

(2006) 01 BOM CK 0042
In the Bombay High Court
Case No : Criminal W.P. No. 191 of 2004

Parbatabai Sakharam Taram

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Arms Act, 1959 — Section 25, 3
Constitution of India, 1950 — Article 21, 22, 226, 227
Penal Code, 1860 (IPC) — Section 107, 109, 121, 122, 216
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 12(4)
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 4

Citation : (2006) CriLJ 2202

Hon'ble Judges : R.C. Chavan, J; J.N. Patel, J

Bench : Division Bench

Advocate : P.M. Chandekar, for the Appellant; D.B. Yengal, APP, for the Respondent

Judgement

J.N. Patel, J.—The petitioner has approached this Court seeking compensation from the respondents and officials in the police department by invoking its extraordinary jurisdiction under Article 226 and 227 of the Constitution of India to issue appropriate writ, order or direction for conducting an inquiry against the erring Police Officers and specifically against respondent No. 4 Shri A.B. Chavan, Police Officer, Arjuni (Mor) and Shri Suiyavanshi, Police Officer Chichgarh, Tq. Deori and others, including the State for her wrongful detention in police custody, false implication in serious offences, custodial torture and for violation of her fundamental and human rights including the protection for which the petitioner was entitled to under the Juvenile Justice Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner further claims compensation for violation of her fundamental and human rights in the sum of

Rs. 10,00,000/- with costs.

2. It is the case of the petitioner that she is tribal belonging to caste Gond and resident of Arjuni (Mor) in Gondia District and that they come from a very poor family. According to the petitioner, she was born on 15-4-1977 and was a minor and also juvenile at the time she was arrested, wrongfully detained and tortured in police custody and thereafter falsely implicated in three cases on serious charges including the TADA (P) Act, 1987.

3. The case of the petitioner is that some time in the year 1990 while petitioner was studying in 5th standard and was hardly 13 years of age, P.S.O. A.B. Chavan (since deceased), who was at the relevant time attached to Police station Arjuni (Mor) visited the petitioner's house at 12 O'clock at midnight along with other police constables and brutally assaulted the petitioner and her mother and took away the petitioner to the Police Station without there being any lady constable. At the Police station, the petitioner was severely beaten thereafter she was dumped in a Police van and taken to the dense forest of Keshori at 1 a.m. and hanged to a tree by tying her both hands upwards and then was beaten by belt till the petitioner lost her consciousness. The petitioner regained consciousness and found that she was in hospital from where she was again taken to the Police Station and illegally detained during which period she was tortured by police Officers, who used to beat her with their boots and she was forced to take whatever meal supplied to her by spreading it on the floor and when she resisted such inhuman treatment, she has to bear beatings by kicks and other means for which the petitioner primarily holds P.S.O. A.B. Chavan responsible along with other police officials. It is the case of the petitioner that though there were lady constables but they were helpless and could not do anything except for sympathising with her. It is the case of the petitioner that the police merely on the basis of suspicion that the petitioner was working with Naxalites have wrongfully detained her and tortured her in police custody in order to extort information about the Naxlites.

4. Though the petitioner repeatedly informed them and even told them that she is not at all concerned with any Naxalites and that she is innocent, she was not released and continued to be tortured in cruel and inhuman manner in police custody.

5. It is the case of the petitioner that from time to time she was moved from one police lock-up to another and was treated with utmost cruelty and inflicted acts insulting to woman in the police station. The petitioner was kept in lock-up at Police Stations Arjuni (Mor), Chichgarh and then D'eori. Along with petitioner there were four other girls who were also treated with cruelty and tortured on the basis of similar allegations that they were associates of Naxalites, It is the case of the petitioner that as she was arrested and wrongfully detained by the police, no record of such arrest and detention was maintained in any of the Police Stations and the petitioner was illegally detained in lockup for years together in violation of Article 21 and 22 of the Constitution of India. It is the case of the

petitioner that it is only in the year 1993, for the first time, the petitioner's arrest was brought on official record and she was implicated in three cases for having committed offences under various sections of the Indian Penal Code and TADA (P) Act and for the first time officially the petitioner's arrest was shown on 1-3-1993 and was produced before the Magistrate and came to be remanded to police custody as well as Judicial Custody and ultimately landed in Central Jail.

6. It is the case of the petitioner that in the year 1996 one non-governmental organisation i.e. Tejaswi Adivasi Mahila Mandal and at the instance of the National Women's Commission and Smt. Mohini Giri three cases of the petitioner came to be transferred before the Juvenile Court and she was released on bail. The petitioner has suffered torture in police custody which has left deep scars on her mind having undergone the life which was as if she was in hell in such a tender age which has spoiled not only valuable period of her childhood but even for future she lost all hopes for which the petitioner particularly blames respondents No. 4 and 5 and the officials of the State and, therefore, seeks high level enquiry so that they can be punished and she should be duly compensated for the atrocities committed on her by the officials of the State under colourable exercise of their powers.

7. The petitioner has also highlighted the fact that police has arrested so many other girls like her and wrongfully detained them in custody on the suspicion that they were working for Naxalites and out of them, four girls who were with her, are missing and a petition seeking writ, of habeas corpus has been filed before the Supreme Court and is pending though the petitioner has no further information about the fate of those girls. The petitioner, therefore, claims that this Court should direct the State to take action against the erring Police Officers and prosecute them for the offences committed by them for wrongful arrest, detention, custodial torture of the petitioner and for falsely implicating her in serious cases and sending her to prison in spite of knowing the facts that the petitioner was innocent and suitably compensate her.

8. In support of her petition the petitioner has annexed documents regarding her prosecution before the Juvenile Board, Bhandara in all the three cases which acquitted her for want of evidence.

9. In response to the petition, the State has filed affidavit of Shri P.P. Shrivastava, Principal Secretary to the Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai and of one of the Police Officers i.e. respondent No. 5 Shri Suryawanshi. In so far the State is concerned, preliminary issue has been raised that though the petitioner claims to have suffered arrest, illegal detention and custodial torture from the year 1990 and being implicated in false cases but she has filed the petition in the year 2004 i.e. almost after fourteen years and, therefore, the petition deserves to be dismissed merely on the ground of delay and laches, as no ground is made for entertaining this petition.

10. During the pendency of the petition we have already made clear by our order dated 16-12-2004 that such a plea is not available to the State in the facts and circumstances of the case, as petitioner's grievance relates to violation of her fundamental and human rights and so also being prosecuted in violation of the provision of the Juvenile Justice Act in force at the relevant time and has suffered atrocities, being a tribal, for which even provision of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 stands attracted. Further we have no hesitation to add that the fact brought on record does go to show that the petitioner had no access to justice though she suffered flagrant violation of her fundamental rights under Article 21 and 22 of the Constitution of India and human rights till Non-governmental Organisation intervened in her matter and took her issue not only with the State Government but also sought assistance of the National and States Human Rights Commissions. It is now well settled that right to legal aid to such person is part of right to life and liberty as enshrined in Article 21 of the Constitution of the India. Therefore, it does not lie in the mouth of the State, who is supposed to protect the fundamental and human rights of a citizen to take ground of delay and laches for dismissing the petition.

11. In the affidavit-in-reply filed on behalf of the State of Maharashtra an attempt has been made to demonstrate before us that the State has taken all the necessary steps by constituting a special team to conduct a detailed inquiry into the matter and the Special Team has investigated the record of the Police Station and also visited village Jambhali (Porla) where petitioner at the relevant time was residing, and recorded the statements of respectable persons residing in that village, concerned officials and police personnels, who had been posted at the respective police station during the period the petitioner claimed to have been illegally detained and tortured in the police custody. The inquiries have also been made with the jail authorities and the Primary Health Centre at Keshori but that Special Team could not find any incriminating material to substantiate the claim of the petitioner. To sum it up, it has given clean chit to the State.

12. It is also contended that the respondent No. 4 Shri A.B. Chavan was not working during the year 1990 in Police Station Arjuni (Mor) and similarly respondent No. 5 named as Shri Suryawanshi who was also not working at the relevant time in the police station Chichgad. Therefore, according to them, these allegations against the respondents are not well founded. Further it has been stated that the record shows that the petitioner was first time arrested by respondent No. 4 in the year 1993 when she had confessed of having involved in naxal activities and other accused persons who were arrested along with the petitioner also corroborated that petitioner was involved in the naxal activities and petitioner along with other accused were produced before the Magistrate from time to time,

13. The Respondent/State admits that at the relevant time the petitioner was below the age of 18 years when she was shown arrested in the year 1993, but, when she was produced before the Magistrate and remand was obtained by

respondent No. 4 Shri A.B. Chavan, record does not shows that the petitioner had raised any objection for not producing her before the -Juvenile Court. It is only when the charge sheet came to be filed in Crime No. 82/90 before the Juvenile Court, it was noticed that the petitioner was below the age of 18 years and it is on 24-2-1996 by the order of Special Court designated under TADA (P) Act, 1987 petitioner came to be released on bail. It is admitted that the petitioner was also co-accused in crime No. 100/92 and 44/92 and charge sheet in these two cases were subsequently filed before the Juvenile Court on 30-5-1996 against the accused. It is not disputed that the respondent No.4 was Investigating Officer in all these three cases. It is contended that the fact that the petitioner was juvenile was not noticed by the magistrate before whom the petitioner was produced. It has been brought on record that the respondent No.4 Shri A.B. Chavan has expired on 10-2-2004, as he met with an accident and as such no further inquiry could be made with said Shri Chavhan.

14. On facts, it is the contention of the Respondent/State that the petitioner was involved in Naxal activities and she was arrested only in 1993 and not in 1990. Further the claim of the petitioner that her father has died, is also not true and he is residing at Sukli Ramgad, Taluka Deori. It has been specifically denied on the basis of inquiry conducted by the Special Team that the petitioner was arrested and brought to Police Station Arjuni (Mor) in 1990. The Special Team has also conducted inquiry, recorded the statement of Police Patil, Sarpanch and other villages, however, did not reveal that petitioner was brought to the police station in the mid-night and she was tied with the tree as alleged and, therefore, the allegations made by the petitioner are not borne out during inquiry. It is specifically denied that the petitioner was ill treated by the police. It has been further contended that the Special Team has verified the lockup register and did not discover that the petitioner along with four other girls were kept in police lock-up during that period and as such question of ill treatment to the petitioner does not arise. The prosecution of the petitioner in three cases i.e. Crime Nos. 100/92, 44/92 and 82/90, according to the Respondent/State, is sufficient to show that the petitioner was involved in various serious offences, and that as and when it came to the notice of the authorities that the petitioner was below the age of 18 years i.e. at the time of filing charge sheet her case was transferred to Juvenile Court at Bhandara. The State has shown ignorance about the efforts made on the part of Tejaswi Adivasi Mahila Mandal and National Human Rights Commission but it has admitted that there was one application dated 21-5-1996 found on record which was received from the said Mahila Mandal after the release of the petitioner on 24-2-1996. It has been submitted that on earlier occasion two writ petitions were filed in this Court i.e. Writ Petition No. 244 of 1993 and 59 of 1994 but same came to be dismissed by this Court by order dated 22-11-1993 and 18 1-1996 respectively but the respondent/State has not placed on record any such order in support of this contention.

15. By way of rejoinder, the mother of the petitioner Sayatrabai w/o Sakharam Taram has filed an affidavit explaining the position in so far as her husband

Sakharam Taram is concerned, wherein she does not claim that he has died but has stated that he has abandoned her and the petitioner when she was three years" old. The mother supports the claim of the petitioner made in the petition that she was picked up forcefully in between the year 1991-92 by Police Authorities and was never informed of the reason of her arrest and at that time she was studying in 5th standard in the school at Tukum Saygaon, Tq. Morgaon (Arjuni) and since then the petitioner remained absent from School and compelled to show her absence due to illness for about two months. The petitioner has also filed her reply on affidavit denying all the allegations and submitted that she has claimed that her father is dead because since the time she was 3 to 4 years old her father had abandoned her, her mother and, therefore, she was always told that her father is dead and petitioner is and was never aware about her father,

16. In order to appreciate the case of the petitioner, we have requisitioned the original record and proceedings from the Juvenile Court, Bhandara whereby petitioner was tried in three cases and acquitted for want of evidence of serious charges under the Indian Penal Code, TADA(P) Act and Arms Act. Xerox copies of the communication sent by Tejaswi Adivasi Mahila Mandal dated 19-2-1996 to the President, Maharashtra State Women's Commission, copy of which was also forwarded to the Minister, Tribal Development, acknowledged on 12-3-1996 and also letter dated 12-3-1996 written by the then Minister for Tribal Development, Government of Maharashtra, addressed to the Hon"ble Deputy Chief Minister, Home Department are placed on record and the internal correspondence amongst police authorities, so also the Birth Certificate of the petitioner issued by the Head Master, showing that the petitioner was admitted in the school on 1-9-1983 and as per the school record her date of birth Is 15-4-1977. What we find from the facts is that admittedly the petitioner was not only a minor but a juvenile even at the time she was officially shown as arrested by the police for the first time on 31-1-1993 in Crime No. 100/92 and subsequently implicated in two more cases i.e. Crime No. 44/92 and Crime No. 82/90. In all these cases, in addition to the offence under the I.P.C. Act arid the Arms Act, the petitioner has also been charged for having committed offence under Sections 3 and 4 of the TADA (P) Act. It is pertinent to note that first case in which the petitioner came to be arrested, the offence alleged to have been committed on 15-10-1990 and for which the petitioner was charged by the Juvenile Court that - on 15-10-1990 at about 6.30 to 13 hrs. at village Yarandi Talao in furtherance of common intention with them committed murder of deceased Moreshwar, the alleged informant to police, and further you made the activities against State being members of people war groups Naxalite Organisation and further you were possessing one fire arm in your possession with intention to commit offence as such, and committed offences u/s 302, 107, 109, 216(a), 121 and 122 r/w 34 of the I.P.C. and offences u/s 3 r/w 25 of Arms Act and u/s 3 and 4 of the TADA(P) Act.

17. The fact that the petitioner was charged for having committed offence on

15-10-1990, which was registered by P.S.O. Morgaon (Arjuni) substantially corroborates the contention of the petitioner that she was picked up by the Police in the year 1990 itself and was in their illegal detention and suffered torture in order to get information about Naxalites. The record and proceedings of the Juvenile Court in this case i.e. JCC No. 40 of 1996 and the evidence recorded by the Juvenile Court as well as the judgment clearly indicates that the petitioner was required to be acquitted as it was a case of no evidence and similar was the fact in respect of other two cases in which the petitioner has been prosecuted.

18. In our considered opinion, the contentions of the petitioner that she was arrested, illegally detained and tortured and thereafter falsely implicated in these three cases stand well corroborated and there is no reason to disbelieve her on this count.

19. The very fact that the Special Team constituted by the State after petitioner approached this Court to inquire into her allegations, could not lay hands on any record. It also goes to show that arrest and detention of the petitioner being illegal, question of making any record of the same in the concerned Police Station would not arise, otherwise it would have been obligatory for the police to have produced the petitioner before Magistrate within 24 hours of her arrest. One can well appreciate the petition and status of the petitioner, who belongs to very poor family and being a tribal (Gond). It was only her mother to stand by her side without having any access to justice. No one is expected to come forward in support of the petitioner and, therefore, merely the Special Team has verified the claim of the petitioner by examining the Sarpanch, Police Patil and villagers does not in any manner dislodge the petitioner's claim. Further the fact that the petitioner was tried and acquitted for want of evidence in three cases and probably last acquittal was by judgment and order of the Juvenile Court in JCC No. 40 of 1996 delivered on 15-3-2002, one can understand that the petitioner was under constant pressure and fear of being prosecuted of serious offences in spite of the fact that she was found to be innocent and there was no evidence against her. The Respondent/ State have put up a case before this Court that petitioner came to be arrested, as she herself confessed of her complicity in these cases and being associated with Naxalites, which was confirmed by the confessions given by the co-accused arrested in the case. The past experience goes to indicate that the petitioner could not have gathered courage to approach any court of law and it is after her last acquittal on 15-3-2002, in the year 2004 she has knocked the doors of this Court to seek action against the police Officials of the Respondent/State, who were responsible for arrest, illegal detention and custodial torture.

20. The learned Counsel appearing for the petitioner has placed reliance for the purpose of seeking compensation against the State on the two decisions of this Court. The first being rendered in the case of Rajeev Shankarlal Parmar and Anr. v. Officer-in-Charge, Police Station Malad, Mumbai and Ors. 2003 (5) Mah LJ 820 and after considering the case Their Lordships found that the petitioner Rajeev

who was a juvenile was arrested and detained in prison by the State and found that he was entitled for compensation. The relevant part of the reported judgment in Rajeev's case aptly sums up the case for which the petitioner has knocked the doors of this Court and for the said purpose we are reproducing para Nos. 15 to 21 of the said Judgment as under :-

15. The learned Counsel for the petitioners in this connection referred to two decisions of the Hon'ble Supreme Court in Rudul Sah Vs. State of Bihar and Another, and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, . She also relied upon a decision of the Division Bench of this Court (Aurangabad Bench) in Baban Khandu Rajpur v. State of Maharashtra and Ors. 2002 ALL MR (Cri) 1373. In Bahari Khandu Rajput, though the person was kept in illegal custody only for a period of two and half days, the Court awarded an amount of Rs. 10,000/- to the petitioner therein which was ordered to be paid by the State of Maharashtra. It was, therefore, submitted that in the facts and circumstances, an amount of Rs. 10,000/- per month may be awarded by way of compensation.

16. Considering the facts and circumstances, however, that an offence had been registered against the first petitioner and as stated by the complainant, the accused was of 22 years age, who alleged to have committed offence punishable under Sections 302 and 307 of the Indian Penal Code, and according to the Police Officer, the accused himself had stated his age to be 20 years at the time of arrest (which was disputed by the accused) coupled with the fact that the order dated 7th March, 2003 could not be implemented in view of non-availability of police escort, in our considered opinion, the action cannot be termed mala fide or malicious.

17. In the facts and circumstances, therefore, ends of justice would be met, if the respondent State is ordered to pay to petitioner No. 1 paramount of compensation of Rs. 15,000/- (Rupees Fifteen thousand only). Let such amount be paid within a period of three months from today. Order accordingly.

18. Regarding general guidelines, our attention was invited by the learned Counsel to three decisions referred to above i.e. Sheela Bares, Gopinath Ghosh and Bhola Bhagat.

19. In Sheela Barse, the Apex Court stated:

If a child is a national asset, it is the duty of the State of look after the child with a view to ensuring full development of its personality. That is why all the statues dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still large number of children in different jails in the country as is now evident from the reports of the survey

made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are accused of offences, they must not be kept in jails. It is no answer on the part of the State to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of the State to urge that the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where, children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail.

The problem of detention of children accused of an offence would become much more easy of solution if the investigation by the police and the trial by the Magistrate could be expedited. The report of survey made by District Judges show that in some places children have been in jail for quite long periods. We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal Courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and even where there are juvenile Courts, they are nothing but a replica of the ordinary criminal Courts, only the label being changed. The same Magistrate who sits in the ordinary criminal Court goes and sits in the Juvenile Court and mechanically tries cases against children. It is absolutely essential, and this is something which we wish to impress upon the State Governments with all the earnestness at our command that they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrates who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Court is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against Juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach.

We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the First Information Report and if the investigation is not completed within

this time, the case against the child must be treated as closed. If within three months, the charge sheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed of within a further period of 6 months at the outside and this period should be inclusive of the time taken up in committal proceedings, if any. We have already held in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remained pending before the Magistrate or the Sessions Court for an unreasonable length of time. It is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held upon account of some interim order passed by a superior Court of the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. One of the primary reasons why trial of criminal cases is delayed in the Courts of Magistrates and Additional Sessions Judges is the total inadequacy of Judge strength and lack of satisfactory working conditions for Magistrates and Additional Sessions Judges. There are Court of Magistrates and Additional Session Judges where the workload is so heavy that it is just not possible to cope with the workload, unless there is increase in the strength of Magistrates and Additional Sessions Judges. There are instances where appointments of Magistrates and Additional Sessions Judges are held up for years and the Courts have to work with depleted strength and this affects speedy trial of criminal cases. The Magistrates and Additional Sessions Judges are often not provided adequate staff and other facilities which would help improve their disposal of cases. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of Courts, appointing requisite number of Judges and providing number of Judges and providing them the necessary facilities. It is also necessary to set up an Institute or Academy for training of Judicial Officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the Court of Magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious, but, here, we are not concerned with the question of speedy trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other case where this Court may be called upon to examine as to what is reasonable length of time for a trial beyond which the Court would regard the right to speedy trial as violated. So far as a child accused of an offence punishable with imprisonment of not more than 7 years is concerned, we would regard a period of three months from the date of filing of the complaint or lodging of the First Information Report as the maximum time permissible for investigation and a period of 6 months from the filing of the charge-sheet as a reasonable period within which the trial of the child must be

completed. If that is not done, the prosecution against the child would be liable to be quashed. We would direct every State Government to give effect to this principle or norm laid down by us in so far as any future cases are concerned, but so far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of charge sheet and if a charge sheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed.

We have by our order dated 5th August, 1986 called upon the State Governments to bring into force and to Implement vigorously the provisions of the Children's Acts enacted in the various States. But we would suggest that instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by Parliament should contain not only provision for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who were either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation.

20. In Gopinath, the Court said; "Before we part with this judgment, we must take notice of a developing situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with Juvenile delinquents prevalent in various State is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the First time before it. However, the Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court, A way has, therefore, to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation, We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused

on the date of the occurrence. This ought to be more so where special Acts dealing with Juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining creditworthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey up to the Apex Court and the return journey to the grass-root Court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."

21. In *Bhola Bhagat*, referring to *Gopinath Ghosh* and reiterating the principle laid down therein, the Court issued the following directions:

Before parting with this judgment, we would like to re-emphasize that when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the Court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The Court must hold an enquiry and return a finding regarding the age, one way or the other. We expect the High Courts and subordinate Courts to deal with such cases with more sensitivity, as otherwise the object of the Acts would be frustrated and the effort of the legislature to reform the delinquent child and re-claim him as a useful member of the society would be frustrated. The High Courts may issue administrative directions to the subordinate Courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding regarding the age of the accused concerned and then deal with the case in the manner provided by law.

Let the administrative side of the High Court take appropriate action in accordance with law in the light of the observations made and directions issued by the Hon"ble Supreme Court.

21. Another decision on which reliance is placed for the purpose of claiming compensation for illegal detention of Juvenile has been rendered in the case of *Master Salim Ikramuddin Ansari and Maharukh Adenwalla Vs. Officer-in-charge, The Superintendent and State of Maharashtra*, wherein Their Lordships after dealing with the provisions of the Juvenile Justice Act found that the petitioner was wrongfully confined behind the bar for almost three years because of sheer negligence, indifference and inhuman attitude adopted by the authorities and

awarded compensation of Rs. 1 lakh on consideration of the totality of the facts and circumstances of the case.

22. From the facts which have surfaced before the court from the Record and proceedings of the three cases in which petitioner was tried before the Juvenile Court at Bhandara that too for serious offences under I.P.C. and TADA (P) Act, 1987. We have no hesitation to draw the conclusion that the police officers involved in the investigation of these cases were bound to come across the fact that the petitioner at the time of commission of offences was of 13 years of age as she was taking education in a school which had record of her date of birth and it was obligatory on their part to bring it to the notice of the Magistrate before whom she was produced for the first time. On the other hand, they misrepresented her age as 18 and above and sought her remand, now the State cannot blame the petitioner or the concerned Magistrate for this serious lapse for which the State will have to compensate the petitioner,

23. We have no hesitation to arrive at a conclusion that this is the case where the State has acted in violation of Articles 21 and 22 of the Constitution of India and Juvenile Act of 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000 and its officials have committed offences punishable u/s 3 Sub Section 2(i), (ii) and (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for that the State is bound to compensate the victim as provided under Rule 12(4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and particularly in respect of Item No. 18 in the serial number of the schedule, which provides for full compensation on account of damages or loss or harm sustained in victimization at the hands of a public servant. Here, we would like to add -as the original respondent No. 4 having expired, though the State is not able to proceed against him, it is to prosecute all concerned police officers who were part of the investigation team for the offence u/s 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 but the State overlooked violation of these provisions of the said Act and it has failed to prevent atrocities suffered by the petitioner, at the hands of its officials,

24. We have plethora of cases to support our findings, which we would like to refer the first being the case of Joginder Kumar Vs. State of U.P. and others, in which the Hon'ble Supreme Court was required to make the following observations.

The law of arrest is one of the balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other, of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first the criminal or society: the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that

the exclusion rule was bad law that society came first and that criminal should not go free because the constable blundered.

No arrest can be made because it is lawful for the Police Officer to do so.

The existence of the power to arrest is one thing, the Justification for the exercise of it is quite another, The Police Officer must be able to justify the arrest apart from his power to do so, Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of the protection of constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

The next case which requires to be referred is that of D.K. Basu Vs. State of West Bengal, wherein the Supreme Court has observed-

"Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever the human dignity is wounded, civilization takes a step backward the flag of humanity must on each such occasion fly half mast.

...a crime suspect must be interrogated indeed subjected to sustained and scientific interrogation -- determined in accordance with the provisions of law. He cannot however be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc.

Challenge to terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State must therefore ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot Justify the violation of human rights except in the manner permitted by law.

And the court was required to issue the following directions,

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a

memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the Police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests be also examined at the time of his arrest and major and minor injuries, if any present on his / her body, must be recorded at that time. The "inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed

on a conspicuous notice board.

All these directions are inherent in Article 22 of the Constitution of India.

25. In the case *Kishore Singh Ravinder Dev and Others Vs. State of Rajasthan*, in reference to the "third degree" method is concerned about police atrocities the Supreme Court has examined the matter in detail and deprecated use of "third degree" method by the police and observed as under:-

...no police life-style which relies more on fists than on wits, on torture more than culture can control crime because means boomerang on ends and re-fuel the vice which it seeks to extinguish. Secondly the State must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person - a process, which must begin by example than by precept if the lower rungs are really to emulate. Thirdly if any policemen are found to have misconducted themselves no sense of police solidarity or in-service comity should induce the authorities to hide the crime. Condign action, quickly taken is surer guarantee of community credence than butting about that "all is well with the police and their critics are always in the wrong". Nothing is more cowardly and unconscionable that a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights.

26. What one can gather from the aforementioned cases is that lack of accountability of the police force also adds to the custodial violence. The Police is police mostly by themselves and hence police personnel committing excesses on citizens succeed, by and large, in getting away scot free. The contention of the Respondent/State in this case that the respondent Nos. 4 and 5 were not posted at the relevant police stations within which jurisdiction the petitioner/victim was residing; belies the case of the petitioner, cannot be accepted or digested. The record and proceedings of three cases in which the petitioner came to be falsely implicated and ultimately acquitted on the ground of no evidence were all investigated by original respondents No.4 and 5. We may go a step further and observe that such serious offences alleged to have been committed by Naxalites attracting a draconian law like TADA (P) Act, 1987 must have been monitored by Senior Officials of the police and without their tacit consent police could not have arrested and kept in illegal detention a poor helpless tribal girl of 13 years age, who was continuously tortured in most inhuman manner and, therefore, the State rather than coming before the court and offering to punish all those Officers who were concerned with the investigation, sanction and prosecution of the petitioner as well as other co accused, after conducting fair inquiry into the matter, has tried to cover up their misdeeds and, therefore, they are bound to compensate the petitioner/victim. The law relating to compensation is now well settled by series of decisions of the Supreme Court. To mention a few first in the line being that of *Rudul Sah Vs. State of Bihar* and Another, wherein a Supreme Court clearly held that the State is liable to pay compensation to the victim and may recover the same from its officers, who are responsible for the misdeeds.

The matter was further dealt with by the Supreme Court in the case of Sebastian M. Hongray Vs. Union of India (UOI) and Others, , Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, . The principles laid down by the Supreme Court in all these cases again came for its consideration in the celebrated case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, . Therefore, there can be no doubt that the law is well settled that the State will have to compensate the victims of atrocities committed by its officials, particularly the police, in flagrant violation of fundamental rights and human rights of the victim.

27. Now, the only question which remains to be considered is how much compensation should be granted to the petitioner. The victim had been arrested and illegally detained right from the year 1990 when she was of a tender age of 13 years suffered inhumane torture though the petitioner has not in so many words explained that in what manner she was tortured to show that it was an insult to womanhood but one can understand the agony the victim might have suffered in police custody and, therefore, taking all these facts and circumstances into consideration in our opinion a sum of Rs. 5,00,000/- (Rs. Five Lakhs) would be reasonable compensation to which the petitioner is entitled.

28. Therefore, we order the Respondent/ State to pay a sum of Rs. 5,00,000/- (Rs. Five Lakhs) to the petitioner within a period of four weeks from the date of pronouncement of this judgment along with costs of the petition which we quantify at Rs. 10,000/-. We further order and direct the State to conduct a thorough and impartial inquiry by setting up a Special Investigating Team of the State C.I.D. headed by I.P.S. Officer not below the rank of D.I.G. and it should consist of a lady Police Officer not below the rank of Superintendent "of Police and inquiry should be in the direction of the arrest and detention of the petitioner and her prosecution in the three cases. We, by way of abundant caution, would like to observe that none of the Police officials associated with the inquiry should be in any manner connected with the investigation of the three cases in which the petitioner was tried.

29. This exercise has to be undertaken by the State in order to identify Police Officers, who were at the relevant time associated with the investigation and prosecution of all accused persons in these three cases where the petitioner was one of the co-accused and also those Senior Officers who have monitored the investigation of these three cases and granted sanction to prosecute the petitioner/victim as well as co-accused and also examine material collected against the petitioner showing her complicity in the crime so that the State can fix responsibility on erring officers and after conducting necessary inquiry if they are found guilty of having committed any offence under any penal provisions, prosecute them for the same and also recover the amount of compensation directed to be paid to the victim. We will highly appreciate if an Action Taken Report is submitted to this Court within a period of six months from the date of

judgment and order, and for this limited purpose the petition will remain pending on the file of this Court.

30. Before parting with this judgment we would also like to observe that pursuant to the direction issued by the Supreme Court in the case of Kartarsingh v. State of Punjab in which the Hon''ble Supreme Court upheld the validity of TADA (P) Act, 1987, had issued direction to the State Government to constitute Review Committee. It is unfortunate that though the petitioner is tribal girl with no access to justice was being prosecuted under the provisions of TADA (P) Act, 1987 along with other offences of serious nature under the Indian Penal Code and Arms Act, her case was never referred to the Review Committee probably because the State was oblivious of its duty to do so because the petitioner/victim who was accused was a non-entity so far as the State Government was concerned.

Rule is made absolute in the aforesaid terms.