
(2003) 04 BOM CK 0023

In the Bombay High Court

Case No : Criminal Appeal No's. 597 and 676 of 2002

Kamlakar Ollala

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Prevention of Terrorism Act, 2002 — Section 49, 49(2)

Citation : (2003) 4 MhLj 400

Hon'ble Judges : R.M.S. Khandeparkar, J;P.S. Brahme, J

Bench : Division Bench

Advocate : S.V. Sirpurkar, in Criminal Appeal No. 597 of 2002 and Amol S. Deshpande, in Criminal Appeal No. 676 of 2002, for the Appellant; S.G. Loney, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned advocates for the parties. Perused the records.

2. Since the common questions of law and facts arise in both these appeals, they were heard together and are being disposed of by this common judgment.

3. In both these appeals, the appellant challenges, the orders passed by the Additional Sessions Judge, Gadchiroli, remanding the appellants to custody beyond the period of 90 days from the date of arrest of the appellants on the various grounds, inter alia contending that the exercise of powers of remand by the Additional Sessions Judge to be ab initio bad in law of in view of the provisions of law contained in Section 49 of the Prevention of Terrorism Act, 2002 (hereinafter called as "POTA") as well as the law settled by the Apex Court on the point of indefeasible right of the accused to get released on bail on account of default on the part of the investigating agency to submit the charge sheet within a period of 90 days and failure to get such period extended by further period of

90 days by the Special Court under the said provisions of law contained in Section 49 of the POTA.

4. Few facts relevant for the decision in the matter are that pursuant to the registration of crime under the provisions of POTA, the accused in Criminal Appeal No. 597/2002 came to be arrested on 6-6-2002 whereas the accused in Criminal Appeal No. 676/2002 was arrested on 23-6-2002. Pursuant to the arrest of the appellants, they were remanded to the custody and it continued till the expiry of the period of 90 days without any charge sheet being filed against the appellants. The period of 90 days expired on 3-9-2002 in case of the former while it expired on 20-9-2002 in case of the latter. Meanwhile an application for further remand of the appellant along with the application for extension of period in Appeal No. 597/2002 was filed by the respondents and the appellant was remanded till 3-10-2002. Similarly the application for extension of remand was filed in case of the appellant in Appeal No. 676/2002 on 19-9-2002 along with an application for extension of period of detention from 90 days to 180 days on 19-9-2002 and by order dated 19-9-2002 the appellant was remanded to M.C.R. till 3-10-2002. Again the custody of the appellant was further extended till 17-10-2002 by order dated 3-10-2002. Simultaneously the appellant in the former case had filed an application for bail on 11-9-2002 and the same was dismissed by order dated 12-9-2002 whereas in the latter case, the application for bail was filed on 23-9-2002 and the same was rejected on 26-9-2002.

5. The Section 49(2) of POTA provides as under:--

"Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in Sub-section (2),--

(a) the references to "fifteen days", "ninety days", and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(b) after the proviso, the following provisos shall be inserted, namely :--

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days :

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

6. Referring to the above provision of law, it was sought to be contended that the law clearly requires the investigation to be completed within 90 days and in case it is not so completed and no charge sheet is filed, the accused is entitled for

release on bail as a matter of right unless the Special Court extends such period by another ninety days i.e. in total for one hundred and eighty days pursuant to the report of the public prosecutor indicating the progress of the investigation and disclosing specific reasons for the detention of the accused beyond the period of 90 days. It is the case of the appellants that in the case in hand neither there has been any extension of the said period of ninety days to the period of one hundred and eighty days by any order of the Special Court nor there has been a proper report submitted by the public prosecutor indicating the progress of investigation as well as disclosing the reasons for detention of the accused beyond the period of ninety days and, therefore, the Special Court could not have remanded the appellants, to custody beyond the period of ninety days and ought to have allowed their applications for bail. On the other hand, the learned A.P.P. has submitted that the Public Prosecutor did submit the necessary report in terms of the requirements of Section 49 of POTA and, therefore, no fault can be found with the orders passed by the Courts below rejecting the application for bail filed by the appellants and remanding them for further custody in the matter. It is also sought to be contended that the charge sheets have already been filed in both the matters on 2-12-2002, and therefore nothing survives in both these appeals.

7. The appellants have sought: to rely upon the decision of the Apex Court in the matter of *Raj Narain Vs. Superintendent, Central Jail, New Delhi, , Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others, , Sanjay Dutt v. The State through C.B.I. Bombay*, reported in 7995 Cri.L.J. 477, *Uday Mohanlal Acharya Vs. State of Maharashtra*, and Full Bench of this Court in the matter of *Rehemankha Kalukha Vs. The State of Maharashtra*, and the Division Bench in the matter of *Mohammad Allimuddin v. State of Maharashtra* reported in 2003(3) Mh.L.J. 93 : 2003 All MR (Cri) 474.

8. Referring to the decision of the Apex Court in *Raj Narain's* case, it was sought to be contended that at the time of obtaining order of remand, it is absolutely necessary that the accused should be produced before the Magistrate and any order of remand should be passed in the presence of the accused. In that connection attention was drawn to paragraphs 38 and 39 of the said decision. The decision in *Raj Narain's* case indeed discloses in para 38 an observation to the effect that the various provisions of the Criminal Procedure Code as also the various decisions of the Apex Court, as well as of other Courts lead to the conclusion that the accused must be presented before the Magistrate or Court when an order of remand is to be passed and that an order of remand passed without the accused being produced, is illegal. The observations in that regard in para 39 are to the effect that "it stands to reason that an order of remand will have to be passed in the presence of the accused. Otherwise the position will be that a Magistrate or Court will be passing orders of remand mechanically without having heard the accused for a considerably long time. If the accused is before the Magistrate when a remand order is being passed, he can make representations that no remand order should be passed and also oppose any

move for a further remand". It has been further held that. "Magistrate has to apply his judicial mind, he himself can take not of all relevant circumstances when the person detained is produced before him and decide whether a further remand is necessary". However, at the same time it is to be noted that these observations are from the minority view in the said decision. The majority view in the said decision is revealed from para 7 of the said decision and it reads thus :--

There is nothing in the law which required his personal presence before the Magistrate because that is a rule of caution for Magistrates before granting remands at the instance of the police. However, even if it be desirable for the Magistrate to have the prisoner produced before them, when they recommit him to further custody, a Magistrate can act only as the circumstances permit. Where the prisoner's custody is transferred to a superior Court such as this the Magistrate can only adjourn the case at the same time extending the period of remand. It is for this Court to see that the custody by it continues under proper orders and if this Court is satisfied that the prisoner is in proper custody under a proper order of remand, the prisoner will not be released. This Court does not order detention and cannot extend the remand. Its custody is conterminous with the remand ordered by the Magistrate. If the Magistrate extends the period of remand and communicates the order to the person having the immediate custody of the prisoner with intimation to this Court and the prisoner, nothing more is expected of him. The object of production of the prisoner before the Magistrate is more than answered by his production before this Court because the prisoner has the protection of his interest transferred from the Magistrate to this Court."

9. In Hitendra Vishnu Thakur's case while dealing with the provisions of Terrorist, And Disruptive Activities Prevention Act, 1987 (hereinafter called as "TADA") and particularly in relation to the period of detention and the powers of the Court to remand the accused as well as right of the accused for bail, when he is arrested under the provisions of TADA, has held that:

"We find that once the period for filing the charge sheet has expired and either no extension under Clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under Sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed u/s 20(4) TADA read with Section 67 of the Code, the Court must release the accused on bail on its own motion even without any application from an accused person, on his offering to furnish bail in our opinion as an accused is required to make an application if he wishes to be released on bail on account of the "default" of the investigating/prosecuting agency once such an application is made, the Court should issue a notice to the public

prosecutor, who may either show that the prosecution has obtained the order for extension for completion of investigation from the Court under Clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period has actually not expired and, thus resist the grant of bail on the alleged ground of "default".

It was further observed that:--

"When a report is submitted by the public prosecutor to the Designated Court for grant of extension under Clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him."

It was also held that:--

"This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the Courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large, through the prosecuting agency on the other hand."

10. Dealing with the provision relating to the extension of the period for detention on such request being made by the investigating agency, the Apex Court has ruled in the said decision that:

"Where the Designated Court declines to grant such an extension, the right to be released on bail on account of "default" of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by Sub-section (4) of Section 20."

11. The Apex Court has also warned that the Courts are expected to zealously safeguard the liberty of the accused and Clause (bb) has to be read and interpreted on its plain language without, adding or substitution of any expression in it. It has been further ruled that:--

"An accused person seeking bail u/s 20(4) has to make an application to the Court for grant of bail on grounds of the "default" of the prosecution and the Court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case, since Section 20(8) does not control the grant of bail u/s 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under Clause (bb) by filing a report for the purpose before the Court. However, no extension shall be granted by the Court without notice to an accused to have his say regarding the prayer for grant of extension under Clause (bb)."

12. The Apex Court in Sanjay Dutta's case while dealing with the provisions of

TADA and more particularly in relation to right of the accused to have an opportunity of being heard at the time of extension of the period from ninety to one hundred and eighty days, as well as about the right of the accused to be released on bail on account of "default" on the part of the investigating agency to complete the investigation within the prescribed time and to file the charge sheet, it was ruled that:--

"(2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the Court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to Clause (bb) of Sub-section (4) of Section 20 of the TADA Act has to be understood in the judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the Court informing him that the question of extension of the period of completing the investigation is being considered is alone sufficient for the purpose.

(2) (b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

13. In Uday Mohanlal Acharya's case, the Apex Court after taking into consideration all earlier judgments in relation to provisions of Section 167 of Code of Criminal Procedure, 1973 as well as similar provisions in other Acts has held that :--

"We are of the considered opinion that an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to Sub-section (2) of Section 167 of the Code if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail, that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of the arrest of the accused. In our view, such interpretation would subserve the purpose and the

object for which the provision in question was brought on to the Statute Book."

It has been further observed that:--

"Personal liberty is one of the cherished object of the Indian Constitution and deprivation of the same can be only in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody upto a maximum period as indicated in the proviso to Sub-section (2) of Section 167, any further detention beyond the period without filing of challan by Investigating Agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution. There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in the provision to Sub-section (23) of Section 167 excepting contingency indicated Explanation I, namely, if accused does not furnish bail. It is in this sense it can be stated that if after the expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail, and thereby avail of his indefeasible right and then an order of bail is passed on certain terms and conditions but he fails to furnish the bail, and at that point of time a challan is filed then possibly it can be said that the right of the accused stood extinguished."

It is further held that:--

"This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file challan within the specified period and the interest of the society, at large, in lawfully preventing an accused for being released on bail on account of inaction on the part of the prosecuting agency."

It has also been held therein that:--

"On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate."

Further it is ruled that:--

"On expiry of the period specified in paragraph (a) of proviso to Sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."

The Apex Court has ultimately held that:--

"Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail already granted in accordance with law laid down by this Court in the case of Mohamed Iqbal Madar Sheikh and Others Vs. State of Maharashtra, ."

14. In Mohamed Iqbal Madar Sheikh's case (supra) the Apex Court has ruled that:--

"The bail of such accused who has been released, because of the default on the part of the Investigating Officer to complete the investigation, can be cancelled, but not only on the ground that after the release, charge- sheet has been submitted against such accused for an offence under TADA. For cancelling the bail, the well settled principles in respect of cancellation of bail have to be made out..... that order can be cancelled, when a case for cancellation is made out under Sections 437(5) and 439(2) of the Code- But for that, the sole ground should not be that after the release of such accused the charge-sheet has been submitted."

15. The Full Bench of this Court, in Rahemankha Kalukha's case while dealing with the provisions of Section 167(2) of the Code of Criminal Procedure, has held that the provisions of Section 167(2) are mandatory in the sense that the accused shall have to be released on bail, if he is prepared to and does furnish bail on expiry of the period of 90 days or 60 days as the case may be, if the charge sheet is not filed within the said period and further held that it is expected of the learned Magistrate to pass an order of bail no sooner the applicant/accused made an application on 91st day when undisputedly no charge sheet was filed against him in the Court by the Investigating Agency.

16. The Division Bench of this Court in Mohammad Allimuddin's case placing reliance upon the decision in the matter of Hitendra Vishnu Thakur's case as well as other decisions of the Apex Court has held that the report of the public prosecutor should be in consonance with the requirement of Section 49 of POTA and further that the extension order should not be passed without an opportunity of being heard offered to the accused.

17. Considering the provisions of law contained in Section 49 of POTA and various decisions referred to above, it is apparent that the investigation has to be primarily completed within the first 90 days period from the date of arrest of the accused under POTA in case the investigating Agency is not able to complete such investigation within the period of 90 days and if it needs for continuation of the detention of the accused in custody beyond the said period of ninety days, it is necessary for the Investigating Agency to submit a report in that regard through the Public Prosecutor to the Special Court. Such a report necessarily

should disclose the progress of the investigation and the specific reasons for detention of the accused beyond the period of ninety days. Apparently it should indicate the satisfaction of the Public Prosecutor in that regard and thereupon the Special Court can extend the period of ninety days to further ninety days i.e. in total for a period of one hundred and eighty days. The provisions of Section 49 which deals with the powers of the Special Court to extend the period from ninety days to one hundred and eighty days does not on the face of it disclose any provision for opportunity of being heard to be given to the accused before any such order of extension of period is passed by the Court. However, time and again the Apex Court as well as this Court has held that while exercising the powers relating to curtailment of the personal liberty, the provisions contained in Article 21 of the Constitution are never to be forgotten and any deprivation of personal liberty has to be in accordance with the provisions of law and in conformity with the mandate of Article 21 of the Constitution and without ignoring the basic principles of natural justice therefore, the provision for opportunity of being heard has to read in the proviso to Section 49 when the Special Court chooses to curtail the liberty of the accused for further period of ninety days on expiry of the initial period of ninety days. In fact, as seen above, the Apex Court while dealing with the provisions of TADA in relation to extension of the period has clearly observed that, though specific provision for opportunity of being heard is not incorporated in the relevant section, nevertheless it was necessary for the Court to issue notice to the accused before the extension period. The law settled by the Apex Court in the matter of similar provisions under TADA, will apply to the provisions in POTA in spite of the fact that there is no specific provision for hearing to be given to the accused before extending the period. Hence it is to be held that while exercising the power to extend the period pursuant to the report of the public prosecutor, the Special Court will have to issue notice to the accused before passing any such order of extension of period.

18. The maximum period prescribed under POTA for detention of the accused for the purposes of investigation is ninety days. That is clear from Section 49(2)(a) of POTA. Undoubtedly the said period can be extended for further period of ninety days. However, the extension does not depend upon happening of any event as such nor it is a deeming provision. The extension of the period has to be by a judicial order in that regard. The proviso added to Section 167 of Criminal Procedure Code. In terms of Section 49(2)(b) of POTA clearly requires satisfaction of the Special Court pursuant to the report by the public prosecutor in terms of said provision of law in order to enable the Special Court to extend the period. In that regard the order of extension of period beyond the period of initial ninety days, is different from the order of remand of the accused to custody beyond such initial period of ninety days. Undoubtedly the grounds for extension of period, as well as for remand of the accused may be the same, and both the orders can even be simultaneously passed. They can be even passed together. However, the order of remand beyond the period of ninety days cannot

precede the decision of the Special Court to extend the period beyond ninety days. The reason for the same is that the Court can remand the accused to custody beyond such period of ninety days only after expiry of the said period as provided under proviso to Section 167(2) of Criminal Procedure Code. In view of the provisions of law contained in Section 49 of POTA. Unless the period of ninety days is extended for further period of ninety days, the Special Court is not empowered to remand the accused to custody, even though the investigation is incomplete. Needless to say that in case the charge sheet is filed within the said period of ninety days, certainly situation may be different. It is, therefore, necessary that the Special Court first to ascertain whether the period of ninety days has expired and if so whether it has been extended and only thereupon to remand the accused to custody when the Court finds, the period of ninety days having been expired. In short, the decision for extension of period has necessarily to precede the order of remand of accused to custody when the initial period of ninety days expires.

19, Reverting to the facts of the case, undisputably in the case in hand, the Investigating Machinery had not filed the charge sheet before the expiry of period of ninety days from the date of appellants' arrest. As already seen above in former case the accused was arrested on 6-6-2002 and in latter case he was arrested on 23-6-2002, whereas the charge sheets were filed on 2-12-2002 much after the period of the expiry of the period of 90 days in both the matters. Added to this, the respondents have not been able to place on record any order having been passed by the Special Court under POTA of having extended the period of ninety days to one hundred and eighty days in either of the cases. The applications for extension of period were filed on 19-9-2002 in both the cases. However, while disposing of the said applications, the Special Court had not passed any order of extension of period but it restricted its order only in relation to the remand of the appellant to the custody. Apparently the respondents without inviting an appropriate order from the Special Court as regards the extension of the period, obtained the orders of remand of the appellants beyond the period of ninety days. It is seen from the record that the period of ninety days expired on 3- 9-2002 in case of the appellant in appeal No. 597/2002 whereas it expired on 20- 9-2002 in case of the appellant in Appeal No. 676/2002 and they had filed bail applications on 11-9-2002 and 22-9-2002 respectively. In other words :--

- i) the period of ninety days had already expired;
- ii) there was no extension of the said period obtained by the Investigating Agency;
- iii) the accused were remanded to the custody without extending the said period;
- iv) the accused had filed their applications seeking bail after the expiry of the period of ninety days;
- v) the accused had, therefore, acquired indefeasible right to be released on bail

and

vi) the right of bail was refused to the appellants contrary to the provisions of law.

The above conclusions in the facts of the case and applying the law laid down by the Apex Court revealed from the various decisions quoted above are inevitable.

20. Considering the facts, and circumstances of the case, therefore, the appellants are justified in contending that they had acquired indefeasible right for being released on bail on expiry of the period of ninety days and that has been illegally refused to them by rejecting their bail applications by the Court below. At the same time it is also equally true that the charge sheets have already been filed on conclusion of the investigation. In these circumstances, therefore, the question which arises is as to what should be the further course of action in the matter? Though neither in POTA nor in Criminal Procedure Code there is any clear provision of law to meet any such situation, the decisions of the Apex Court in Mohammed Iqbal's case read with that in Sanjay Dutt's case provides the necessary answer.

21. As already seen above, the Apex Court in Sanjay Dutt's case has held that if the accused applies for bail after the expiry of period, he has to be released on bail forthwith and the accused so released on bail may be arrested and committed to the custody according to the provisions of Criminal Procedure Code and in Mohamed Iqbal Madar Sheikh's case has clearly ruled that on account of default on the part of the investigating agency to complete the investigation within the period of ninety days, indefeasible right accrues to the accused to be released on bail. However, before such order is being passed, if the charge sheet is submitted by the investigating Agency, such a right can be interfered with by following the procedure applicable in cases of cancellation of bail and not in any other manner in other words, once the investigation agency commits default of not completing the investigation and filing the charge sheet within the period of ninety days, and also fails to obtain appropriate order for extension of such period, the accused gets indefeasible right to be released on bail and such a right cannot be denied to the accused under any circumstances. However, in a case where before such right is exercised by the accused or even the proceedings to exercise such right are initiated but an order of the Court is not passed, and meanwhile the charge sheet is filed, the accused in such case is required to be produced before the concerned Court and the concerned Court can deal with the matter by following the procedure applicable in cases of cancellation of bail and under no circumstances merely because the charge sheet is filed, the bail can be refused. The Apex Court in that regard has clearly ruled that "the order can be cancelled, when a case for cancellation is made out under Sections 437(5) and 439(2) of the Code. But for that, the sole ground should not be that after the release of such accused the charge sheet has been submitted". In other words, at this stage it is necessary for the respondent to produce the appellants before the Special Court forthwith and to furnish the copies of the charge sheet and in

case their detention is necessary, to make out a case for cancellation of the bail which is deemed to have been granted to the appellants on account of default on the part of the Investigating agency to complete the investigation and to file the charge sheet within the period of ninety days as well as failure on their part to obtain the extension of the said period.

22. In the result, therefore, the appeals succeed. The orders passed by the Court below remanding the appellants beyond the period of 90 days as well as refusal of bail are hereby quashed and set aside. The respondents are directed to produce the appellants before the Special Court forthwith and without fail within the period of three days from today and thereafter the Special Court to proceed with the matter bearing in mind the observations made hereinabove and the law down by Apex Court and as referred above. Order accordingly.