

(1991) 09 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 3555 of 1991

Munindra Basumatary for and on behalf of Manganada
Daimary and Jadav Daimary

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 30-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 157, 157(1), 159
Penal Code, 1860 (IPC) — Section 120B, 323, 334, 34, 342
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 3(1), 4

Citation : (1991) 2 GLR 428

Hon'ble Judges : U.L. Bhat, C.J.;B.P. Saraf, J

Bench : Division Bench

Advocate : P.G. Baruah, R. Baruah, A.K. Sharma and R. Sarma, for the
Appellant; Government, for the Respondent

Judgement

U.L. Bhat, C.J.—This habeas corpus petition is filed by the Petitioner on behalf of Magananda Daimary and his son Jadav Daimary. The Under secretary (Home) of the Government of Arunachal Pradesh has sworn to a counter affidavit.

2. On an earlier occasion Criminal Revision 233 of 1991 was filed in this Court on behalf of these two persons. As per Annexure-A dated 11.6.91 the High Court directed the Deputy Commissioner of Naharlagun to take up for consideration bail request on behalf of Jadav Daimary on or before 20.6.91 and release him on bail if no charge sheet was submitted on or before that date. Petitioner complains that though bail application was filed on behalf of Jadav Daimary it was not entertained. This allegation is denied in the counter affidavit, which states that Jadav Daimary is still in judicial custody in connection with a Bank dacoity case in G.R. Case No. 23/91 of the court of Additional Deputy Commissioner, Naharlagun, that no proper application was filed and the other requirements of law were not fulfilled and therefore he was not released on bail. It is further pointed out that he could not furnish adequate security and hence the bail

application was rejected on 1.7.91. In these circumstances all that needs to be done is to reiterate the order of this Court in Criminal Revision No. 233 of 1991 that Jadav Daimary shall be released on bail subject to the conditions imposed in that order,

3. This Court in Criminal Revision 233/91 directed Magananda Daimary's release on bail. He had been arrested in connection with G.R. Case No. 23/91 referred to above. It is alleged that Magananda Daimary was not released though Annexure-2 release order dated 19.6.91 was passed. This allegation is also controverted in the counter affidavit which states that he was released on bail on 20.6.91 as per order of the High Court, that since he was involved in Itanagar Police Station Case No. 43/91 registered u/s 3/4 of the Terrorist and Disruptive Activity (Prevention) Act, 1987 (TADA Act for short) registered on 14.6.91 he was rearrested on the same day and is in the judicial custody of the Designated Court constituted under TADA Act, namely, Court of Deputy Commissioner, Ziro. The records produced before us bear out these statements.

4. The learned Counsel for the Petitioner contended that there is no material at all to show that Magananda Daimary was in any way concerned with any act coming within the purview of Section 3 or 4 of TADA Act and therefore the F. I. R. and his detention are illegal. Learned Counsel placed reliance on two decisions of the Supreme Court, one of Gujarat High Court and several decisions of this Court in support of his argument that this Court has jurisdiction under Article 226 of the Constitution to direct release of Magananda Daimary. It is therefore necessary to advert to these decisions.

5. In *Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat*, Supreme Court had occasion to consider the power of the High Court to grant bail to a person accused u/s 3/4 of TADA Act. The Designated Court as well as the High Court had declined to grant bail to the accused in two cases. The Supreme Court held:

...that the Act being a special Act must prevail in respect of the jurisdiction and power of the High Court to entertain an application for bail u/s 439 of the Code or by resort to its inherent powers u/s 482. Under the scheme of the Act, there is complete exclusion of the Jurisdiction of the High Court in any case involving the arrest of any person on an accusation of having committed an offence punishable under the Act or any rule made thereunder.

(Emphasis supplied)

The Supreme Court reiterated:

The manifest intention of the legislature is to take away the jurisdiction and power of the High Court under the Code with respect to offences under the Act. No other construction is possible.

The Supreme Court further held:

In view of the explicit bar in Section 19(2), there is exclusion of the jurisdiction of the High Court... We must accordingly uphold the view expressed by the High Court and that it had no jurisdiction to entertain an application for bail u/s 439 or u/s 482 of the Code.

(Emphasis supplied)

6. Learned Counsel for the Petitioner placed reliance on the following observations of the Supreme Court:

The Act is in extreme measure to be restored to when the police cannot tackle the situation under the ordinary penal law. The intendment is to provide special machinery to combat the growing menace of terrorism in different parts of the country. Since, however, the Act is a drastic measure, it should not ordinarily be resorted to unless the Government's law enforcing machinery fails.

(Emphasis supplied)

7. It would be useful to refer to the following observation of the Supreme Court:

The legislature by enacting the law has treated terrorism as a special criminal problem and created a special court called a Designated Court to deal with the special problem and provided for a special procedure for the trial of such offences.... Where an enactment provides for a special procedure for the trial of certain offences, it is that procedure that must be followed and not the one prescribed by the Code.

8. The Supreme Court considered the materials before it and found that one case related to communal riots and the other Was launched at the instance of the Management of a textile mill and observed:

Normally such oases have to be dealt with under the ordinary procedure prescribed by the Code, unless offences under Sections 3 & 4 of the Act are made out. The Designated Courts were under a duty to examine the circumstances closely from this angle."

(Emphasis supplied)

9. Dealing with the duty of the Designated Court and the request for bail by an accused before it, the Supreme Court observed:

In view of these more stringent conditions a Designated Court should carefully examine every case coming before it for finding out whether the provisions of the Act apply or not. Since before granting bail the court is called upon to satisfy itself that there are reasonable grounds for believing that the accused is innocent of the offence & that he is not likely to commit any offence while on bail, the allegations of fact, the police report along with the statements in the case diary and other available materials should be closely examined. A prayer for bail ought not to be rejected in a mechanical manner.

(Emphasis supplied)

Thus it can be seen that this decision considered only the question of grant of bail.

10. In *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, request for bail was rejected by the Designated Court and the High Court disclaimed its jurisdiction over the matter. Subsequently, the Designated court held that the material papers did not disclose any offence u/s 3/4 of TADA Act and passed an order discharging the accused. This case came before the Supreme Court on account of order of discharge. The Supreme Court noticed the drastic statutory provisions, which constitute a departure from the ordinary law and the legislative policy that such crimes of aggravated nature which could not be checked or controlled under the ordinary law necessitated deterrent provisions, and referred to the observations in *Usmanbhai Dawoodlehai Menon v. State of Gujarat* (supra) and observed:

To put it differently the ratio of the decision is that the provisions of the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of the land. It is only in those cases where the law enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorist and disruptive activities that resort should be had to the drastic provisions of the Act. While invoking a criminal statute, such as the Act, the prosecution is duty bound to show from the record of the case and the documents collected in the course of investigation that facts emerging therefrom prima facie constitute an offence within the letter of the law.... But that does not mean that judicial officer called upon to decide whether or not a case for framing a charge under the Act is made out should adopt a negative attitude. He should frame a charge if the prosecution shows that the material placed on record and the documents relied on give rise to a strong suspicion of the accused having committed the crime alleged against him.

(Emphasis supplied)

11. The Supreme Court examined the materials on record and held that the Designated court was fully justified in taking the view that the materials placed on record and the documents relied on did not prima facie disclose the commission of the offence punishable u/s 3(1) of the Act and sustained the order of discharge. This decision was concerned only with the stage of framing charge and passing an order of discharge.

12. Gujarat High Court had to deal with the provisions of TADA Act in *Ayubkhan Kalandarkhan Pathan v. State of Gujarat* 1990 (1) Crimes 183, in a petition under Article 226 of the Constitution of India to quash the incorporation of Sections 3 and 4 of TADA Act in the F.I.R. The court held that it can under Article 226 of the Constitution look into the question whether the provisions of TADA Act apply or not. After considering the materials on record it came to the conclusion that there was no justification to incorporate Section 3 and 4 of TADA Act in the F. I. R.

13. In *Girish Chandra Kakati v. Union of India and Ors.* 1991 (1) GLR 265, a

Division Bench of this Court dealt with the case of a person arrested by Army authority and handed over to police, who arrested him in connection with a case u/s 3 and 4 of TADA Act. On examination of the records the court held that it was a case of mistaken identity and" therefore directed release of the arrested person. The Division Bench took the view that the High Court has no jurisdiction u/s 482, Code of Criminal Procedure to quash the F.I.R. but could examine the case under Article 226 of the Constitution of India. The decision did not lay down any other principle.

14. In *Md. Fazir Ali v. State of Assam and Ors.* 1991 (1) GLJ 539, this Court considered a habeas corpus petition by a person Arrested in connection with a case u/s 385 and 506 I.P.C. read with Section 34 I.P.C. and Section 3 and 4 of TADA Act. The Division Bench referred to the observations of the aforesaid decisions of the Supreme Court and Gujarat High Court and examined the case diary thoroughly and found no material to show that the allegation against the Petitioner could not be dealt with under the ordinary law of the land and there was no prima facie case against him under TADA Act and that the F.I.R. was absolutely vague and did not include the ingredients of Section 3 and 4 of TADA Act and ultimately directed release of the Petitioner. The judgment does not refer to the allegations in the F. I. R.

15. In Civil Rule 141 (HC) of 1991 *Sati Narzari and Ors. v. State of Arunachal Pradesh and Anr.*, a Division Bench of this Court had to consider the case of a person released on bail in pursuance of the order of the High Court, but rearrested on the same day in connection with a case under Sections 3 and 4 of TADA Act and produced before the Designated Court and remanded to police custody. We may notice that the case involved in the decision is the same in which Magananda Daimary is said to be involved. The Division Bench declined to interfere in the matter and disposed of the case with liberty to the Petitioner or persons arrested in connection with that case to approach the appropriate court for any remedy open to them, if so advised, Magananda Daimary is a co-accused in the same and we see no reason why a different treatment should be meted out to him by this Court.

16. The last of the cases referred to is the one decided by a learned Single Judge of this Court in *Sampatmall Jain and Ors. v. State of Assam* 1991 GauHCC 349. In this case F.I.R. was lodged for offences under Sections 365 and 343 I.P.C. and after three months the Investigating Officer submitted an application to add Sections 3 and 4 of TADA Act in the F.I.R. The Chief Judicial Magistrate allowed the application. This order was challenged in revision before the High Court. In dealing with the case the learned Judge expressed views which we are summarising in the following manner:

The Designated court has a duty to implement the law of the land as declared by the Supreme Court. The F.I.R. must be sent to the Designated court and not any other court. On receipt of the F.I.R. the first duty of the court is to apply its mind to the report and other materials made available and to take a decision keeping

in view the observations of the Supreme Court and other courts whether a prosecution should be allowed to rope in a person under the Act and in so doing, the Designated court is duty bound to record its satisfaction or otherwise as to whether the offence disclosed in the F.I.R. could be dealt with under the normal law of the land and whether the Government's law enforcing machinery has failed. It is needless to say that before passing the order, Designated Court may hear the Public Prosecutor and the persons accused of the offence. If the Designated court is of the opinion that no prima facie case is made out, it may transfer the case to any other court having jurisdiction under the Code of Criminal Procedure and this has to be done promptly. In order to add Section 3 and 4 of TADA Act in the F.I.R., an order can be passed only by Designated court and not by any other court. The Designated court in so allowing the provisions to be added has to examine very carefully all the materials produced before it and pass a speaking order, which shall not be passed mechanically. Order of remand u/s 167 Code of Criminal Procedure cannot be passed mechanically and without application of mind. Before passing a remand order, the Designated court shall have to first find out whether on the materials placed before it, namely, copies of the entries in the case diary, the prosecution has been able to show a prima facie case under the Act against the person. In doing so, the court shall have to take note of the law laid down by the apex court. The court has to examine whether the case can be tackled under the ordinary law of the land and whether the Government's law enforcing machinery has failed and if it decided against the prosecution it should send the records along with the accused to the court concerned. The power of the High Court u/s 482 to quash an order of the Magistrate u/s 167 is not taken away and if there is a legal fault in the remand order the High Court can interfere u/s 482 apart from Article 226 or 227 of the Constitution." On the basis of these principles the learned Simile Judge quashed the order of the Magistrate allowing incorporation in the F.I.R. of Sections 3 and 4 of TADA Act and directed release of the two accused persons on bail.

17. There can be no doubt about the jurisdiction of High Court under Article 226 of the Constitution of India to interfere in appropriate cases. However, it is necessary to take note of certain observations of the Privy Council and the Supreme Court in this connection. The Privy Council in AIR 1945 18 (Privy Council) observed:

In India, as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function always, of course, subject to the right of the court to intervene in an appropriate case....

(Emphasis supplied)

18. In *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, the Supreme Court observed:

It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court Could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.

(Emphasis supplied)

19. In a parallel situation, dealing with the order of the High Court quashing the F.I.R. u/s 482 of the Code of Criminal Procedure, the Supreme Court in *Kurukshetra University and Another Vs. State of Haryana and Another*, observed:

It ought to be realized that inherent power; do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the (sic)rest of rare cases.

20. The High Court has a constitutional duty to exercise jurisdiction under Article 226 of the Constitution in cases of illegal detention and take all possible steps to verify whether the person in question is in detention, whether his detention is illegal and if satisfied about the illegality of the detention, to grant him appropriate relief.

21. We will now deal with the facts of the Case. Magananda Daimary is one of the accused in a case which took place in Itanagar on 8.3.91 involving robbery of over a crore of rupees and leading to registration of a case under Sections 395, 334, 353, 323, 506, 342 and 120B I.P.C. Magananda Daimary who was arrested in connection with that case was released in pursuance of the order of this Court on 20.6.91. Even before his release, namely, 14.6.91, a separate case was registered under Sections 3 and 4 of TADA Act. This case was registered on the basis of information collected during the investigation of the Bank dacoity case. The F.I.R. in the second case alleges that a meeting was held on 20.6.90 at a place in Itanagar attended by extremists and militants, that there was discussion about formation of an underground extremist group in Arunachal Pradesh a liaison with another extremist outfit for the purpose, inter alia, of fighting against the Government, that they planned illegal collection of money from big contractors or businessmen or by looting banks for purchase of arms and ammunition, that group of persons were in possession of deadly weapons such as A.K. 47 Rifles, stenguns and pistols etc. and in consequence thereof the bank dacoity was committed to finance the raising of an under ground organisation.

The F.I.R. indicates that during the course of investigation, the involvement of Magananda Daimary and other persons in giving shelter to extremist elements and helping to smuggle arms was revealed and it is strongly suspected that Magananda Daimary is an active member of the United Boro Liberation Army. This(sic) to his arrest on 20.6.91 as an accused in that case, He was immediately produced before the Designated court concerned, namely court of Deputy Commissioner, Ziro with the material papers and was remanded to police custody. The materials in the case diary which has been placed before us would clearly give rise to a strong suspicion about his involvement in activities which could attract Section 3 or 4 of TADA Act. In these circumstances, registration of a case under the provisions of TADA Act or apprehension or detention of persons involved therein cannot be held to be illegal.

22. Relying on the observations of the learned Single Judge in Sampatmall Jain's case (supra), learned Counsel for the Petitioner urged that the Designated court did not apply its judicial mind when it received the First Information Statement. We have summarised the observations in paragraph 16 (supra). The learned Single Judge issued general direction to all criminal courts and designated courts on matters which did not strictly arise in that case. In that case, the F.I.R. for certain offences under the I.P.C. was lodged before an ordinary Criminal court. Subsequently, the Investigating Officer submitted an application to add in the F.I.R. Sections 3 and 4 of TADA Act and the Magistrate purported to allow the application. The learned Single Judge observed that the F.I.R. must be sent to the Designated court and not to any other court, that on receipt of the F.I.R. the first duty of the court is to apply its mind to the report and other materials made available and to take a decision keeping in view the observations of the Supreme Court and other courts whether a prosecution should be allowed to rope in a person under the Act and in so doing, the Designated court is duty bound to record its satisfaction or otherwise as to whether the offence disclosed in the F.I.R. could be dealt with under the normal law of the land and whether the Government's law enforcing machinery has failed, that an order can be passed only by Designated court under Section 3 and 4 of TADA Act in the F.I.R., that in doing so the court should examine very carefully all the materials produced before it and pass necessary orders giving reasons. There are also certain observations regarding the circumstances under which remand can be ordered which are outside the purview of the case and are in the nature of obiter dicta.

23. Information in cognizable case is dealt with in Section 154 of the Code of Criminal Procedure (for short "the Code"). Every such oral information shall be reduced in writing by the Officer In-charge of the police station and shall be signed by the person giving the same and the substance thereof shall be entered in a book, that is General Diary. A written information also has to be dealt in the same manner. This information is the First Information Statement, sometimes loosely referred to as First Information Report or F.I.R. Section 156 of the Code confers power on him to investigate a cognizable case without the order of a Magistrate. The procedure for investigation is dealt with in Section 157, The

competent officer shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. The report referred to in Section 157 is obviously what is called First Information Report. u/s 159, the Magistrate on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to disposed of, the case according to the provisions of the Code. This provision has been interpreted by the Supreme Code in S.N. Sharma's case. The Supreme Court noticed that the Magistrate could direct an investigation or in the alternative may at once proceed or depute any Magistrate to hold a preliminary enquiry and observed:

On the face of it, the first alternative of directing an investigation cannot arise in a case where the report itself shows that investigation by the police is going on in accordance with Section 156. It is to be noticed that the second alternative does not give the Magistrate an unqualified power to proceed himself or depute any Magistrate to hold the preliminary enquiry. That power is preceded by the condition that he may do so, "if he thinks fit". The use of this expression makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative.

(Emphasis supplied)

24. There is no other provision in the Code which requires the Magistrate to perform any function or to discharge any duty or pass any order when he receives the F.I.R. He can act at that stage and interfere only if the police have decided not to investigate the case. There is no provision in the Code requiring a Magistrate, upon receipt of an F. I. R. to apply his judicial mind to the report and "other materials" (at that stage there cannot be any other material, before the Magistrate), and to take a decision whether the investigation should proceed or whether "the investigating officer should be allowed to rope in a person as an accused". The F.I.R. is only a report to the court. It is intended to serve several distinct purposes. The first is to protect the person who is shown as an accused from subsequent manipulation of First Information. The second is to protect the investigating officer from being charged with any subsequent manipulation. The third is to provide a basis for the court ultimately trying the case to see in what manner the investigating machinery was set in motion and see whether the commencement of the investigation does or does not inspire confidence. Lastly, it is intended to alert the Magistrate in cases which attract the alternatives contemplated in Section 159. Except to the extent indicated in Section 159, no Magistrate is required, when he receives an F. I. R. to apply his judicial mind to the contents thereof or to pass any order. No judicial permission is necessary to

register a case with reference to any fact situation giving rise to a suspicion of commission of cognizable offence. No judicial permission is necessary for police to show the name of any person as an accused in the F.I.R. There may be cases where an F.I.R. is registered on the basis of information given by a person who is not in full possession of facts or who is not in a position to mention the identity of all or any of the accused. In such casus the Investigating Officer in the course of investigation may find reason to suspect the complicity of persons not named in the F.I.R. F.I.R. does not become defective for want of particulars of all or any of the accused persons. The Code does not contain any specific provision enabling or requiring the Investigating Officer to send subsequent report to the court about the Involvement of the persons not mentioned in the F.I.R. Nevertheless he has the duty to bring to the notice of the court the involvement of such persons by way of a report at, part of the requirement of Section 157 of the Code. He is not required to file any application in that behalf. When such an additional report is received, the court does not have any judicial function to perform except perhaps to the extent permissible u/s 159 of the Code if it could be invoiced. The Court is not required to pass any order at that stage. The application of the judicial mind of the court in a criminal case can arise for the first time only When an accused person is produced before it in terms of Section 167 of the Code and not at any earlier stage. This question of finding if a prima facie case is made out also does not arise at that stage. The observations to the contrary in Sampatmall Jain's case with respect, do not lay down good law.

25. Learned Counsel for the Petitioner contended that it has not been shown that the alleged activities of accused in the TADA case could not be dealt with under the ordinary law of the land or that the Government's law enforcing machinery has failed. The argument is based on certain observations of the Supreme Court in Usmanbhai Dawoodbhai Menon's case already referred to in para 5 (supra). The Supreme Court in that case was consideration the power of the High Court to grant bail to persons accused under Sections 3 or 4 of TADA Act and held that in the given facts the accused deserved bail. The court, inter alia, examined the provisions of the Act, the purpose for which the Act was enacted and indicated the nature of the Act as an extreme measure to be resorted to when police cannot tackle the situation under the ordinary law of the land and that the Act should not ordinarily be resorted to unless Government's law enforcing machinery fails. These general observations of the court cannot be read or understood in the manner in which statutory provisions are read or understood. The ingredients of the offences under Sections 3 or 4 of TADA Act are found in those Sections. Whenever a Designated court or any other court has occasion to consider the applicability of Sections 3 or 4 of TADA Act to a given situation, it has to look to those ingredients and examine the fact-situation in the light of those ingredients. The general observations of the Supreme Court are not intended to be a substitute for the ingredients of the offences under Sections 3 or 4 of TADA Act. When the Supreme Court observed that the Act is intended to be resorted to when the police cannot tackle the situation under ordinary criminal

law and should not ordinarily be resorted to unless the Government's law enforcing machinery fails, the court was emphasising the stringent nature of the provisions of the Act. Examination of the provisions of Sections 3 and 4 would indicate that the acts described therein are of a nature which ordinarily cannot be expected to be tackled under the ordinary law of the land or beyond the capacity of the Government's law enforcing machinery to handle. The duty of court is to examine the ingredients of the offences and the materials before it, whether it be at the stage of bail, framing charge or disposing of case. Supreme Court indicated this duty at more places than one in the judgment quoted supra, Even this has no relevance at the stage when the court receives the F.I.R. or an additional report.

26. We are in this case not dealing with the stage of request for bail or framing charges ; these matters can be dealt with only by the Designated Court. We are also not sitting in judgment over a charge framed or discharge ordered by any court. It is axiomatic that even at the stage of considering the question of granting bail or of dealing with request for remand, the Designated court has to apply its judicial mind. Framing charge and passing order of discharge are judicial acts. Application of judicial mind is necessary at all these stages. But different considerations and different yardsticks and criteria are to be applied at these stages and no uniform guidelines appropriate at all these stages can be laid down. At the stage of passing an order of remand, the Designated court is not required to consider whether a prima facie case has been made out. At that stage the only consideration required to be taken note of are those mentioned in Section 167 of the Code. We hold that to the extent indicated above Sampatmall Jain's case does not lay good law.

27. We find no reason to hold that the F.I.R. in the TADA Case is illegal and the arrest and judicial custody of Magananda Daimary are illegal. It is open to Magananda Daimary to seek bail before the Designated court, No writ of habeas corpus can be issued with reference to him. With reference to Jadav Daimary, we reiterate the order of this Court in Criminal Revision No. 233 of 1991 that he should be released on bail subject to the conditions imposed in that order.

28. The Civil Rule is accordingly disposed of.