

(2010) 03 BOM CK 0099

In the Bombay High Court

Case No : Criminal Application No. 3878 of 2009

Sadhwi Pragya Singh Thakur

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Constitution of India, 1950 — Article 22, 22(1), 22(1)(2), 22(2)
Criminal Procedure Code, 1973 (CrPC) — Section 160, 160(1), 167, 167(2), 41
Customs Act, 1962 — Section 107, 108
Explosive Substances Act, 1908 — Section 3, 4, 5
Maharashtra Control of Organised Crime Act, 1999 — Section 21(2)
Penal Code, 1860 (IPC) — Section 153(A), 302, 307, 324, 427
Unlawful Activities (Prevention) Act, 1967 — Section 18, 23, 6

Citation : (2010) CriLJ 3267 : (2011) 6 RCR(Criminal) 1272

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : Mahesh Jethmalani, instructed by Ganesh Sovani, for the Appellant;
Rohini Salian, Special P.P., Amit Desai and P.A. Pol, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—Heard learned Counsel for the parties.

2. The Applicant is original accused No. 1 in MCOC Case No. 1 of 2009 on the file of Special Court-1, MCOC, Greater Bombay. She applied for bail before the Special Judge by moving an application being Bail Application No. 2 of 2009. The bail was sought under the provisions of Section 21(2)(b) of the Maharashtra Control of Organised Crimes Act (for short "the MCOCA"). The bail was also sought u/s 167(2) of the Code of Criminal Procedure, 1973. That application having been rejected by the order dated 9/07/2009, the applicant-original accused No. 1 has approached this Court seeking bail.

3. Before setting out the grounds on which the relief is sought, it would be worthwhile setting out a few facts.

4. Bail Application No. 2 of 2009, copy of which is annexed at page-89/98 of the paper-book was filed before the trial court on 14/01/2009. It is the case of the applicant-Sadhvi Pragyasingh Thakur that she is formerly a resident of District-Bhind, State of Madhya Pradesh. She has renounced the material world and became a Sadhvi on/or about 31/01/2007, pursuant to a religious ceremony conducted at Prayag (Allhabad), State of Uttar Pradesh.

5. It is her case that thereafter she has been residing at Jabalpur in the State of Madhya Pradesh in a rented accommodation. She was residing in this accommodation which belongs to one Agarwal family. She has been conducting her religious and spiritual activities from that place with the help of her disciples, associates etc.

6. A bomb blast took place within the jurisdiction of Azad Nagar Police Station at Malegaon on 29/09/2008. Six persons died and dozens were injured. A crime was registered initially against unknown persons (C.R. No. I/130 of 2008) under Sections 302, 307, 324, 427, 153A of IPC and Sections 3, 4 and 5 of The Explosive Substances Act, so also, Sections 6, 18 and 23 of The Unlawful Activities Prevention Act, 1967. The investigations in this C.R. were initially carried out by the local police station in Malegaon. Subsequently, the investigation of this crime was entrusted to the Anti Terrorism Squad, Mumbai ("ATS" for short). Therefore, the C.R. was renumbered as C.R. No. I-18 of 2008.

7. It is the case of the applicant that the allegations in the C.R. are that a vehicle (two wheeler ? LML Freedom) was used by the perpetrators of the crime. This vehicle was depicting the number plate bearing registration number MH-15-P-4275. However, this vehicle actually bears registration number GJ-5-JR-1920. It is the prosecution's case that both engine and Chassis numbers were tampered with beyond recognition. However, with the help of advanced technology and scientific aid, the prosecution was able to collect the original registration number. It is alleged that the details revealed that the said vehicle belonged to the applicant. The applicant is therefore arrayed as accused No. 1 in the crime.

8. In paragraph-7 of the application for bail filed in the trial court, the applicant states as under:

That, the applicant was officially arrested on 23/10/2008 by the Opponent ATS and was produced before the Learned Chief Judicial Magistrate, Nasik on 24.10.2008 and the police custody remand of the applicant along with two other accused was sought by the investigation agency which was granted till 03/11/2008. Marked and annexed hereto as "Exhibit-A" is the copy of the remand application dated 24/10/2008 filed by the ATS before the learned Nasik court.

9. It is thereafter alleged that when the applicant was produced before the learned Chief Judicial Magistrate, Nasik she had no opportunity to engage services of a lawyer. She was informed by the ATS about her right to avail the

same. Moreover, she was extremely frightened due to the treatment meted out to her by the ATS. She could not muster enough courage to say anything. She was not aware of legal formalities and therefore when she was again produced seeking fresh police custody remand on 3/11/2008 that she could engage the services of an advocate. The said advocate brought out many things on record and after her brief dialogue and discussion with the advocate, it is her case that she was in custody of the ATS right from 10/10/2008 when she was taken from Surat alongwith her associate and illegally detained at ATS Office, Kalachowki, Mumbai till 24/10/2008, whereafter, she was taken to Nasik for the first time.

10. The above are the allegations in paragraph-9 and 10 of her application for bail filed in the trial court. Thereafter, in paragraph-11 she lists out non-compliance with Section 50A of CrPC and states that there have been other lapses and she has sought an enquiry into the same. She states that the Chief Judicial Magistrate, Nashik was pleased to transmit the applicant to judicial custody until 17/11/2008. She was then sent to Byculla Jail, Mumbai and on the following day i.e. on 18/11/2008 her Narco Analysis Test was to be conducted in Mumbai. Thereafter, her judicial custody was extended until 29/11/2008 and a remand application was made in that behalf on 17/11/2008 by the ATS. It is alleged that on 17/11/2008 the applicant placed eight page detailed affidavit on record of the trial court narrating the nature, extent and enormity of ill-treatment, torture by ATS when she was detained from 11/10/2008 to 23/10/2008.

11. I am not concerned with the allegations of ill-treatment and harrasment, so also, alleged torture, inasmuch as, I am informed that a separate application in that behalf is made and is presently pending before the Human Rights Commission.

12. It is alleged that on/or about 20/11/2008, the ATS invoked the provisions of MCOCA against all the accused alongwith the applicant. They were brought from Nashik Jail to Mumbai on 23/11/2008. It is stated that the ATS sought police custody remand of the applicant and some other accused, but, this request was rejected by the trial court and the applicant is remanded to judicial custody. Her judicial custody is being extended from time to time.

13. In paragraphs-17 to 21 of the application for bail filed in the trial court, the following is alleged:

17. That, thereafter, the applicant's magisterial custody is being extended from time to time and when she was produced on 05.01.2009, before the MCOCA Special Court, the applicant's judicial custody has been extended till 20/01/2009.

18. That, as the applicant has been picked by the Opponent ATS from 10/10/2008, on the guise of interrogating her in connection with her vehicle, etc. and was told that she would be let off, once her interrogation was over at the hands of higher ups of the ATS officials.

19. That, the applicant has been in the custody of ATS, since 10/10/2008. No remand for custody was obtained by the ATS from 10/10/2008 to 24/10/2008. The applicant was therefore in the custody of the ATS without authority of law. Manifestly, the applicant was in unlawful custody/illegal detention from 10th to 24th October, 2008.

20. That, however, since 10/10/2008 the applicant had been lodged at ATS Kalachowkie office and she was officially shown to have arrested on 23/10/2008 and was produced for the remand for the first time before the Ld. CJM, Nasik on 24/10/2008.

21. That, the applicant has briefly narrated the manner as to when and how she was picked at Surat, Gujrat on 10/10/2008 by the ATS in her three page application submitted through her advocate on 3/11/2008 at the first available opportunity after engaging the advocate and also at length in her extensive affidavit dated 17/11/2008 that was submitted before the learned CJM, Nasik.

14. It is her case that the ATS has not denied that she was illegally detained from 10/10/2008 till 24/10/2008 and her further case that she sought legal assistance, which was given to her for the first time in November, 2008. She states that the ATS has denied specifically in writing, the allegations levelled in the applications dated 3/11/2008 and in the affidavit dated 17/11/2008.

15. It is her case that going by the provisions of Section 21(2)(b) of the MCOCA and it being the 95th day from the date, when she was taken in custody by the ATS on 10/10/2008, her further detention is impermissible in law. Thereafter, she is entitled to be released on bail by default of the Investigating Agency in not filing a report as is envisaged by Criminal Procedure Code. Therefore, Section 167(2) as applicable to a case under MCOCA and she be enlarged on bail on such terms as the trial court deems fit and proper.

16. As is stated, this application was filed on 14/01/2009.

17. Mr. Mohan Kulkarni, Assistant Commissioner of Police, ATS, Mumbai filed reply to this application on 5/02/2009. This reply was filed after the ATS came to be served with a copy of the application and the annexures thereto.

18. It is stated that the charge-sheet has been filed on 20/01/2009. It is the case of the prosecution that the applicant-accused was arrested on 23/10/2008. She was produced before the Chief Judicial Magistrate, Nashik in ATS C.R. No. 18 of 2008 on 24/01/2008. The specific case of the prosecution is that the charge-sheet came to be filed on the 89th day from the first date of remand. Therefore, the same is within the period provided in law.

19. It is the case of the prosecution that on 29/09/2008 at about 21.35 hrs, there was a bomb explosion opposite Shakeel Goods Transport Company between Anjum Chowk and Bhiku Chowk, Malegaon. The said blast took place on account of an explosive device fitted in LM-Freedom Motor Cycle, as a result of which 6 persons were killed. About 101 persons received injuries of varied

degrees. It is the prosecution's case that since it was the holy month of Ramzan and on 30/09/2008, the holy festival of Hindus namely Navratri Utsav was to commence, the conspirators caused a bomb blast with an apparent intent to terrorize the people, to cause loss of life and property and disruption of supplies and services essential to the life, to create communal rift and to endanger internal security of the State. The experts of the Forensic Science Laboratory (FSL), Nashik opined that the exhibits collected from the place of offence contained cyclonite (RDX) and ammonium nitrate and which are also used as high explosives. The investigations also revealed that the registration number of the vehicle used in the crime is bogus. The Chassis and Registration number of the motor cycle were found to be erased.

20. The original engine number was traced. It was successfully restored by the FSL, Nasik. The further investigations revealed the original registration number reproduced herein above. The registration of the vehicle was found in the name of the applicant-accused No. 1 and then residing in Surat in the State of Gujarat. The details of the investigation and the role of the applicant in the crime have been highlighted in paragraphs-5 and 6 of the affidavit-in-reply.

21. The reply of the prosecution to paragraphs-8 and 10 of the bail application filed in the trial court is that the applicant was arrested on 23/10/2008. She was fully informed about her rights in law and her family members were not informed about her arrest because she on her own stated that she has renounced family ties. All procedural provisions were complied with and she was produced before the Chief Judicial Magistrate, Nasik on 24/10/2008 and her police custody remand was sought. The prosecution specifically denied that the applicant was in the custody of ATS at Kalachowki Office from 10/10/2008 to 24/10/2008. It is denied that they lodged her in Kalachowki Office of ATS. It is the prosecution's case that the applicant was asked to attend the ATS office for inquiry and she was allowed to go. It is stated by the prosecution that the applicant is making false allegations against the officers of ATS and this is nothing but an after thought and concocted story. It is stated that the applicant accused was arrested and produced as above and from the first date of remand upto 20/01/2009, only 89 days have been completed and on the 89th day, charge-sheet has been filed. Therefore, there is no question of the applicant being released on bail for default of the prosecution for allegedly not filing the charge-sheet as contemplated u/s 167(2) CrPC.

22. Although, this was the case in the bail application and on affidavit, so also, considering the response of the prosecution as above, it was expected that the application for bail before the trial court would be argued on this basis. However before the trial court, the applicant argued that she was in custody of ATS from 10/10/2008 and contrary to Section 167 CrPC and Article 22 of the Constitution of India, she was detained, there is no remand sought until 24/10/2008, there is difference between arrest and custody. Therefore, when custody commences, from the moment the accused is called to the police station, the period of 90

days must be calculated from such date. When such is the fact situation, then, the prosecution's version should not be accepted. Several decisions of the Hon'ble Supreme Court were cited.

23. On the other hand, the Special Public Prosecutor argued on the basis of the stand taken by the prosecution in the reply.

24. On the basis of this material, the trial court made the following observations:

28. First the admitted positions. In her application, the applicant has not given details of how she came to Mumbai and about the alleged ill-treatment that was mitigated to her by the police when was allegedly illegally detained from 11/10/2008 upto 23/10/2008. She has only stated that that is narrated in her 8 page detailed affidavit dated 17/11/2008. Similarly, in the application she has not mentioned about being admitted in the two hospitals, which fact she has narrated in her affidavit dated 17/11/2008 before the CJM, Nashik. Her first complaint in time is her application dated 3/11/2008 given to the CJM, Nashik in which she alleged in paragraph-2 that she was picked up by ATS men from Surat, Gujarat on 10/10/2008 and brought to Mumbai and was illegally detained at Kalachowki ATS office, Mumbai. As against this, in her affidavit dated 17/11/2008 in paragraph 9, she specifically admits that she agreed to accompany the ATS team to Mumbai alongwith her disciple Bhimbhai Pasricha she left Surat with the ATS Officer at 5.15 p.m. and reached Bombay on the very night of 10/10/2008 and was taken straight away to the ATS office. In this connection, the station diary entry reveals that she reached the ATS office at 1.40 hrs on 11/10/2008, i.e. in the night of 10/10/2008. Hence, there is no question of producing the case diary of 10/10/2008 about which the applicant's advocates contended.

29. It is also an admitted position from the side of the applicant that on 15/10/2008, she and her disciple were kept in rooms No. 315 and 314 of Hotel Rajdoot, on doubt at the behest of the ATS and on that day itself she was admitted in the Shushrusha Hospital at Dadar. The discharge card of that hospital shows that she was admitted there from 15/10/2008 upto 17/10/2008. The papers of investigation annexed with the discharge card shows several investigations including C.T. Scan (brain), USG of abdomen and pelvis, C.T. Scan of chest, abdomen and pelvis and ECG on 15th and 16th. It is also admitted position that she was admitted in the Vaze Hospital where as per her own contention in paragraph-17 of the Affidavit, she stayed for 2-3 days. In the same paragraph she contended that no female police constable was by her side either in Hotel Rajdoot or in either of the two hospitals.

30. It is also an admitted position that her disciple Bhimbhai Pasricha accompanied her from Surat to Mumbai and was with her continuously upto 13/10/2008. It is her contention that on 14/10/2008 she was taken out for examination at a far away place from ATS and on that day she did not meet him. It is an admitted position that on 15/10/2008, she and Bhimbhai Pasricha was

taken by the ATS vehicle to Hotel Rajdoot and thereafter, when she was admitted in the Shurusha Hospital, Bhimbhai Pasricha came there and filled her hospital admission forms, etc. She has however mentioned that after some time Bhimbhai Pasricha left the hospital alongwith the ATS men and thereafter, she had no contact with him.

25. The trial court therefore concluded that the applicant has not disputed that firstly her disciple Bhimbhai Pasricha was also in the custody of the ATS, and secondly she and he were not restrained from going anywhere or contacting any person. There is not a single statement or allegation in the application made and affidavit filed (dated 3rd November and 17th November, 2008) that she and Bhimbhai were directed not to leave Mumbai without intimation or orders of ATS. The rest of the version is with regard to her ill-treatment, with which I am not concerned. The trial court further observed that it is not the applicant's case that Bhimbhai was in the custody of the police or that he was confined or not allowed to move freely or telephone anybody. This damages her case of illegal detention from 10/10/2008 till 15/10/2008. In paragraph-52 of the trial court's order, reference is made to the treatment in private hospitals between 15/10/2008 to 20/10/2008. Therefore, the trial court concluded that she has failed to make out a case that she was in custody of the police from 10/10/2008 to 22/10/2008. The trial court, then refers to the original station diaries in paragraph-34 of the impugned order and subsequently deals with the decisions cited. Finally, the trial court refers to the legal provisions in paragraph-42 of the impugned order and concludes that the application is liable to be rejected. It is this conclusion of the trial court which is challenged and the bail application is argued before me on this basis.

26. Shri. Jethmalani, learned Senior Counsel appearing on behalf of the applicant submitted that the application for bail is being pressed on three grounds, firstly, the applicant was in illegal custody from 10/10/2008 to 23/10/2008 for a total period of 13 days. The prosecution may urge that the applicant was arrested and produced before the concerned Magistrate on 24/10/2008, but the facts, as set out would demonstrate that the applicant was called from Jabalpur to Surat. At Surat, Shri. Salvi, officer of ATS came and questioned her and thereafter directed her to go to the office of ATS at Kalachowkie, Mumbai. The applicant had to accompany the said officer and that is how she came to Mumbai. At Mumbai also, the applicant was not free to move every where as is being falsely alleged. The applicant was in illegal custody and that is evident from the fact that she was not allowed to reside anywhere, except, within the vicinity or neighbourhood of the ATS office. The ATS had complete information and knowledge about the applicant and her associate/disciple. It was the ATS which directed her to reside in a hotel nearby. Even when the applicant was not well and was admitted to hospital, it is the ATS which was approached and it is only after intimation to them that medical treatment could be administered. Therefore, this is nothing but illegal detention of the applicant contrary to the statutory mandate. Inviting my attention to Sections 41, 44, 46, 57, 60 and Section 167 of the Code of Criminal

Procedure, Shri. Jethmalani submits that this period, where the applicant was detained in custody without authority of law should be taken into account and once that period is taken into account for computation of 90 days period stipulated for filing of the charge-sheet, then, the applicant is entitled to bail.

27. Assuming without admitting that this period cannot be taken into consideration for computing the period of 90 days, then, it is evident that once the applicant is in illegal custody and not produced before the Magistrate within 24 hours from 10/10/2008, then, going by the plain language of Article 22(1)(2) of the Constitution of India, the arrest is wholly illegal and unconstitutional. The only consequence of such unlawful, illegal, so also, unconstitutional arrest, is the release of the applicant on bail. In these circumstances, even on the second ground the applicant is entitled to be released on bail. The third ground on which the bail can be granted to the applicant is that assuming without admitting that she was not in illegal custody, but, arrested on 23/10/2008 as is urged by the prosecution, even, then she was summoned for interrogation and investigation at the ATS office, Mumbai. Inviting my attention to Section 160 of CrPC and particularly the proviso thereto, Shri. Jethmalani submits that a person can be summoned for investigation only after complete compliance is made with the provision. If the person summoned is a woman, then, all the more the proviso has to be adhered. If it is demonstrated that there is violation of Section 160, then, the only consequence that can result from such an action is release of the applicant on bail. The applicant has been summoned without any notice and without adhering to the proviso, she has been interrogated at the ATS office in Mumbai. The proviso does not permit such a course of action in the case of a woman. Assuming that the section applies to an accused and even an accused can be summoned, even then, if there is non-compliance with Section 160 CrPC, the consequence is that the applicant is entitled to be released on bail. Shri. Jethmalani, submits that, all this has been clearly set out in the application and affidavit of the applicant, copy of which is annexed at page-70 of the paper-book. Shri. Jethmalani, has invited my attention to paragraphs-3, 9, 10, 19 and 27 at pages-70 to 72 and 76, so also, page-78 of the paper-book and submits that the stand of the prosecution that the applicant was attending the office of the ATS pursuant to a notice is not at all tenable. It lacks in bonafides. The document purported to be a notice u/s 160 CrPC is suspicious. It is not signed and acknowledged by the applicant. Furthermore, it is in marathi. It is complete fabrication and a cooked up document. In any event, it is violation of the proviso to Section 160 because it does not permit interrogation of a woman at the ATS Headquarters/office. In these circumstances, even on the third ground the applicant is entitled to be enlarged on bail.

28. On facts, Shri. Jethmalani was at pains to point out that there is no substance in the contentions raised by the prosecution before the trial court. There are no details about the local accommodation produced by the prosecution. If the version, that the applicant had on her own put herself up at Sadguru Lodge, then, it was incumbent to produce some proof, but nothing is

forthcoming. This would show that the applicant was not at all free. She was not allowed to go around and move freely as is falsely contended. If she was not a free citizen, then, there is no explanation for P.I. Khanwilkar visiting the hospital in which the applicant was admitted. If the applicant was not in custody, then there was no occasion for the police officer to get in touch with the hospital authorities. Inviting my attention to paragraph-14 and 18 (pages 85 and 86 of the paper-book (report regarding allegations of the violation of Human Rights) Annexure-G, Shri. Jethmalani, submits that if the applicant was only a suspect as is now contended and allowed to reside and move around as per her choice, then, why no details about who incurred her expenses and the hospital where she was lodged are being produced. This is for obvious reason. All this demonstrates that the applicant was in illegal custody. She was detained by the ATS for the aforementioned period. He submits that by production of station diary and relying upon some entries therein, it cannot be said that the applicant was never detained or in custody of the ATS.

29. Lastly, Shri. Jethmalani submits that if the period of illegal detention cannot be taken into account as is urged by relying upon the judgment of the Supreme Court reported in Chaganti Satyanarayana and Others Vs. State of Andhra Pradesh, , then also that judgment is distinguishable on facts. Paragraph-13 of that judgment would demonstrate that the facts before the Supreme Court and this Court are not identical. This is an application u/s 439 CrPC. Before the Supreme Court, there was no controversy about taking into account the period of illegal custody. In any event, if there is no notice u/s 160 CrPC, then, the detention is illegal and unconstitutional. No amount of material now relied upon including the station diary entries will assist the prosecution in rebutting the presumption raised by law. These vital aspects have been ignored by the trial court and hence this Court must allow the instant application and release the applicant on bail.

30. In support of his submissions, Shri. Jethmalani has relied upon the following decisions:

- (i). State of U.P. Vs. Deoman Upadhyaya, .
- (ii). Nandini Satpathy Vs. P.L. Dani and Another, .
- (iii). Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, .
- (iv). Roshan Beevi and Ors. v. Joint Secretary, Govt. of Tamil Nadu and Ors. 1984 Cri.L.J. 134.
- (v). Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, .
- (vi). Sudhakar Hegde and Ors. v. Intelligence Officer of Customs, Mumbai and Anr. Cri. Appln No. 2628/1991 dt. 31/10/1991 (Unreported).
- (vii). Aizaz Hussein M. Sahabbuddin and Anr. v. Asst. Director of Enforcement, Mumbai and Anr. Cri. Appln No. 418 of 1991.dt.27/2/1992 (Unreported).

(viii). Mohammed Yakub Shaikh v. Asst. Collector of Customs, Bombay and Anr. Cri. Appln No. 1503 of 1992 dt. 22/09/1992 (Unreported).

(xi). Barry Saul Bershadsky v. State of Maharashtra and Ors. Cri. Appln No. 3374 of 1992 dt. 12.11.1992 (Unreported).

(x). Suaibo Ibow Casamma Vs. Union of India, .

(xi). Directorate of Enforcement Vs. Deepak Mahajan and another, .

(xii). Jayendragiri Anandgiri Goswami Vs. Narcotics Control Bureau and Another, .

31. On the other hand, Shri. Desai, learned Senior Counsel and Special Public Prosecutor appearing for the State submitted that this application deserves to be dismissed. He submits that the factual aspects cannot be ignored in this case. The application is now argued on the ground that the applicant was arrested on 10/10/2008 and not produced before the nearest Magistrate within 24 hours thereof. Therefore, her continued detention is illegal and unconstitutional. However, essentially the bail is sought u/s 21(2) of MCOCA read with Section 167(2) CrPC. Article 22(2) of the Constitution of India was not in issue at all. The only issue is the manner of interpretation of Section 167(2) CrPC and particularly computation of 90 days period stipulated thereunder.

32. At the outset, Shri. Desai submitted that this Court is not called upon to enter into the merits of the controversy. The bail is not sought on the merits of the matter. However, the prosecution's case is that the applicant is involved in the Malegaon bomb blast. She is seeking bail in default. The consequence of releasing such an accused on bail are serious. This Court is required to uphold not only the statutory mandate but balance the requirement of fair, complete investigation and proper trial. The offences alleged in this case are of grave nature and affect the interest and security of the State. Therefore, before holding that the consequence of the alleged illegal acts are release of the applicant on bail, this Court should satisfy itself as to whether on facts the applicant was indeed arrested or in illegal custody as contended by Shri. Jethmalani. Shri. Desai, submits that violation of Section 160 CrPC does not result in the applicant being released on bail straightaway. The consequences would be otherwise, but, not release on bail. That is not what the statutory provision indicates and provides but it is an interpretation placed by the applicant on the same. That interpretation is not supported by the statutory scheme. In these circumstances, firstly this Court should find out as to whether there is any case made out of the applicant being in arrest or illegal custody from 10/10/2008 to 23/10/2008.

33. Shri. Desai, submits that for that purpose this Court must minutely scrutinize the allegations made in the application for bail. Shri. Desai, submits that in the application, the case is that the applicant was detained at the ATS office, Kalachowkie. There is no case pleaded of detention elsewhere or that the applicant was moved to hospital by the ATS. There is no permission sought to engage any advocate and therefore the grievance that the applicant was not

allowed to get in touch with any Advocate is baseless. Inviting my attention to the copy of the application for bail annexed to this paper-book and reply of the prosecution, Shri. Desai submits that the applicant's story is fully concocted and is totally false. He submits that all acts of the applicant are voluntary. She on her own left Jabalpur and did not immediately reach Surat as is falsely contended. She came to Surat via Ujjain. She was also all throughout accompanied by her disciple. Her statement was recorded at the residence of her disciple, Bhimbhai. If paragraph-10 of the application is perused, it would show that an advocate is engaged by the applicant. There is no affidavit of the disciple supporting the application filed in the trial court, although, he was with the applicant all throughout. The applicant was calling her disciple freely and at her free will. There is no dispute that she stayed at Hotel, Rajdoot. There were two separate rooms and if the story is that she was detained at Kalachowkie, then, it was only for 2 days according to her own case. However, even that is not the true and correct factual position. The applicant was not even under surveillance. She on her own went to hospital and got herself admitted. The ATS and her disciple came half an hour later. If her own story is to be taken, then, she was in hospital for 2-3 days. There is no allegation that she was arrested in the hospital or detained therein. There was no police surveillance. Bhimbhai Pasricha was always with her. Her allegations in paragraphs-17 and 19 are false, because she was never residing with her family. She had renounced her family and worldly ties. Therefore, there was no question of her contacting the family. If her case of illegal arrest and detention in custody is to be accepted, then, she would have had no access to anybody, including her disciple. However, she was freely communicating on her mobile phone. There is no complaint made by her from 3/11/2008 to 14/01/2009 about any violation of constitutional rights or breach of any provisions of Code of Criminal Procedure. Shri. Desai, has invited my attention to the reply of the prosecution, the application for bail in the trial court and also the reply filed in this Court. He submits that paragraph-12 of the reply (page No. 193), paragraph-13 and paragraphs-43 and 45 would show that the officer from ATS had told the applicant that she is not deprived of her liberty. She could contact her father and he can go along with her. She has stayed in the hotel and in the hospital at her own expenses. Further, a notice was given to her before she was called for interrogation. Thus, this is at the most a case, where the applicant was called and questioned by the ATS. Her participation in the questioning was voluntary. She was called during investigation and interrogation of the criminal case. She was free to go and was always going out and away from the office of the ATS. There is no detention. This was a case where the investigations had to be carried out urgently and therefore the summons may not have been immediately issued but the applicant came on her at the ATS office. Section 160 of the CrPC applies even to the case of an accused. That apart, a witness can also be taken into protective custody. In the instant case, the applicant was then a suspect and therefore such a person was to be investigated and interrogated and in all such matters, rights of citizen have to be necessarily balanced with the requirement of free, fair, complete and impartial

investigation of serious crime. It was in public interest that the crime was investigated thoroughly and on emergency basis. In these circumstances, some infraction of the requirement of notice while summoning the applicant would not be enough to enlarge her on bail. That is a consequence which is not borne out from the statutory provisions.

34. Shri. Desai, then, contends that Section 167 of the Criminal Procedure Code, does not empower or permit the Magistrate to inquire or probe into anything prior to arrest and detention in custody. There is no jurisdiction nor power to look into any earlier events. The said provision does not authorise the Magistrate to conduct any fact finding inquiry in the interrogation and investigation. If such prior event is to be taken into account for computing of the period of 90 days, then, serious consequences will follow. Therefore, it is his contention that the antecedent events have not to be considered as they do not confer any indefeasible right to bail. The period of 90 days has to be calculated from the date of arrest and remand. He was at pains to emphasize that Section 167 itself contemplates authorisation of further detention by the Magistrate. Therefore, unless the person is produced before the Magistrate, the authorisation of the Magistrate in terms of the statutory provisions will not come into play. Therefore, prior events have no relevance at all. The view taken in the case of Chaganti Satyanarayanan (*supra*) by the Hon'ble Supreme Court, which has been consistently followed, is binding upon this Court. Therefore, assuming that the applicant has been arrested by the ATS on 10/10/2008 itself, that does not mean that she will be entitled to be released on bail by virtue of Section 167 of the Code of Criminal Procedure.

35. Shri. Desai's principle contention is that the applicant was not arrested at all. He submits that for Article 22(1)(2) to apply it would be necessary to establish and prove that the applicant is arrested. In this case, if Section 57 of the CrPC is perused together with all prior statutory provisions, it is clear that the applicant was not arrested. She was not named in the FIR. Shri. Desai, strenuously contended that arrest may amount to custody but, custody is not necessarily arrest. Therefore, by the applicant being summoned to the police station/ATS office at Kalachowkie is not something which could be said to be taking her into custody. He submits that the words "arrest" and "detention in custody" appearing in Article 22 of the Constitution of India should be read conjunctively. "Arrest" is a concept recognised by the Criminal Procedure Code and more particularly Section 46 thereof. Therefore, no inference can be drawn and by interpretative process, it cannot be held that acts of the ATS in this case would mean that the applicant was detained in custody. When there is no arrest, then, there is no obligation to comply with Article 22(1) and (2) of the Constitution of India.

36. Shri. Desai, then, submits that the applicant was arrested on 23/10/2008. The remand sought orders in that behalf have not been challenged by the applicant. The application for bail is made on the 95th day and there is no grievance about the earlier events. Thus, once the arrested person is produced

before the Magistrate, then, there is compliance with the statutory mandate. In any event, Criminal Procedure Code does not contemplate grant of bail on the ground of illegal detention. The remedy in such cases is to file a writ petition and seek appropriate reliefs. Therefore, the decision of the learned Single Judge of this Court relied upon by Shri. Jethmalani is clearly distinguishable. That is no authority for the proposition that violation of Article 22(1) and (2) results in bail. That was a decision rendered by the learned Single Judge not only on the grounds of illegal detention but parity and that the trial was not likely to commence for the next 3 years. It is in these circumstances that the unreported judgment of the learned Single Judge and that of the another learned Single Judge in Ashok Hassan (supra) would have no application to the facts of the present case. The judgment of another learned Single Judge, (A.V. Sawant, J) (as His Lordship then was), is rendered when there was complete deprivation of personal liberty of the applicant accused therein. In any event, the attention of the learned Single Judge was not invited to various judgments of the Hon''ble Supreme Court. For all these reasons, the argument that if there is violation of the mandate of Article 22(1) of the Constitution of India, the consequences would be immediate release of the person/accused is not sound and accurate in law.

37. Shri. Desai, finally submits that Section 160 CrPC would enable the prosecution/investigation authority to summon not just witnesses but even an accused. The words appearing therein cannot be construed narrowly. Any person acquainted or aware of the facts in relation to a case can be summoned and that would include the accused. If such a person is summoned and questioned without complying with Section 160 CrPC, that would not mean that he is detained or that assuming that he is detained thereafter, his detention straightaway becomes illegal, so as to enlarge him on bail. Shri. Desai, submits that even if the judgment of the Hon''ble Supreme Court in the case of Nandini Satpathi (supra) is perused, it is apparent therefrom (paragraph-17) that non-compliance with the proviso to Section 160 CrPC, does not result in release on bail. The circular issued by the police authorities is nothing but an internal note on implementation of Section 160 CrPC and does not confer any statutory right on the applicant.

38. For all these reasons, Shri. Desai, submits that there is no substance and merit in this application and it must be rejected.

39. Shri. Desai, has relied upon the following decisions in support of his afore noted contentions.:

- (i). Nijamuddin Mohammad Bashir Khan and Another Vs. State of Maharashtra, .
- (ii). Directorate of Enforcement Vs. Deepak Mahajan and another, .
- (iii). State of Haryana and Others Vs. Dinesh Kumar, .
- (iv). Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others, .

- (v). Roshan Beevi and Ors. v. Joint Secretary to Government of Tamil Nadu and Ors. 1984 Cri.L.J. 134.
- (vi). Harbansingh Sardar Lenasingh and Another Vs. The State, .
- (vii). Munsamy Shanmugam Vs. Collector of Customs and another, .
- (viii). Saptawna Vs. The State of Assam, .
- (ix). Naranjan Singh Nathawan Vs. The State of Punjab, .
- (x). Ram Narayan Singh v. The State of Delhi and Ors. 1953 Cri.L.J. 1113 (Supreme Court).
- (xi). A.K. Gopalan Vs. The Government of India, .
- (xii). Talib Hussain Vs. State of Jammu and Kashmir, .
- (xiii). Col. Dr. B. Ramachandra Rao Vs. The State of Orissa and Others, .
- (xiv). Kanu Sanyal Vs. District Magistrate, Darjeeling and Others, .
- (xv). Sanjay Dutt Vs. State through C.B.I., Bombay, .
- (xvi). Harpinder Singh Vs. State (Delhi Administration), .
- (xvii). Rajani Kanta Meheta Vs. State of Orrisa, .
- (xviii). Mahesh Chand and etc. v. State of Rajasthan 1985 Cri.L.J. 301.
- (xix). Taju Khan Vs. State of Rajasthan, .
- (xx). Durei Behera and etc. v. Suratha Behera and Anr. 1987 Cri.L.J. 1462.
- (xxi). Ashak Hussain Allah Detha Alias Siddique and another Vs. Assistant Collector of Customs (P.), Bombay and another, .
- (xxii). Nandini Satpathy Vs. P.L. Dani and Another, .
- (xxiii). Kamalanantha and Others Vs. State of Tamil Nadu, .

40. In rejoinder, Shri. Jethmalani, the learned Senior Counsel contended that the arguments of the prosecution are nothing but an desperate attempt to demonstrate that the applicant was not detained in custody by the ATS. Shri. Jethmalani, submits that perusal of Section 46 would indicate that unless there is a submission to the custody by word or action, the act of confining itself is arrest. Section 46 of CrPC has not made any distinction between "arrest" and "custody", in the sense highlighted by Shri. Desai. Even physical restraint on a person would amount to arrest in a given case. Therefore, when the applicant was in total custody of the ATS, it is nothing but an arrest. By no stretch of imagination can she be said to be free during the period (10/10/2008 to 23/10/2008). She was in custody at the ATS, Kalachowkie office. The State is estopped from arguing to the contrary. Assuming that the applicant was summoned u/s 160 CrPC she could not have been called upon to attend at the

ATS, Kalachowkie, office. The very fact that she was required to attend despite being a woman is enough to prove that she was in custody of the ATS. There is no substance in the argument of Shri. Desai, that the applicant was formally arrested on 23/10/2008 and hence that is crucial or relevant date. This is not a case where the applicant is arguing on the basis that she was formally arrested by the ATS on 23/10/2008. The application highlights that she was in complete custody and therefore informal or formal arrest is an argument which cannot be countenanced. In the peculiar facts of this case, no other conclusion is possible. It is apparent that the applicant was in custody which was wholly illegal and therefore the judgments of the Hon'ble Supreme court which highlighted the consequence of violation of Section 22(1)(2) of the Constitution, would clearly apply. For all these reasons, the applicant deserves to be enlarged on bail and the application be allowed.

41. For properly appreciating the rival contentions, it would be necessary to note some of the provisions in Criminal Procedure Code. Chapter-V of the same is entitled "ARREST OF PERSONS". Section 41 empowers any police officer to arrest without an order from a Magistrate and without an warrant. Section 42 states that any person who in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained.

42. Section 43 provides for arrest by private person and procedure of such arrest. Section 44 talks of arrest by Magistrate, whereas, Section 45 protects members of the Armed Forces from arrest. Then comes Section 46 which reads as under:

Section 46. Arrest how made.

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be it submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

43. Section 47, 48, 49, 50 and 50A are provisions post arrest and enabling the police officer to impose restraint but at the same time obliging him to inform the person arrested of grounds of arrest and his right to appeal. Section 50A has been added to the Criminal Procedure Code wherein the police officer now is obliged to giving information as regards the arrest and place where the arrested person is being held forthwith to any of his friends, relatives or such others

persons as may be disclosed or nominated by the arrested person, for giving information. Section 52 empowers the officer to seize offensive weapons. Section 53 deals with examination of accused by a medical practitioner at the request of the police officer. Section 53A, 54A and 55 are not relevant for the purpose of the present application. Section 56 and 57 reads as under:

Section 56. Person arrested to be taken before Magistrate or officer in charge of police station-A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Section 57. Person arrested not to be detained more than twenty-four hours. - No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate u/s 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

44. Article 22 of the Constitution of India reads thus:

Article 22. Protection against arrest and detention in certain cases:

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in Clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in Clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe,

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of Sub-Clause (a) of Clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under Sub-clause (a) of Clause (4) Right against Exploitation.

45. A bare perusal of the provisions aforementioned would indicate that the Code empowers arrest and lays down adequate safeguards in the event of arrest, so as to make the constitutional guarantee under Article 22 meaningful and purposeful. The Code in no way conflicts with the constitutional guarantee. Therefore, the obligations which have to be discharged by the authorities are in the event of an arrest. It is only when there is an arrest that the further procedure and safeguards come into play.

46. In the backdrop of these statutory provisions and the constitutional scheme, the only issue that arises for determination in this case is whether the applicant was arrested by the ATS as urged by her. In this behalf, it must be noted that the applicant states on oath that she resides away from her family. She has renounced the material world and has become a Sadhvi. She has devoted her life to religious pursuits by giving up family ties. She was residing at Surat with her family, but, thereafter she has left the family house and shifted her base to Jabalpur. In the application filed by the applicant seeking bail, the applicant has stated the above facts in paragraph-1. In paragraph-2, she has stated that she has been staying at Jabalpur in rented accommodation of one Agarwal family from where she is conducting her religious and spiritual activities. In paragraph-7 of her application, she has stated that she was officially arrested on 23/10/2008 and produced before the learned Chief Judicial Magistrate, Nasik on 24/10/2008. Therefore, it is not her case that within 24 hours of her formal arrest, she was not produced before the nearest Magistrate. From a perusal of the application, it is apparent that she did not make any grievance about the events prior to 23/10/2008, because according to her she did not have any opportunity to engage a lawyer. She could not muster enough courage. It is only on 03/11/2008 when a fresh police custody remand was sought that the applicant alleges that she could engage or otherwise avail the services of an advocate. In paragraph-10 of her application, she states that after a brief dialogue with an advocate, she placed on record that she was in the custody of the opponent right from 10/10/2008, when she was taken to Surat alongwith her associate and was

illegally detained at Kalachowkie office till 24/10/2008. Thus, it is clear that the applicant does not allege that she was forced to leave Jabalpur or come to Surat or that she was taken into custody from Jabalpur itself. It is apparent that she volunteered and on her own left Jabalpur for Surat. It is her case that she was in the custody of the ATS from 10/10/2008, at which stage she realised of the non-compliance with Section 50A of IPC. It is then set out in her application for bail that she was sent to judicial custody on 03/11/2008 till 17/11/2008 and thereafter she has been in judicial custody.

47. In paragraph-14 of her application, she has made a reference to 8 page affidavit filed on 17/11/2008 after three meetings with her advocate at Byculla jail.

48. A copy of this affidavit has been annexed to this application at page-70-79 of the paper-book. It is stated that this is filed in the court of Chief Judicial Magistrate, Nasik after the contents of the same are explained to the deponent in Hindi and confirmed after such explanation.

49. The prayers in this application/affidavit are that the ATS be directed to submit an explanation for her detention without authority of law between 10/10/2008 and 23/10/2008 and an enquiry be conducted into the accusations made by oath by her.

50. In her affidavit, she has stated about how she became a sanyasi. She has narrated about her activities in the ashram. She has stated that between 23/09/2008 and 4/10/2008, she was in Indore, where she stayed at the residence of one of her disciple. She states that on 7/10/2008 she received a call at Jabalpur ashram from an officer, who enquired about her vehicle. She states that he insisted that she should come down to Surat, although she states that she was reluctant to come down and leave her ashram. She has very clearly stated that she reached Surat via Ujjain on 10/10/2008 early morning and her disciple Bhimbhai Pasricha came to receive her at the railway station. Alongwith him, she went to Pasricha's place at Atop Nagar. She states that about 10.00 a.m., she met an officer, Shri. Sawant who made enquiries with regard to the vehicle and who also informed her about the use of the vehicle in the blast at Malegaon. She then refers to the information with regard to the vehicle given by her to Shri. Sawant and it is then alleged that Shri. Sawant told her to accompany him to Mumbai for further interrogation.

51. In paragraph-9 of this affidavit, she has stated that even though no formal summons to attend as a witness was served and though she could have insisted for such compliance, she agreed to accompany the ATS team to Mumbai. The officer told her that her father can accompany her but she suggested that she would like Bhimbhai Pasricha to accompany her. She states that she reached Mumbai on 10/10/2008 and was taken to the ATS office at Kalachowkie. In paragraph-10 of the affidavit, she states that she was detained and interrogated by the ATS team in Mumbai for 2 days. Thereafter, in paragraph-11 she alleges

harassment and torture and then she states that on 15/10/2008, she and Pasricha were taken by the ATS team to Hotel Rajdoot in Nagpada and were kept in Room Nos. 314 and 315 respectively. She alleges that they did not pay or deposit any money with the hotel manager and that part was done by the ATS. She alleges that she was forced to speak on her mobile and tell her friends and disciples that she was hale and hearty. She has made allegations of custodial violence and torture, but, then in paragraph-16 she states that she was kept in ICU of Shusrusha Hospital. Her disciple came there and her admission form and other medical examination forms were signed by her disciple, Shri. Pasricha. She states that she underwent treatment for 3 to 4 days and thereafter she was shifted to another hospital but in paragraph-17, she states that no female police constable was by her side either in Hotel, Rajdoot or in either of the two hospitals and thereafter she states that she was finally arrested on 23/10/2008. This affidavit is filed by her on 17/11/2008. Prior to that, she has filed another affidavit seeking directions to the ATS seeking call details of all her calls from the mobile of accused No. 1 between 11/10/2008 to 23/10/2008.

52. It is in such circumstances that her allegations in the afore-reproduced paragraphs of the bail applications must be seen. In paragraph-17 of her application seeking bail, she states that she is in judicial custody. In paragraph-18, she has alleged that she had been picked up by the ATS on 10/10/2008 under the guise of interrogating her in connection with her vehicle. Then, she alleged that she has been in the custody of the ATS since 10/10/2008 and no remand in custody was obtained from 10th to 24th October, 2008 by the ATS. Therefore, the custody with the ATS is without authority of law. The applicant states that she was in unlawful custody/illegal detention. In paragraph-21, she alleges once again that she was picked up at Surat by the ATS.

53. To my mind, the applicant's allegations are contradictory and conflicting. She is not clear as to whether she was in custody or illegally detained. She has on her own stated that she was called for interrogation and without a formal summons, she agreed to accompany the ATS team to Mumbai. I am not concerned with and therefore not expressing any opinion with regard to the allegations of torture, ill-treatment etc. Suffice it to state, that the applicant from 23/10/2008 till 03/11/2008 did not make any grievance about the events prior to her arrest. Even the grievance made thereafter is not in terms alleging arrest. She has either been stating that she was illegally detained or taken in custody. At some places, she has alleged that she was called for interrogation. Her assertion that there was no formal summons to attend as a witness, yet, she made available herself for interrogation to Mumbai, would demonstrate that she wants to make capital of her prolonged interrogation by ATS at their office at Mumbai. The questioning and interrogation was something to which she agreed to submit herself. She on her own left Jabalpur, came down to Surat, accompanied the officer alongwith her disciple from Surat to Mumbai and stayed in Mumbai. At one stage, she has alleged that she was taken at a far away place by the ATS but was brought back to the ATS office. However, her case all throughout is that she

was allegedly detained by the ATS at their office in Mumbai. All these allegations, have been specifically denied by the prosecution. Even her allegations regarding torture have been denied. It is pertinent to note that in the reply, the ATS has stated that they had not taken the applicant in custody from 10/10/2008 to 24/10/2008. It has been pointed out by the prosecution that all her allegations even of torture have been denied by the ATS on the same day.

54. Thus, from the application made before the trial court, it is apparent to me that the applicant is not sure as to whether her case is of illegal detention or illegal custody or interrogation and questioning by the ATS without a formal summons. She has not alleged that her disciple was not in touch with her or contacting her. The disciple Bhimbhai was with her throughout. He accompanied her to Surat, to ATS office at Kalachowkie, Mumbai. They were residing at a lodge near Hindmata Cinema earlier and thereafter shifted to Hotel, Rajdoot. It is not her case that her disciple was not in touch with her during her hospitalisation and even thereafter. She is not alleging that she was not contacting her disciple or was not allowed to be in touch with him during her interrogation and questioning by the ATS at Mumbai. It is in such circumstances that it is difficult to believe that the applicant was arrested by the ATS during this period.

55. In this behalf, reliance by Shri. Desai on the facts as narrated in the application and on the contradictions in the version of the applicant is justified. The applicant has made allegations but from these allegations, she has not been able to substantiate her case of arrest by the ATS. The reliance by Shri. Desai on the judgment of the Hon'ble Supreme Court in the case of Directorate of Enforcement Vs. Deepak Mahajan and another, is apposite. The Supreme Court has made a clear distinction by holding that in arrest, there is custody but custody is not always arrest. In this behalf, this is what the Supreme Court has observed:

48. The word "arrest" is derived from the French word "Arreter" meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word "arrest" is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian, J. as he then was being the Judge of the High Court of Madras) in Roshan Beevi v. Joint Secretary, Government of T.N. had an occasion to go into the gamut of the meaning of the word "arrest" with reference to various textbooks and dictionaries, the New Encyclopaedia Britannica, Halsbury's Laws of England, A Dictionary of Law by L.B. Curzon, Black's Law Dictionary and Words and Phrases. On the basis of the meaning given in those text book sand lexicons, it has been held that: "the word "arrest" when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one"s personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into

custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."

49. There are various sections in Chapter V of the Code titled "Arrest of persons" of which Sections 41, 42, 43 and 44 empower different authorities and even private persons to arrest a person in given situation. Section 41 deals with the power of a police officer to arrest any person without an order from a Magistrate and without a warrant. Section 42 deals with the power of a police officer to arrest any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence and who refuses on demand "to give his name and residence or gives a name or residence which such officer has reason to believe to be false". Section 43 empowers any private person to arrest any person who in his presence commits a non-cognizable offence, or any proclaimed offender. Section 44 states that when any offence is committed in the presence of a Magistrate whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon subject to the provisions contained in the Code as to bail commit the offender to custody.

50. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words "custody" and "arrest" are not synonymous terms. Though "custody" may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi 1984 Cri. L.J. 134 (FB) (Mad) (supra).

51. While interpreting the expression "in custody" within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in *Niranjan Singh v. Prabhakar Rajaram Kharote* observed that: (SCC p. 563, para 9)

He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits

to its directions.

56. In all fairness Shri. Desai has invited my attention to another decision of Hon"ble Supreme Court (recently delivered) State of Haryana and Others Vs. Dinesh Kumar, and to the following observations therein:

18. Mr. Chaudhary submitted that the ordinary dictionary meaning of "arrest" is to legally restrain a person's movements for the purpose of detaining a person in custody by authority of law. He submitted that in Dinesh Kumar's writ petition the High Court had erred in coming to a finding that he had never been arrested since he had voluntarily appeared before the Magistrate and had been granted bail immediately.

19. Opposing Mr. Chaudhary's submission, Mr. Patwalia, relying on various decisions of different High Courts and in particular a Full Bench decision of the Madras High Court in the case of Roshan Beevi and Ors. v. Joint Secretary to the Govt. of Tamil Nadu and Ors. 1984 Cri LJ 134 submitted that although technically the appearance of the accused before the Magistrate might amount to surrender to judicial custody in actuality no attempt had been made by anyone to restrict the movements of the accused which may have led him to believe that he had never been arrested. It is on a layman's understanding of the principle of "arrest" and "custody" that prompted the respondent in the first of the two appeals and the appellants in the second appeal to mention in column 13(A) that they had never been arrested in connection with any criminal offence.

20. Mr. Patwalia referred to certain decisions of the Allahabad High Court, the Punjab High Court and the Madras High Court which apparently supports his submissions. Of the said decisions, the one in which the meaning of the two expressions "arrest" and "custody" have been considered in detail is that of the Full Bench of the Madras High Court in Roshan Beevi's case (supra). The said decision was, however, rendered in the context of Sections 107 and 108 of the Customs Act, 1962. Sections 107 and 108 of the Customs Act authorises a Customs Officer empowered in that behalf to require a person to attend before him and produce or deliver documents relevant to the enquiry or to summon such person whose attendance is considered necessary for giving evidence or production of a document in connection with any enquiry being undertaken by such officer under the Act. In such context the Full Bench of the Madras High Court returned a finding that "custody" and "arrest" are not synonymous terms and observed that it is true that in every arrest there is a custody but not vice-versa. A custody may amount to "arrest" in certain cases, but not in all cases. It is in the aforesaid circumstances that the Full Bench came to the conclusion that a person who is taken by the Customs Officer either for the purpose of enquiry or interrogation or investigation cannot be held to have come into the custody and detention of the Customs Officer and he cannot be deemed to have been arrested from the moment he was taken into custody.

21. In coming to the aforesaid conclusion, the Full Bench had occasion to

consider in detail the meaning of the expression "arrest". Reference was made to the definition of arrest in various legal dictionaries and Halsbury's Laws of England as also the Corpus Juris Secundum. In paragraph 16 of the judgment it was observed as follows:

16. From the various definitions which we have extracted above, it is clear that the word "arrest" when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested. In this connection, a debatable question that arises for our consideration is whether the mere taking into custody of a person by an authority empowered to arrest would amount to "arrest" of that person and whether the terms "arrest" and "custody" are synonymous.

22. Faced with the decision of this Court in *Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others*, the Full Bench distinguished the same on an observation made by this Court that equivocal quibbling that the police have taken a man into informal custody but have not arrested him, have detained him in interrogation but have not taken him into formal custody, were unfair evasion of the straightforwardness of the law. This Court went on to observe further that there was no necessity of dilating on the shady facet as the Court was satisfied that the accused had physically submitted before the Sessions Judge giving rise to the jurisdiction to grant bail. Taking refuge in the said observation, the Full Bench observed that the decision rendered by this Court could not be availed of by the learned Counsel in support of his contentions that the mere taking of a person into custody would amount to arrest. The Full Bench observed that mere summoning of a person during an enquiry under the Customs Act did not amount to arrest so as to attract the provisions of Article 22(2) of the Constitution of India and the stand taken that the persons arrested under the Customs Act should be produced before a Magistrate without unnecessary delay from the moment the arrest is effected, had to fail.

23. We are unable to appreciate the views of the Full Bench of the Madras High Court and reiterate the decision of this Court in *Niranjan Singh's case* (supra). In our view, the law relating to the concept of "arrest" or "custody" has been correctly stated in *Niranjan Singh's case* (supra). Paragraphs 7, 8 and the relevant portion of paragraph 9 of the decision in the said case states as follows:

7. When is a person in custody within the meaning of Section 439 Cr. P.C.? When

he is, in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubiotics are unfair evasion of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody in the context of Section 439, (we are not, be noted, dealing with anticipatory bail u/s 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and order of the court.

9. He can be in custody not merely when the police arrest him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.

24. Sections 107 and 108 of the Customs Act do not contemplate immediate arrest of a person being summoned in connection with an enquiry, but only contemplates surrendering to the custody of the Customs Officer which could subsequently lead to arrest and detention.

25. We also agree with Mr. Anoop Chaudhary's submission that unless a person accused of an offence is in custody, he cannot move the Court for bail u/s 439 of the Code, which provides for release on bail of any person accused of an offence and in custody. The pre-condition, therefore, to applying the provisions of Section 439 of the Code is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. This aspect of the matter was considered in Niranjana Singh's case where it was held that a person can be stated to be in judicial custody when he surrenders before the Court and submits to its directions.

26. It is no doubt true that in the instant case the accused persons had appeared before the concerned Magistrates with their learned advocates and on applying for bail were granted bail without being taken into formal custody which appears to have swayed one of the benches of the Punjab and Haryana High Court to take a liberal view and to hold that no arrest had actually been effected. The said view, in our opinion, is incorrect as it goes against the very grain of Sections 46

and 439 of the Code.

27. The interpretation of "arrest" and "custody" rendered by the Full Bench in Roshan Beevi's case (supra) may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialize into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Indian Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the Court or the police authorities before he can be granted the benefit thereunder. In Vol. 11 of the 4th Edition of Halsbury's Laws of England the term "arrest" has been defined in paragraph 99 in the following terms:

99 Meaning of arrest. Arrest consists in the seizure or touching of a person's body with a view to his restraint; words may however, amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person's notice that he is under compulsion and he thereafter submits to the compulsion.

28. The aforesaid definition is similar in spirit to what is incorporated in Section 46 of the Code of Criminal Procedure. The concept was expanded by this Court in State of U.P. Vs. Deoman Upadhyaya, wherein it was inter-alia observed as follows:

12. ...Section 46, Cr.P.C. does not contemplate any formality before a person can be said to be taken in custody. Submission to the custody by words of mouth or action by a person is sufficient. A person directly giving a police officer by word of mouth information which may be used as evidence against him may be deemed to have submitted himself to the custody of the Police Officer....

29. The sequitur of the above is that when a person, who is not in custody, approaches the police officer and provides information, which leads to the discovery of a fact, which could be used against him, it would be deemed that he had surrendered to the authority of the investigating agency.

57. Relying upon these observations, Shri. Jethmalani would submit that the Supreme Court has not upheld the basis on which it proceeded in Deepak Mahajan's case (supra). In other words, the distinction between "arrest" and "custody" as is made in Roshan Beevi's case (supra) is no longer valid. There is nothing like "protective custody" or otherwise. Now, it is clear that physical restraint on movement and activities of a person by confining him, would tantamount to his arrest. The period or duration of the same is immaterial. As long as the person is not free to move around and his movements are restricted, then, a conclusion can be drawn that he is under arrest.

58. It is not possible to accept these contentions of Shri. Jethmalani for more than one reason. In the instant case, the applicant who proclaims to be a Sadhvi

having renounced the material world and cut off the family ties, is residing on her own at Jabalpur. She herself states that she was officially arrested on 24/10/2008. Although, she would urge that she had been picked up by the ATS from 10/10/2008, she herself has stated that this was in the guise of interrogating her in connection with her vehicle. It is not clear as to whether when it is alleged that she was picked up, it means she was arrested and when she states that she had been in the custody of ATS that would, according to her amount to arrest. At the same time, she alleges unlawful custody/illegal detention. However, the contradiction in the version has been pointed out by me. She is not disputing that she left Jabalpur on her own and reached Surat. This was her voluntary act. She has in her bail application not stated that she was picked up from Surat and given details of such acts. Her application for bail does not set out as to how she reached Surat and where she was on 10/10/2008 and from where she was picked up by the ATS. The application for bail is silent on these aspects but all this was argued with the assistance of her statements made in the affidavit filed by her on 1/11/2008. Even if the contents of that application are perused, it would reveal that the officer from ATS, Shri. Sawant questioned her at Surat after she reached there and was received by her disciple. It is not her case, that she was taken into custody at Surat because in her affidavit she states that she went alongwith Bhimbhai Pasricha to his place at Atop Nagar. She states that at 10.00 a.m, she met Shri. Sawant who had travelled to Surat and he contacted her. Even in her further assertions and statements on oath, she states that there were no formal summons to attend as a witness, but made herself available for interrogation in Mumbai. She states that she agreed to accompany the ATS team to Mumbai. Her disciple was with her. In these circumstances, it is clear that her case in that affidavit of 17/11/2008 is also of being interrogated by the ATS team in Mumbai. She gave details of interrogation and then alleges that she was detained by the ATS team in Mumbai. However, at the same time she does not deny the fact that she resided in the hotels in Mumbai and that while residing in Hotel, Rajdoot, she went to the ATS office and she took ill and admitted in hospital. While she may have been taken by the ATS team to the hospital, but, she admits that she was under treatment for 3 to 4 days and there was no female constable by her side either in the hotel or in either of the hospitals. All these allegations have been denied by the prosecution in the detailed affidavit-in-reply filed in the trial court. They have specifically denied her allegations that she was in the custody of ATS at Kalachowkie.

59. The argument of Shri. Jethamalani, is that there is a violation of the constitutional mandate. In that behalf, the constitutional provision must be carefully perused. I have already reproduced Article 22 which opens with the words "No person who is arrested shall be detained in custody" [See Article 22(1)]. Therefore, the Article speaks of detention in custody of a person who is arrested. That is how Sub-articles (1) and (2) must be read. Hence, as long as there is no arrest, there is no requirement of the mandate of the said Article being followed and complied with.

60. The crucial thing is therefore, is there Arrest? From a perusal of the entire application, I am satisfied that the applicant was not arrested. It is in that context that Shri. Jethmalani, submits that the distinction between "arrest" and "custody" is more or less obliterated. I am unable to uphold these contentions. In Deepak Mahajan's case the Supreme Court relied upon the Full Bench decision in Roshan Beevi's case and the dictionary meaning of the term. It is not as if the Supreme Court was not aware of the judgment delivered by it in Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, . It adverted to that decision and all other provisions in the Criminal Procedure Code in relation to arrest and concluded that custody may amount to arrest in certain circumstances, which may not be so in all circumstances. The words "custody" and "arrest" are not synonymous terms. In Dinesh Kumar's case (supra), the Supreme Court did not disapprove the decision in Roshan Beevi's case completely. It is of some relevance to note that the attention of the Hon'ble Judges deciding Dinesh Kumar's case was not invited to the decision of the Supreme Court in Deepak Mahajan's case. The attention was invited to the Full Bench decision of the Madras High Court in Roshan Beevi's case. However, from a perusal of the judgment in Dinesh Kumar's case, it is apparent that the attention of the Hon'ble Supreme Court was not invited to its own decision in Deepak Mahajan's case affirming the Full Bench decision of the Madras High Court in Roshan Beevi's case. What impact it would have, if the attention was invited is something, which in my humble view, would not be proper for me to go into and decide. Yet, while observing in Dinesh Kumar's case that the word "custody" has not been defined in the Criminal Procedure Code, the Hon'ble Supreme Court adverted to the dictionary meaning of the term, Full Bench decision of the Madras High Court in Roshan Beevi's case and in paragraph-22 after referring to the decision in Niranjana Singh's case, the Supreme Court held that Roshan Beevi's case was concerned with the provisions of the Customs Act, whereas, the position may be different and the law relating to the concept of "arrest" or "custody" is correctly stated in Niranjana Singh's case. At the same time, in paragraph-27, it held that the interpretation of "arrest" and "custody" in Roshan Beevi's case may be relevant in the context of Sections 107 and 108 of the Customs Act, wherein, summons in respect of an enquiry may amount to custody but not to arrest and such custody could subsequently materialize into arrest. For my purpose, it is not necessary to go into any larger controversy because Shri. Jethmalani argues the matter on the basis of the phraseology of Article 22 of the Constitution of India which talks of detention in custody of a person, who is arrested, and therefore the obligation to produce him before the nearest Magistrate within a period of 24 hours of such arrest. All throughout in both sub-articles, so also, in other sub-articles the word used is "arrest" and "detention in custody". Thus, if there is no arrest, then the distinction as made by Shri. Jethmalani, would not be applicable in the constitutional context. Shri. Jethmalani, has relied upon the Single Judge's decision of this Court in Criminal Application No. 3374 of 1992 decided on 12th November, 1992 (Unreported) regarding right to bail on violation of this constitutional mandate. He has based

his arguments on this decision by urging that if the person arrested is not informed of the grounds of such arrest, his right to consult and be defended by a legal practitioner of his choice and his non-production within 24 hours before the nearest Magistrate, that would enable him to apply for bail. In other words, if this constitutional mandate is violated, the applicant/person concerned would be entitled to be released on bail and that is how the judgments are rendered by the Single Judges of this Court. Therefore, the application of these judgments pre-supposes an "arrest" of such person. If he is not arrested, then, there is no question of his being entitled to be released on bail, as the right to apply for bail would be available only if he is arrested and not otherwise. The correctness of the views of the learned Single Judges and the right of bail carved out in the event of breach of this constitutional mandate are once again larger questions and I need not advert to and consider the arguments of both Shri. Jethmalani and Shri. Desai, in that behalf, all the more, when I am satisfied that these judgments would have no application as the applicant before me was not arrested.

61. Once the applicant was not arrested between 10/10/2008 to 23/10/2008, then, the question of inclusion of such period prior to her formal arrest on 23/10/2008 would not arise at all. Therefore, the controversy based thereon and the larger issue raised in the backdrop of the decision of the Hon''ble Supreme Court in Chaganti Satyanarayanan's case (supra) also need not be gone into and decided in the peculiar facts of this case.

62. Shri. Jethmalani, has then urged that even if the applicant was not arrested, but she was summoned for interrogation. He relied upon Section 160 of CrPC in this behalf. Section 160 of CrPC reads thus:

Section 160. Police Officer's power to require attendance of witnesses.

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who from, the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under Sub-section (1) at any place other than his residence.

63. A bare perusal of the same would indicate that although the heading of the Sections speaks of a power to require attendance of witnesses, a perusal of the substantive provision would indicate that the police officer making an investigation under Chapter-XII may by his order in writing, require the

attendance before him of any person who appears to be acquainted with the facts and circumstances of the case. The larger issue as to whether this provision includes an accused or not, need not be decided, though raised, because it is a common ground that the applicant relies upon this provision in support of her arguments that she was not served with any order in writing and in any event, the proviso to Section 160(1) has been violated in this case. Therefore, her argument presupposes, that Section 160 could have been invoked by the police officer to summon her. The next argument is that since there is no notice or order in writing, requiring her attendance before the ATS office and yet she was interrogated and detained that would mean that she was arrested or in any event, taken in protective custody and detention. It is not possible to accept this argument either. Merely, because the applicant urges that there was no notice or order in writing requiring her attendance, yet, from her own case as pleaded in the bail application, it is clear that she was called for interrogation during the course of investigation of the Malegaon bomb blast case. Assuming that she was called for interrogation and questioned by the ATS without any written order or notice, still, such attendance is only for interrogation and questioning and nothing more. The applicant was questioned and interrogated from 10/10/2008 but has not been detained or taken into custody. She was moving around freely as is apparent from the record. She stayed in hotel and was not detained in the night at the ATS Kalachowkie office. It is not her case that she did not stay at any hotel. As is clear, she resided firstly at a lodge near Hindamata Cinema in Dadar and thereafter shifted to Hotel, Rajdoot. She was in hospital for 3-4 days. After her discharge from the hospital she was in a hotel. That she was nearby the ATS office and daily interrogated and questioned for some time by the ATS, by itself would not mean that she was arrested and detained in custody. All this is nothing but an act of questioning a person on the basis of his likely involvement in a criminal case. At the most, the applicant was a "suspect". That on account of the use of the vehicle in the bomb blast and as the vehicle one time belonged to the applicant, that the ATS questioned her about her suspected involvement in the criminal case. That they were empowered to do so during the course of investigation is not disputed by the applicant. That the ATS may have kept a watch on her movements, by itself, is no ground to hold that she was arrested and detained in custody by the ATS. In this behalf, it would be pertinent to note that the case of the applicant is that she was detained in the ATS office at Kalachowkie, Mumbai and not elsewhere. On her own showing, there was no watch or surveillance when she was residing in the hotel or lodge, so also, when she was admitted in the hospital. The officer of the ATS may have contacted her during her stay at the hotel or visited her when she was admitted in the hospital, but, such acts without anything more would not constitute an "arrest" or "detention in custody" of the applicant. The applicant was free to move around and contact everybody. She was in touch with her disciple and was using her mobile phone is undisputed. Once the applicant's movement were not restricted, nor, she was confined to the ATS office but allowed to go after questioning and interrogation, then, it is difficult to hold that in the garb of interrogating and

questioning her, she was taken in custody by the ATS. Assuming that "custody" and "arrest" are synonymous terms, yet, in the facts of this case it is not possible to conclude that the applicant was in custody and arrested by the ATS. 64. There may have been non-compliance with the provisions reproduced above and more particularly the proviso to Section 160(1) of CrPC. The ATS has produced a copy of the notice issued to the applicant and bearing her signature. However, the applicant refutes receipt and signing of any such notice and argues that the document produced is fake and bogus. Assuming that the applicant was not told by an order in writing to attend the office of ATS at Kalachowkie, Mumbai, yet, it is clear that she accompanied the officer of the ATS squad from Surat to Mumbai on her own. Prior thereto, she left Jabalpur on her own after she was contacted by the ATS. Every single act and movement is of the own volition of the applicant. There is no force used or compulsion. Once without insisting on a notice or an order in writing, the applicant on her own attended the ATS at Kalachowkie office, then, it is not necessary to go into wider question as to whether non-compliance with Section 160(1) including its proviso would enable the applicant to apply for release on bail. Apart from the fact that there is substance in the contentions of Shri. Desai, that such is not the statutory mandate, still, in the peculiar facts of this case, I am not inclined to enlarge the applicant on bail for such non-compliance.

65. Shri. Jethmalani, in this context relied upon the judgment of the Hon'ble Supreme Court in Nandini Sathpathy's case (supra). He has also relied upon the orders passed by this Court dated 21/08/2008 in Criminal Writ Petition No. 993 of 2008 (Nisar Ahmed Faisal Ahmed Shaikh v. The State of Maharashtra) and 1580 of 2008 (Abdul Wahid Abdul Jabbar Ansari v. The State of Maharashtra). This Court in these orders strongly deprecated the practice of the Maharashtra Police in not issuing any Notice in writing, but sending only a word or a constable, to call a person to the police station. The Division Bench thereafter invited the attention of all concerned to Section 160 including its proviso and held that the station diary entries would not be decisive. That conclusion was recorded, because, the Division Bench was satisfied from the facts that the petitioner before it was kept in custody without authority of law from 9/03/2008 till 12/03/2008. The court refused to rely upon the station diary entries to absolve the police machinery. It did not believe the version of the police machinery that the petitioner was only interrogated and never arrested, but, allowed to go back home after interrogation. These orders do not hold that the person kept in custody like this, has a right to be enlarged on bail. Infact, far from recording such conclusion in law, the court disposed off these writ petitions by strongly deprecating the conduct of the police officers. This course was adopted because the court noticed that the person/petitioner has been released from custody. The court therefore laid down the procedural guidelines and invited the attention of all concerned to the legal provision. Beyond this, there is nothing in the Division Bench orders, so as to support the arguments of Shri. Jethmalani. In Nandini Sathpathy's case, in the paragraphs relied upon, the Hon'ble

Supreme Court held that actual accused and suspects can be interrogated and their attendance at the police station can be required u/s 160. The word "any person" would include the accused as well. While so holding, the Hon'ble Supreme Court in paragraph-72, quashed the prosecution. That was because, the Hon'ble Supreme Court was satisfied about violation of Section 160 of the Criminal Procedure Code and more particularly proviso to Section 160(1) CrPC

66. Shri. Jethmalani, submits that if the prosecution itself can be quashed for such violation, then, a lesser relief of enlargement on bail can always be granted following the ratio in Nandini Sathpathy's case. I am unable to agree. While it is true that before me also the case is of an applicant-woman accused. However, in the present case once the applicant voluntarily and on her own attended the ATS office by leaving her place of residence on her own, then, it will not be proper to hold that she is entitled to be enlarged on bail. That the prosecution should be quashed is not even her prayer. Her prayer is of enlarging her on bail. That is not the relief to which she is entitled to in the facts and circumstances peculiar to this case. Shri. Jethmalani, has invited my attention to this statutory provision and emphasized its proviso. Yet, that was to buttress his submission that the applicant was not interrogated and questioned but was taken in custody. He did not emphasize this provision and highlight its non-compliance in this case to urge that the applicant is entitled to be released on bail straightaway. The entitlement to bail was pressed on the ground of violation of the mandate of Article 22(1) and (2) and that the applicant being taken in custody and arrested prior to 23/10/2008 and the period of such arrest and custody be included for computing the 90 days as contemplated by Section 167(2) of CrPC. Having rejected his arguments based on these provisions, I am not inclined to enlarge the applicant on bail, merely because of non-compliance of Section 160 of CrPC. She may be entitled to some other relief for such non-compliance but in the peculiar facts, she is not entitled to be enlarged on bail.

67. In the result, I am of the view that the applicant's request for bail has rightly been turned down by the trial court. Even before me, she could not satisfy me that she is entitled to be enlarged on bail. Having rejected her arguments and submissions on all three grounds, noted above, there is no alternative but to reject this application. This Criminal Application is accordingly rejected.

68. It is not necessary to set out and consider each of the decisions brought to my notice both by Shri. Jethmalani and Shri. Desai. Suffice it to hold that in the view that I have taken, it may not be necessary to advert to each of them. However, since great emphasis was laid on the decision of the Hon'ble Supreme Court reported in Manoj Vs. State of Madhya Pradesh, by Shri. Jethmalani, it would be proper to refer to the same. The decision is more on the point of violation of the mandate of Article 22(1) and (2) of the Constitution of India. While it is true that the Hon'ble Supreme Court has held in this case that violation of the constitutional mandate would result in his being released, but, that is a release from Arrest. There the Supreme Court was satisfied that the

petitioner before it was arrested and detained by the M.P. police, although he was released on bail by the Rajasthan High Court in a Criminal case. That decision must be therefore appreciated in the backdrop of this peculiar factual position and the mandate flowing from Article 22(1) and (2) of the Constitution of India. Once, I have taken the view that the applicant was not arrested by the ATS, then, this decision is of no assistance to her.

69. In the result, the Criminal Application is dismissed.