

(1987) 06 GUJ CK 0003
In the Gujarat High Court

Usmanbhai Dawoodbhai Memon and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-06-1987

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 439, 439, 482, 482

Terrorist and Disruptive Activities (Prevention) Act, 1985 — Section 16, 3, 4

Citation : (1987) 2 GLR 982

Hon'ble Judges : R.A. Mehta, J;M.B. Shah, J

Bench : Division Bench

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and order dated March 24, 1987 passed by the Designated Judge, Ahmedabad (Rural) at Narol, in Miscellaneous Criminal Application No. 116 of 1987, rejecting the application for releasing the applicants on bail, the applicants have filed this application u/s 439 and/or 482 of the Criminal Procedure Code to release them on bail.

2. The applicants and other persons are alleged to have committed the offences punishable under Sections 143, 147, 148, 149, 307, 504, 324, 323, 120-B of the Indian Penal Code, Section 27 of the Arms Act and Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, (hereinafter referred to as "The Terrorist Act"). The incident took place on March 10, 1987. The applicants were arrested on the same day. The applicants filed an application before the Designated Court for releasing them on bail. The Designated Court arrived at the conclusion that prima facie the acts committed by the accused constitute an offence punishable u/s 3 and/or 4 of the Terrorist Act. The Designated Court held that there are reasonable grounds to believe that the accused are responsible for the offence punishable u/s 3 of the Terrorist Act and, therefore, under the provisions of Section 17(5) they cannot be released on bail.

3. When this matter was called out before the learned single Judge, a preliminary objection was raised on behalf of the State of Gujarat that against the order

dated March 24, 1987 passed by the Designated Court under the Terrorist Act, the application u/s 439 or 482 of the Criminal Procedure Code is not maintainable before the High Court. It was further pointed out that u/s 16 of the Terrorist Act the High Court has no jurisdiction to entertain any application filed on behalf of the applicants against whom the allegations are for the offence punishable u/s 3 and/or 4 of the Terrorist Act. The learned single Judge referred the whole matter to the Division Bench and for deciding the question whether the High Court has jurisdiction to entertain application u/s 439 or 482 of the Criminal Procedure Code in view of the provisions of the Terrorist Act.

4. For deciding the question whether the High Court has jurisdiction to entertain an application u/s 439 or 482 of the Criminal Procedure Code in a case where the allegations against the accused are under the provisions of the Terrorist Act, it would be necessary to refer to certain provisions of the Terrorist Act.

5. The Terrorist Act is framed for a specific object for making special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto. Its operation is limited for a period of two years from the date of its commencement. Section 2(1)(b) of the Terrorist Act defines the phrase "Designated Court" meaning thereby a Designated Court constituted u/s 7 of the Terrorist Act. Section 2(1)(d) of the Terrorist Act defines "High Court" in relation to a Designated Court and states that "High Court", in relation to a Designated Court, means the High Court within the territorial limits of whose jurisdiction such Designated Court is proposed to be, or is constituted. Section 2(1)(e) of the Terrorist Act defines "Public Prosecutor" meaning thereby a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed u/s 11 and includes any person acting under the directions of the Public Prosecutor. Sec 7 of the Terrorist Act provides that the State Government may for the whole or any part of the State constitute one or more Designated Courts. The 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.

6. Section 9 of the Terrorist Act provides that notwithstanding anything contained in the Code, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed. Sub-section (2) of Section 9 empowers the Central Government to transfer a case pending before a Designated Court in one State to a Designated Court in any other State, if it is necessary or expedient in the public interest so to do. That transfer can be only with the concurrence of the Chief Justice of India. Therefore, it is clear that the High Court has no jurisdiction to transfer a case pending before a Designated Court to any other Designated Court. u/s 11 of the Terrorist Act the State Government is required to appoint a person to be the Public Prosecutor to appear before the Designated Court. It also empowers the State Government to appoint a Special Public Prosecutor in any case or class of cases and also to appoint Additional Public Prosecutor or

Additional Public Prosecutors. This provision also makes it clear that the Public Prosecutor or Additional Public Prosecutor appointed by the State Government under the Criminal Procedure Code cannot conduct the cases under the Terrorist Act unless they are specifically appointed u/s 11 of the Act.

7. Section 12 of the Terrorist Act provides the procedure and powers of Designated Courts, which reads as under:

12. (1) A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a Police report of such facts.

(2) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in Sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 262 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court that recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

8. From the aforesaid section, it is clear that exclusive jurisdiction is given to the Designated Court to try an offence punishable under the provisions of the Terrorist Act. The Designated Court can take cognizance of the offence upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. u/s 12(2) of the Terrorist Act it has been provided that notwithstanding anything contained in Sub-section (1) of Section 260 or Section 262 of the Code, the Designated Court is required to try the offence in a summary way in a case where the offence is punishable with imprisonment for a term not exceeding three years or with fine or with both and the Designated Court is required to follow the procedure prescribed for summary trial and the provisions of Sections 263 to 265 of the Criminal Procedure Code, shall, so far as may be apply to such trial. Sub-section (3) of Section 12 of the Terrorist Act empowers the Designated Court to tender a pardon. From this Sub-section it is clear that the provisions of Section 306 or Section 307 are not made applicable but a deeming provision is made that tendering of a pardon under Sub-section (3) shall be deemed to have been granted u/s 307 of the Code. Sub-section (4) of Section 12 of the Terrorist Act provides that the 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. The aforesaid provisions of the Terrorist Act clearly show that the entire Criminal Procedure Code is not made applicable but only specific provisions thereof are made applicable.

9. The other most relevant section for our purposes is Section 16 which reads as under:

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 revision 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.

This section begins with non-obstante Clause and provides that notwithstanding anything contained in the Criminal Procedure 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. By this section it has been made clear that against any judgment, sentence or order, not being an interlocutory order, of a Designated Court, no appeal or revision lies to the High Court but straightway an appeal or revision lies to the Supreme Court both on facts and on law. By this provision the different hierarchy (other than the one provided by the Criminal Procedure Code) is provided. Designated Court is made subordinate straightway to the Supreme Court. Sub-section (2) of Section 16 of the Terrorist Act further lays down in emphatic terms that no appeal or revision shall lie to any Court from any judgment, sentence or order of a Designated Court except as provided in Sub-section (1). Therefore, against any order passed by a Designated Court no revision application is maintainable. The phrase "any Court" used in Sub-section (2) would without any doubt mean that the High Court has no jurisdiction to entertain appeal or revision application against the judgment, sentence or order of a Designated Court.

10. Learned Counsel for the applicants heavily relied upon Section 17 of the Terrorist Act for contending that this Court has jurisdiction to entertain this application. Section 17 reads as under:

17. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of Clause (c) of Section 2 of the

Code and "cognizable case" as defined in that Clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that-

(a) the reference in Sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate".

(b) the references in Sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as reference to "sixty days", "one year" and "one year", respectively; and

(c) Sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and Section 392 of the Code shall apply in relation to a case involving an offence triable by a Designated Court subject to the modifications that the reference to "Court of Sessions" and "High Court", wherever occurring therein, shall be construed as references to "Designated Court" and "Supreme Court", respectively.

(4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act or any rule made thereunder.

(i) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless-

(a) The Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) Where the Public Prosecutor opposes the application, the Court is satisfied that there are "reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(6) The limitations on granting of bail specially in Sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Sub-section (1) of this section begins with non-obstante Clause that notwithstanding anything contained in the Code or any law, an offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of Clause (c) of Section 2 of the Code. By Sub-section (2) of Section 167 is made applicable with certain modifications. By Sub-section (3) the provisions of Sections 366 to 377 which deal with submission of death sentences for confirmation and Section 392 of the Code are made applicable with a modification that the references to "Court of Session" and "High Court", wherever occurring in the said provisions, shall be construed as

references to "Designated Court" and "Supreme Court" respectively. Under this Sub-section (3) it is clear that the order of death sentence passed by the Designated Court is to be referred to the Supreme Court for confirmation. For bail entirely different provisions are made under Sub-sections (4), (5) & (6). By Sub-section (4) it is provided that the provisions of Section 438 of the Code for anticipatory bail would not be applicable to any person involved on an accusation of having committed an offence punishable under this Act or any rule made thereunder. Again Sub-section (5) begins with non-obstante Clause that notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless:

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and,

(iii) that he is not likely to commit any offence while on bail.

Reading these Sub-sections (5) and (6) together it is abundantly clear that entirely different criteria is laid down for considering the bail application of a person accused of an offence punishable under the Terrorist Act. The Court can release such accused on bail only if it is satisfied that there are reasonable grounds for believing that the person is not guilty of such offence and further he is not likely to commit any offence while on bail. Even if the Court is satisfied to the aforesaid extent, the limitations on granting of bail u/s 437 of the Criminal Procedure Code or any other law for the time being in force are made applicable. Section 19 of the Terrorist Act empowers the Supreme Court to make such rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to Designated Courts. Section 22 gives overriding effect to the provisions of the Terrorist Act or any rule made thereunder or any order made under any such rule notwithstanding anything inconsistent therewith contained in any enactment.

11. Learned Counsel for the applicants submitted that even if an appeal or revision is not maintainable against the order passed by a Designated Court, yet this Court has jurisdiction to entertain an application u/s 439 of the Criminal Procedure Code for releasing the accused on bail because there is no provision under the Terrorist Act which debars the application of Section 439 of the Criminal Procedure Code. He further submitted that in any circumstances the High Court has inherent powers u/s 482 of the Criminal Procedure Code to quash and set aside any illegal or arbitrary order passed by the Designated Court situated within the territorial jurisdiction of the High Court and to decide whether prima facie the provisions of the Terrorist Act are applicable to the facts of the case. For this purpose, reliance was placed on the provisions of Section 17 of the

Terrorist Act and it was contended that specific provision is made to the effect that Section 167 of the Criminal Procedure Code, with some modifications, would be applicable to a case involving an offence punishable under the Terrorist Act. Further, specific provision is made that Section 438 of the Criminal Procedure Code for granting anticipatory bail shall not apply while no such provision is made that Section 439 will not apply. The learned Counsel further submitted that all throughout in the Terrorist Act wherever the Legislature wanted to confer powers on the Designated Court it has been specifically mentioned as "Designated Court" while under Sub-section (5)(b) of Section 17 the word used is "Court". He, therefore, submitted that the accused against whom allegation for offence punishable under the Terrorist Act is made, can be released u/s 439 of the Criminal Procedure Code by the High Court or by the Sessions Court. The Counsel emphasized upon Sub-section (6) of Section 17 wherein it is provided that limitations on granting of bail specified in Sub-section (5) of Section 17 are in addition to the limitations under the Code of Criminal Procedure or any other law for the time being in force on granting of bail. He, therefore, submitted that with regard to the bail, the provisions of Criminal Procedure Code are applicable and this Court has jurisdiction u/s 439 or 482 of the Criminal Procedure Code to release the accused on bail.

12. In our view, it is difficult to accept these contentions of the learned Counsel for the applicants for the reasons stated hereinbelow.

13. It is an admitted fact that u/s 9 of the Terrorist Act, exclusive jurisdiction is conferred on the Designated Court established as per provisions of Section 7 of the Terrorist Act to try every offence punishable under any provision of the Terrorist Act or any rule made thereunder. No other Court has jurisdiction to deal with or try the person who is involved in any offence punishable under the Terrorist Act.

14. Entire Criminal Procedure Code is not made applicable but some specific provisions are made applicable or some provisions of the Criminal Procedure Code with modifications are made applicable.

15. The following provisions of the Terrorist Act would make it clear that the entire Criminal Procedure Code is not made applicable. u/s 8 of the Terrorist Act a Designated Court is entitled to sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is constituted. Sub-section (2) of Section 9 of the Terrorist Act provides for transfer of cases from one Designated Court to another Designated Court. That power is conferred upon the Central Government and is to be exercised with the concurrence of the Chief Justice of India. So it is clear that the provisions of transfer which are there in the Criminal Procedure Code would not be applicable. u/s 10 of the Terrorist Act the jurisdiction is conferred upon the Designated Court to try any other offence with which the accused may, under the Criminal Procedure Code, be charged at the same trial, if the offence is connected with such other offence, but for this provision the Designated Court would have no jurisdiction to try the accused for

any other offence. Other important provision is Section 11 of the Terrorist Act which provides that for every Designated Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors or Special Public Prosecutor. That means the Public Prosecutor appointed under the Criminal Procedure Code would have no right to conduct the trial or appear before the Designated Court as a Public Prosecutor unless he is specifically appointed u/s 11 of the Terrorist Act. As discussed above, same is the position with regard to the procedure prescribed u/s 12 of the Terrorist Act. The provisions of appeal and revision are not made applicable. In this view of the matter, it is amply clear that the entire Criminal Procedure Code is not made applicable to Terrorist Act but some provisions of the Criminal Procedure Code are made applicable with or without modifications. Therefore, there is no reason to hold that provisions of Section 439 or 482 of the Criminal Procedure Code are applicable to a person accused of an offence punishable under the Terrorist Act.

16. Even if we refer to Section 17 of the Terrorist Act, the same is the position. Sub-section (1) of Section 17 of the Terrorist Act provides that notwithstanding anything contained in the Criminal Procedure Code or any other law, every offence punishable under the Terrorist Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of Clause (c) of Section 2 of the Criminal Procedure Code and "cognizable case" as defined in that Clause shall be construed accordingly. Sub-section (2) of Section 17 of the Terrorist Act makes a specific provision that Section 167 of the Criminal Procedure Code shall apply in relation to a case involving an offence punishable under the Terrorist Act or any rule made thereunder subject to the modifications provided therein. In our view, this clearly indicates that entire provisions of the Criminal Procedure Code with regard to bail, remand or sending the accused to judicial custody are not made applicable. Otherwise there was no necessity of providing that Section 167 of the Criminal Procedure Code shall apply in relation to the case involving the offence punishable under the Terrorist Act. Sub-section (3) of Section 17 of the Terrorist Act provides that Sections 366 to 371 and Section 392 of the Criminal Procedure shall apply in relation to a case involving an offence triable by a Designated Court subject to the modifications that references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Designated Court" and "Supreme Court", respectively. Sections 366 to 371 of the Criminal Procedure Code deal with submission of death sentence for confirmation. Section 392 of the Criminal Procedure Code deals with the procedure where Judges of the Court of appeal are equally divided. By Sub-section (4) of Section 17 of the Terrorist Act it has been provided that concept of anticipatory bail is not at all applicable and it provides that nothing in Section 438 of the Criminal Procedure Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the Terrorist Act or any rule made thereunder. Sub-section (5) of Section 17 of the Terrorist Act begins with the non-obstante Clause that

notwithstanding anything contained in the Criminal Procedure Code, no person accused of an offence punishable under the Terrorist Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless:

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that (i) there are reasonable grounds for believing that he is not guilty of such offence, and (ii) he is not likely to commit any offence while on bail.

This Sub-section (5) of Section 17 of the Terrorist Act lays down entirely different criteria for deciding the bail application. In view of this Sub-section the provisions of bail provided under the Criminal Procedure Code would not be applicable and the bail application is required to be decided as per the criteria laid down under Sub-sections (5) & (6) of Section 17. Nowhere it is provided that Section 439 of the Code is applicable. Therefore, in our view, there is no question of applying Section 439 of the Code and entertain the application under it. As against this, reliance was placed upon Sub-section (6) of Section 17 of the Terrorist Act and it was contended that Sections 437 and 439 of the Criminal Procedure Code would be applicable. In our view, it is total misreading of Sub-section (6) of Section 17 of the Terrorist Act. Sub-section (5) and Sub-section (6) of Section 17 of the Terrorist Act are to be read together. Sub-section (6) of Section 17 of the Terrorist Act lays down that the limitations on granting of bail specified in Sub-section (5) of Section 17 of the Terrorist Act are in addition to the limitations under the Criminal Procedure Code or any other law for the time being in force on granting of bail. So the limitations which are provided in Section 437 of the Criminal Procedure Code are also made applicable by Sub-section (6) of Section 17 of the Terrorist Act. But it cannot be said that Section 439 of the Criminal Procedure Code which provides that the High Court or the Court of Session may direct that any person accused of an offence and in custody be released on bail if the offence is of the nature specified in Sub-section (3) of Section 437, is applicable. The limitations of granting bail are not provided u/s 439 of the Criminal Procedure Code. Limitations are provided u/s 437 of Criminal Procedure Code. This would be clear by referring to Sub-sections (1) and (3) of Section 437 of the Criminal Procedure Code. Sub-sections (1) and (3) of Section 437 of the Criminal Procedure Code read as under:

437. (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police Station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence

and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence:

Provided that the Court may direct that a person referred to in Clause (i) or Clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in Clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

(2) (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under Sub-section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interest of justice.

Section 439 of the Criminal Procedure Code confers special powers on the High Court or the Court of Session regarding bail.

17. While considering similar provisions with regard to the Special Courts Bill, 1978 In Re: The Special Courts Bill, 1978, , constitutional validity of the said Bill was examined by the Supreme Court. In that case it was urged that a person put up for trial before the Special Court is denied the benefit of Section 439 of the Criminal Procedure Code under which a High Court or a Court of Session may release an accused on bail. The Supreme Court observed that as regards bail, it is open to the accused to ask for it and in appropriate cases the Special Court would be justified in enlarging him on bail (paras 92-93). In that reference the Court also construed the contention that the Parliament has no power to create a Court outside the hierarchy of Courts recognised by the Constitution, and that the creation of a trial Court which is not subject to the control and superintendence of High Court is detrimental to constitutional concept of Judicial

independence and held that Parliament is entitled to set up Courts of the same kind and designation as are referred to in the Special Courts Bill and create new or Special Courts. The Court also observed that "it is also true to say that the Special Courts are not District Courts within the meaning of Article 235, with the result that the control over them will not be vested in any High Court. But we do not accept that by reason of these considerations the creation of Special Courts is calculated to damage or destroy the constitutional safeguards of Judicial independence. The reasons given by the Supreme Court in the aforesaid reference are confirmed by it in the case of State V.C. Shukla and Others Vs. State (Delhi Administration), . In this view of the matter, in our opinion, no application u/s 439 of the Criminal Procedure Code is maintainable either to this Court or to the Sessions Court.

18. Learned Counsel for the applicants submitted that in any case this Court has inherent jurisdiction u/s 482 of the Code to release the applicants on bail and to find out whether the accusation against the applicants was justified to hold that they are prima facie liable to be punished under the provisions of the Terrorist Act. In our view, there is no substance in this contention also. Firstly, as stated above, the entire Criminal Procedure Code is not made applicable and the different hierarchy of the Courts is established under the Terrorist Act i.e. Designated Court is directly subordinate to the Supreme Court. The position is abundantly clear from Section 16 of the Terrorist Act. u/s 16 of the Terrorist Act, straightway appeal lies to the Supreme Court against any judgment, sentence or order, not being an interlocutory order, of a Designated Court. Sub-section (2) of Section 16 of the Terrorist Act in explicit terms provides that except as aforesaid no appeal or revision shall lie to any Court from any judgment, sentence or order of a Designated Court. The phrase "any Court" would include High Court. Therefore against the final or interlocutory order passed by a Designated Court no appeal or revision is maintainable in the High Court or any other Court. Section 482 does not confer fresh or new or additional powers on the High Court. It saves the inherent powers of the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. If the Court had jurisdiction to entertain an application or appeal, then its powers are not circumscribed by anything in the Code except insofar as the sections expressly dealing with them do so. But if the High Court has no jurisdiction to entertain any appeal or application, there is no question of exercising inherent jurisdiction.

19. Similar contention, that even though the High Court has no appellate or revisional jurisdiction, High Court was possessing inherent jurisdiction to interfere with the order of Special Magistrate, was negated by the Privy Council in the case of AIR 1946 169 (Privy Council) , and the Court held that no Court can claim inherent jurisdiction to exercise powers expressly taken away by legislation. In paragraph 12 of the said judgment the Court held as under:

In their Lordship's opinion, the suggestion that the High Court possessed

inherent jurisdiction to interfere with the order of the Special Magistrate is quite untenable. At the date when the order of the High Court was made the Special Magistrate had been held to have had no jurisdiction. He was not a Court inferior to the High Court and indeed was not a Court at all, his order was a mere nullity, and no question of revising it could arise. This was pointed out in the opening passages of the judgment of this Board delivered by Lord Simon in 72 I.L. 57. The restoration of the jurisdiction of Special Magistrates by the decision of this Board is irrelevant, since by that time the Ordinance of 1942 had been repealed by the Ordinance of 1943, and apart from this, Clause 26 of the former Ordinance took away all powers of revisions by the High Court and no Court can claim inherent jurisdiction to exercise powers expressly taken away by the legislation. In their Lordships' view, if the High Court possessed any power of revision in the present case, such power must be found in the Ordinance of 1943.

Similar contention was dealt with by Vivian Bose, J. in the case of Vishnu Ghanshyam v. Emperor AIR 1941 Nagpur 97. In that case the Court was considering the provisions of Press (Emergency Powers) Act, 1931. By the said Act limited power was conferred upon the High Court and Section 30 of the said Act provided as under:

No proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on application u/s 23.

The Court held that in view of this specific provision no general section conferring inherent power can be invoked. It would be worthwhile to reproduce the relevant discussion which is as under:

It is urged that the High Court has powers u/s 561A, Criminal Procedure Code. But I am clear that that section can have no application to a matter of this kind. That section confers no fresh or new or additional powers on the High Court. It merely states that the existing powers are not circumscribed by anything in the Code of Criminal Procedure except insofar as the sections expressly dealing with them do so. It is well known that inherent powers cannot be invoked where the Legislature expressly deals with the matter. It has dealt with the matter in this case. It has stated that no proceeding purporting to be taken under the Act shall be called in question except in one particular matter and in one particular way. That is express and absolute. No general section conferring inherent power can be invoked in the face of that. But it is argued that these sections in the Act are ultra vires because they contravene Section 561A. Section 561A cannot possibly have been intended to relate to powers which were not in existence at all at the date when it was passed. It does not give a power of superintendence or of revision in respect of matters which have been specially created by the Legislature at a later date. If the Legislature chooses to confer those powers upon any Court or body and state that there shall neither be appeal nor revision it has every right and power to do so. We are familiar with the exercise of these powers on the civil side. Many special Acts are passed conferring special and extraordinary powers upon Courts, persons or bodies and stating that there shall

be no appeal from orders made under those Acts, or stating that an appeal shall not lie in the Civil Courts, it would be impossible to argue that these Acts are ultra vires because inherent powers are conferred upon the High Court on its civil side by Section 115, Civil Procedure Code. The same reasoning applies here.

(Emphasis added)

20. In the case of *Israilkhan v. The State* AIR 1951 ghy 106, the Division Bench of the Assam High Court considered the question whether the High Court can exercise inherent jurisdiction. While dealing with the Assam Opium Prohibition Act XXIII of 1947, and the Court held that the effect of the provision is to exclude the revisional jurisdiction of the Court at least by necessary implication, if not in express terms, for otherwise Section 17(3) loses all significance and meaning. The order of the learned Sessions Judge, therefore, is not revisable under the Criminal Procedure Code. The attribute of finality which the law attaches to the order will also prevent the Court from exercising its inherent jurisdiction u/s 561A of the Criminal Procedure Code.

21. In the case of *Palaniappa Gounder Vs. State of Tamil Nadu and Others*, the Court while considering the provision of Section 561-A held that a provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. The relevant discussion in this case is as under:

Section 482 of the Code under which the heirs of the deceased filed the application for compensation corresponds to Section 561-A of the Criminal Procedure Code of 1898. It saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provision in a statute governing a particular subject-matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter. From this it will be clear that the application made by the heirs of the deceased for compensation could not have been made u/s 452 since Section 357 expressly confers power on the Court to pass an order for payment of compensation in the circumstances mentioned therein.

In the present case also Section 16 of the Act explicitly states that no appeal or revision shall lie to any Court from any judgment, sentence or order of the Designated Court except as provided in Sub-section (1) of Section 16. Section 22 of the Act gives overriding effect to the provisions of the Terrorist Act. Therefore, when Section 16(2) bars the appellate or revisional jurisdiction of the High Court against the order passed by the District Court, this Court cannot interfere against the order passed by the Designated Court by exercising its inherent jurisdiction u/

s 482 of the Code.

22. Same position is laid down by the Supreme Court in the case of *Madhu Limaye Vs. The State of Maharashtra*, wherein the Court has laid down that inherent power of the High Court should not be exercised against the express bar of law engrafted in any other provision of the Code. Further, in the case of *Smt. Sooraj Devi Vs. Pyare Lal and Another*, the Court had laid down that the power of the Court cannot be exercised for doing that which is specifically prohibited by the Code.

23. In this view of the matter, in our opinion, when there is specific bar u/s 16(2) of the Terrorist Act, this Court cannot exercise the inherent jurisdiction u/s 482 of the Code. However, the learned Counsel for the applicants submitted that in any case where the false allegations are made against the accused persons for the offences under the Terrorist Act, the High Court has jurisdiction to interfere with the order passed by the Designated Court and to quash the investigation or to grant bail. In our opinion, once the High Court has no jurisdiction to entertain the application, this contention has no foundation. It is for the Designated Court to decide whether there is sufficient material collected during the investigation and find out whether the accusation is well-founded. High Court has no jurisdiction to interfere with the prima facie finding of the Designated Court.

24. In the result, in our opinion the application u/s 439 and or 482 of the Criminal Procedure Code is not maintainable against the order passed by the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act. Hence this application is rejected. Rule discharged.