

(1992) 09 AHC CK 0068

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 24268 of 1991 C/W Civil
Miscellaneous Writ Petition No's. 10870 of 1991 and 5105 of 1992

Mohammad Daud alias Mohd. Saleem APPELLANT

Vs

Superintendent of District Jail and Others RESPONDENT

Date of Decision : 28-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 21(2), 22(1)
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(1), 167(2), 167(2A), 209
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 29,
36A, 52(1), 8(C)
Penal Code, 1860 (IPC) — Section 307, 392, 394, 397

Citation : (1993) 1 AWC 225 : (1993) CriLJ 1358

Hon'ble Judges : A.P. Mishra, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : D.S. Mishra, for the Appellant; A.G.A. and Mahendra Pratap, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Srivastava, J.—These are three connected writ petitions under Article 226 of the Constitution of India, in relation to one and the same matter filed on different dates, hence are being disposed of by a common judgment.

2. The writ petition No. 10870 of 1991 was filed on 15-4-1991 for mandamus directing the Superintendent, District Jail, Moradabad not to transfer the petitioner from the said jail to Bombay in pursuance of warrants received from the City Sessions Court Greater Bombay and to release him the moment he receives release order in Crime No. 96 of 1983 under Sections 392/397, IPC. P. S. Hazrat Nagar Garhi, Moradabad. It was admitted on 1-10-191.

3. By means of the Habeas Corpus Petition No. 24268 of 1991 filed on 12-9-1991 the petitioner prayed for issuance of a writ of habeas corpus directing the respondents Nos. 1 and 2, Superintendent District Jail, Moradabad and State of

Uttar Pradesh, respectively to release the petitioner from detention in the District Jail, Moradabad and also for a writ of mandamus prohibiting the respondents from transferring the petitioner to any other jail outside the district of Moradabad. This petition was originally filed impleading the Superintendent, District Jail, Moradabad and the State of Uttar Pradesh as respondents Nos. 1 and 2, respectively. It was admitted on 1-10-1991 and rule nisi was issued to the respondents on 28-10-1991, an interim order restraining transfer of petitioner to any jail outside Moradabad was passed. Subsequently, on the application of the petitioner by an order dated 13-1-1992 of this court, the Superintendent Central Prison, Nasik (Maharashtra), and the Senior Inspector (Police), Detention of Crime Branch, C.I.D. Unit No. 5, Bombay were impleaded as respondents Nos. 3 and 4 respectively, and notices for return be issued to them.

4. Writ Petition No. 5105 of 1992 was filed on 12-2-1992 against the Sessions Judge, Moradabad and the Special Judge, Moradabad for mandamus directing them not to shift the petitioner to Bombay or any prison outside Moradabad, to comply with interim order dated 28-10-1991 in Habeas Corpus Petition No. 24268 of 1991 and to release him on bail in pursuance of order dated 27-3-1991 of this court in Crime No. 96 of 1983 aforesaid.

5. Since Habeas Corpus Petition No. 24268 of 1991 has been heard as the leading case and the pleadings therein cover the entire gamut of the controversy, it will not be necessary to burden this judgment by separately narrating the pleadings in all three petitions.

6. The petitioner Mohd Daud alias Mohd Salim along with four others, was arrested by Detention of Crime Branch, CID Bombay (hereinafter referred to as D.C.B., C.I.D. Bombay) on 11th July, 1989 pursuant to alleged recovery of narcotic and psychotropic substances, He was being prosecuted in the court of Special Judge, City Sessions Court, Greater Bombay for offences under Sections 8(C), 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as N.D.P.S. Act) and was in judicial custody of the said court, when "production warrant u/s 267 of the Criminal Procedure Code (commonly known as B Warrant) dated 13-4-1990, was sent from the court of the Special Judge, Moradabad to the Superintendent Central Jail, Nasik requiring him to produce the petitioner before the said court to answer the charge of offences u/s 394/397, IPC in the Sessions Trial No. 748-A of 1984. By his order dated 11-7-1990 the Special Judge, Greater Bombay directed the Superintendent, Central Prison, Nasik to produce the petitioner before the Special Judge, Moradabad in compliance of the production warrant. The petitioner was ultimately produced before the court of Special Judge, Moradabad on 3-12-1990 who by his order dated 3-12-1990 remanded him to judicial custody in the said sessions trial.

7. These petitions for issuing writs of habeas corpus and mandamus have been filed by the petitioner alleging inter alia, that his detention by order dated 3-12-1990 of the Special Judge, Moradabad is illegal. The petitioner was not

named in the first information report relating to the said case, he was subjected to test identification in the District Jail, Moradabad on 19-12-1983 in which he was not identified by any of the prosecution witnesses. Under these circumstances, his prosecution for the said offences in Sessions Trial No. 748-A of 1984 is an abuse of process of court requiring intervention of this court. The petitioner who was on bail in the said case could not appear in the court of Special Judge, Moradabad due to his illegal detention in the N.D.P.S. Case in the Central Prison, Nasik, resulting into cancellation of his bail bonds, and issuance of a B Warrant by the said Court. On the petitioner being produced before the court concerned at Moradabad on 3-12-1990 no valid order remanding him to jail custody was passed nor any intermediate custody warrant in the prescribed form was sent to jail authority at Moradabad, the so called intermediate custody warrant dated 3-12-1990 is a mere waste paper. There being no other valid intermediate custody warrant for detaining the petitioner in jail in connection with any other offence, the continued detention of the petitioner in the District Jail, Moradabad is illegal. Even no order remanding the petitioner to custody of District Jail, Moradabad was passed on 7th, 22nd January, 28th February, 27th March, 23rd April, 15th May, 28th June, 11th July, 25th July and 22nd August, 1991, as would appear from the copy of order-sheet of the said court, Annexure "3" to the petition No. 24268 of 1991. The petitioner was even not produced before the court on 13-6-1991 and 19-6-1991 and the adjourned dates were fixed in his absence.

8. It is further pleaded that the petitioner applied for bail to the Sessions Court at Moradabad which was not accepted. His bail plea, however, was allowed by this Court vide order dated 27-3-1991. In spite of the petitioner offering to furnish bail bonds in compliance of the order dated 27-3-1991 the Special Judge, Moradabad and the authorities of the District Jail, Moradabad, expressed inability to release him from custody on the plea that in such event they would transfer the petitioner to the Central prison, Nasik from where he had been brought to Moradabad jail. The respondents, it is alleged to have no right to transfer the petitioner back to the Central Prison Nasik as there does not exist any valid order or warrant B of the City Sessions Court, Greater Bombay for such return of the petitioner to the central prison Nasik u/s 267, Cr. P.C. The detention of the petitioner being in violation of the provisions of Sections 167, 209 and 309 of the Cr. P.C. and Articles 14, 19 and 21 of the Constitution of India, he is entitled to be released from detention in the District Jail Moradabad forthwith, and till such time as he so released the authorities of the District Jail, Moradabad are liable to be restrained from transferring him to any other jail outside Moradabad.

9. In the supplementary affidavit dated 2-1-1992 filed on behalf of the petitioner, in Habeas Corpus Petition No. 24268 of 1991 for impleadment of the respondents Nos. 3 and 4, the arrest and detention in custody of the petitioner under orders of the Special Judge, City Sessions Court, Greater Bombay has been challenged on the ground that the search was conducted in violation of the provisions of N.D.P.S. Act, there also was not made recovery of any narcotic or psychotropic

drug from him he was not disclosed the reasons or grounds for his arrest which amounted to violation of provisions of Article 22(1) of the Constitution, Section 50(1) of the Code of Criminal Procedure and Section 52(1) of the N.D.P.S. Act, he was not produced before any court or Magistrate along with the entries in the diary of investigation, despite the bar on detaining an accused in police custody for a period of more than 15 days, he was detained in police custody by the D.C.B., C.I.D. Bombay for about one and half months, there thus was a violation of Section 167 of the Cr.P.C. rendering the petitioner's detention invalid. The City Sessions Court, Greater Bombay took cognizance of the offence u/s 8C read with Sections 21 and 29 of the N.D.P.S. Act 1985 on 6-10-1990. In the meantime the petitioner was arbitrarily transferred from the Bombay jail to the Central Prison Nasik, despite the fact that there was no order to that effect of the City Sessions Court Bombay. The petitioner was not produced before the Special Judge, Greater Bombay on 24-10-1990 when 17-1-1991 was fixed and no order of remand to custody was made. Subsequently on 17-1-1991, 12-3-1991, 13-6-1991, 19-9-1991 and 20-11-1991 the petitioner was even not produced before the said court, as would appear from Annexure S.A. 1 the copy of the order sheet of the said court. For these reasons and in the absence of any B Warrant u/s 267, Cr.P.C. or detention order of the Special Judge, City Sessions Court Greater Bombay addressed to the Superintendent District Jail, Moradabad the detention of the petitioner from inception as well as from the date of his production before the Moradabad Court, 3-12-1990, is illegal and unauthorised, and the authorities at Moradabad have no jurisdiction to transfer him back to Central Prison Nasik. The petitioner being presently detained in the District Jail, Moradabad (U.P.) and also being a permanent resident of the said district the cause of action for this habeas corpus petition accrued within the jurisdiction of this Court qua these respondents also.

10. The return on behalf of the respondents Nos. 1 and 2 was filed on 19-11-1991 by means of a counter affidavit dated 13-11-1991 of Virendra Bahadur Asthana, Deputy Jailor, District Jail, Moradabad. It has been contended in this counter affidavit that the petitioner came on transfer to the District Jail, Moradabad in pursuance of a production warrant issued by the Special Judge, Moradabad and was committed to jail custody vide order dated 3-12-1990, and the dates subsequent thereto, as borne out from Annexure-1 to the C.A. the copy of the intermediate custody warrant. The trial in S.T. No. 748-A of 1984 was proceeding in the aforesaid court, and there was in existence a valid order of detention up to 12-12-1991 on the eve of filing the return. The petitioner was regularly being produced in the court of Special Judge, Moradabad in accordance with the directions of the the said court. There is no fresh warrant B for transfer of the petitioner to the Central Prison, Nasik, and a radiogram had been sent to the City Sessions Court, Bombay for such warrant. The documents in the possession of the respondents on the basis of which the petitioner is to be transferred to the Central Prison, Nasik besides Annexure-1 to the counter affidavit, are Annexure-2 the letter dated 1-12-1990 of the Superintendent

Central Prison Nasik about transfer of the petitioner to Moradabad and intimating that the second case being pending in Bombay Sessions Court he may be sent back to the said prison, Annexure-3 copy of letter dated 8-12-1990 of the Superintendent of the said prison to the Registrar, City Sessions Court, Greater Bombay, intimating that in case the presence of the said accused was required in the Bombay case production warrant may be sent directly to the Superintendent of Jail, Moradabad. It was on account of the mandate in these orders and documents that the petitioner even after his release in S.T. No. 478-A of 1954 of Moradabad will have to be transferred back to the Central Prison, Nasik, Under these circumstances, nor his transfer to the Central Prison Nasik will be illegal or invalid.

11. On behalf of the respondent No. 4 the return was filed on 4-3-1992, by means of counter affidavit of Shri Jayat Kanhu Hargude, Police Sub-Inspector, D.C.B., C.I.D. Bombay. Subsequently on 1-5-1992 a fresh counter affidavit and on 7-7-1992 a supplementary counter affidavit of Shri Hargude was filed on behalf of the respondent No. 4. The contentions inter alia in these affidavits being that on a raid conducted on Flat No. 704/12 A-1 ARHFAT Co-operative Housing Society Millat Nagar, Andheri West Bombay on 11-7-1989 the petitioner along with four others found in possession of 25 Kg of brown sugar + 30 Kg of charas, the petitioner was also found in unlawful possession of a foreign made pistol with five cartridges. Recovery memo was duly made and the accused persons were arrested. They were explained the entire facts and reasons for their arrest and were produced before the Additional Chief Metropolitan Magistrate, Esplanade Bombay the same day who remanded the petitioner and the co-accused persons to police custody up to 25-7-1989 on which date they were produced before the competent court of Sessions of Greater Bombay who after hearing the counsel for both sides remanded all the 5 to police custody till 9-8-1989. On 9-8-1989 while the rest of the accused persons were remanded to judicial custody, the petitioner was remanded to police custody up to 18-8-1989. On 18-8-1989 the petitioner also was remanded to judicial custody which was extended from time to time. These remand orders were validly passed under the provisions of the N.D.P.S. Act, and Section 167 of the Cr.P.C. read with Section 96 of the Bombay Police Act, 1951. The chargesheet against the petitioner and other co-accused persons under the N.D.P.S. Act was submitted in the court of Session, Greater Bombay on 6-10-1989. While the petitioner was under detention in the Nasik Central Prison during trial of the aforesaid N.D.P.S. case, on production warrant being received from the court of Special Judge, the Special Judge City Sessions Court Greater Bombay, on 11-7-1990, ordered the Superintendent Central Prison Nasik to produce the petitioner before the said court at Moradabad. The petitioner reached Moradabad on 3-12-1990 in compliance of the said production warrant and was confined in the district Jail Moradabad. He is liable to be transferred back from District Jail Moradabad to Central Prison, Nasik, to stand his trial before the Special Judge City Sessions Court Greater Bombay and is not entitled to be released as neither his detention

in connection with the N.D.P.S. Act case nor the move for his transfer to Central Prison, Nasik is in any way illegal or unconstitutional. The arrest, detention and trial of the petitioner in connection with the N.D.P.S. case having occurred in Greater Bombay, within the territories of the State of Maharashtra, this court has no jurisdiction to adjudicate upon its validity or otherwise, or to order the release of the petitioner from detention, or prevent his transfer to the Central Prison Nasik which is being made in compliance of the provisions of law. These petitions are liable to be dismissed for want of territorial jurisdiction itself.

12. In the counter affidavit of Ashok Chintamani Rane, Jailor Group I, Nasik Road, Central Prison Nasik, filed on behalf of the respondent No. 3 on 1-5-1972, the said respondent stated that the petitioner came on transfer to the Central Jail Nasik, from Bombay Prison Bombay on 30-6-1990, on the basis of order passed by the IG Prison Maharashtra due to overcrowding in the Bombay prison, and was detained there in connection with the N.D.P.S. case against him pending before the Special Judge City Sessions Court Bombay, on the basis of valid remand orders passed by the said Court. By his order dated 11-7-1990 the Special Judge Greater Bombay directed the production of the petitioner before the Special Judge, Moradabad U.P. as per production warrant received from the said court. As escort was not readily available and the date of production before Moradabad court had expired, correspondence through wireless was made enquiring about the fresh dates in the case. Meanwhile the petitioner also made an application vide Annexure CA. 2 that he may be transferred to Moradabad. Under these circumstances the petitioner was sent on 1-12-1990 by the respondent No. 3 to Moradabad with a communication Annexure CA-4 to return him back to stand trial in N.D.P.S. case in Bombay. The petitioner thereafter could not be produced before the court at Bombay because he had been detained in District Jail Moradabad under order of the Special Judge, Moradabad. The petitioner having been acquitted on 12-2-1992 in the Sessions Trial before the Special Judge, Moradabad he was liable to be immediately transferred to the Central Prison Nasik. The said transfer, however, could not be made and he is detained in the District Jail, Moradabad only on the basis of the interim order dated 28-10-1991 of this court restraining transfer of the petitioner to any jail outside Moradabad. Meanwhile an order dated 23-4-1992 has also been passed by the Special Judge City Sessions Court Greater Bombay for production of the petitioner in his court, as intimated by Annexure CA 5. The respondent No. 1 is accordingly duty bound to comply with the said direction and transfer the petitioner to the Central Prison Nasik.

13. In the various affidavits of Muzaffar Husain alias Pappu filed on behalf of the petitioner as rejoinder to the counter-affidavits, the petitioner stated that the theory of raid and recovery of narcotic drugs from the possession of the petitioner on 11-7-1989 at Bombay is totally imaginary. The remand orders passed by the courts at Greater Bombay were against law, the I.G. Prison, Maharashtra had no jurisdiction to transfer the petitioner outside the territorial jurisdiction of the City Sessions Court, Bombay, there being no order of any

competent court, the detention in the Central Jail, Nasik from 30-6-1990 to 1-12-1990 was illegal and unconstitutional. On the petitioner being produced before the Moradabad court on the production warrant, and detained under order dated 3-12-1990 of the said court in the Moradabad Jail, the detention, if any, of the petitioner in the Central Prison Nasik automatically came to an end. The Sessions Trial No. 748A of 1984 of the court of Special Judge, Moradabad having ended in acquittal on 12-2-1992, and there being no remand order in relation to the N.D.P.S. Case No. 801 of 1989 or B warrant of the court of Special Judge Greater Bombay, the direction of the Special Judge, Moradabad, in the operative portion of his judgment to detain the petitioner in District Jail, Moradabad till he is transferred to Central Prison Nasik is also illegal. The respondent No. 3 had no authority to direct the respondent No. 1 to transfer back the petitioner to Central Prison Nasik as such orders could only be passed by the competent court, the production order dated 23-4-1992 of the City Sessions Court Bombay and the communication dated 24-4-1992 of the Registrar, City Sessions Court have been procured to fill in the lacunae and do not either validate the petitioner's detention, or his transfer to the Nasik Jail. Since the petitioner has not sought quashing of, or adjudging illegal, any act or order of court or authorities at Greater Bombay, and is in illegal detention in District Moradabad, the petition is within jurisdiction of this Court. The petition is also maintainable in this court, as in any case part of cause of action for it has accrued within the territorial jurisdiction of this Court.

14. We have heard the learned counsel for the parties at sufficient length and have perused the record.

15. On behalf of the respondents a preliminary question has been raised, and it has been pleaded that, this court has no jurisdiction to entertain this petition for writs of habeas corpus and mandamus in the matter of detention of the petitioner, in view of the fact that this will involve adjudication of the question of validity or otherwise of the orders passed, and acts done by the courts at Greater Bombay and the authorities of the Central Prison Nasik, both within the territorial jurisdiction of the Bombay High Court. It is contended that the arrest of the petitioner was made at Bombay pursuant to alleged recovery of narcotic drugs on 11-7-1989, under the provisions of N.D.P.S. Act, the orders remanding him to custody were passed by the competent courts at Bombay, charge-sheet was submitted and cognizance of the offence was also taken by the Special Judge City Sessions Court Greater Bombay and the petitioner was detained in custody first at Bombay Prison, and thereafter at the Central Prison Nasik, all within the State of Maharashtra. On requisition being sent by the Moradabad court u/s 267 of the Code of Criminal Procedure, he was transferred under orders of the Special Judge, City Sessions Court Greater Bombay by the Superintendent, Central Prison Nasik with a stipulation as provided in Section 270 of the Cr.P.C. that he was to be taken back to the said prison on conclusion of the trial in the court of Special Judge, Moradabad, in view of the N.D.P.S. Act case against him pending in the court at Greater Bombay. The proceedings in the said Sessions Trial No.

748-A of 1984 having concluded on 12-2-1991 ending in acquittal of the petitioner, he has to be sent back to the Central Prison Nasik in compliance of the order of the Special Judge, Greater Bombay as well as the mandate in Section 270 of the Code of Criminal Procedure. Under these circumstances, the cause of action for the present petition has arisen wholly within the territorial limits of the jurisdiction of the Bombay High Court and no part of it having arisen within local limits of this Court, the petition is beyond jurisdiction of this court.

16. The contention of the petitioner on the other hand is that this petition is cognizable by this court, as the petitioner does not seek quashing of any order or act, of the courts or the authorities within the territorial jurisdiction of the Bombay High Court, and secondly the cause of action for the present petition has arisen within the jurisdiction of this Court and not that of the Bombay High Court. It is contended that the detention of the petitioner in the Central Prison Nasik was invalid and non-existent in law, in view of the fact that there was no order at all of remand by the competent court to custody of the Central Prison Nasik, the transfer of the petitioner from Bombay prison to the Central Prison Nasik was without jurisdiction no remand at all to custody having been ordered after 20-10-1990 the detention of the petitioner was without any valid authority of law, the act of the Superintendent Central Prison Nasik of transferred the petitioner to Moradabad despite the prohibition contained in Section 269(b) of the Cr.P.C. is indicative of the fact that there was no valid detention of the petitioner in N.D.P.S. case. In any event the order of Special Judge, Moradabad remanding the petitioner to custody in the Moradabad jail vide his order dated 3-12-1990 amounted to automatic termination of the petitioner's detention in the Central Prison Nasik in the N.D.P.S. case, at Bombay. The order dated 3-12-1990 of the Special Judge, Moradabad remanding the petitioner to custody in both the cases pending at Bombay and Moradabad, till further orders being invalid and thereafter there being no remand for any specific period after 3-12-1990 and before 11-7-1991 the petitioner's detention in Moradabad jail also was without any authority of law. The petitioner having been granted bail by this Court and offering to furnish bail bonds, the act of the Special Judge Moradabad of refusing to entertain the same and release the petitioner on the plea that he was liable to be transferred back to the Central Prison Nasik from where he had come on a production warrant u/s 267, Cr.P.C. and his subsequent order dated 3-12-1990 in the judgment of acquittal in Sessions Trial No. 748-A of 1984, that the petitioner be not set at liberty and detained till decision of this writ petition as he was liable to be transferred to the said prison is illegal. The petitioner being presently detained in the jail at Moradabad, and also being a permanent resident of the said district the cause of action for this petition wholly, or in any case in part has arisen within the territorial jurisdiction of this court and the petition is cognizable by this Court.

17. Article 226(1) and (2) of the Constitution of India, relevant in this regard is as follows:--

226(1). Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to person or authority, including in appropriate cases, any Government, within those territories directions, orders writs, including (writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred in Part III and for any other purpose).

(2) The power conferred by Clause (1) to issue directions orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within these territories.

18. It is clear therefore that the power to issue writs under Article 226 of the Constitution can be exercised by a High Court in respect of a person or authority (a) within the territories in relation to which it exercised jurisdiction as well as, (b) if the cause of action wholly or in part has arisen within such territories.

19. In the instant case on a careful scrutiny of the facts narrated above, it would be clear that it is only the detention of the petitioner from the date of his production before the Moradabad Court, 3-12-1990 up to the date of judgment, 12-2-1992 in the Sessions Trial No. 478-A of 1984, in regard to which cause of action has arisen within the local limits of jurisdiction of this Court. No part of cause of action with regard to his arrest, confinement and detention in connection with the N.D.P.S. Act as at Bombay, or the liability of his transfer back to Central Prison Nasik, from the District Jail, Moradabad on conclusion of the Sessions Trial No. 748-A of 1984, has arisen within such jurisdiction, rather the same has squarely arisen within the territorial limits of the State of Maharashtra.

20. In fact in this petition, there is a misjoinder of the two different and distinct causes of action. The arrest, prosecution and detention of the petitioner in Maharashtra in connection with the N.D.P.S. Act constitutes an entirely separate and distinct transaction having no nexus to his detention in connection with the Sessions Trial at Moradabad. For the purposes of determining jurisdiction, therefore the two cannot be clubbed together to bring the case within the purview of Article 226(2) of the Constitution. The expression "cause of action in part arises" in the said provision refers to a part of cause of action relating to or arising from the same transaction. It does not envisage or permit joining of different causes of action arising out of two separate transactions, to confer jurisdiction on the ground of accrual of part of cause of action within the territorial limits of the court. In this "view of the matter, therefore, the present petition for writs of habeas corpus and mandamus, in so far as it will have the effect of releasing the petitioner from confinement and detention qua the N.D.P.S. Act case at Greater Bombay, is beyond the jurisdiction of this court, as no part of cause of action has arisen within its territorial limits.

21. The alternative plea of the petitioner that there being no prayer for adjudging illegal, or quashing the acts done by the concerned authorities at Bombay and Nasik, the petition as a whole is cognizable by this court, is also devoid of any force. The determination of the questions as to whether the detention of the petitioner from inception was void or it became invalid after 24-10-1990, or became non-existent from 3-12-1990, and whether the petitioner is liable to be taken back to the Central Prison "Nasik in accordance with the provisions of Sections 267 and 270 of the Code of Criminal Procedure after conclusion of the Sessions Trial No. 478-A of 1984 in court of Special Judge, Moradabad, will obviously involve adjudging illegal the petitioner's confinement and detention in connection with the N.D.P.S. Act case pending before the court of the Special Judge Greater Bombay. This Court as such before issuing the writs prayed for, would precisely be called upon to decide about the validity or otherwise the orders passed, and acts done, in relation to the N.D.P.S. Act case pending before the court at Greater Bombay, as well as the acts of the detaining authority in the Central Prison Nasik, both outside the limits of its jurisdiction, which it is not competent to undertake in test of the provisions of Article 226(2) of the Constitution.

22. To say that cause of action for this petition has arisen only at Moradabad, within the territorial limits of jurisdiction of this Court, on account of production warrant for transferring the petitioner from Central Prison Nasik, having been issued by the Special Judge, Moradabad, and his consequent detention in the District Jail, Moradabad, and the said Court itself having ordered the petitioner to be taken back to the Central Prison Nasik is also not correct. In determining the maintainability of the petition in this court, qua the petitioner's liability to be sent back to the Central Prison Nasik for being produced before the Special Judge, Greater Bombay, in connection with the N.D.P.S. Act case pending there, from which custody he came on transfer to Moradabad, the issuance of production warrant u/s 267 of the Cr.P.C. by the Moradabad Court is not at all relevant. Return of a prisoner requisitioned by a Court u/s 267 of the Code of Criminal Procedure does not depend upon any violation of, or order passed by the transferee court, rather is the natural corollary of such transfer of a prisoner from another custody, as well as the mandate of Section 270 of the Cr.P.C. On this count also, therefore, no part of the cause of action for this petition against sending back the petitioner to Central Prison Nasik in connection with the N.D.P.S. Act case at Greater Bombay can be said to have arisen within the jurisdiction of this Court.

23. Yet another contention of the petitioner that he could not file a petition under Article 226 of the Constitution in regard to this subject-matter in the High Court of Bombay because he is no longer in the custody of the Bombay Court after his transfer to Moradabad, and remand to the custody of Moradabad Jail, is also not tenable in view of the fact that even if not in actual custody of the said Court at Greater Bombay, during the intervening period between the date of his transfer to Moradabad and return to Central Prison Nasik, he will be deemed to be in

confinement in connection with the N.D.P.S. Act case pending in the court of Special Judge, Greater Bombay. On behalf of the petitioner reliance has been placed on a decision of the Gujarat High Court in Smt. Manjulaben and Another Vs. C.T.A. Pillay and Others, In the said case the detenus, who were ordinarily resident within the State of Gujarat were detained under orders passed under the Maintenance of Internal Security Act, 1971 and were kept in Jail at Baroda. Subsequently they were transferred to the Central Jail Jaipur in the State of Rajasthan. On expiry of the said orders of detention, fresh orders of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 were passed and served on them, without releasing them from jail. On these facts the court found that since the detenus were not set at liberty on the expiry of previous orders of detention passed under the Maintenance of Internal Security Act, 1971 and under their fresh orders of detention they were kept in the Central Jail, Jaipur, their initial detention at Baroda continued. Thus, the aforesaid facts furnished a part of cause of action within the territorial limits of the Gujarat High Court and the said Court had jurisdiction to entertain the writ petition.

24. The facts of the instant case, however, are entirely different than those of Manjulaben's case (supra). In the instant case the detention and confinement of the petitioner in connection with the N.D.P.S. Act case pending at Bombay, and that in the Sessions Trial No. 748-A of 1984 pending in the court of Special Judge, Moradabad are in relation to two different crimes, having no nexus or correlation to each other. The detention of the petitioner in the two cases also do not form part of the same transaction. Accordingly, these facts do not furnish a part of cause of action within the territorial limits of the jurisdiction of this court in relation to the confinement and detention of the petitioner in connection with the N.D.P.S. Act case at Bombay, so as to attract the enabling provisions of Article 226(2) of the Constitution and confer jurisdiction on this Court to entertain this writ petition in that regard.

25. In State of Madhya Pradesh v. Bhaskar Dutt Misra 1986 AllWC 295 also cited by the petitioner, the plaintiff who was an employee of the Madhya Pradesh Government against whom an order determining his services was passed by the appointing authority at Madhya Pradesh, was served with the order of termination at Allahabad. On his instituting a suit in the court of Civil Judge, Allahabad for declaration that order terminating his services was illegal, inoperative and without jurisdiction, the defendants, State of Madhya Pradesh and others, took the plea that the Civil Judge, Allahabad had no jurisdiction to entertain the suit as no part of cause of action arose at Allahabad. It was, However, held that since the order of termination of services was served on the plaintiff at Allahabad, the part of cause of action did arise at Allahabad and the suit was, accordingly, cognizable by the Civil Judge, Allahabad. The facts here again were quite different from those in the present writ petition, wherein so far as the petition with regard to the relief in respect of the confinement in the N.D.P.S Act case at Bombay is concerned, no part of cause of action arose within

the territorial jurisdiction of this Court.

26. On behalf of the respondents a Division Bench decision of this court in *Daya Shanker Bhardwaj Vs. Chief of the Air Staff, New Delhi and Others*, has been relied on in support of the plea regarding lack of jurisdiction. The petitioner in the said case was a Junior Warrant Officer in Air Force posted in Madhya Pradesh where he was superseded. He filed a writ petition before this Court for a direction to the opposite parties, the Chief of Air Staff, Air Headquarters, New Delhi and others, to decide his representation and grant him the status of Warrant Officer. It was held by this Court that a person residing in a State cannot invoke extraordinary jurisdiction under Article 226 against an authority or Government situated outside the State in respect of an order made or action taken by such Government or authority outside the territorial limits of the High Court for no part of cause of action in such a case could be said to arise within jurisdiction of the High Court in which the petition was filed.

27. In *Krishna Kumar Bhargava v. The Metropolitan Magistrate, 26th Court Boriwali, Bombay 1986 AllWC 148 : (1986 All LJ 1093)* a complaint for defamation was filed against the petitioners in the court of Magistrate at Bombay. On the notice of complaint being received by the petitioner at Allahabad, they filed a writ petition under Article 226 for quashing the complaint. On the question of maintainability of the petition before this Court being raised it was observed that Article 226 of the Constitution confers on all High Courts wide powers in the matter of issuing writs. The two limitations placed under this Article, however, are that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction, that is to say the writ issued by the Court cannot run beyond the territories subject to its jurisdiction and that the person or authority to whom the High Court is empowered to issue the writ must be within these territories. This implies that the persons against whom the writs are sought should be amenable to the jurisdiction of the High Court either by residence or the location within those territories. It was further observed that the Court could exercise its power under Article 226 of the Constitution if the cause of action either wholly or in part would have arisen within the territorial limits of the Allahabad High Court. Service of notice not being an integral part of cause of action, no part of cause of action could be said to have accrued within the jurisdiction of this Court. Consequently also, the petition was not maintainable.

28. The principles enunciated in the aforesaid cases cited by the respondents, apply with full force to the present case where also as a matter of fact it is found that no part of cause of action in respect of the relief claimed in relation to the confinement of the petitioner in the N.D.P.S. Act case at Bombay, has arisen within the territorial jurisdiction of this Court.

29. For these above reasons, therefore, we hold that this petition in so far as it relates to the confinement and detention of the petitioner in connection with the case under the N.D.P.S. Act, at Greater Bombay is concerned, is not maintainable in this Court, as the cause of action neither wholly, nor in part has arisen within

the territories in relation to which this Court exercises jurisdiction.

30. This, however, is not the end of the matter, as in this petition allegations about illegal confinement and detention have been made, and reliefs sought, not only in regard to the cause of action arising from the petitioner's arrest, detention and confinement in connection with the N.D.P.S. Act case in Bombay, but also against the detention of the petitioner in connection with the Sessions Trial No. 748-A of 1984 Sections 394 and 397, I.P.C.P.S. Hazrat Nagar Garhi, District Moradabad under orders of the Special Judge, Moradabad. The pleas raised, as to whether the order dated 3-12-1990 of the Special Judge, Moradabad, Moradabad remanding the petitioner to custody till further orders, and in connection with the cases, both at Moradabad and Bombay, the non-sanction of remand on the adjourned dates between 3-12-1990 and 11-7-1991 by the Special Judge, Moradabad, render the petitioner's detention illegal, whether the orders of the Special Judge, Moradabad refusing to release him on furnishing bail bonds as well as his non-release pursuant to the acquittal recorded on 12-2-1991 in S.T. No. 478-A of 1984, and the direction to send him back to the Central Prison Nasik in connection with the Bombay case are against law, do give rise to a cause of action within the territories in relation to which this Court exercises jurisdiction. Also the authorities concerned, Special Judge, Moradabad and the Superintendent, District Jail, Moradabad being within the limits of the said territories, the petition to this extent and in respect of this cause of action is maintainable in this Court and it has jurisdiction to take cognizance of this case.

31. In view of our above conclusion, holding part of the subject matter of the petition and the reliefs claimed in that regard, to be beyond the jurisdiction of this Court, although it is now not necessary to dilate upon the various pleas of the petitioner touching the question of validity or otherwise of his arrest and detention in the N.D.P.S. Act case, since detailed arguments were advanced on these questions also, by both sides, we propose to mention the same briefly.

32. The first contention on behalf of the petitioner is that the search and arrest was made by the Detection of Crime Branch C.I.D. Bombay in violation of the provisions of the N.D.P.S. Act as well as the Code of Criminal Procedure. No papers were produced before the Magistrate at the time of seeking the first remand. There thus was violation of Article 21(2) of the Constitution and Section 50(1) of the Code. The remand to police custody of the petitioner from 11-7-1989 up to 18-8-1989 also exceeded the mandatory limit of 15 days as provided u/s 167 of the Criminal Procedure Code and Section 36A of the N.D.P.S. Act, as such it was illegal and render the detention of the petitioner from inception invalid.

33. The plea of the respondents on the other hand, is that search and arrest was legally made, the petitioner was also disclosed the grounds of his arrest and was produced promptly before the Magistrate with all relevant papers, on a consideration of which he was remanded to custody first by the Magistrate and

after expiry of the same by the Special Judge. The limit of 15 days for police remand is not applicable in this case in view of the modification to Section 167, Cr. P.C. by the Bombay Police Act applicable to the State of Maharashtra. Section 96 of the said Act lays down that Presidency Magistrate in Greater Bombay to whom the accused person is forwarded u/s 167(2), Cr. P.C. may, whether he has or has no jurisdiction to try the case, authorise the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days at a time. The reference to the term Presidency Magistrate in the Bombay Police Act has to be construed as reference to the Metropolitan Magistrate as per Section 3 of the Code of Criminal Procedure. According to Section 5 of the Code, in the absence of a specific provision to the contrary, nothing in it shall affect any special or local law for the time being in force. Admittedly, the Bombay Police Act is a local law. There being no specific provision in the Criminal Procedure Code to the contrary, the provisions of Section 96(i)(ii) of the said Act would govern grant of remand in Greater Bombay and police remand from time to time may be granted but not exceeding 15 days at a time.

34. In reply, on behalf of the petitioner it has been contended by his learned counsel, that N.D.P.S. Act being a Central Law and a Special Act, the provisions of Section 36A will have overriding effect and Section 96, Bombay Police Act, 1951 would stand abrogated, meaning thereby, police remand could be granted under the provisions of Section 167(2), Cr. P.C. only for a period of 15 days as a whole.

35. The contention of the respondents is that while there can be no doubt about the proposition that a special law would have the effect of abrogating a general or local law to the extent it deals with matters which formed the subject matter of the latter, it would be found from the phraseology of Section 36A of the N.D.P.S. Act, 1985 as substituted by Act 2 of 1989, that while Sub-clause (b) thereof modifies the provisions of Sub-sections (2) and (2-A) of Section 167, Cr. P.C. in respect of powers of a Magistrate to grant remand by limiting the same to a period not exceeding 15 days in the whole in such custody as he thinks fit; there is no such modification with regard to the powers of Magistrate having jurisdiction exercisable by the Special Court under Sub-section (c) of Section 36A, rather it lays down that the special court may exercise in relation to the persons forwarded to it u/s 167(2), Cr. P.C. the same powers which a Magistrate having jurisdiction may exercise u/s 167, Cr. P.C. In other words, the provisions of Section 167, Cr. P.C. as modified by Section 96 of the Bombay Police Act, 1951 applicable to the Greater Bombay have been implanted under the N.D.P.S. Act and will regulate powers of a Special Court under the said Act to grant remand, and in this view of the matter police remand from 11-7-1989 to 25-7-1989 granted by Metropolitan Magistrate and from 25-7-1989 to 9-8-89, and thereafter up to 18-8-1989, granted by the Special Court was not illegal and does not render the detention invalid.

36. On behalf of the petitioner the following cases have been cited by his learned

counsel in support of his contention that the remand of the petitioner u/s 167, Cr. P.C. in connection with the N.D.P.S. Act case at Bombay having been granted in contravention of the provisions of law, the said detention is illegal and inoperative.

Ramakant v. State 1988 AllWC 1354. In this case detention of two of the detenus was found to be violative of Article 22(1) of the Constitution and Section 50(1) of the Cr. P.C. in the absence of any Entry in the General Diary or other record indicating that the arresting officer informed them of the grounds of arrest of particulars of the offence. Surya Kant Ram Das More v. State of Maharashtra (1990) 1 EFR 119 : (1989 CriLJ 2422) to the effect that a Judicial Magistrate cannot grant remand for a period exceeding 15 days and is obliged even if he considers detention of the person to be unnecessary to order him to the Special Court having jurisdiction under the N.D.P.S. Act and the Special Judge shall have the same powers which a Magistrate having jurisdiction may exercise u/s 167, Cr. P.C. Zaverbhai Amaidas Vs. The State of Bombay, laying down that the important thing to be considered with reference to Article 254(2) is whether the legislation by the Parliament is in respect of the same matter as enacted by the Maru Ram and Others Vs. Union of India (UOI) and Others, laying down that Section 433-A as newly added to the Cr. P.C. would prevail over the local and Special Laws relating to remissions and short sentencing schemes in view of Section 5 of the Cr. P.C. being a provision to the contrary dealing with a particular and narrow class of cases. Ajmer Singh and Others Vs. Union of India (UOI) and Others, and Ajit kumar Vs. Union of India (UOI) and Others, laying down that Army, Navy, Air Force Acts being a Special Act embodying completely self contained comprehensive Code, specifying offences, procedure for detention, investigation and punishments, constitute a special law within the meaning of Section 5 of the Code of Criminal Procedure, rendering the provisions of the Code inapplicable in respect of matter covered by such special law.

37. The authorities cited on behalf of the respondents in support of their contentions in these regard are -- Yeshwant Bapuji Mokashi Vs. State of Maharashtra and Others, laying down that the position u/s 96, Bombay Police Act, 1951 is different that the general law u/s 167, Cr. P.C. in so far as a Presidency Magistrate in Greater Bombay irrespective as to whether he has or has no jurisdiction to try the case has authority to remand the accused into police custody even for a period of more than 15 days, the only limitation being that at a time he shall not remand for a period exceeding 15 days. Mohd Abdul v. State of West Bengal (1991) 2 EFR 242 laying down that with regard to the powers of a special Court under the N.D.P.S. Act, Section 167 of the Cr. P.C is attracted by virtue of the fact that the said provisions have been implanted under the N.D.P.S. Act by Clause (c) of Section 36A.

Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, laying down that where a person is arrested and produced before the nearest Magistrate as required u/s 167(1) or forwarded u/s 167(2) of

the Code can be remanded to police custody only during the first period of 15 days and not after expiry of the said period, but if there are any special amendments enlarging the periods of detention, different considerations may arise on the basis of the language employed in those amendments.

38. The next contention of the petitioner regarding his detention being illegal and without any authority of law is that, no remand to custody within the meaning of Section 309 of the Cr. P.C. was granted by the Special Judge, City Sessions Court Greater Bombay on 24-10-1990, nor any such remand subsisted on the date of filing of the habeas corpus petition or till date. Reliance has been placed on the extract of order-sheet of the case under the N.D.P.S. Act of the Court of the Special Judge, City Sessions, Greater Bombay Annexure-1 to the supplementary affidavit dated 2-1-1992, according to which after taking cognizance of the case on 6-10-1989 and furnishing papers, the case was adjourned to 20-10-1989 and the accused was remanded to custody till the said date. Thereafter the case was adjourned for various reasons to be recorded to 26-10-1989, 19-6-1990 and 24-10-1990 on 24-10-1990 it was adjourned to 17-1-1991 and thereafter to 12-3-1991, 13-6-1991, 19-9-1991, 20-11-1991 and 27-1-1992. On these dates the petitioner was not produced in custody before the said court and order to produce him on the next date was passed but not for his remand to custody. It is also contended that although from 24-7-1990 the date of order of the Special Judge Greater Bombay directing production of the petitioner before the court of Special Judge, Moradabad up to 1-12-1990, he remained in custody of the Central Prison Nasik and even after his production before the Special Judge, Moradabad and remand to custody of the Moradabad jail by order dated 3-12-1990 of the Special Judge, Moradabad, no order of remand authorising detention of the petitioner in connection with N.D.P.S. Act case was passed by the Special Judge, Greater Bombay, in consequence the custody of the petitioner, if any, in connection with the N.D.P.S. Act case at Bombay stood terminated. Further it is contended that the act of the Superintendent Central Prison Nasik of producing the petitioner before the court of Special Judge Moradabad despite the bar in Section 269(b) of the Cr. P.C. implies that he was not under any remand pending trial in Greater Bombay.

Ram Narayan Singh Vs. The State of Delhi and Others,

Raj Narain Vs. Superintendent, Central Jail, New Delhi, , Matabar Parida, Bisnu Charan Parida, Batakrushna Parida and Babaji Parida Vs. The State of Orissa, ,Hari Prasad Dubey Tyagi v. D. M. Farukhabad, (1976 AILLJ 62) and Mashooq Ahmed v. State of U.P. 1987 AILLJ 329.

39-40. On behalf of the respondents, the proposition that the existence of a valid remand is the foundation of the authority to detain a person in custody, is not disputed but it is contended that, in the instant case there does exist a valid remand to custody in connection with the N.D.P.S. Act case at Bombay and the said remand has not terminated or exhausted. The effect of the production of the petitioner on transfer from Central prison Nasik before the Special Judge,

Moradabad and his order dated 3-12-1990 remanding the petitioner to custody of Moradabad Jail would be that the custody of the petitioner stood transferred in view of the provisions of Section 267, Cr. P.C. to the district jail Moradabad, with stipulation in return him back to the custody of the said prison in connection with the N.D.P.S. Act case at Bombay, in view of the provisions of Section 270 of the Cr. P.C. Despite the custody having been so transferred the confinement of the petitioner under orders of the Special Judge, Bombay in connection with the N.D.P.S. Act case continued. Under these circumstances of the confinement in the N.D.P.S. case being; the court of Special Judge, Greater Bombay, but the custody being of the court of Special Judge Moradabad, while adjourning the case u/s 309 of the Cr. P.C. awaiting return of the petitioner to its custody, the court of Special Judge, Greater Bombay was not required in law to remand him to custody. The necessity and occasion for passing such an order of remand would arise only on the petitioner being returned back to the custody of the court at Bombay after the Moradabad court has dispensed with the presence of the petitioner authorising him to be taken back to the Central Prison Nasik. Such contingency however, has so far not arisen, on account of the petitioner himself having obtained even before his acquittal in the Moradabad case, an interim stay order dated 28-10-1991 from this court, prohibiting his transfer from the District Jail, Moradabad to any jail outside Moradabad. The respondents have also disputed the contention that the detention and custody of the petitioner in the N.D.P.S. case automatically terminated on the petitioner being remanded to custody in the Moradabad case. In the instant case the transfer having been authorised by the Special Judge Greater; Bombay, the bar in Section 269(b), Cr. P.C. also stood removed.

41. Reliance has been placed on behalf of the respondents on a decision of the Full Bench of this court in *Surjeet Singh v. State of U.P.* 1984 AILLJ 375.

42. Apart from narrating what the parties have stated and contended before us, we do not propose to deal with, and express any opinion on the questions aforesaid in view of our conclusion on the question of jurisdiction in the matter of petitioner's confinement and detention in connection with the N.D.P.S. Act case pending before the Bombay Court, lest it may prejudice the parties, in case any petition in regard to the said cause of action is filed before the competent court having jurisdiction.

43. Now this brings us to that part of petition which concerns the petitioner's detention in the District Jail, Moradabad in connection with the Sessions Trial No. 748A of 1984 of the Court of Special Judge, Moradabad and the reliefs claimed on the cause of action alleged to have been furnished by the said detention. The contentions in this regard before us to recapitulate may be summarised as below.

44. A warrant B or a production warrant being a mere requisition for transfer, does not on its own constitute a valid authority for detention in prison, specific order of remand for a specified period was necessary to authorise the petitioner's detention in the Moradabad jail, which was not done and the alleged

remand warrant was not in the prescribed form. There, thus, was violation of: Section 309 of the Cr. P.C. and the detention of the petitioner from inception, as well as on the date of filing the petition, and filing of return, was illegal and non-existent, Grant of Remand by the Special Judge Moradabad for the trial before him as well as that pending before the Bombay Court, was illegal. It was also illegal because while adjourning the trial to various date after 3-12-1990 the petitioner was not remanded to custody till the next date. Consequently, he was entitled to be set at liberty without any further formality. The refusal of the Special Judge, Moradabad and the Superintendent, District Jail, Moradabad to release the petitioner despite bail being granted in the Moradabad case on 27-3-1991 was in violation of law non-release of the petitioner despite his acquittal on 12-2-1992 in the Moradabad case and the judgment not directing such release, constituted breach of Section 354, Cr. P.C., there being no subsisting detention order or a valid production warrant of the Special Judge, Greater Bombay, there is no authority in law to send him back to the Central Prison, Nasik, and the provisions of Section 270 of Cr. P.C. are not attracted. The petitioner's detention in District Jail, Moradabad being unlawful he is entitled to be released and the respondents commended not to transfer him to Central Prison Nasik.

45. Before dealing with these submissions, however, at the very outset it may be mentioned that in a writ of habeas corpus the validity of detention has to be determined at the time of the return and not with reference to the institution of the proceedings. At the same time, however, an enquiry whether the detention is legal or not at the date of hearing would also be relevant.

46. It has been laid down in Col. Dr. B. Ramachandra Rao Vs. The State of Orissa and Others, that in habeas corpus proceedings the court has to judge the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. A fortiori, the court would not be concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus.

47. In Talib Husain v. State of Jammu & Kashmir AIR 1951 SC 62 it has been observed that in habeas corpus proceedings the court has to consider the legality of the detention on the date of hearing.

48. In Kanu Sanyal Vs. District Magistrate, Darjeeling and Others, taking note of the propositions laid down in A.K. Gopalan Vs. The Government of India, B. R. Rao's case (Supra) and Talib Husain's case (Supra) the Supreme Court observed as follows:--

Of these three views taken by the Court at different times the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India though the 3rd view also cannot be discarded as incorrect because an enquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on the date the detention is legal,

the Court cannot order release of the person detained, by issuing a writ of habeas corpus.

49. Now with these propositions in mind, we may consider and discuss the questions raised as aforesaid to determine whether or not the petitioner is in unlawful detention of District Jail Moradabad.

50. Taking up first the submission of the petitioner based on Section 267 of the Cr. P.C. that a warrant issued under the said section does not constitute a detention order authorising detention in prison of a person, it would be found that it is fully borne out from the provisions of Section 267 itself. The head-note as well as the phraseology of the said section indicates that the order envisaged therein is an order to produce a person confined or detained in a prison before a criminal court for answering to a charge or for the purpose of any proceedings against him. An order under this section does not partake the character of a detention order by the court seeking production qua the charge of the proceedings pending before it. This view finds support also from the principles laid down in *Dharampal v. State of U.P.* 1982 AllWC 13 : (1982 All LJ 130) and *Pramod Kumar v. State of Uttar Pradesh* (reported in *Allahabad Band Nirnaya* 108). In fact before us the learned counsel for the respondents has also not taken the stand of a warrant u/s 267 to be a warrant of detention. He, on the other hand, relies on what he claims to be an order of remand validly passed u/s 309 of the Cr. P.C. by the Special Judge, Moradabad and this brings us to one of the main questions in issue between the parties.

51. Undisputedly, on the petitioner being; produced by the Superintendent, Central Prison, Nasik on 3-12-1990, before him the Special Judge, Moradabad passed the following order (Annexure-1 to the counter affidavit of V. B. Asthana Deputy Jailer, Moradabad) directing detention of the petitioner in custody.

In the Court of Special Judge, Moradabad S.T. No. 748-A/84

(contd. on col. 2)

State v. Mohd. Daweed

Under Section 394/307 I.P.C. Crime No. 96/83 P. S. Hazaratnagar, Garhi Distt. Moradabad

Also detained in Special Case No. 801/89 U/S N.D.P.S. Act in the court of City Sessions Court, Greater Bombay.

To,

The District Superintendent, District Jail, Moradabad

Accused Mohd. Daweed, s/o Ikram Qureshi r/o Langra Ki Pullia, Asalatpura, P. S. Gal Shaheed, District Moradabad, is being remanded to judicial custody of this court. He is also under judicial custody of the City Sessions Court, Greater Bombay. You are, therefore, authorised to detain the aforesaid accused in both

the cases till further orders.

Dt. 3-12-1990

Sd/- Illegible (I.B. Singh) Special Judge, Moradabad

52. The pro forma of custody warrant as reproduced in a decision of Lucknow Bench of this court in Urooj Abbas Vs. State of Uttar Pradesh, is as follows :

Warrant for intermediate custody of remand (Section 344, Cr. P.C. 1898)

The Jailor of whereas charged with and has been remanded to take his trial before the court of

You are hereby required to receive the said ... into your custody and produce him before

the said court as required on the reverse

Date Date of Magistrate 19 The back side of the form is divided into four columns with heading both in English and Hindi in each column and a note at the end. Only the English part of the headings and the back side is reproduced below.

Number of date of order date on which accused is Magistrate accused to be produced Signature

53. A perusal of the reverse side of the custody order/warrant (Annexure-1 aforesaid) would show that no endorsement on the back was made on 3-12-1990. Such endorsements start from 11-7-1991 and cover the period coinciding with the various dates fixed in the trial such as 11-7-1991 to 25-7-1991 and so on and bear also the initials of the Presiding Judge against each entry, the last entry being for the period 28-11-1991 to 12-11-1991.

54. It has been vehemently contended on behalf of the petitioner by his learned counsel that the order and the various endorsements on the back as contained in Annexure-1 aforesaid do not constitute a valid remand to custody within the meaning of Section 309, Cr. P.C. because firstly a remand to custody for the N.D.P.S. Act case at Bombay was beyond jurisdiction of the learned Special Judge, Moradabad, secondly he could not have granted a remand for an indefinite period, thirdly no reasons or directions were recorded for remanding the accused to custody on the various dates mentioned in Annexure-1 and even such endorsements are absent for the dates fixed in the trial after 3-12-1990 up to 11-7-1991.

55. In our opinion, the interpretation of recitals on the front side of the custody warrant (Annexure 1 aforesaid) that by means of it the Special Judge, Moradabad exercised the power of remanding the petitioner also in connection with the Bombay case, is not supported by the context. It would appear from the tenor of Annexure-1 that the Special Judge was merely taking precaution to incorporate in the warrant issued by him, the fact that the petitioner was also in detention in connection with the N.D.P.S. Act case before the City Sessions Court,

Greater Bombay, for the purpose of record in the District Jail, Moradabad, Obviously with the requirements of Sections 267 and 270 of the Cr. P.C. in mind. It become further clear from the main sentence in the warrant that the accused Mohd. Daud is being remanded to judicial custody of the court of Special Judge, Moradabad. The further information was that he is also under judicial custody of the City Sessions Court. Greater Bombay, meaning thereby he was in such custody, irrespective of his order in the Sessions Trial No. 748-A of 1984. The last sentence authorising to detain the accused in both the cases thus was obviously superfluous so far it refers to Bombay case but that by itself would not invalidate the remand order in connection with S.T. No. 748A of 1984.

56. As far as the mention in the order dated 3-12-1990 that the Superintendent District Jail, Moradabad was authorised to detain the petitioner till further orders, is concerned, apparently it is not in consonance with the provisions of Section 309 of the Cr. P.C. and consequently on this count, unless it is found to be valid for other reasons, the detention order would be invalid.

57. Section 309 of the Cr. P.C. does not envisage or permit remand to custody for an indefinite period. The remand thereunder has to coincide with the duration of adjournment and not beyond it, (See Raghavendra Singh v. State of U.P. (1986 AILLJ 611) (Supra).

58. The plea that the custody and detention of the petitioner in connection with the Sessions Trial No. 484-A of 1984 of the Moradabad Court is illegal for want of reasons for such remand to be recorded, however, is not warranted on a true interpretation of Section 309 of Criminal P.C. Sub-section (2) of Section 309, Cr. P.C. runs in following terms:--

309 (2). If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considered reasonable may by a warrant remand the accused if in custody.

59. It is clear therefore, that the court is required to record its reasons for postponement or adjournment of the trial, and not for remanding the accused. It is not because a remand u/s 309, Cr. P.C. stands on a quite different footing than one u/s 167 of the Cr. P.C, where remand is sought pending investigation and the Magistrate or Judge is required to apply its judicial mind to consider whether on the materials collected remand is necessary and justified. In taking this view we are fortified by observations in Mashooq Ahmad v. State of U.P. 1987 AILLJ 329 and Urooj Abbas Vs. State of Uttar Pradesh, .

60. Before adverting to the other grounds upon which these remand orders are stated to be invalid, it will be proper to consider the legal position in regard to the powers, if any, to validate a custody. The submission of the petitioner is that once the initial remand is invalid, all subsequent orders of remand would also be

rendered invalid because the word custody in this context used in Section 309(2) Cr. P.C. means legal custody. On behalf of the petitioner reliance in this regard has been placed on decisions rendered by this court in Hari Prasad Dubey Tyagi v. District Magistrate, Farrukhabad, 1976 AILLJ 62 Mahesh Chandra v. Adhikshak Janpad Karagar, Nainital, 1983 LLJ 141 Raghuvendra Singh v. State of U.P. 1983 AILLJ 611 and Kamlesh Kumar v. State 1982 LLJ 4 : (1981 CriLJ 92).

61. On behalf of respondents, on the other hand, it is contended that the custody for the purpose of Section 309(2), Cr. P.C. includes illegal custody. This contention finds support from a Full Bench decision of this Court in Surjit Singh v. State of U.P. 1984 AILLJ 375. In the said case, the applicant was committed to the Court of Session u/s 209, Cr, P.C. on 26-2-1983. The Magistrate issued warrant to the effect that he be produced before the Court of Session on 10-3-1983 without mentioning that he was to be in custody during or until conclusion of the trial before the Sessions Judge. The case was put up on various dates between 1-3-1983 and 17-5-1983, but no custody warrant was issued. It was issued for the first time on 14-6-1983 and was extended to various dates of hearing. On detention being challenged as illegal and the accused applying for bail on the said ground, dissenting from the view taken in the cases of H.P. Dubey Tyagi (1976 AILLJ 62), Mahesh Chandra (1983 LuckLJ 141), Raghuvendra Singh (1983 AILLJ 611) and Kamlesh Kumar (1981 CriLJ 92) (supra), it was held that the word custody u/s 309(2), Cr. P.C. embraces both legal imprisonment as well as illegal imprisonment. The fact that in the said section word lawful is not used with the word custody shows that the legislature did not restrict the ordinary meaning of the word custody to lawful custody.

62. In view of this legal position, there-fore, the petitioner cannot assail his custody and detention in the Moradabad Jail during the pendency of Sessions Trial No. 748 of 1984 as being incapable of rectification.

63. The detention of the petitioner in the Moradabad Jail during the pendency of the Sessions Trial aforesaid has, however, been assailed by the learned counsel for the petitioner on the ground that apart from initial order of remand to custody being illegal, the alleged subsequent extension of remand to custody is also illegal, and as such there is no question of the mistake being rectified or the custody legalised at any subsequent time. In fact, he says during the period from 3-12-1990 to 11-7-1991 there was no attempt of extension of remand whereas the alleged extension after 11-7-1991 is no order of remand in the eye of law. The petitioner seeks to derive support to his contention in this regard from Ram Narain Singh v. State of Delhi (1953 CriLJ 1113) (supra) to the effect that detention of a person in custody after expiry of remand without any fresh order of remand committing him to further custody, while adjourning the case as illegal, and Urooj Abbas Vs. State of Uttar Pradesh, to the effect that a remand by merely filling the columns of the reverse of the warrant form already signed on the front side on some earlier date is not substantive compliance with the requirement of Section 344 (1), Cr. P.C. (corresponding to new Section 309 of

the Cr. P.C.)

64. On behalf of the respondents reliance has been placed on *Mashooq Ahmad v. State* (1987 AILLJ 329) (supra) in support of the contention regarding detention of the petitioner during the pendency of Sessions Trial at Moradabad being legal and valid. In the said case the accused was committed to the Court of Sessions on 2-8-1985 without any order of remand during and until conclusion of trial as required u/s 209, Cr. P.C. In the Court of Session, the date fixed for appearance was 9-8-1985 whereafter it was adjourned to various dates from time to time. On the validity of the detention being challenged it was held that there was a valid remand up to 9-8-1985 and thereafter no specific order of remand was passed on the order sheet. However, the accused came to be present before the court, fresh dates were given from time to time and the accused appeared on these dates also. In the absence of any specific plea to the effect that valid warrant of custody was not drawn out, it was held that the requirement of the law stood completely fulfilled. Even though there was no specific order of remand in the order sheet it would be presumed that warrant must have been drawn out on which the endorsement of the dates must have been made. Reliance in this regard was also placed on *Surjeet Singh v. State of U.P.* (1984 AILLJ 375) (supra).

65. On a careful consideration on of the above submissions and scrutiny of the relevant documents on record, however, in our opinion, the initial illegality in the remand order dated 3-12-1990, continued and was not rectified at any point of time. The remand on 3-12-1990 by means of Annexure-1 to the counter-affidavit was for an indefinite period. As per copy of order sheet in S.T. No. 748A of 1984 Annexure-1 to the petition, although the case was adjourned to 22-1-1991, 28-2-1991, 27-3-1991, 23-4-1991, 12-5-1991, 13-6-1991 and 28-6-1991 no order of remand to custody nor any endorsement to the effect on the warrant was made. Subsequently though there were endorsements covering the period from one adjourned date to another and containing initials of the Presiding Officer, there is nothing to indicate that these were intended to remand the accused to custody during these periods.

66. Had the warrant of remand to intermediate custody been drawn in the relevant pro forma directing the petitioner (accused) to be kept in custody and produced on the dates mentioned in reverse, or at least the columns Nos. 1 to 4 were properly drawn and filled to convey remand from one date to another, it could on the principles laid down in *Mashooq Ahmed v. State* (1987 AILLJ 329) (supra) have been taken to be sufficient compliance of Section 309(2) of the Cr. P.C. In the absence of all these there is no option but to hold that there was no valid remand to custody of the petitioner in ST No. 748-A/84 from 3-12-1990 the date of the production till his acquittal in the said trial on 12-2-1992.

67. It is a matter of concern that the subordinate courts in the State, are paying scant regard to the provisions of law as contained in Section 309(2) of the Cr. P.C. in the matter of remand of accused to custody, while adjourning an enquiry or trial. This is so, despite the proposition of law being clearly laid down in a

catena of decisions in the case of Ram Narain Singh (1953 CriLJ 1113), Mahesh Chandra (1983 LuckLJ 141), Raghuvendra Singh (1983 AILLJ 611), Kamlesh Kumar (1981 CriLJ 92) , Urooj Abbas Vs. State of Uttar Pradesh, Mashooq Ahmad (1983 AILLJ 611) and Surjeet Singh (1985 AILLJ 375) (supra),

68. In fact in Urooj Abbas v. State (supra) a Full Bench of this court while recommending some improvement in the form of intermediate custody, directed the matter to be placed before Hon. the Chief Justice for the purpose. While reiterating the same, we direct the Registrar also to issue necessary instructions at the earliest to all the courts subordinate to this court, to scrupulously observe the mandate in Section 309(2), Cr. P.C. and to ensure that remand is granted for a specific period coinciding with the adjourned date of hearing, and either a printed form of warrant is used or in case it is not available, the typed or cyclostyled copy used is the exact reproduction of the same in both sides.

69. In the peculiar circumstances of this case, however, the mere fact of the detention of the petitioner in Sessions Trial No. 748 A of 1984, in the District Jail, Moradabad between 3-12-1990 the date of his production before the court and 12-2-1992 the date of acquittal in the said case being invalid would in our opinion, not constitute any ground for release of the petitioner by means of a writ of habeas corpus. The reason being that the petitioner was brought before the Special Judge, Moradabad to answer a charge of an offence on the strength of a production warrant issued u/s 267 of the Cr. P.C. to so produce him from the custody of the Special Judge, Greater Bombay in the Central Prison Nasik. Section 270 of the Cr. P.C. dealing with the mode of compliance of production warrant issued u/s 267, Cr. P.C. lays down that upon delivery of an order under sub-sec. (1) of Section 267, the Officer-in-charge of the prison shall cause the person named in the order to be taken to the court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the court until he has been examined or until the court authorises him to be taken back to the prison in which he was confined or detained. The Form No. 36 of order of production u/s 267 contained in Schedule II of the Cr. P.C. also reiterates the same position, when it says that the Officer-in-charge of the jail where the prisoner required to be produced is confined, is required, besides producing the accused before the court concerned, to answer the charge, after the court has dispensed his further attendance, to cause him to be conveyed under safe and sure conduct back to the said prison.

70. Sections 267 and 270 of the Cr. P.C. read together thus contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering to a charge of an offence, and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he has been brought for such attendance. In view of this there could be no question of the confinement of the petitioner in connection with the N.D.P.S. Act case in Greater Bombay coming automatically to an end, or becoming nonexistent, on

the petitioner being produced on transfer before the Special Judge, Moradabad and his order for petitioners' detention in the Moradabad Jail pending trial, and ultimately the said detention as undertrial in the sessions case coming to an end by a judgment of acquittal. No support can be derived by the petitioner in this regard from the decision of the Supreme Court in Kanu Sanyal Vs. District Magistrate, Darjeeling and Others, as the facts in the said case were quite different and it also has not been laid down therein, that the original confinement or detention comes to an end on transfer of the prisoner on the basis of a production warrant.

71. It is a cardinal principle that where the law prescribes a specific mode of doing an act, such act can be done only in that and no other manner, when Section 270 of the Cr. P.C. provides a prisoner brought before a court on a production warrant to be taken back to the prison from where he was so brought, he can only be dealt with in such manner. The act of the respondents in directing the petitioner to be taken back to the Central Prison, Nasik thus has the due sanction of law and these petitions for the writs of habeas corpus and mandamus do not lie.

72. It has been vehemently contended by the learned counsel for the petitioner that in the absence of a valid detention order of the Bombay Court, his detention for the purpose of the NDPS case there or sending back to Central Prison, Nasik, is unsustainable, as no person can be detained without any lawful authority. However, as said, above, in view of our conclusion on the question of jurisdiction, it is not open to us to go into these questions.

73. As far as the grievance of the petitioner against the act of the Special Judge, Moradabad and the Superintendent District Jail, Moradabad in not agreeing to release him in the event of his furnishing bail bonds in pursuance of the order dt. 27-3-1991 of this court granting bail in the sessions case, the same has become redundant in view of the fact that the trial has already concluded, ending in acquittal and now there does not arise any question of release on bail. However, even otherwise there could be no release from detention even on the petitioner furnishing bail bonds, in view of what we have held about his being liable to be transferred back to the Central Prison, Nasik in connection with the NDPS Act case in view of the mandate in Section 270 of the Cr. P.C.

74. Yet another contention of the petitioner that his detention in the District Jail, Moradabad is unauthorised after his acquittal in the sessions case on 12-2-1992 and the Special Judge, Moradabad acted illegally in directing him to be detained in jail pending decision of this writ petition, in view of the interim order dated 28-10-1991 of this court, is also not tenable. What Section 354(1)(d) of the Cr. P.C. means by the requirement of the judgment containing a direction that the accused be set at liberty, is liberty with reference to the case in which acquittal is recorded, and not with reference to any other confinement or custody. In the instant case the operative portion of the judgment dated 12-2-1992 in Sessions Trial No. 748A of 1984 does connote a direction to set the accused at liberty with

reference to the said case. The release in such a case, has to be by making a note in jail record, and not actually setting the accused to liberty, when he is also in detention or confinement in connection with another case. In the instant case, being in confinement of the Bombay Court also in the NDPS Act case, the petitioner obviously could only be released on paper from detention in the Moradabad case, and was liable to be transferred back to the Central Prison, Nasik. The same, however, could not be in view of the interim order dated 28-10-1991 of this court at the instance of the petitioner, restraining his transfer to any jail outside Moradabad. The only order which the Special Judge could have passed in the operative portion of his judgment thus was to keep the petitioner confined in District Jail, Moradabad, to be dealt with subject to the decision of this court in the writ petition. The order thus does not contravene the provisions of Section 354, Cr. P.C. and is also not otherwise illegal.

75. The controversy regarding the detention of the petitioner in the District Jail, Moradabad in connection with the Sessions Trial being illegal, is also not now relevant, in view of the fact that on 4-3-1992 and 1-5-1992 the date, respectively of return of the respondents Nos. 3 and 4, and at the hearing of these writ petitions there was no subsisting detention in connection with the Sessions Trial No. 748A of 1984, the same having already ended in acquittal on 12-2-1992, and as apparent from the averments in the supplementary affidavit dated 29-7-1992 of V.P. Srivastava the Education Teacher in District Jail, Moradabad, filed on behalf of the respondents, the petitioner has been released in the said case in compliance of the said judgment Annexure SA 1 to the affidavit. The confinement of the petitioner after 12-2-1992 in the District Jail, Moradabad, thus is only for the purpose of compliance of the mandate of Section 270 of the Cr. P.C. regarding taking back the petitioner to Central Prison, Nasik in view of his confinement in the said prison, in connection with the NDPS Act case at Bombay, and the said case admittedly still being pending before the Special Judge, City Sessions Court, Greater Bombay.

76. For all the above stated reasons, therefore, in our opinion, there is no merit in the contentions advanced on behalf of the petitioner in any of these petitions and these are liable to be dismissed.

All the three petitions are accordingly dismissed. The interim order dt. 28-10-1991 in Habeas Corpus Petition No. 24268 of 1991 is withdrawn. As directed in paras 67 and 68 above the Registrar shall issue necessary instructions to all the Courts subordinate.

77. Leave to appeal to Supreme Court is orally prayed for on behalf of the petitioner. In our opinion, it is not a fit case where such leave may be granted. It is, accordingly refused.