised in this writ petition are common to all.

Once the questions are decided, it will be possible to mould the relief in respect of all the affected persons. Therefore, we find that the present writ petition filed as a public interest litigation is maintainable.

13. The next preliminary objection taken by learned Advocate-General is that an alternate remedy by way of Criminal revision before this Court is available against the orders of remand and further the said

orders can be challenged under S. 482, Cr.P.C., before this Court and, therefore, the present writ petition is not maintainable before exhausting the alternative remedies.

14. It has been repeatedly held by the Supreme Court and this Court that normally the remedy under Art. 226 being a discretionary remedy, the High Court may refuse to grant the relief wherever there is an

alternate remedy available which is equally efficacious and adequate. Whether the alternative remedy is equally effective or adequate is a question of fact to be decided in each case. As far as the cause of action

against the Government is concerned, a distinction is always made between sovereign functions of the Government and contracts made by the Government. A person who is individually and prejudicially affected

by exercise of a sovereign power by the Government is entitled to file a petition under Art. 226 under certain circumstances. Art. 226 is not intended to circumvent statutory procedure but it is intended to give

effective and immediate relief to the aggrieved persons. While considering this question the basic principles should be borne in mind viz., that the existence of an alternate remedy is not an absolute bar to the

relief under Art. 226. It must be noted in this connection that it was made an absolute bar by the Constitutional 42nd Amendment Act, 1976 which inserted Clause (3) in Art. 226 but that clause had been

omitted by the 44th Amendment Act, 1978. The existence of an alternate remedy does not take away the jurisdiction of the Court to grant relief under Art. 226 was again considered by the Supreme Court in

Zila Parishad Moradabad Vs. Nundan Sugar Mills, Amroha, wherein it was held as follows :-

A provision like S. 128 of the U.P. District Boards Act for an appeal against an assessment to tax is there, but the fact that the petitioner has not availed of it, does not oust the jurisdiction of the High Court to

entertain a petition under Art. 226 and it is for the High Court to exercise its discretion whether to entertain the petition or not. Where there is nothing to show that the discretion has not been properly exercised

by the High Court the Supreme Court would not interfere.

In A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, it was held as follows (at p. 1509 of AIR) :-

The rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law is not one which bars the

jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which courts have laid down for the exercise of their discretion.

Therefore, whenever this Court finds that resort to such alternative remedy in a given case is dilatory or difficult to give quick relief, this Court can always exercise jurisdiction under Art. 226 as held by the

Supreme Court in Assistant Collector of Central Excise Vs. Jainson Hosiery Industries, . In Rashid Ahmed Vs. The Municipal Board, Kairana, the Supreme Court held that an appeal under S. 318 of the Uttar

Pradesh Municipalities Act was not in circumstances adequate legal remedy the existence of which would disentitle the petitioner from maintaining this application. Whatever it is, it is well established by now that

if an impugned order goes to the root of jurisdiction of the authority exercising power under any provision of law, this Court can exercise its jurisdiction under Art. 226 and grant necessary relief. However, this

Court will be slow in admitting writ petitions wherever there are alternate remedies and only in extraordinary cases an aggrieved person can approach this Court under Art. 226. It is a judicial discretion which

has to be exercised with care and caution bearing in mind that the ultimate object is to render justice to an aggrieved person. Apart from the existence of the alternate remedy there is one other circumstances

which will be in favour of the petitioners. The petitioners have raised a point regarding the power of the Magistrates in remanding and extending the remands of the arrested persons under S. 167, Cr.P.C., and

the impugned orders of remand are not sustainable in view of the hostile discrimination in treating the arrested persons in different manners. According to the petitioners, after having released the Members of

Parliament and Members of the Legislative Assembly, without obtaining any bail bond it is not open to the State to discriminate the other persons and retain them in custody thereby violating equality provisions

contained in Art. 14 of the Constitution. These questions cannot be effectively decided by the Magistrate concerned. For all these reasons we find that there is no effective or speedy remedy available to the

petitioners elsewhere and, therefore, this writ petition is looking at that angle of practical aspect, it is not necessary to (sic) maintainable under Art. 226 of the Constitution waste the time of this Court by

entertaining thousands of provisions on this short question.

15. A writ of Habeas Corpus is a very important jurisdiction in which the High Courts are called upon to protect the individual liberties of citizens and prevent illegal detention by the authority of the State or

otherwise. This jurisdiction is exercised to call upon the person who has detained another to produce the person detained before the Court in order to let the Court know on what ground he has been confined

and if the Court finds that there is no legal basis for the imprisonment, the Court will set him at liberty. If the detention is proved to be in violation of the procedure established by law, the Court has to necessarily

order his release. It is the paramount duty of the Courts to issue that kind of writ to safeguard the freedom of the citizens against arbitrary and illegal detention. In Ram Narayan Singh Vs. The State of Delhi and

Others, the Supreme Court observed that those who feel called upon to deprive

other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously

observed the forms and rules of the law. It was a case in which a writ of Habeas Corpus was filed on the ground that the remand of the detenus was bad. The Court allowed the Writ of Habeas Corpus and

directed release of the detenus. It is no doubt true that the Court will not normally interfere with the day-to-day operations of the State and unnecessary detention in jails cannot be countenanced on the ground

of discipline and security. In *Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi*, , the Supreme Court observed that prisoners retain all rights enjoyed by free citizens except those lost necessarily as an

incident of confinement. Further, the imprisonment does not spell farewell to fundamental rights and the rights enjoyed the prisoners under Arts. 14, 19 and 21, though limited, are not static and will rise to human

heights when challenging situations arise, as observed by the Supreme Court. While considering the necessity for providing legal assistance to under trial and convicted prisoners, the Supreme Court in *Sheela*

Barse Vs. State of Maharashtra, pointed out that the legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not

only by Art. 39A but also by Arts. 14 and 21 of the Constitution. Further, it is necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice

corrodes the foundations of democracy and rule of law. Therefore, in a case like this where the petitioners allege that they have been detained against the procedure established by law and in violation of their

fundamental rights to equal justice, certainly a Writ of Habeas Corpus would lie. We must make it clear that normally a Writ of Habeas Corpus cannot be granted when a person is committed to jail custody by

a competent Court by an order which prima facie does not appear to be without jurisdiction, as observed by some of the decisions of the Supreme Court. But in a deserving case, a Writ of Habeas Corpus can

be granted for the reasons stated above. As a matter of fact a Bench of this Court in *Elumalai v. State of Tamil Nadu*, 1983 MLW 121 above referred to entertained a batch of writs of habeas corpus

questioning the validity of the remands made by various Magistrates in the State and various reliefs were granted in respect of the under trial prisoners.

16. Now let us advert to the points raised in respect of remand and extension of

remand by the learned Magistrate at the instance of the prosecution. A perusal of the Scheme of the Criminal Procedure Code

shows that there are four stages of remand after a person is arrested. There is a constitutional mandate under Art. 22(2) that every person who is arrested and detained in custody shall be produced before the

nearest Magistrate within a period of 24 hours of such arrest and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. This is, reflected in S. 57, Cr.P.C.,

which reads as follows :-

Person arrested not to be detained more than twenty four hours :- No police officer shall detain in custody a person arrested 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 magistrate under S. 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the

Magistrate's Court.

As per the said provision, a person cannot be detained for more than 24 hours without a special order of a Magistrate under S. 167. This is the first stage after a person is arrested. Chapter III of the Code

relates to information to the police and their powers to investigate. Elaborated provisions have been made as to the powers of the police in the matter of investigation. When an investigation cannot be completed

within the period of 24 hours as provided by S. 57 and if it appears to the investigating agency 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. Therefore, a person arrested by the police has to be produced before a Magistrate within 24 hours for remanding him to

judicial custody. A careful reading of S. 167(1), Cr.P.C. would show that an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded

and it appears that the investigation cannot be completed within the period of 24 hours fixed by S. 57. Therefore, it follows that a remand by a Magistrate is not an automatic one and sufficient grounds must

exist for the Magistrate to exercise their powers of remand. That is the reason why it is required that a copy of the entries in the diary should be forwarded to the Magistrate along with the arrested persons. This

is the second stage in remanding the accused persons.

17. S. 167(2), Cr.P.C. provides that a 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, authorise the

detention of the accused in such custody to 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. This is the third stage contemplated under the Code. Before exercising this power, the Magistrate has

to satisfy himself that the investigation cannot be completed within the period of 24 hours fixed by S. 57 and that there are grounds for believing that the accusation or information is well founded. The Magistrate

on being satisfied from the entries in the diary transmitted to him that a further detention is necessary can remand the arrested person in custody for a period of 15 days either at one stretch or for a shorter

period from time to time not exceeding 15 days in the whole. In the above said case in *Elumalai v. State of Tamil Nadu*, 1983 MLW 121 a Bench of this Court pointed out that remand should not be made

mechanically and as a matter of routine and such routines should be deprecated. Further, the Bench held that under sub-sec. (2), the duration of detention, police or judicial, 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 dies. Under the old Code, in cases involving serious and complicated offences, where investigations 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 jurisdiction and then moving for further remand of the

accused and getting his judicial detention extended from time to time. Therefore, on the recommendations of the Law Commission, proviso (1) 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

maximum period of 90 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 the investigation

relates to any other offence, as pointed out by the Bench. 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. This is the fourth stage in the course of Judicial remand. In this connection, it is worthwhile extracting the observations of the Bench of this Court in the above said case.

.... Therefore, from the above position of law, it is clear 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.

18. The Scheme of the Act clearly establishes that the consideration that would weigh with the Magistrate at the time of remanding an accused person for a period of 15 days at the first instance is different from

the ground on which the period of remand is extended beyond the period of 15 days as per the proviso to S. 167(2). The proviso categorically states that the Magistrate may authorize the detention of the

accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the

accused person in custody under this paragraph for a total period exceeding 90 days or 60 days as the case may be, depending upon the nature of offence with which he is charged. As already noticed, the

Magistrate remands and accused person to judicial custody for a term not exceeding 15 days at the first instance solely with a view to enable the police to complete the investigation if they are able to satisfy that

such time is required for investigation. But once that period of 15 days is over the prosecution must show adequate grounds for extending the period of remand for a further period of 60 days or 90 days, as the

case may be. The language of the Section to the effect that the Magistrate may

authorise the detention beyond the period of 15 days if he is satisfied that adequate grounds exist for doing so, makes this petition

amply clear that an order of remand cannot be extended unless there are special grounds for doing so. At this stage, the Magistrate has to apply his mind in the nature of investigation that has been done until

then and the necessity for extending the remand to enable further investigation. For this purpose, the Magistrate must have sufficient materials before him for exercising such a power under this proviso.

Therefore, we are unable to accept the contention of the learned Advocate-General that the Magistrate can order remand for any period exceeding 15 days even at the first instance. The decision in Chaganti

Satyanarayana and Others Vs. State of Andhra Pradesh, relied on by him may not be of any assistance to the contentions raised by him. In that case, the Supreme Court considered the question regarding the

starting point of 15 days, whether the said period started from the time of arrest or from the time when an accused person is produced before Court. In the said decision, the Supreme Court pointed out that it

would be proper to give the plain meaning of the words occurring in sub-section (2) and holding that a Magistrate is empowered to authorise for a full period of 15 days from the date of production of the

accused. The following observations of the Supreme Court in the said case would make this position clear :-

Apart from these anomalous features, if an accused were to contend that he was taken into custody more than 24 hours before his production before the Magistrate and the police officer refutes the statement,

the Magistrate will have to indulge in a fact finding inquiry to determine when exactly the accused was arrested and from what point of time the remand period of 15 days is to be reckoned. Such an exercise by

a Magistrate ordering remand is not contemplated or provide for in the Code. It would, therefore, be proper to give the plain meaning of the words occurring in sub-sec. (2) and holding that a Magistrate is

empowered to authorise the detention of an accused produced before him for a full period of 15 days from the date of production of the accused.

19. Further, the Bench of this Court in Elumalai's case (1983 Mad LW (Cri) 121) has clearly indicated the importance of the provisions contained in S. 167(2), Cr.P.C. In the following words :-

For a speedy trial, the prosecution 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, for months together and if the Courts without being

conscious of the mandatory provisions of S. 167(2), mechanically authorise repeated detention 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.

The Bench followed the decision in Krishna Iyer, J., in Mantoo Majumdar and Dasdev Singh v. State of Bihar, 1980 MLW 17 : 1980 CLJ 546 wherein it was observed that the magistrate concerned have

been practically authorising repeated detentions, unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention. The Bench concluded its discussion by holding that

all possible breach that may result, from delays between the time a prosecuting officer discovers sufficient evidence to proceed against an accused person and the time of instituting those proceedings is to be

guarded against by Courts which are obliged to the society.

20. Bearing the above said principles in mind, let us now look at the facts of the present case. For the present, we are considering the first 12 cases above referred to in which the learned XIV Metropolitan

Magistrate, Egmore, Madras remanded the accused persons on 10-3-1990 till 12-3-1990. It appears that the investigating officer sought for the remand of the accused for a period of 15 days pending further

investigation. However, it was resisted on behalf of the accused on the ground that such a long period of remand is not necessary. After hearing both parties the learned Magistrate came to the conclusion that

there was no need to grant remand for 15 days and, therefore, the period of remand was restricted to 3 days, namely, till 12-3-1990. As far as this order is concerned, it cannot be stated that the learned

Magistrate has acted in a mechanical or summary manner. But on the other hand, he applied his mind to the facts of the case and came to the conclusion that it was enough if the remand was made till 12-3-

1990. Therefore, it is a speaking order and it is perfectly valid. On 12-3-1990 this writ petition was heard by us and while arguments were going on the learned Additional Chief Metropolitan Magistrate to

whom all these cases were transferred for purpose of further remand, passed an order extending the period of remand for further period of 15 days till 26-3-1990. This order is being challenged as it came to be

passed during the pendency of this writ petition. Mr. P. Chidambaram contended that the learned Magistrate was not at all justified in extending the remand for a further period of 15 days, especially when the

matter was being heard by this Court. According to him, the learned Magistrate in all fairness ought to have extended the remand for a short period awaiting the orders from this Court. The learned Advocate-

General contended that there was no bar door doing so. We have carefully considered these submissions. We have already discussed the various stages in the course or remand to judicial custody and the

matters that should be considered by the remanding Magistrate. We have held that the first spell of remand must be limited to 15 days either in one stretch or otherwise. At that stage, the Magistrate is expected

to satisfy himself as to the necessity for investigation into the case and remand for a reasonable time not exceeding 15 days. Once that stage is passed, the provision under S. 167(2), Cr.P.C., would come into

operation whereunder special reasons must be given for extending the period of remand originally granted. A reading of the common order passed by the learned magistrate clearly indicates that this destination

was not kept in mind at the time when the remand was extended. As a matter of fact, the mandate contained in sub-sec. (2) was not at all taken note of and there is no reference to any adequate grounds for

extending the period of remand beyond 15 days in total. Therefore, this extension of remand has to be treated as remand for 15 days contemplated under the said provision. In that is the meaning that can be

given to the said order, the learned Magistrate was empowered to remand the accused persons only for a total period of 15 days. In this case, they were remanded for three days at the first instance and,

therefore, there was no scope for remanding them into 15 days again since the total period exceeds the period of 15 days contemplated under S. 167(1), Cr.P.C. In view of this legal position, we find that the

subsequent remand for 15 days is not maintainable as the learned Magistrate had no jurisdiction to pass such an order. In so far as the other two cases are concerned, the learned Magistrate have remanded the

accused straightway for 14 days without giving any reason whatsoever. There is nothing to indicate on the face of the order that the learned Magistrates applies their minds in this regard. Admittedly the copies

of the diaries were not produced before the learned Magistrates. The learned Magistrates had no occasion to consider the length of time required for investigation. Such orders have been deprecated with a

strong language by the Bench, which decided Elumalai's case 91983 Mad LW 121) above referred to, stating that remand orders should not be passed by Courts mechanically and without verifying the entries

in the diaries and without personally satisfying about the real necessity for remand or its extension.

21. These 14 cases above referred to suffer from another infirmity. The following Members of Parliament and Members of Legislative Assembly were also arrested along with other people in the abovesaid

cases.

Name of the M.P. or Crime No. Name of the
M.L.A Police Station

1. Era Anbarasu M.P. 372/90 Crime Branch, Egmore.

2. P. Chidambaram M.P. 376/90 - do -

3. M. Arunachalam M.P. - do - - do -

4. C. K. Kuppuswamy M.P. - do - - do -

5. G. K. Moopanar M.L.A. - do - - do -

6. V. Gopalakrishnan M.L.A. - do - - do -

7. S. R. Balasubramaniam M.L.A. - do - - do -

8. K. V. Thangabalu M.P. 381/90 - do -

9. Mrs. Margatham

Chandrasekar M.P. 189/90 F-1 Avadi

10. Tindivanam Ramamoorthy M.P. 49/90 Maromalainagar

All these persons were released under orders of Court at the instance of the Government as they were not required for investigation. Even though it is stated

that they were released to enable them to attend

Parliament and Assembly, there is no indication to that effect in the orders passed by the Court. Now the reasons given by the police for extension of remand are four-fold : (1) Staff members employed in the

train at the time of occurrence are yet to be examined : (2) A few passengers who travelled in the train have to be examined after tracing them at various places : (3) There are similar cases wherein the agitator

indulged in violence and the complicity of these accused in those cases has to be verified; and (4) The accused are well placed and there are possibilities for hampering with in the course of investigation. It is

significant to note that identical reasons are given in all the 12 cases. As far as the third reason is concerned, stereotyped reasons are given in all the 12 cases and in no one case there is any reference to any

violence during agitation. Therefore, this ground does not exist practically. As far as the first two grounds are concerned, if the non-examination of the staff members and the passengers is a ground for further

detention of the accused, there is no reason why only M.Ps. and M.L.As. have been released. It is nobody's case that they are not likely to interfere with the course of investigation. It has to be borne in mind

that they are leaders who led the agitation and others have merely followed them. Therefore, if at all there is anybody to interfere with the investigation, it must be the leaders who are responsible for the agitation.

The fourth reason that the other accused are well placed and, therefore, they are likely to hamper the investigation is, on the face of it meaningless, since more powerful and influential people have been released

at the instance of the Government. The orders of the learned Magistrate extending the remand do not show that these factors have been considered by him at the time of extending the remand. In view of the fact

that the prosecution is willing to release them on bail, there is no meaning in saying that the other accused must be kept in custody to enable further investigation. It is, therefore, obvious that none of these

reasons can be sustained on the facts of the present case. The founding fathers of our Constitution has engrafted Art. 14 into our Constitution conferring equality before the law and equal protection of the laws.

The guarantee of equal protection applies not only against substantive law but also against procedural laws. All the litigants who are similarly situated, are entitled to avail of the same procedural rights for relief

and for defence, without any discrimination. It is no doubt true that there can be

minor variations in such procedures which do not cause any serious prejudice to the persons affected. As held by the Courts, in

order to find out whether there has been a substantial departure from the normal procedure, the test to be applied is not the degree of inequality but the consequent effect of it on the rights of individuals.

Whenever there is a substantial difference in procedural rights of the accused to equality of treatment where the act complained of deprives the accused of similar procedural safeguards which are offered to the

other accused of the same class, under the general law of Criminal procedure, the petitioners are entitled to claim equal justice as held by the Supreme Court in *The State of West Bengal Vs. Anwar Ali Sarkar*,

. In this case, we find that there was no justification for keeping the other accused in custody after having released the Leaders of the agitation in so far as these 14 cases are concerned. It amounts to hostile

discrimination and violates the equal rights guaranteed under Art. 14 of the Constitution. It is not the judicial decision alone which is under challenge in these cases. We find that remands are made only on the

request of the prosecution and, therefore, the State was not justified in asking for the release of some persons and for continuing detention in respect of others in these cases. It is to be remembered that the

learned Magistrate has acted on the basis of such request and the orders passed by him are only consequential. Once we find that such a request is arbitrary and violates equal protection of laws under Art. 14

of the Constitution, the consequential orders passed by the learned Magistrate must also suffer from the same vice. We are aware of the fact that normally every judicial decision must depend on the facts and

circumstances of a particular case, and, therefore, once judicial discretion is exercised in deciding the matter on merits, normally the procedure is only to file an appeal or revision as the case may be. But the case

on hand is not of that type.

22. Though Mr. Chidambaram made a request that reports must be called for from all the Courts regarding the manner of arrest and remand for deciding the points raised in this writ petition, we find it

unnecessary to do so in view of the conclusions arrived at by us. We have already extracted the six points raised in the writ petition. Learned counsel himself has conceded that points 1, 2, 5 and 6 are covered

by the decision of a Bench of this Court in *Elumalai's case* 1983 Mad LW 121. We have also dealt with those points in this judgment and, therefore, it is

unnecessary to give any findings on those points. As far

as the fourth point is concerned, we find that learned Public Prosecutors are not involved at the time when the police seeks an order of remand from a Magistrate and, therefore, there is no necessity to decide

this aspect as far as this writ petition is concerned. Of course, whenever a Public Prosecutor appears in such matters, he is certainly bound to satisfy himself that there is a justification to seek such an order of

remand to judicial custody and assist the Court. This duty is already cast on him under law and, therefore, it does not need repetition. As far as the fourth point is concerned, the Criminal Procedure Code itself

provides for the circumstances under which the Executive Government may seek and order of remand to judicial custody and it is not possible to enumerate all possible reasons in this regard. That is the reason

why the Criminal Procedure Code itself has left the matter to the discretion of the Courts. It is highly undesirable to catalogue the circumstances under which a judicial officer can exercise his discretion. These

points are answered accordingly.

23. This is a peculiar case in which we find that the accused persons are desirous of getting released from custody and the State is willing to release them on bail. However, the relief in this case eluded both

parties so far. Therefore, we are called upon to decide the various points more as an academic interest than out of real necessity.

24. In the result, we hold that the other persons in all the 14 cases above referred to, who are still in remand are entitled to be released for the reasons stated above.

25. To obviate the difficulty of production of the remand prisoners in the 14 cases before the concerned Magistrate, since the number of remand prisoners are stated to be more than one thousand we direct the

Superintendent of the Central Prison, Madras, to take personal undertaking (Muchalika) from the concerned remand prisoners for their appearance on the date of hearing in the concerned Criminal Courts from

where they have been remanded and to forward such undertaking to the concerned Magistrate for taking action in case there is any difficulty in their appearance.

26. Similarly, we direct the Superintendents of the Central Prisons, Madurai, Tiruchi, Coimbatore, Palayamkottai, Vellore, Uddalore and Salem, to produce the remand prisoners arrested on 10-3-1990 with to

the Rail Rokho agitation before the concerned Magistrates on or before 20-3-1990 so as to enable those Magistrates to pass fresh orders of remand. The concerned Magistrates shall pass fresh orders or

remand regarding the remand prisoners arrested with respect to the Rail Rokho agitation on production of the Zerox Copy of the order passed by this Court in this W.P. viz., W.P. No. 2895 of 1990. On such

production, the Magistrate concerned will hear the accused parties and the Public Prosecutor and pass suitable orders taking into consideration the totality of the facts in the respective cases. It is entirely for the

learned Magistrate to decide about the necessity to remand and if so to what period ? We do not want to express any opinion in this regard since no particulars are available before us. However, we make it

clear that the points decided on the basis of discrimination under Art. 14 of the Constitution would apply only to those cases where M.L.As. or M.Ps. have been released. The writ petition is ordered

accordingly.

27. After the judgment was delivered, learned Advocate General applied orally for leave to file an appeal before the Supreme Court of India. We are satisfied that this case involves a substantial question of law

of general importance which, in our opinion, needs to be decided by the Supreme Court.

28. Hence leave is granted.

29. Order accordingly.