

(2003) 12 BOM CK 0017
In the Bombay High Court
Case No : Criminal W.P. No. 1241 of 2003

Prema Bangar Swamy

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 378, 390

Citation : (2004) CriLJ 1296 : (2004) 2 MhLj 993 : (2004) 3 RCR(Criminal) 780

Hon'ble Judges : S.S. Parkar, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Sharmila Kaushik, for the Appellant; A.S. Pai, APP For respondent Nos. 1, 2, 4, 5 and 7, H.V. Mehta and Gonsalves, Assistant Registrar, Criminal Department, for the Respondent

Judgement

H.L. Gokhale, J.—The Petitioner herein is a resident of Chennai and on the date of filing of this petition i.e. on 22-8-2003 she was in custody of Yerawada Central Prison, Pune. The petition places on record a very sorry state of affairs inasmuch as it is pointed out therein that in spite of her acquittal in NDPS Special Case No. 16 of 1991 by the Special Court in Mumbai and in spite of that order having been confirmed in appeal, by dismissing the appeal filed by Respondent No. 3 - Narcotics Control Bureau, which appeal bearing No. 484 of 1995 was dismissed by the High Court on 13-12-2000, the petitioner continued to be retained in custody. This petition filed under Article 226 of the Constitution, therefore, invokes Articles 14, 19, 21 and 22 of the Constitution and seeks to challenge this illegal detention. This is prayer Clause (a) of this petition. In fact, Ms. Kaushik, the learned counsel appearing for the petitioner, informs, on a query from the Court, that she happened to visit Yerawada Central Prison, Pune in another legal aid matter when the petitioner met her and informed her about her plight which led to the filing of this petition.

2. The petition came up before an earlier Division Bench on 25-8-2003 when having noted this state of affairs, the Division Bench directed that the petitioner

be released immediately from custody. The petition came up before another Division Bench on 10-9-2003 when it was noted that in spite of the earlier order passed on 25-8-2003 the petitioner had not been released. The Division Bench was required to pass another order on that date and ultimately the petitioner was released on 13-9-2003. In this order, passed on 10-9-2003, the Division Bench also directed the learned Public Prosecutor to take instructions and to find out whether any other similarly situated prisoners are still languishing in jail.

3. The relevant facts leading to this petition are that the petitioner was arrested on 29-10-1990 by Respondent No. 3-Narcotics Control Bureau when she had boarded a flight to Zambia from Mumbai. The Respondent No. 3 had received an information that some narcotics were being carried on that flight. The petitioner was off-loaded. A certain baggage which was at the Airport was checked wherein heroin of the quantity of 1.4 kgs. was detected. It was the case of the prosecution that the baggage belonged to the petitioner. However, the prosecution failed to establish the charge to the hilt and the petitioner was acquitted by the Judgment and Order dated 23-11-1993 in NDPS Special Case No. 16 of 1991 of the offences for which she was charged, namely, those u/s 8(c) read with Section 21, Section 28 read with Section 23 of the NDPS Act and Section 135(1)(a) read with Section 135(1)(ii) of the Customs Act.

4. All throughout this period i.e. from the date of her arrest on 29-10-1990 until the judgment and her release, the petitioner was in custody. Thereafter she returned to her home town Chennai to join her family. The Narcotics Control Bureau filed an appeal bearing No. 484 of 1995 against this Judgment. As is often done, after the appeal was admitted, a warrant was issued against the petitioner. She was arrested by the Narcotics Bureau in Chennai on 13-8-1998 and brought to Mumbai. Thereafter she was produced before the Court of Sessions on 21-8-1998. Now, in all such appeals against acquittal normally the accused, who are already acquitted in trial are required to give surety to assure their presence when the appeal is heard finally and they are released on bail. However, in the present case the petitioner did not apply for bail and, therefore, there was no occasion for her being released on giving an appropriate surety bond. She, therefore, continued to remain in custody during pendency of the appeal.

5. When the appeal reached for final hearing, an Advocate from the Legal Aid Committee was provided to represent the petitioner since she was not in a position to engage any Advocate on her own. As stated above, the appeal was heard and came to be decided on 13-12-2000 by another Division Bench. At the end of para 12 of the Judgment, the Division Bench held that there were serious discrepancies in recording of the statement of the accused. This was because the petitioner only knew Tamil and the Court was not satisfied with the recording of her statement and interpretation and explanation thereof to her. The Court noted that the linkage between the baggage and the petitioner was not established in the trial Court and as a result it found no merit in the appeal and the appeal

came to be dismissed. At the end of para 14, the Court held, "Therefore the defects pointed out by the Court and acquitting the accused fully is justified" and then passed the following operative order in para 15 :

"In the result we find no merit in the appeal. Appeal is therefore dismissed. The order of acquittal rendered by the Court below is justified and confirmed."

6. Paragraphs 5 and 6 of this petition record the subsequent developments. It is stated therein that although the appeal was dismissed as stated above, the order of the Hon"ble High Court was not communicated to the petitioner. It is further stated that the respondents had failed to record the details of the petitioner"s whereabouts in the Court records. Grievance is made with respect to Respondent No. 3 i.e. Narcotics Control Bureau that the Respondent No. 3 does not co-ordinate with the authorities of the State Government and, therefore, the person continued to languish in jail for a long period. In paragraph 6 of the petition a general inquiry is sought regarding the number of persons who are in custody after their appeals have been disposed of and orders for their release are not passed by the concerned authorities. In this behalf an inquiry is sought from Respondent No. 5 through prayer Clause (c) to give details such as the names of the accused, their appeal numbers, period of incarceration undergone, whereabouts of the persons and the date of, release, if any. Apart from making this general inquiry, it is submitted that for no fault of hers grave injustice has been done to the petitioner and she has been made to suffer a wrongful and continued illegal detention. Her self esteem has suffered and she has lost reputation. She has lost valuable years of her life in jail. She has, therefore, sought compensation of Rs. 5 lacs through the prayer Clause (b). In prayer Clause (d) a suitable procedure is sought to inform the accused persons in jail about the judgments and orders passed in their cases.

7. When this matter reached before this Bench on 5th November, 2003, the petitioner had already been released by that date. The State was directed, therefore, to file affidavit of the concerned officers as to whether there are any such other matters wherein such deficiencies had been noted. The Additional Registrar, Criminal Department, High Court was also directed to file an affidavit. On the subsequent date i.e. on 17-11-2003 the Additional Senior Jailor, Yerawada Central Prison, Pune filed his affidavit. Similarly, an affidavit was filed by Intelligence Officer, Narcotics Control Bureau. One more affidavit was filed by the Asstt. Registrar, High Court, Appellate Side, Bombay. On behalf of the High Court administration it was pointed out that on the file of Appeal No. 484 of 1995 it was clearly placed in writing that the original accused No. 1 was in jail. This is as per the practice. The cause list of the date when the matter was listed was also shown to us and it indicated in clear words that the original accused No. 1 was in jail. It was also pointed out that the writ containing the operative order passed by the High Court was sent down to the Sessions Court, Mumbai at the earliest. This affidavit indicated that perhaps there was delay on the part of the Registrar (Criminal Department), Sessions Court, Mumbai in forwarding the acquittal order

to the Jailor. The learned Counsel for the petitioner, therefore, sought to amend the petition and she added Registrar (Criminal Department), Sessions Court, Mumbai as Respondent No. 7 and notice was issued to him.

8. When the matter reached on the subsequent date i.e. on 27-11-2003 one more affidavit of Mrs. S. P. Patange, First Additional Registrar (Civil) and I/c Registrar (Sessions), City Civil and Sessions Court, Bombay was filed. From all these affidavits it was clear that the writ conveying High Court's operative order was received by the Sessions Court on 21-12-2000. The then Principal Judge of the Sessions Court is reported to have signed it in acknowledgment on 26-12-2000. Thus it is seen that this was the first occasion when petitioner ought to have been released and the Sessions Court ought to have sent the direction to the jail concerned. It is seen from the affidavit of Mr. Bhailume, Addl. Senior Jailor, Yerawada Central Prison, Pune, that the petitioner had been taken in custody in appeal on 21-8-1998 and the Sessions Court had informed the prison authorities that the petitioner was to be kept in jail as an undertrial prisoner until further orders. This is also accepted in the affidavit of Mrs. Patange, who is the present In-charge of the relevant section of the Sessions Court. Thus the authorities of Sessions Court knew that the petitioner was in custody and, therefore, on receiving the order of dismissal of the appeal the Sessions Court ought to have moved further to release the petitioner.

9. We were told that initially it is the writ of the High Court which was received by the Sessions Court in December, 2000 as seen above, but the Sessions Court did not move further. A copy of judgment was received by the Sessions Court on 23-8-2001. That was the second occasion when the Sessions Court could have moved further. From the affidavit of the Jailor it is seen that the petitioner herself had sent an application dated 16-6-2001 seeking an early hearing and then another letter through Jail Authorities dated 31-10-2002 informing that the petitioner wanted to be produced before the Court. That was much after the appeal was dismissed. These were two more occasions when the Sessions Court ought to have moved further. Hence, by our order passed on 27-11-2003 the Sessions Registrar was asked to file further affidavit as to who were the officers in-charge of the concerned Registers in December 2000, August 2001 and October 2002. She was also asked to produce the relevant Registers and the letter from the Yerawada Central Prison, Pune received in the Sessions Court.

10. On the next date i.e. on 5-12-2003 the Registers from the Sessions Court were produced. It was seen that no effort was taken to look into the trial Court register which would have indicated that the petitioner was in custody in December, 2000. One Mr. M.P. Rasal was Registrar (Sessions) and there were other Assistant Registrars viz. Mr. G.H. Makandar, (who has since expired), Mr. W. J. Remedies and Mr. V.S. Narvekar. Thereafter when we looked into the further affidavit of Mrs. Patange, it was seen that in June 2001 the Prisoner had sent one letter through Jailor. It mentioned the case number of the Sessions Case and the sections of the NDPS Act. The letter stated that the person concerned was

acquitted by the trial Court and the appeal was pending and the appeal be heard at the earliest. This letter was replied by one Mr. V.S. Narvekar, Asstt. Registrar, who has signed it for the Registrar, City Sessions Court, Gr. Bombay on 5th July 2001. This reply of Mr. V.S. Narvekar is a most casual reply. It states that the matter is assigned to Court No. 24 and is sent for trial. Now when one sees the letter sent by the detenu as stated above, it clearly mentions the NDPS sections in that letter. If Mr. V.S. Narvekar was to read this letter carefully he would have understood that it was concerning the NDPS case. Yet it is apparent that he has gone only by Sessions Case No. 16/1991 and not by NDPS Case No. 16/1991 and reported that the case was still pending and was sent for trial.

11. Then we were shown a further letter dated 31-10-2002 sent by the Superintendent, Yerawada Central Prison, Pune which made a reference to the Sessions Court earlier reply dated 5th July 2001. The letter stated that the detenu was pressing hard to produce her before the Court. There is endorsement on this letter. One Mr. S.S. Waydande, Deputy Registrar has made an endorsement on it but no reply is sent thereto.

12. Thus, from what is seen above, as far as record of the appeal was concerned, it was clearly mentioned on the paper-book that the original accused No. 1 was in jail. The cause list of the High Court also clearly mentions that the original accused No. 1 was in jail. In as much as the appeal, was against acquittal, all that the High Court was expected to decide was whether the appeal was to be entertained or not and accordingly having found no merit, the then Division Bench dismissed the appeal and held that the order of acquittal was justified and confirmed. The High Court administration immediately sent the writ to the Sessions Court accordingly. Thus as far as the High Court administration is concerned, it is difficult to say that there was any error on their part.

13. However, as far as the administration of the Sessions Court, Mumbai, is concerned, it has clearly come on record that when the writ of the High Court was received in December, 2000, if they were only to refer to the relevant register, they would have found that the person concerned was in custody. We were shown the register and we have noted that there are endorsements therein clearly recording that the person concerned was taken in custody in appeal. It has clearly come on the affidavit of Mr. Bhailume as well as Mrs. Patange that the petitioner was taken in custody in the then pending appeal on 21-8-1998 and the Prison Authorities were informed by the Sessions Court that the petitioner was to be kept in jail as an undertrial prisoner. Thus, in December 2000 itself the officers of the Sessions Court ought to have moved and informed the Jail Authorities to release the detenu, but they did not inform the jail authorities accordingly. A copy of the judgment of the High Court was received by the Sessions Court on 23-8-2001. That time also the Sessions Court did not inform the jail authorities to release the petitioner.

14. The Sessions Court was provided one more opportunity when a letter was received as stated above on 16-6-2001 from the detenu mentioning specific

sections of the NDPS Act and her case number. The letter clearly mentions that she has been acquitted in trial, she has been further taken in custody in appeal and, therefore, her matter be heard at the earliest. As stated above, in spite of clear reference to the Sessions Case number and the sections of the NDPS Act, the then Asstt. Registrar Mr. V.S. Narvekar has sent a letter on 5th July 2001 stating that her Sessions Case No. 16/91 was assigned to Court No. 24 and was sent for trial. If Mr. V.S. Narvekar was to look into the letter sent by the detenu carefully he would have clearly understood that it was a NDPS Case. The letter had clearly stated that the detenu was acquitted and had been arrested in appeal. So surely he would have understood that the trial was over and that her appeal was pending as per her understanding. At that point of time an opportunity was available for the Sessions Court to move but nothing was done as expected. As stated above, there was one more opportunity when the jail authorities wrote to the Sessions Court on 31-10-2002 informing that the detenu was pressing hard to produce her before the Court. The letter of the jail authorities referred to the case number and Sessions Court's earlier reply dated 5-7-2001 bearing their outward No. 14213. On this letter of the jail authorities we find an endorsement by one Mr. S.S. Waydande submitted to the Hon'ble Court concerned. No efforts are obviously made to look into the letter in all seriousness. Ultimately it is only when the petition was filed in the High Court and that to after two orders passed by this Court that the detenu came to be released. Thus, prima facie, the submission of Ms. Kaushik appearing for the petitioner has to be accepted that right from the date of the order passed on 13-12-2000 by this Court until the release of the petitioner on 13-9-2003 there is practically no explanation or no defence on the part of the authorities of the State as to why the petitioner was kept in detention. Petitioner's detention from 13-12-2000 to 13-9-2003, which is clearly 2 years and 9 months, is without any authority of law and is illegal. There is no doubt that the State will have to compensate the petitioner for this illegal detention.

15. Ms. Kaushik submitted that even during the prior period i.e. when the appeal was admitted and the petitioner was taken in custody, that time also normally all such accused are released on bail on their giving appropriate surety. In the present case, however, unfortunately it so appears that the petitioner did not apply for any bail at all. In our view although some appropriate direction with respect to the orders u/s 390 of the Code of Criminal Procedure will have to be passed, as of now it is difficult to say that this earlier period of remaining in custody amounted to any illegal detention. The petitioner had every right to be released. However, she did not avail of it by making any application. It is undoubtedly because of her ignorance of law or her educational deficiencies and various other defects. An appropriate directions for the benefit of such detenu will therefore have to be given but until then as of now the authorities of the State cannot be held responsible for the detention during this earlier period.

16. As far as the family circumstances and loss of earning of the petitioner, we had asked the learned counsel for the petitioner to put it on affidavit. The

petitioner has affirmed an affidavit of 15-12-2003. She has stated therein that she is born on 17th May, 1947 in Chennai and was educated in Tamil medium upto 10th Standard. Mrs. Pai, the learned APP, points out that from the record of the earlier proceedings it is seen that petitioner had informed that she had studied upto 5th Standard in Tamil. In this affidavit the petitioner has stated that she got married to an Advocate by name Shri Bangar swamy in 1970 and she has a son from this marriage born on 9-6-1978. Her husband died in the year 1988 and thereafter she joined one Club known as Raja Recreation Centre and earned approximately Rs. 2,500/- per month and looked after her son. She has been arrested in the Sessions Case on 29-10-1990. Thereafter she was released on 23-11-1993 on her acquittal. She has not provided any particulars about her occupation thereafter. She was rearrested on 13-8-1998 in Chennai and she was in custody until her release on 13-9-2003 under the orders of this Court. Thus, when the petitioner continued to remain in illegal detention from 13-12-2000 onwards, her son was about 22 years of age. It is for 2 years and 9 months thereafter that she has remained in illegal detention. She has further stated that at the time of her arrest earlier in 1990 her son was about 12 years of age and could not complete his schooling. He is presently working as a daily-wage earning electrician and she is dependent on him.

17. Mrs. Pai, the learned APP appearing for the State, brought it to our notice that at the time of earlier proceedings under the NDPS Act the petitioner had stated that she was a housewife. She was, therefore, not very sure as to whether the petitioner did earn any such amount as claimed by the petitioner sometimes much earlier until her first arrest in 1990.

18. Ms. Kaushik, the learned counsel appearing for the petitioner, drew our attention to various judgments passed by the Apex Court as well as by different Division Benches of this Court. Firstly, she referred to a judgment in the case of Rudul Sah v. State of Bihar and Anr. reported in 1983 Cri L.J. 1644. In this judgment where the petitioner had been detained illegally for over 14 years, the Supreme Court held that petitioner may, if so advised, file a suit to recover damages from the State Government which should be the remedy to be availed of after leading full and proper evidence. At the same time Supreme Court also held that the State must repair the damage done by its officers to the petitioner's right. It was as an interim measure that the Court awarded Rs. 30,000/- as stated in paragraph 11 of that judgment and also observed that this would not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. As against the aforesaid decision, much later in the case of Mohd. Zahid Vs. The Govt. of NCT of Delhi, for an illegal continued detention of two days the Apex Court directed the Delhi Government to pay a sum of Rs. 50,000/- as compensation.

19. Ms. Kaushik then referred to the leading judgment in the case of D.K. Basu Vs. State of West Bengal, which has laid down various rights of the prisoners and has also provided for compensation in case of such wrongful detention. In

paragraph 42A, the judgment referred to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR), which provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". The Court noted that Government of India at the time of its ratification of the International Covenant on Civil and Political Rights had made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. The Court, however, noted that this reservation had now lost its relevance in view of the law laid down by the Apex Court in a number of cases awarding compensation it referred to the various judgments in that behalf. Thus, it is clear that the Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. In paragraph 55 of that judgment the Apex Court summed up the various propositions in that behalf. The Court laid down that this claim for compensation was based on the principle of strict liability and that in the assessment of the compensation the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender. This compensation is also without prejudice to any other action like civil suit for damages and ultimately the quantum of compensation will depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf.

20. Ms. Kaushik referred to two judgments of this Court also. Firstly one in the case of Chandrabhan Dhengle Vs. Indarbai Dhengle and others, wherein in the event of illegal detention for a period of 63 days the State Government was directed to pay Rs. 50,000/- and in another unreported judgment in the case of Arif Moinuddin Shaikh v. The Ld. Secretary, State of Maharashtra and Ors. in Criminal Contempt Petition No. 17 of 2002 decided on 14-1-2003 (unreported of Parkar and Smt. Tahilramani, JJ.). This was a case of the illegal detention of four days and compensation of Rs. 10,000/- was awarded.

21. In the circumstances, there are three following questions which we have to determine :--

I. What should be the appropriate compensation by way of an interim measure until appropriate suit is filed in the present case?

II. Whether there should be any direction to the Principal Judge, City Civil and Sessions Court. Gr. Bombay to take appropriate action against the officials concerned and to recover a part of the compensation amount from them, if held guilty?

III. Whether any further guide-lines with respect to Section 390 of the Code of Criminal Procedure are required?

22. Now as far as the first question is concerned, the petitioner has stated on her affidavit that earlier sometimes prior to her first arrest she was earning an amount of Rs. 2,500/- per month. By the time she was put into this illegal

detention from December, 2000 to September, 2003 may be her son was around 22 years of age but she had to look after him in a city like Chennai. We have to note that her husband was an Advocate and had expired in the year 1988. Some minimum standard of living has to be assumed for such a lady with one child. Her statement, therefore, that in the year 1990 she was earning Rs. 2,500/- per month cannot be brushed aside. Her contribution to her family consisting of herself and her son cannot be considered to be of a monetary value of less than Rs. 2,500/- per month, in any case assuming she was doing household duties. The household duties also have some value and they cannot be ignored. On this footing for this period of 2 years and 9 months the actual loss would be in the range of Rs. 82,500/-. What is further to be noted is that she has been put to illegal detention. This has been done not by authorities of the Government but by the authorities of the Court which are dispensing justice and it is their administration which has functioned absolutely in a callous manner to say the least. The Sessions Court had received the Writ of the High Court in December, 2000. In August 2001 the Sessions Court had received the Judgment of the High Court. Thereafter a letter written by the petitioner through jail was received in June 2001 and it was replied in the most bureaucratic manner on 5-7-2001. On the top of it, once again in October, 2002 when the Superintendent of Yerawada Central Prison, Pune sent a letter to the Sessions Court, no reply was sent. This has resulted into deprivation of her liberty for a period of not less than 2 years and 9 months. This is not a small period. May be that the petitioner is a person belonging to a lower middle class family but she has got to be adequately compensated for the loss she has suffered.

23. We asked Mrs. Pai, the learned APP, as to what should be an appropriate amount. She has, however, expressed a difficulty in making a positive statement and left it to the Court to decide the appropriate amount. Ms. Kaushik is undoubtedly pressing for an amount of Rs. 5 lacs. However, considering the totality of the circumstances, noting that this an interim measure and that this is not a punitive compensation, in our view, an amount of Rs. 2,00,000/- would be an appropriate amount to be paid by the State Government by way compensation as of now. This will be our order as far as the first question is concerned. The Government of Maharashtra is, therefore, directed to pay a sum of Rs. 2,00,000/- to the petitioner within two months and in any case by end of February, 2004. The cheque of this payment will be handed over to the Superintendent of Yerawada Central Prison, Pune and he will, in turn, write a letter to the petitioner to attend at the Jail in Yerawada for her identification and then hand over the cheque to her.

24. As far as the dereliction in duties on the part of the officers of the Sessions Court is concerned, we have mentioned above the names of the persons concerned. The Principal Judge of the City Civil and Sessions Court, Mumbai will hold an inquiry in this affair and with respect to the misconduct, if any, on the part of the officers concerned. This will be with reference to the receipt of the writ of the High Court in December 2000 and the inaction thereafter, the receipt

of the judgment of the High Court in August 2001 and the inaction thereafter, receipt of the letter of the petitioner in June 2001 and the callous reply to that letter on 5-7-2001 and lastly the receipt of the subsequent letter of the Superintendent, Yerawada Central Prison. Pune dated 31-10-2002 which the Sessions Court did not find it appropriate even to reply. We are told that one of the officers concerned, one Mr. Makandar has passed away in the meanwhile. Obviously, no inquiry will be held against him. However, the Principal Judge will cause an inquiry to be held against all the officers concerned including those who are retired and if necessary pass appropriate order which may have an effect on their pension. All these observations do not mean that in our view the officers concerned are guilty. We have placed our prima facie observations on record. The Principal Judge will initially cause an appropriate preliminary inquiry to be held by a Judge of his Court under the relevant service rules and on receiving the report will direct a full-fledged inquiry to be held against the officers concerned. It will be open to the State Government if it is so inclined to represent to the Principal Judge that in the event any officers are held guilty appropriate amount from the aforesaid amount of Rs. 2,00,000/- be recovered from them. On the State Government making such representation it will be for the Principal Judge to pass appropriate order.

25. (i) Then we come to the last question with respect to the appropriate directions u/s 390 of the Code of Criminal Procedure. This section reads as follows :--

"390. Arrest of accused in appeal from acquittal. -- When an appeal is presented u/s 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail."

Now as the section reads, in an appeal from acquittal when an accused is arrested and brought before the subordinate Court it is for the accused to apply for bail. It is quite possible that out of lack of adequate knowledge or financial difficulties or various reasons that in spite of an acquittal in his favour an accused may not apply for bail. Some such thing appears to have happened in the present case. In our view in all such matters where an accused is produced before the subordinate Court after his rearrest the Judge concerned ought to inform the accused that he has a right to apply for bail. Thereafter it will be for the accused to make the appropriate application.

(ii) We are told that the consequence of any such bail application or even non-presentation thereof is reported by the Judge concerned to the High Court subsequently. Thus the communication reaches the High Court as to whether the accused has been granted bail or the same has been refused. In our view, once such communication is received from the subordinate Court the Administration of the High Court must find out as to whether the accused has been granted bail or has been denied it and whether he is continued in custody. In all such matters it

would be desirable that the High Court Administration places the paper of the concerned appeal before the appropriate Court with a note that after the arrest of the accused subsequent to the admission of the appeal against the acquittal, accused has been taken in custody. On noting this development it will be for the concerned Court thereafter to pass appropriate order. That will be one more opportunity to see to it that unnecessary retaining the accused in custody in spite of acquittal by the trial Court is avoided and the person concerned can be released on a bond.

(iii) These two directions will take care of such situation which has arisen in the present matter. This is only to see to it that there is no further occurrence of such situation which will most unfortunate to say the least.

26(i). We further direct that a copy of the writ containing operative part of the order passed by the High Court ought to be sent to the person in custody wherever he or she has not engaged any advocate of their own and are represented by a Court appointed advocate. This to be done forthwith when the writ is sent down to the concerned subordinate Court.

(ii) Similarly in all cases where the person is in custody a copy of the judgment will also be sent to him/her free of cost wherever such a person is not represented by an advocate of his or her choice. The copy of the judgment will be sent at an outer side within three months from the date, it is received by the office.

27. As far as our query as to whether any such other persons are in custody in appeals against acquittal, the Inspector General of Police has filed an affidavit stating that no such persons are in custody.

28. In our view the aforesaid order is only an attempt to mitigate the unfortunate suffering of the petitioner and to avoid such situation in future. The petition is disposed of in the aforesaid terms. The State will pay the cost of Rs. 10,000/- for this writ petition.

29. Before we conclude we record our appreciation for efforts taken by Ms. Sharmila Kaushik for an unfortunate detenu. It is only the efforts like these which strengthen the faith of the citizens in the legal system.

30. A copy of this order to be given to the Registrar General of this Court for him to follow it up with the Principal Judge of the City Civil and Sessions Court, Mumbai with a request to him to report back the further events to Hon"ble the Chief Justice on the Administrative Side. The High Court Administration will make available copies of this petition and the affidavits therein to the Principal Judge, City Civil and Sessions Court, Mumbai, if required by him.

31. A copy of this order duly authenticated by the Personal Secretary of this Court be made available to the parties.