

(1989) 09 GUJ CK 0010

In the Gujarat High Court

Case No : Special Criminal Application No's. 860 and 2043 of 1989

Suresh Ramtirath Yadav

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 22, 22(1), 226
Criminal Procedure Code, 1973 (CrPC) — Section 309, 309(2), 344, 344(1), 439
Terrorist and Disruptive Activities (Prevention) Act, 1985 — Section 12, 12(4), 13, 13(1), 16
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 19

Citation : (1990) CriLJ 1834 : (1990) 1 GLR 104

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; R.A. Mehta, J

Bench : Division Bench

Advocate : Bharghav Bhatt, for B.M. Gupta, for the Appellant; G.D. Bhatt, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Gokulakrishnan, C.J.—This matter was heard at the admission stage at length on several days and with the consent of the parties, it was treated as final hearing. We, therefore, issue rule.

Mr. G. D. Bhatt, learned Addl. P. P., waives service of rule on behalf of the respondent.

2. The petitioner has come forward with the present Special Criminal Application for the purpose of issuing a writ of habeas corpus or any other writ, order or direction in the nature of habeas corpus, declaring the detention of the petitioner as illegal. There are further prayers to the effect that the petitioner should be released on bail with necessary terms and conditions and that the Designated Judge, before whom the case of the petitioner is pending, should be directed to proceed forthwith without any delay.

3. The petitioner (accused No. 29) is one of the accused among the 63 accused

committed to the Court of Designated Judge, City Civil and Sessions Court, Ahmedabad, under the Terrorist and Disruptive Activities (Prevention) Act, 1985 in pursuance of the complaint lodged by P.S.I. Mr. M. K. Parmar on 12-7-1986 regarding the incident which had taken place at about 9.00 hours on 12-7-1986. The petitioner was arrested on 12-8-1986 and a case was registered as Terrorist Case No. 1 of 1987. On 4-12-1987, the Designated Judge has framed the charge against the present petitioner and 62 others and the petitioner pleaded not guilty to the charge on 4-12-1987. From 4-12-1987 till today, according to the petitioner, the case was adjourned for more than 65 occasions and has not yet been concluded. It is the further say of the petitioner that it is only on 9-3-1988 the prosecution has examined the first witness in Terrorist Case No. 1 of 1987.

4. The petitioner, alleging that the detention, as an under-trial prisoner as and from 12-8-1986, which is the date of his arrest, is against the basic principle of the criminal jurisprudence and violative of Article 21 of the Constitution of India, which confers right to have a speedy trial and that there is a violation of Section 309 of the Criminal Procedure Code in passing the orders of adjournments and remand by the Designated Judge, prays for an issue of writ of habeas corpus and also for necessary orders releasing the petitioner on bail.

5. Bharghav Bhatt, the learned counsel appearing for the petitioner, contended that the right to have a speedy trial is a fundamental right and if the petitioner is languishing in jail as an under-trial prisoner for such a long time, he is entitled to be released by virtue of Article 21 of the Constitution of India. It is the say of Mr. Bharghav Bhatt that for no fault of the petitioner herein, the case is being adjourned as many as 65 times after framing of the charge by the Designated Judge as early as 4-12-1987. Pointing out the Roznama regarding the adjournments granted in this case, Mr. Bharghav Bhatt submitted that the inordinate delay in hearing the case, is sufficient ground for granting the prayers made in this petition. Mr. Bharghav Bhatt further submitted that there is no remand orders as contemplated u/s 309 of the Criminal Procedure Code and hence, the continuance of the prisoner in prison is against the fundamental right guaranteed to a citizen of India and as such, the petition has to be allowed as prayed for. Mr. Bharghav Bhatt contended that the High Court under Articles 226 and 227 of the Constitution of India can interfere and grant the prayers made in this petition, since the petitioner has stated that Article 21 of the Constitution of India has been violated by illegally detaining the petitioner in jail.

6. In this connection, Mr. Bhatt brought to our notice the decision in the case of Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, , This is a case decided by the Supreme Court regarding the lack of powers in the High Court to interfere under Sections 439 and 482 of the Criminal Procedure Code in respect of matters arising out of the proceedings under Terrorist and Disruptive Activities (Prevention) Act, 1987. The Supreme Court observed (at pp. 944-45):

"At the very outset, Shri Poti, learned counsel appearing for the State Government with his usual fairness, unequivocally accepted that the provisions of

the Act do not take away the constitutional remedies available to a citizen to approach the High Court under Article 226 or Article 227 or move this Court by a petition under Article 32 for the grant of an appropriate writ, direction or order. It must necessarily follow that a citizen can always move the High Court under Article 226 or Article 227, or this Court under Article 32 challenging the constitutional validity of the Act or its provisions on the ground that they offend against Articles 14, 21 and 22 or on the ground that a notification issued by the Central Government or the State Government u/s 9(1) of the Act constituting a Designated Court for any area or areas or for such case or class or group of cases as specified in the notification was a fraud on powers and thus constitutionally invalid."

Finally, the Supreme Court agreed with the High Court and stated that the High Court has no jurisdiction to entertain an application for bail u/s 439 or Section 482 of the Code of Criminal Procedure.

7. Mr. Bhatt also cited the decision in the case of Ram Narayan Singh Vs. The State of Delhi and Others, . This is a case arising out of Article 32 of the Constitution of India, praying for a writ of habeas corpus. In that case, there was no remand order detaining the person in custody. After the original remand order expired, there was no fresh order of remand committing the prisoner to further custody while adjourning the case u/s 344 of the old Criminal Procedure Code. In those circumstances, it is held that the detention of the prisoner is illegal.

8. Mr. Bharghav Bhatt contended that there must be a specific order of remand of the accused signed by the Judge u/s 309 of the Criminal Procedure Code or otherwise the detention will be illegal. For this proposition, the learned Counsel cited the above decision in the case of Ram Narayan Singh Vs. The State of Delhi and Others, , wherein the Supreme Court, considering the old Section 344 corresponding to Section 309 of the Criminal Procedure Code, came to the conclusion that the detention of a person in custody after the expiry of remand order without any fresh order of remand committing him to further custody while adjourning the case u/s 344 of the Criminal Procedure Code is illegal. In the said case, the section applied is Section 344 of the old Criminal Procedure Code, wherein it is provided that:

"Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate. "

In the present Section 309 corresponding to Section 344 of the old Criminal Procedure Code, there is no such direction to the Court to pass the remand order in writing signed by the Judge. The present section only says that the Court may adjourn the trial "for such time as it considers reasonable and may by a warrant, remand the accused if in custody". Mr. Bhatt states that there is no warrant of remand signed by the Judge himself and as such, the detention is illegal. He states that the above-said decision squarely applies to the facts of this case.

9. This judgment is based on the express language of old Section 344 which

expressly requires the order of remand to be signed by the Presiding Judge/Magistrate. While re-enacting the said provision in Section 309 of the new Code, this provision of remand order under signature of the Presiding Judge is deliberately removed and, therefore, this judgment is of no assistance to the petitioner.

10. Mr. Bharghav Bhatt also relied on the decision in the case of Matabar Parida, Bisnu Charan Parida, Batakrushna Parida and Babaji Parida Vs. The State of Orissa, , wherein the Supreme Court held that the power to remand the accused to custody is not inherent power, but has to be found from the provisions of the Code and the Supreme Court held that Section 344 (old Code) corresponding with Section 309 (of the, new Code) gives express power to the Court for remand. This decision cannot have any application or bearing to the facts of the, present case.

11. Section 309 of the Code of Criminal Procedure reads as follows:

"309. Power to postpone or adjourn proceedings.-- (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of the witnesses has once begun; the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

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

Provided that no Magistrate may remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Explanation 1 : If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2: The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

This Section specifically empowers the Court to remand the accused while

adjourning the case.

12. It is the say of the petitioner that in the absence of a proper remand order and adjournment as envisaged by Section 309 of the Criminal Procedure Code, the detention becomes illegal and that if that be so, this Court, under Article 226 of the Constitution of India, can interfere and release the petitioner since there is a violation of Article 21 of the Constitution of India owing to the illegal detention of the petitioner. Mr. Bhatt, the learned Counsel appearing for the petitioner, pointing out the Rojnama, contended that the adjournments and the remand orders are not in accordance with the provisions of Section 309 of the Criminal Procedure Code and cited the decisions to support his contentions. In *Urooj Abbas Vs. State of Uttar Pradesh*, , a Full Bench of the Allahabad High Court had occasion to consider Section 344 of the old Criminal Procedure Code which is akin to the present Section 309. The difference between old Section 344 and new Section 309 of the Criminal Procedure Code is material and significant. As regards the remand contemplated u/s 344 of the old Code, the Full Bench of the Allahabad High Court in the above said decision, observed (at p. 1464):

"Thus though there is no mandate of the law compelling production of an accused person before a Magistrate for purposes of remand, ordinarily such production should take place, unless it is prevented by some circumstance which can be regarded as reasonable and proper. A Magistrate cannot act arbitrarily in the matter and has to follow well-recognised precedents and principles in the exercise of his judicial discretion in the matter. In the circumstances, the remanding of the petitioner without his production before the Magistrate cannot be characterised as illegal so as to enable the Court to set him at liberty on that basis."

13. Continuing further and also referring to the adjournment of the case, the Full Bench observed (at p. 1464):

"It is only a postponement or adjournment which requires an order in writing and the reasons therefor, and not the act of remanding which, if I may say so. can be signed by Magistrate."

The Full Bench agreed with the observations made in the decision in the case of *In Re: Kunjan Nadar*, , wherein it is stated :

"The reasons to be stated as per the above provision are the reasons for the adjournment of the case and not the reasons for the remand. When a person charged with the commission of a non-bailable offence is produced before the Court unless he is admitted to bail the Court remands him to custody. This is done as a matter of course and is the only way to make him available for trial."

Mr. Bhatt states that inasmuch as there are no reasons given for remand, the continued imprisonment of the petitioner is illegal, We do not think that this decision spelt out that irregularity in the remand and adjournment ipso facto results in the illegality of the detention.

14. In the decision in the case of *In the Matter of Madhu Limaye and Others*, , the Supreme Court observed (para 14):

"Once it is shown that the arrests made by the Police Officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that Mr. Chagla has said is that if the arrested persons wanted to challenge their legality, the High Court should have moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Article 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in custody could not continue after their arrest because of the violation of Article 22(1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This disposes of the third contention of Madhu Limaye."

15. Pressing this decision into service, Mr. Bhatt submitted that the order of remand in this case is mechanical and has to be treated as illegal. We are afraid, that the decision rendered by the Supreme Court lays down no such principle that even in a case where a person has been taken into custody under the Terrorist and Disruptive Activities (Prevention) Act, 1985, and proper trial is proceeded with by periodically remanding the undertrial prisoner, he is to be released. In the above said Supreme Court decision, the detention itself is questioned as violative of Article 22(1) of the Constitution of India and in facts and circumstances of the case of illegal arrest, the Supreme Court held that the order of remand is a mechanical one and cannot cure the constitutional infirmities in the arrest. Hence, this case cannot have any bearing to the facts of the present case.

16 The next decision cited by *Raghavendra Singh Vs. State of U.P. and Others*, , wherein a Bench of the Allahabad High Court observed (at p. 1783):

"There is no order directing the accused to be kept in custody. The warrant of intermediate custody on the basis of which the petitioner is said to be detained, was produced before us on the last occasion. It contained a warrant directing the remand of the accused to custody for the period of 10th August to 23rd August, 1975. Thereafter, there is no warrant of remand for keeping the accused in custody. u/s 309 of the Code of Criminal Procedure, the custody of an accused can be maintained and continued only by a warrant issued by the Magistrate. Without such a warrant, the custody cannot be justified. As there is no warrant of remand issued by a Magistrate directing the continuance of the custody, the custody of the petitioner must be held to be without authority of law. The petitioner is, therefore,, entitled to be released as in the return no other authority for detaining the petitioner has been shown."

17. Pressing this decision into service, Mr. Bhatt contended that the Designated Court itself has not signed any remand order as per the Rojnama produced before the Court. Mr. Bharghav Bhatt further contended that, after 9-8-1989, though the remand order expired and even though the Judge was on leave, mechanically the remand order was passed by Registrar or other officer of the Court. Hence, according to Mr. Bhatt, such remand orders are illegal. Mr. G. D. Bhatt, the learned Additional Public Prosecutor, brought to our notice, rules framed by the Government, High Court etc. under various Acts. This particular rule deals with the City Civil and Sessions Court at Ahmedabad. This rule in the Preamble reads as follows:

"The Honourable the Chief Justice and the Judges of the High Court of Gujarat at Ahmedabad with the previous sanction of the Government of Gujarat are pleased to make the following Rules for regulating the practice and procedure to be followed in the Court of Session for the City of Ahmedabad :--

(1) The Registrar and the Deputy Registrar of the Ahmedabad City Civil Court shall also be Registrar and Deputy Registrar of the Court of Session for the City of Ahmedabad.

(2) Save as otherwise provided in the Code of Criminal Procedure and in these Rules, all summonses, precepts, rules, orders and mandatory processes shall be issued from and returned into the office of the Registrar and shall be subscribed and sealed by the Registrar, Deputy Registrar or such other officer as the Principal Judge may by general or special order authorise in that behalf."

18. Thus, it is seen that, such orders of remand can also be signed by such of the officers of the Court prescribed in this Rule. No doubt, Mr. Bhatt states that offences under the Terrorist and Disruptive Activities (Prevention) Act, 1985 (Act No. 31 of 1985) spelt out the procedures and powers of the Designated Court. It is clear from the provisions of Section 12(4) of the Act that subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session. Thus, reading Section 12 and also the Rules extracted above, do not ipso facto make the remand orders passed in this case illegal. Sub-section (2) of Section 309 of the Criminal Procedure Code contemplates that reasons have to be recorded only for adjoining the enquiry or trial. As regards the remand order, there is no such inhibition of recording reasons signed by the Court. Even the provision of restriction of remand of 15 days only at a time applies to a Magistrate and not to a Sessions Court or a Designated Court. The petitioner who was arrested under the "Terrorist and Disruptive Activities (Prevention) Act, 1985" and who is facing the trial along with 62 others, in our opinion, has been correctly remanded as provided under the rules extracted above.

19. In the decision in the case of In Re: Kunjan Nadar, , a Bench of the

Travancore-Cochin High Court has clearly observed:

"The reasons to be stated as per Sub-section (1) of Section 344, Criminal P.C., are the reasons for the adjournment of the case and not the reasons for the remand. When a person charged with the commission of a non-bailable offence is produced before the Court unless he is admitted to bail the Court remands him to custody. This is done as a matter of course and is the only way to make him available for trial. The order of remand is not, therefore, invalid on the ground that no reasons are stated therein for remand."

The Bench further observed :

"Where a charge-sheet is submitted against the accused and they are remanded to judicial custody u/s 344, Criminal P.C., their proper remedy is to move for bail before the appropriate Court and not to move High Court for a writ of habeas corpus."

This decision in all force applies to the facts of this case. This decision of the Travancore-Cochin High Court was also approved by the Full Bench of the Allahabad High Court in the decision reported in *Urooj Abbas Vs. State of Uttar Pradesh*, . It is clear that the orders of adjournments effected in this case are within the powers of the Designated Court and signing of remand orders by its officers cannot be termed as illegal.

20. In the decision reported in , the Allahabad High Court, after extracting Sub-section (2) of Section 309 of the Code of Criminal Procedure, observed (at p. 1838):

Under the above provision the remand is to be granted by a warrant. There is no requirement u/s 309 that the warrant of remand must be on the prescribed pro forma. It is true that this Court has prescribed a pro forma for granting remand to an under-trial but if the requirements of that pro forma have been substantially incorporated in the warrant of remand actually issued, in my opinion, that would be sufficient compliance with the requirements of law and the remand will not be invalidated merely because the prescribed pro forma had not been used and instead the remand warrant had been prepared on an ordinary piece of paper."

21. Mr. Bhatt also cited the decision in the case of *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, , for the proposition that this Court, under Article 226 of the Constitution of India, can interfere and release the petitioner, who is, according to him, under illegal custody. The Supreme Court, in this decision, held that the remedy of a detenu before the Advisory Board was no bar to the jurisdiction of the Supreme Court under Article 32 of the Constitution of India.

22. We are not able to appreciate how this decision can be of any assistance to the petitioner in the facts and circumstances of the present case. It was a case pertaining to preventive detention and not a case of under-trial prisoner who has

been refused bail by judicial Court. When an under-trial prisoner is charged with the commission of an offence, he cannot insist that the question of his innocence or guilt be tried or determined by the High Court or Supreme Court alleging violation of fundamental rights during the pendency of the trial where fairly triable questions of fact and/or law are pending and can be gone into by the trial Court which is constituted under the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1985 nor can he be released by the High Court in a habeas corpus petition when he has been refused bail by a judicial order and is kept in judicial custody.

23. The decision in the case of Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, , clearly affirms the decision of the Gujarat High Court to the effect that the High Court has no jurisdiction to entertain any proceeding either u/s 439 or u/s 482 of the Code of Criminal Procedure arising out of an order passed by the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1985. In that case, the Supreme Court also did say that the powers of the High Court under Articles 226 and 227 of the Constitution of India are unaffected and a citizen can always move the High Court challenging the constitutional validity of the Act or its provisions or the constitutional validity of the notification u/s 9(1) of the Act constituting the Designated Court on the allegation that there was fraud on powers and there is constitutional invalidity. In the present case, there is no such challenge to constitutional validity. The prayers of the petitioner are pure and simple to release him from the judicial custody which can be only by way of bail for which the appropriate forum is the Designated Court. It has already refused bail, against which the only forum is the Supreme Court and as held by the Supreme Court in Usmanbhai's case (supra), the High Court has no jurisdiction in matters of bail under the Terrorist and Disruptive Activities (Prevention) Act, 1985.

24. Mr. Bharghav Bhatt also relied on the decision in the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , for the proposition that to have a speedy trial is a fundamental right of the accused. In that decision, the Supreme Court held that (paras 1 and 5):

"This petition for a writ of habeas corpus discloses a shocking state of affairs in regard to administration of justice in the State of Bihar. An alarmingly large number of men and women, children including, are behind prison bars for years awaiting trial in Courts of law. The offences with which some of them are charged are trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced."

xxx xxx xxx "If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving

a person of his liberty cannot be reasonable, fair or just", unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21, There-can, therefore, be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of. an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after, an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21? That is a question we shall have to consider when we hear the writ petition on merits, on the adjourned date. But one thing is certain and we cannot impress it too strongly on the State Government that it is high time that the State Government realised its responsibility to the people in the matter of administration of justice and setup more courts for the trial of cases. We may point out that it would not be enough merely to establish more courts but. the State Government would also have to man them by competent Judges and whatever is necessary for the purpose of recruiting competent Judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word."

25. After that judgment of 12-2-1979, wherein the Court had left the question open for consideration, the Supreme Court passed further order on 26-2-1979, at page 1367 (of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, of the Report. The Supreme Court noted that the charge-sheets were not filed for more than two years, women prisoners were kept in jail even though they were not accused of any offence and prisoners were not tried after filing charge-sheet in the year 1972 till 1979 and there were undertrial prisoners undergoing custodial detention exceeding the maximum punishment which could be awarded to them even if they are found guilty of the offences charged against them and a person who was in prison as an undertrial prisoner for more than 8 1/2 years for an offence where the maximum punishment was two years. After taking note of such cases, the Supreme Court further adjourned the hearing and on 9-3-1979, passed another judgment reported in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , and the Supreme Court directed release of such undertrial prisoners who were in jails for a period longer than the maximum awardable punishment. The Supreme Court also directed that where under-trial prisoners have been in jails for a period longer than half the maximum term of imprisonment, such prisoners were directed to apply for bail to the trial Court; Thus, it is seen from the Supreme Court judgments in Hussainara

Khatoon's case I, II and III (supra) that even though the Supreme Court has held that speedy trial is the right of the accused, it has to be examined in the facts and circumstances of, the case. While applying the right to speedy trial of an accused, the Supreme Court did not release any accused who was in judicial custody, for a period longer than the maximum possible punishment. Only such persons who had undergone undertrial confinement beyond the period of possible maximum punishment were released. Even these persons who had completed more than half the possible sentence, were not released by the Supreme Court and were directed to make applications to the trial Court. Even where charge-sheets were not filed for more than two years. the Supreme Court had not released them on bail and the prosecution was directed to file the charge-sheets within three months. Thus the right to speedy trial is not equated with a right to get bail whenever there is adjournment or some delay in the trial of an accused. Thus, we find from the above said decisions that the question as to whether the delay constitutes violation of fundamental right under Article 21 of the Constitution of India has to be decided on facts and circumstances of each case.

26. In the decision in the case of *Kadra Pahadiya v. State of Bihar*, reported in AIR 1982 SC 1167, the Supreme Court has reiterated the principle that a speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. It has also stated that in such cases the accused is entitled to approach the Supreme Court for the purpose of enforcing such right and the Supreme Court in discharge of its constitutional obligation has the power to give necessary direction to the State Government and other appropriate authorities for securing this right to the accused.

27. The question as to whether the delay in the trial straightway leads to quashing of the conviction on the ground of delayed trial only, has to be decided on certain principles. Those principles are succinctly stated in the decision in the case of *State of Maharashtra Vs. Champalal Punjaji Shah*, , and they read as under (para 2):

"2. What is the remedy if a trial is unduly delayed? In the United States, where the right to a speedy trial is a constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence. But in deciding the question whether there has been a denial of the right to a speedy trial, the Court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The Court is also entitled to take into consideration whether the delay was unintentional, caused by overcrowding of the Court's Docket or understaffing of the Prosecutors. *Strunk v. United States* (1973) 37 Law Ed 256 , is an instructive case on this point. As pointed out in the first *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, , the right to a speedy trial is not an expressly guaranteed constitutional right in India but is implicit in the

right to a fair trial which has been held to be part of the right to life and liberty guaranteed by Article 21 of the Constitution. While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactic or conduct of the accused himself. The delay may have caused no prejudice whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to be in defence and it could be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only."

28. As far as the present case is concerned, it is an admitted fact that as many as 63 accused have been committed to trial before the Designated Court for the offences punishable under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1985 and out of 65 adjournments, 41 have been sought by the accused. It is not shown that any particular adjournment was objected by the petitioner and the Court, without valid reason, had granted adjournments for unreasonably long period.

29. Section 7 of the said Act deals with the Designated Courts and Section 7(2) states that :

"7. xxx xxx (2) A Designated Court shall be presided over by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court."

Section 7(3) states that :

"7. xxx xxx (3) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional Judges to exercise in a Designated Court."

Section 12 deals with the procedure and powers of Designated Courts, Section 12(4) reads as under:

"12. xxx xxx (4) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Sessions and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session."

Section 13 deals with the protection of witnesses, and Section 13(1) states that:

"13. (1) Notwithstanding anything contained in the Code, all proceedings before a Designated Court shall be conducted in camera;

Provided that where the Public Prosecutor so applies, any proceedings or part

thereof may be held in open Court."

Section 16 of the Act deals with appeals and it reads as follows:

"16. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid no appeal or re-vision shall lie to any Court from any judgment, sentence or order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the, judgment, sentence or order appealed from;

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

30. From a reading of the above sections, it is clear that the procedure taken from the Criminal Procedure Code is in addition to the procedure contained in this self-contained Act called "The Terrorist and Disruptive Activities (Prevention) Act, 1985" (as substituted by Act XVI of '87) and that is why it is stated in Section 12(4) of the old Act "so far as may be in accordance with the procedure pre-scribed in the Code for the trial before a Court of Session". Thus, the procedure set out in this Act overrides the procedure in the Criminal Procedure Code and as far as may be, the procedure in the Code is taken for the limited purpose mentioned in the Act. If the orders of adjournments and remand are not in accordance with Section 309 of the Criminal Procedure Code, it is open to the party aggrieved to apply to the said Court for necessary relief, either for grant of bail or for getting directions for a speedy trial. Section 16 of the Act of 1985 (Section 19 of Act of 1987) specifically mentions that no appeal or revision shall lie to any Court from any judgment, sentence or order of a Designated Court except to the Supreme Court. The provision in this self-contained Act, when there is especially a decision of the Supreme Court, *Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat*, , prohibiting any revision or appeal before the High Court u/s 439 or Section 482 of the Criminal Procedure Code, cannot be circumvented by invoking the jurisdiction of this Court under Article 226 of the Constitution of India alleging as if there is a violation of Article 21 of the Constitution of India. Looking into the Roznama and the facts of this case, we are of the view that the orders of adjournments and also the orders of remand are within the powers of the Designated Court and its officers and as such, there is absolutely no illegality in such remand orders and the adjournments granted by the Court.

31. It is clear from all these decisions, that the remedy for the petitioner is only to move the Designated Court for appropriate relief either for bail or for carrying on with the case day to day. In any event, the petition under Article 226 for issuing a writ of habeas corpus, on the facts and circumstances of the case, is

misconceived. As we have observed in paragraphs supra, the Supreme Court, which has decided that illegal remand and inordinate delay may come under the sweep of constitutional guarantee given under Article 21 of the Constitution of India, has taken, care, by observing that the question as to whether there is such an illegal remand or inordinate delay is a question of fact and law which have to be decided by going into the facts of each case, on merits. When especially those are all questions which have to be decided on factual aspects of the case, the party concerned can as well invoke the jurisdiction of the Designated Court and draw its attention on this aspect of the case and if any adverse order is passed thereon, the remedy of the party concerned lies by filing appropriate petitions before the Supreme Court. When such efficacious and effective legal remedy is available to the petitioner, either before the Designated Court or before the Supreme Court, to set right any illegality that may have been perpetrated in the trial of the case or in the remand of the prisoner, it is too much for the petitioner to invoke the jurisdiction of this Court under Article 226 or Article 227 of the Constitution of India when especially there is a clear provision u/s 16 of the said Act (Section 19 of the new Act) ousting the jurisdiction of this Court in a case pending before the Designated Court. When especially the main appeal or revision cannot be entertained by the High Court, a fortiori, the High Court cannot interfere in any proceedings of the Designated Court on the mere allegation of the violation of the constitutional right of the party concerned. They are not without remedy when especially the Supreme Court's jurisdiction is wide open to time, both under the Constitution and also by virtue of Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1985.

32. For all these reasons, we do not find any merits in this Special Criminal Application and as such, the same is dismissed. Rule is discharged.

33. At this stage Mr. Bhargav Bhatt makes a request for grant of leave for appeal to the Supreme Court. We have elaborately considered the impact of Section 309 of the Code of Criminal Procedure vis-a-vis Section 344 of the old Code. We have considered Article 21 of the Constitution in relation to the present case in which the petitioner has been an under-trial under the T.A.D. Act. We do not find any question of law which is of general importance to be decided by the Supreme Court arises in this case. Accordingly the request for leave is rejected.