2022 LiveLaw (SC) 794

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
AJAY RASTOGI; J., ABHAY S. OKA; J.
September 23, 2022.
Jigar @ Jimmy Pravinchandra Adatiya *v.* **State of Gujarat**

Code of Criminal Procedure, 1973; Section 167(2) - The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21 - Prejudice is inherent and need not be established by the accused. *(Para 30-31)*

Gujarat Control of Terrorism and Organised Crime Act, 2015; Section 20(2) - Code of Criminal Procedure, 1973; Section 167(2) - Application for extension of time for investigation - Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. Therefore, the extension of time is not an empty formality - The scope of the objections may be limited - The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167 of CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted. *(Para 28-29)*

Gujarat Control of Terrorism and Organised Crime Act, 2015; Section 20(5) - In State of Maharashtra v. Bharat Shanti Lal Shah (2008) 13 SCC 5, it was held that the expression "or under any other Act" appearing in sub-section (5) of Section 21 of the MCOCA was violative of Articles 14 and 21 of the Constitution and, therefore, it must be struck down. Hence, the same expression used in sub-section (5) of Section 20 of the 2015 Act infringes Articles 14 and 21 of the Constitution. *(Para 21)*

CRIMINAL APPEAL NO.1656 OF 2022 [Arising out of SLP (Crl.) No. 7696 of 2021] WITH Criminal Appeal No.1657 OF 2022 [Arising out of SLP (Crl.) No. 7609 of 2021] WITH Criminal Appeal Nos.1658-1659 OF 2022 [Arising out of SLP (Crl.) Nos.7678-7679 of 2021] AND Criminal Appeal No. 1660 OF 2022 [Arising out of SLP (Crl.) No. 7758 of 2021]

(Arising out of impugned final judgment and order dated 15-09-2021 in CRLMA No. 4928/2021 passed by the High Court of Gujarat at Ahmedabad)

For Petitioner(s) Ms. Nitya Ramakrishnan, Sr. Adv. Mr. Pradhuman Gohil, Adv. Mrs. Taruna Singh Gohil, AOR Ms. Ranu Purohit, Adv. Mr. Alapati Sahithya Krishna, Adv. Mr. Nikhil Goel, AOR

For Respondent(s) Mr. Rajat Nair, Adv. Ms. Deepanwita Priyanka, AOR

J U D G M E N T

Abhay S. Oka, J.

Leave granted.

FACTUAL ASPECTS

2. The appellants are the accused in FIR No.112020082021862020 registered with Jamnagar City 'A' Division Police Station in Gujarat for the offences under Sections 3(1), 3(2), 3(3), 3(4), 3(5), and 4 of The Gujarat Control of Terrorism and Organised Crime Act, 2015 (for short 'the 2015 Act'). Section 167 of the Code of Criminal Procedure, 1973 (for short 'CrPC') has been amended in relation to the cases involving offences punishable under the 2015 Act. By virtue of sub-section (2) of Section 20 of the 2015 Act, a proviso has been added in addition to the existing proviso to sub-section (2) of Section 167 of CrPC which permits the Special Court established under the 2015 Act to extend the period of 90 days provided to complete the investigation up to 180 days. The Special Court is empowered to extend the period up to 180 days on a report of the Public Prosecutor setting out the progress of the investigation and the specific reasons for continuing detention of the accused beyond the period of 90 days.

3. The aforesaid First Information Report was registered on 15th October 2020. The accused were arrested on different dates. Reports were submitted by the Public Prosecutor seeking extension of time up to 180 days to complete the investigation. In three cases, the reports were submitted on 8th January 2021, and in one case, it was submitted on 21st January 2021. The prayer for extending the time up to 180 days was allowed by the Special Court on the very day on which the applications were filed. Being aggrieved by the said orders of the Special Court, separate applications under Section 482 of CrPC were preferred by the appellants. By the impugned common Judgment dated 15th September 2021, the learned Single Judge of Gujarat High Court rejected the applications made by the appellants under Section 482 of CrPC. The details such as the respective dates of arrest and the dates of making applications are as under:-

S. No.	Name of the accused	Particulars	Date of Arrest	Date of filing application under Section20(2)(b) of GUJCTOC	Date of filing application for default bail
1	Nileshbhai Mansukhbhai Tolia	Criminal Misc. Application No. 4901 of 2021 (SLP (Crl.) No.7758/ 2021)	16.10.2020	08.01.2021 Allowed on the same	04.02.2021
2	Vasantbhai @ Vasantrai Liladharbhai Mansata	Criminal Misc. Application No.4902 of 2021 (SLP (Crl.) No.7609/ 2021)	01.11.2020	21.01.2021 Allowed on the same day	02.02.2021
3	Yashpalsinh Mahendrasinh Jadeja and Jashpalsinh Mahendrasinh Jadeja	Criminal Misc. Application No.4904 of 2021 (SLP (Crl.) No. 7678-79/ 2021)	28/ 29.10.2020	08.01.2021 Allowed on the same day	03.02.2021
4	Jigar @ Jimmy Pravinchandra Adatiya	Criminal Misc. Application No.4928 of 2021 (SLP (Crl.) No.7696/ 2021)	16.10.2020	08.01.2021 Allowed on the same day	03.02.2021

4. The main ground urged in support of the appeals is that when the Special Court passed orders on the reports submitted by the learned Public Prosecutor by which time to complete investigation was extended up to 180 days, the presence of none of the accused was procured either physically or through video conference and that they were not even informed about the reports submitted by the Public Prosecutor.

SUBMISSIONS OF THE APPELLANTS

5. Ms. Nitya Ramakrishnan, the learned senior counsel appearing for the appellants has made detailed submissions. Reliance has been placed on the decisions of this Court in the case of **Hitendra Vishnu Thakur and others** v. **State of Maharashtra and others**[1] and **Sanjay Dutt** v. **State through CBI, Bombay (II)**[2]. Her submission is that when the Special Court exercised the power under the proviso added by subsection (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167 of CrPC, the presence of the appellants was admittedly not procured even through video conference. Admittedly, before the reports submitted by the Public Prosecutor seeking extension of time up to 180 days were considered, the Special Court did not inform the appellants about such reports being filed by the Public Prosecutor. Her submission is that in the case of **Sanjay Dutt**[2], the Constitution Bench of this Court has clearly laid down that the production of the accused before the Special Court on the date on which such a report is considered is mandatory and that by producing the accused before the Court, he must be informed about such a report submitted by the Public Prosecutor. Thus, there is a violation of the mandate of law laid down by the Constitution Bench of this Court. She pointed out that the appellants moved applications for grant of default bail as they were not aware of the filing of the reports by the Public Prosecutor and the orders of the Special Court extending the period for investigation. In view of the extension of time granted by the Special Court, the case of the appellants for grant of default bail under sub-section (2) of Section 167 of CrPC was not considered by the Special Court. On 9th April 2021, a charge sheet was filed by the police. Her submission is that the order granting extension to complete investigation is completely illegal as the same has been passed without following the mandate laid down in the case of **Sanjay Dutt**[2]. Her submission is that the order granting extension passed by the Special Court deserves to be set aside. As the applications for default bail were made by the appellants after the expiry of the statutory period of 90 days but before filing the charge sheet, the appellants are entitled to default bail.

6. The learned senior counsel submitted that the decision of this Court in the case of **Hitendra Vishnu Thakur**[1] was modified by the Constitution Bench in the case of **Sanjay Dutt**[2] on a very limited aspect. She submitted that the requirement of law laid down in the case of **Hitendra Vishnu Thakur**[1] regarding procuring the presence of the accused at the time of considering the report seeking extension of time and requirement of putting the accused to the notice of the filing of such a report has not been disturbed in the case of **Sanjay Dutt**[2]. On the contrary, the decision of the Constitution Bench in the case of **Sanjay Dutt**[2] reiterates the mandatory requirement of production of the accused before the Court at the time of consideration of the report submitted by the Public Prosecutor. The only modification made by the Constitution Bench in the decision of **Hitendra Vishnu Thakur**[1] is by holding that the mode of giving notice to the accused is by informing him

[1] (1994) 4 SCC 602
[2] (1994) 5 SCC 410

about the filing of such a report by producing him before the Special Court and a written notice is not required. Her submission is that as this Court in the case of **Sanjay Dutt**[2] has laid down the requirement of informing the accused about the filing of a report seeking extension of time up to 180 days, it is obvious that the accused on receiving the intimation is entitled to object to the prayer made by the Public Prosecutor for grant of extension of time. However, it is not necessary for the Special Court to supply a copy of the report submitted by the Public Prosecutor to the accused. Her submission is that the proviso added by sub-section (2) of Section 20 of the 2015 Act is *pari materia* with the proviso added by clause (bb) of subsection (4) of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA Act") to subsection (2) of Section 167 of CrPC. Therefore, the decisions of this Court in the case of **Hitendra Vishnu Thakur**[1] and **Sanjay Dutt**[2] will squarely apply to the facts of the case. She pointed out that the decision of this Court in the case of **Sanjay Dutt**[2] was consistently followed in many decisions by this Court. In the case of **Ateef Nasir Mulla** v. **State of Maharashtra**[3], this Court followed the law laid down by this Court in both the aforesaid decisions while dealing with the similar provisions under clause (b) of sub-section (2) of Section 49 of Prevention of Terrorism Act, 2002 (for short 'POTA'). She submitted that while dealing with a similar provision in the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), in the case of **Sanjay Kumar Kedia Alias Sanjay Kedia** v**. Intelligence Officer, Narcotics Control Bureau and Another**[4][5], this Court followed the decision in the case of **Hitendra Vishnu Thakur**[1]. The learned senior counsel also invited our attention to a decision of this Court in the case of **S. Kasi** v**. State through the Inspector of Police Samaynallur Police Station Madurai District**[5]. She also invited our attention to another decision in the case of **Bikramjit Singh** v**. State of Punjab**[6]. She urged that in both the aforesaid decisions, this Court held that the right to get default bail under sub-section (2) of Section 167 of CrPC is not merely a statutory right but a fundamental right guaranteed to an accused. She also referred to another decision of this Court in the case of **M. Ravindran** v. **Intelligence Officer, Directorate of Revenue Intelligence**[7] which holds that sub-section (2) of Section 167 of CrPC is integrally linked to the constitutional commitment under Article 21 of the Constitution of India promising protection of life and personal liberty against unlawful and arbitrary detention. Therefore, the provision of sub-section (2) of Section 167 should be interpreted in a manner that serves this object. She also relied upon a decision of the Karnataka High Court in the case of **Muzammil Pasha & Ors. Etc.** v. **National Investigating Agency etc.**[8].

7. Her submission is that in violation of the law laid down by the Constitution Bench in the case of **Sanjay Dutt**[2], the time to carry out the investigation was extended by the Special Court. Therefore, the said order is completely illegal as it infringes the right of the appellants to get default bail which is held to be a fundamental right guaranteed by Article 21 of the Constitution of India.

---

[3] (2005) 7 SCC 29

[4] (2009)17 SCC 631

[5] 2020 SCC OnLine SC 529

[6] (2020) 10 SCC 616

[7] (2021) 2 SCC 485

[8] 2021 SCC OnLine Kar 12688

SUBMISSIONS OF THE RESPONDENT

8. Shri Aman Lekhi, the learned Additional Solicitor General of India (ASG) submitted that the accused is not entitled to a written notice of the reports submitted by the Public Prosecutor for seeking extension of time. He submitted that the report of the Public Prosecutor is considered by the Special Court at a stage when the investigation is in progress. His submission is that accused has no say in the matter of grant of extension of time as he has no right of being heard at the stage of the investigation. He relied upon a decision of this Court in the case of **Narender G. Goel** v**. State of Maharashtra and Anr.[9].**

9. Learned ASG further submitted that the inquiry at the time of consideration of the report submitted by the Public Prosecutor for extension of time is very limited. He relied upon a decision of this Court in the case of **State of Maharashtra** v. **Surendra Pundlik Gadling and Ors.[10]**. He submitted that if a report is submitted by the Public Prosecutor indicating the progress of the investigation and the specific reasons for continuing the detention of the accused beyond a period of 90 days, the Special Court is empowered to grant the extension. He submitted that in the present case, the reports submitted by the Public Prosecutor indicate that there was an application of mind by the Public Prosecutor and all details as required were submitted. He urged that the decision of this Court in the case of **Sanjay Kumar Kedia[4]** is *per incuriam* as the binding precedent in the case of **Sanjay Dutt[2]** was not considered by this Court.

10. His submission is that the obligation to produce the accused before the Court is mandatory only when his detention in police custody is sought. He submitted that mere non-production of the accused on the day on which the Special Court considered the request for the grant of extension of time will not vitiate the order extending the time. His submission is that in view of Section 460 of CrPC, the order will not stand vitiated. His submission is that in any case, no prejudice has been caused to the appellants due to their non-production and there has been no failure of justice. Learned ASG submitted that physical production of the accused was not feasible due to Covid-19 conditions and that inadequate bandwidth prevented the virtual production of the accused persons. He submitted that the reasons given by the High Court are cogent and correct.

REJOINDER OF THE APPELLANTS

11. By way of rejoinder, the learned senior counsel appearing for the appellant submitted that without disturbing the law laid down in the case of **Hitendra Vishnu Thakur[1]**, the Constitution Bench in the case of **Sanjay Dutt[2]** has held that service of written notice to the accused is not necessary and it would suffice if the accused was present in the Court and was informed that the request for extension of time to complete the investigation is being considered. She submitted that there is no material placed on record to show that in January 2021 when the reports submitted by the Public Prosecutor were considered by the Special Court, either the Standard Operating Procedure prevailing at that time prohibited the physical production of the accused or there was no proper connectivity which prevented the production even virtually. Her submission is that the said plea has no foundation at all.

---

[9] (2009) 6 SCC 65

[10] (2019) 5 SCC 178

FURTHER SUBMISSIONS

12. On 09th February 2022, submissions were concluded. Thereafter, we noticed that sub-section (5) of Section 20 of the 2015 Act was not brought to our notice during the course of submissions. Therefore, on 10th March 2022, the appeals were again listed on Board for further hearing, and time was granted to the learned counsel appearing for the parties to make further submissions on the limited issue of the applicability of sub-section (5) of Section 20 of the 2015 Act. Thereafter, the appeals could not be listed immediately due to the change of the constitution of the Bench. Ultimately, further submissions were heard on 23rd August 2022.

13. Ms. Nitya Ramakrishnan, learned senior counselappearing for the appellants pointed out that though subsection (5) of Section 20, which overrides the provisions of CrPC, provides that the accused shall not be granted bail if it is noticed by the Special Court that he was on bail in an offence under the 2015 Act or under any other Act on the date of the offence in question, the same will not come in the way of the appellants getting default bail. She pointed out that an identical provision in the form of sub-section (5) of Section 21 of the Maharashtra Control of Organised Crime Act, 1999 (for short, 'the MCOCA') has been partially struck down by the Bombay High Court in the case of **Bharat Shanti Lal Shah & Ors.** v. **State of Maharashtra**[11]. She pointed out that this Court in the case of **State of Maharashtra** v. **Bharat Shanti Lal Shah & Ors.**[12] has affirmed the said view. This Court, for reasons recorded, held that the expression "or under any other Act" as appearing in sub-section (5) of Section 21 of the MCOCA was arbitrary and discriminatory.

RESPONSE OF THE SOLICITOR GENERAL OF INDIA

14. Shri Tushar Mehta, learned Solicitor General of India submitted that in view of the pronouncement of law by this Court in the case of **Bharat Shanti Lal Shah**[12], sub-section (5) of Section 20 of the 2015 Act will not by itself be an impediment in the way of the appellants getting default bail. With the permission of the Court, he made additional submissions. He relied upon Section 461 of CrPC which contains an exhaustive list of irregularities that vitiate proceedings. He urged that the irregularity alleged in this case is not a part of the list of irregularities contained in the said provision. He also invited our attention to sub-section (2) of Section 465 of CrPC. His submission is that as held by this Court in the case of **Sanjay Dutt**[2], the accused is not entitled to a written notice of the application made by the Public Prosecutor for extension of the period provided to carry out the investigation and only his presence is to be procured when the application is heard by the Special Court. He submitted that the accused is not entitled to receive a copy of the application/ report made under the proviso to sub-section (2) of Section 20 of the 2015 Act and, therefore, he is not entitled to make any submissions on the report of the Public Prosecutor. He submitted that there is no prejudice caused to the appellants as a result of the failure of the investigating agency to produce them before the Special Court when applications for extension were heard. He submitted that the failure to produce the appellants on the date on which extension applications were heard, is a mere irregularity in the proceedings which will have no effect on further stages such as cognizance, trial, etc. On this aspect, he relied upon a decision of this Court in the case

[11] 2003 All MR (Crl.) 1061

[12] (2008) 13 SCC 5

of **Fertico Marketing & Investment Private Limited & Ors.** v. **Central Bureau of Investigation & Anr.**[13]. He also relied upon another decision of this Court in the case of **Securities and Exchange Board of India etc.** v. **Gaurav Varshney & Anr. etc.**[14]. He urged that the applications for availing of default bail were filed by the appellants after the time was extended by the Special Court. He would, therefore, submit that the appellants are not entitled to default bail. He also submitted that the allegations against the appellants are of a very serious nature. Even this aspect needs to be taken into consideration.

CONSIDERATION OF SUBMISSIONS

15. We have carefully considered the submissions. The entire issue revolves around the interpretation of the proviso added by the 2015 Act to sub-section (2) of Section 167 of CrPC. For that purpose, we must refer to Section 20 of the 2015 Act. The Section reads thus:-

"20. Modified Application of Certain provisions of Code:

(1) Notwithstanding anything contained in theCode or in any other law, every offence punishable under this Act 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 and shall be construed accordingly.

(2) Section 167 of the Code shall apply in relationto a case involving an offence punishable under this Act subject to the modifications that in subsection (2), -

(a) the reference to "fifteen days" and "sixtydays", wherever they occur, shall be construed as references to "thirty days" and "ninety days", respectively;

(b) after the existing proviso, the followingproviso shall be inserted, namely: -

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the said period of ninety days.".

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless –

(a) the Public Prosecutor has been given anopportunity to oppose the application of such release; and

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

(5) **Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Special Court that he was on bail in an offence under this Act, or under any other Act on the date of the offence in question.**

(6) The restriction on granting of bail specified insub-sections (4) and (5) are in addition to the restriction under the Code or any other law for the time being in force on the granting of bail.

---

[13] (2021) 2 SCC 525

[14] (2016) 14 SCC 430.

(7) The police officer seeking the custody of anyperson for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reasons for seeking such custody and also for the delay, if any, in seeking the police custody."

[emphasis added]

We also reproduce sub-sections (1) and (2) of Section 167 of CrPC which read thus:-

"167. Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained incustody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person isforwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that--

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding--

(i) ninety days, where the investigation relates to anoffence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to anyother offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) **no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage**;

(c) no Magistrate of the second class, not speciallyempowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.--For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.--If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."

[emphasis added]

16. Thus, in a case involving the offences punishable under the 2015 Act, the Special Court is authorized to detain the accused person in custody for a period not exceeding 90 days. The proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-Section (2) of Section 167 of CrPC enables the Special Court to extend the said period to a total of 180 days on the basis of a report of the Public Prosecutor setting out the progress of the investigation and incorporating the specific reasons for the detention of the accused beyond the period of 90 days.

17. Thus, unless the Special Court exercises the power under the proviso added by the 2015 Act to sub-section (2) of Section 167 of CrPC, on the expiry of the period of 90 days, the accused will be entitled to default bail. When the Special Court exercises the power under the proviso added to sub-section (2) of Section 167 of CrPC and extends the time up to 180 days, the accused will be entitled to default bail only if the charge sheet is not filed within the extended period.

18. As can be seen from sub-section (2) of Section 20 of the 2015 Act, the provisions of Section 167 of CrPC and in particular sub-section (2) thereof containing entitlement of the accused to default bail will apply to the 2015 Act with the modification that the reference to the period of "fifteen days" and "sixty days" provided in sub-section (2) of Section 167 of CrPC is required to be construed as a reference to "thirty days" and "ninety days" respectively. The proviso to sub-section (2) of Section 20 of the 2015 Act enables the Special Court to extend the period provided in sub-section (2) of Section 167 of CrPC up to 180 days.

GENERAL PRINCIPLES GOVERNING DEFAULT BAIL

19. Before we go to the main controversy concerning the legality of the order of extension passed in exercise of the power under the proviso to sub-section (2) of Section 20 of the 2015 Act, it is necessary to recapitulate the settled law relating to default bail. Three decisions of the Benches of three Hon'ble Judges of this Court have laid down the law on this aspect.

19.(a) The first decision is in the case of **Uday Mohanlal Acharya** v. **State of Maharashtra**[15]. In paragraph 13 thereof, the majority view has been summarised which reads thus :

"…. …. …. ….

On the aforesaid premises, we would record our conclusions as follows:

1. Under sub-section (2) of Section 167, a Magistratebefore whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.

2. Under the proviso to the aforesaid sub-section (2) ofSection 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment

[15] (2001) 5 SCC 453

for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

3. **On the expiry of the said period of 90 days or 60days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.**

4. When an application for bail is filed by an accusedfor enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish the bail asdirected by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (*a*) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

6. **The expression "if not already availed of" used by this Court in *Sanjay Dutt case* [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (*a*) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.**

With the aforesaid interpretation of the expression "availed of" if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a chargesheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of *Mohd. Iqbal* v. *State of Maharashtra* [(1996) 1 SCC 722 : 1996 SCC (Cri) 202] ."

[emphasis added]

19(b) The second decision is in the case of **M. Ravindran**[7]. The conclusions in the said decision can be summarised as under :

(i) Majority view in the case of **Uday Mohanlal Acharya**[15] is correct;

(ii) Sub-section (2) of Section 167 of CrPC was enacted for providing an outer time limit to the period of remand of the accused proportionate to the seriousness of the offence alleged. On the failure to complete the investigation within the defined outer limit, the accused acquires an indefeasible right to get default bail;

(iii) The timelines provided under sub-section (2) of Section 167, CrPC ensure that investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This provision ensures that the Court takes cognizance of the case without undue delay after investigation is completed within the time provided in sub-section (2) of Section 167, CrPC;

(iv) The Legislature has enacted sub-section (2) of Section 167 for balancing the need to provide sufficient time to complete the investigation with the need to protect civil liberties of the accused which is given paramount importance in our Constitution;

(v) Sub-section (2) of Section 167 is integrally linked to the constitutional commitment under Article 21 of the Constitution of India promising protection of the personal liberty against unlawful and arbitrary detention;

(vi) The decision of this Court in the case of **S. Kasi**[5] was quoted with the approval which holds that the indefeasible right to default bail is an integral part of the right to personal liberty under Article 21 and the said right cannot be suspended even during the pandemic situation; and

(vii) It is well settled that in case of any ambiguity in the construction of a penal statute, the Court must favour the interpretation which leans towards protecting the rights of the accused. This principle is applicable even in the case of a procedure providing for curtailment of liberty of the accused.

19.(c) The third decision is in the case of **Rakesh Kumar Paul** v. **State of Assam**[16]. This decision holds that it is the duty of the learned Magistrate to inform the accused, of the availability of indefeasible right under subsection (2) of Section 167 of CrPC once it accrues to him. It was held that this will ensure that dilatory tactics of the prosecution are thwarted and obligations under Article 21 of the Constitution are upheld.

20. The issue involved in these appeals will have to be decided in the context of the legal position that the indefeasible right to default bail under sub-section (2) of Section 167, CrPC is an integral part of the fundamental right to personal liberty under Article 21 of the Constitution of India.

IMPEDIMENT OF SUB-SECTION (5) OF SECTION 20 OF THE 2015 ACT

21. Sub-section (5) of Section 20 reads thus :

"**20**. Modified application of certain provisions of Code.

… … … … …

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Special Court that he was on bail in an offence under this Act, or under any other Act on the date of the offence in question."

Sub-section (5) of Section 21 of the MCOCA contained identical provision. In the case of **Bharat Shanti Lal Shah**[12], this Court, for the reasons recorded in paragraphs 62 to 65,

[16] (2017) 15 SCC 67

concurred with the view of Bombay High Court that the expression "or under any other Act" appearing in sub-section (5) of Section 21 of the MCOCA was violative of Articles 14 and 21 of the Constitution and, therefore, it must be struck down. Hence, the same expression used in sub-section (5) of Section 20 of the 2015 Act infringes Articles 14 and 21 of the Constitution. In the facts of the case, none of the appellants were on bail for any offence under the 2015 Act and hence, no impediment has been created by sub-section (5) of Section 20 in the facts of these cases for considering the prayer for default bail.

THE EFFECT OF THE FAILURE OF THE RESPONDENTS TO PRODUCE THE APPELLANTS BEFORE THE SPECIAL COURT AT THE TIME OF CONSIDERATION OF THE EXTENSION APPLICATION

22. The question before us is about the legal consequences of the failure of the Special Court under the 2015 Act to procure the presence of the accused at the time of the consideration of the reports submitted by the Public Prosecutor for a grant of extension of time to complete the investigation. In addition, we will have to consider the effect of the failure to give notice to the accused of the reports submitted by the Public Prosecutor.

23. Under Clause (bb) of sub-Section (4) of Section 20 ofTADA, there is a *pari materia* proviso that empowers the Designated Court to extend the period provided in clause (a) of Sub-Section (2) of Section 167 of CrPC. Clause (bb) reads thus :

"(*bb*) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

'Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days; and' "

The said proviso came up for consideration before this Court in the case of **Hitendra Vishnu Thakur**[1]. In paragraph 23 this Court held thus:

"23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. **The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused.** A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his

mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. **The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in subsection (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb)**. The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. **The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the report of the public prosecutor, to grant extension of time to complete the investigation.**

Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr. Madhava Reddy or the Additional Solicitor General Mr. Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the *report* of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (*bb*) has to be read and interpreted on its plain language without addition or substitution of any expression in it. **We have already dealt with the importance of the *report* of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his *report* must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (*bb*) of sub-section (4) of Section 20. Since the law requires him to submit the *report* as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid *report* fails in the performance of one of its essential duties and renders its order under clause (*bb*) vulnerable.** Whether the public prosecutor labels his *report* as a *report* or as an *application* for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (*bb*) (*supra*). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (*bb*) and it would not be a proper report to seek extension of time. In the absence of an appropriate *report* the

Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. **Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period *except to enable the investigation* to be completed and as already stated before any extension is granted under clause (*bb*), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.**"

[emphasis added]

24. The same issue came up for consideration before the Constitution Bench in this Court in the case of **Sanjay Dutt**[2]. A specific submission was made before the Constitution Bench that the notice to the accused of the application for the extension as contemplated by the decision in the case of **Hitendra Vishnu Thakur**[1] is not a written notice. The argument was that when the report of the Public Prosecutor is considered by the Special Court, it is enough that the presence of the accused is procured before the Special Court and the accused is informed that such a report has been submitted by the Public Prosecutor. By accepting the said submission, the Constitution Bench summarised its conclusions as under:-

"53. (2)(a) **Section 20(4) (bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of Sub-section (4) of Section 20 of the TADA Act has to be understood in the judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose.**"

[emphasis added]

25. In the case of **Devinderpal Singh** v. **Government of National Capital Territory of Delhi**[17], this Court in paragraphs 14 and 15 held thus :

"**14.** In *Hitendra Vishnu Thakur case* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] it was also opined that no extension can be granted by the Designated Court under clause (*bb*) unless the accused is put on notice and permitted to have his say so as to be able to object to the grant of extension.

15. The Constitution Bench in *Sanjay Dutt case* [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] did not express any contrary opinion insofar as the requirement of the report of the Public Prosecutor for grant of extension is concerned or on the effect of the absence of such a report under clause (*bb*) of Section 20(4), but observed that the 'notice' contemplated in the decision in *Hitendra Vishnu Thakur case* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] before granting extension for completion of investigation is not to be construed as a "written notice" to the accused and that only the production of the accused at the time of consideration of the report of the Public Prosecutor for grant of extension and informing him that the question of extension of the period for completing the investigation was being considered would be sufficient notice to the accused."

[emphasis added]

[17] (1996) 1 SCC 44

26. In the case of **Ateef Nasir Mulla**[3], this Court considered a similar provision under POTA. In the said decision, the law laid down in the case of **Sanjay Dutt**[2] was followed. In the facts of the case, it was found that the accused along with his Advocate were present when the request for extension of time to carry on the investigation was considered by the Court and, in fact, a copy of the report praying for the extension was provided to the accused to enable him to file a reply.

27. In the case of **Sanjay Kumar Kedia**[4], this Court considered a similar provision under the NDPS Act. However, this Court did not consider the binding precedent in the case of **Sanjay Dutt**[2]. Therefore, this decision will not be a binding precedent.

28. Clause (b) of sub-section (2) of Section 167 of CrPC lays down that no Magistrate shall authorise the detention of the accused in the custody of the police unless the accused is produced before him in person. It also provides that judicial custody can be extended on the production of the accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law. This requirement is *sine qua non* for the exercise of the power to extend the judicial custody remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand. When the Special Court exercises the power of granting extension under the proviso to sub-section (2) of Section 20 of the 2015 Act, it will necessarily lead to the extension of the judicial custody beyond the period of 90 days up to 180 days. Therefore, even in terms of the requirement of clause (b) of sub-section (2) of Section 167 of CrPC, it is mandatory to procure the presence of the accused before the Special Court when a prayer of the prosecution for the extension of time to complete investigation is considered. In fact, the Constitution Bench of this Court in the first part of paragraph 53(2)(a) in its decision in the case of Sanjay **Dutt**[2] holds so. The requirement of the report under proviso added by sub-section (2) of Section 20 of the 2015 Act to clause (b) of sub-section (2) of Section 167 of CrPC is two-fold. Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. Therefore, the extension of time is not an empty formality. The Public Prosecutor has to apply his mind before he submits a report/ an application for extension. The prosecution has to make out a case in terms of both the aforesaid requirements and the Court must apply its mind to the contents of the report before accepting the prayer for grant of extension.

29. As noted earlier, the only modification made by the larger Bench in the case of **Sanjay Dutt**[2] to the decision in the case of **Hitendra Vishnu Thakur**[1] is about the mode of service of notice of the application for extension. In so many words, in paragraph 53(2)(a) of the Judgment, this Court in the case of **Sanjay Dutt**[2] held that it is mandatory to produce the accused at the time when the Court considers the application for extension and that the accused must be informed that the question of extension of the period of investigation is being considered. The accused may not be entitled to get a copy of the report as a matter of right as it may contain details of the investigation carried out. But, if we accept the submission of the respondents that the accused has no say in the matter, the requirement of giving notice by producing the accused will become an empty and meaningless formality. Moreover, it will be against the mandate of clause (b) of the

proviso to sub-section (2) of section 167 of CrPC. It cannot be accepted that the accused is not entitled to raise any objection to the application for extension. The scope of the objections may be limited. The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167 of CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted.

30. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by sub-section (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.

31. An attempt was made to argue that the failure to produce the accused will not cause any prejudice to him. As noted earlier, the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused.

32. The learned Additional Solicitor General relied upon the decision of this Court in the case of **Narender G. Goel**[9]. The issue involved in that case was not of extension of time for completion of the investigation. The issue generally discussed therein is about the right of hearing of the accused at the stage of the investigation. His reliance on the decision of this Court in the case of **Surendra Pundlik Gadling**[10] will not help him at all. This was a case where the accused was not only produced before the Court but he was provided a copy of the application for extension of time. The grievance of the accused was that time of only one day was granted to contest the application. This contention was rejected.

33. In the facts of the cases in hand, when the Special Court considered the reports submitted by the Public Prosecutor for grant of extension of time, the presence of the appellants was admittedly not procured before the Special Court either personally or through video conference. It is also an admitted position that information about the filing of such reports by the Public Prosecutor was not provided to the accused. It is mentioned

in the impugned judgment that due to COVID – 19, it was not permissible to physically produce the accused before the Special Court. Moreover, the accused were in different prisons and, therefore, the production through video conference would have been very slow. Assuming that the process of production would have been slow, that is no excuse for not procuring the presence of the accused through video conference. Nothing is placed on record either before this Court or High Court to show that as per the Standard Operating Procedure applicable to the concerned Court in January 2021 when the impugned orders were passed granting the extension, it was not permissible to physically produce the accused before the Special Court. There is no material placed on record to show that technical reasons/difficulties prevented the prosecution from producing the accused before the Special Court through video conference. It is not possible to accept that in January 2021 in the Court at Rajkot in the State of Gujarat, there was any connectivity issue. In fact, admittedly, no such case was pleaded before the High Court in the pleadings of the respondents.

34. We must note here that the reports were submitted by the Public Prosecutor nearly a week before the expiry of the period of 90 days. In every case, period of seven days or more was available for completion of the period of ninety days. The orders were passed by the Special Court on the reports of the Public Prosecutor on the very day on which reports were submitted. There was no reason for such hurry. The Special Court could have always granted time of a couple of days to the prosecution to procure the presence of the accused either physically or through video conference. The accused may not be entitled to know the contents of the report but he is entitled to oppose the grant of extension of time on the grounds available to him in law. In the facts of the present case, the grant of extension of time without complying with the requirements laid down by the Constitution Bench has deprived the accused of their right to seek default bail. It has resulted in the failure of justice.

35. The orders passed by the Special Court of extending the period of investigation are rendered illegal on account of the failure of the respondents to produce the accused before the Special Court either physically or virtually when the prayer for grant of extension made by the Public Prosecutor was considered. It was the duty of the Special Court to ensure that this important procedural safeguard was followed. Moreover, the oral notice, as contemplated by this Court in the case of **Sanjay Dutt**[2], was also not given to the accused.

36. Once we hold that the orders granting extension to complete investigation are illegal and stand vitiated, it follows that the appellants are entitled to default bail.

37. When they applied for bail, the appellants had no notice of the extension of time granted by the Court. Moreover, the applications were made before the filing of charge sheet. Hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of **Sanjay Dutt**[2] as well as in the case of **Bikramjit Singh**[6], this Court held that grant of default bail does not prevent rearrest of the petitioners on cogent grounds after filing of charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by this Court in the case of **Mohamed Iqbal Madar Sheikh &**

Ors. v. **State of Maharashtra**[18], re-arrest cannot be made only on the ground of filing of charge sheet. It all depends on the facts of each case.

38. Accordingly, the impugned orders passed by the Special Court granting extension to complete investigation and impugned judgment of the High Court are hereby quashed and set aside. The appellants shall be enlarged on default bail under sub-section (2) of Section 167 of CrPC on following conditions:

(a) The appellants shall furnish a bail bond of Rs.2,00,000/- with appropriate sureties as may be decided by the Special Court;

(b) The appellants shall surrender their passports to the Special Court at the time of furnishing security;

(c) The appellants shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and

(d) The appellants shall mark regular attendance with such police station and at such periodical intervals, as may be determined by the Special Court; and

(e) The appellants shall cooperate with the Special Court for early conclusion of the trial.

39. The appeals are allowed on the above terms.

[18] (1996) 1 SCC 722