

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.30907 of 2016

ORDER

(per Hon' ble Sri Justice M. Seetharama Murti)

The petitioner, Anitha Mohan Waghmare, who is the wife of Mohan Pandurang Waghmare, the 1st accused, in Crime No.164 of 2016 on the file of Adibatla Police Station, Cyberabad District, seeks a writ of habeas corpus and release of her husband forthwith. He is presently lodged in Central Prison, Cherlapalli, Ranga Reddy District.

2. We have heard the submissions of the learned counsel for the petitioner and that of the learned Special Government Pleader attached to the learned Additional Advocate General, State of Telangana, and the learned Public Prosecutor for the State of Telangana. We have perused the material record.

3. The crux of the complaint of the petitioner is this:

The petitioner's husband along with others was arrested on 25.06.2016 in connection with the before mentioned crime registered for the offence punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, 'the NDPS Act'). The police produced him before the learned IV Metropolitan Magistrate, Ibrahimpatnam, Ranga Reddy District, along with an application for remand. On the same day, the learned Magistrate remanded him to judicial custody. Since then, the petitioner's husband was languishing in jail as the judicial custody is being extended by the learned Magistrate by successive remand orders in violation of the Rule of Law and the provision of Section 36A of the NDPS Act. Under law, the learned Magistrate may authorise the detention of the petitioner's husband in judicial custody for a period not exceeding fifteen days in the whole. Therefore, the

detention of the petitioner's husband in judicial custody beyond first fifteen days pursuant to the remand orders passed by the learned Magistrate from time to time is illegal, arbitrary and violative of principles of natural justice. Therefore, the petitioner's husband is entitled to be set free as the further orders of remand passed by the learned IV Metropolitan Magistrate extending his judicial custody are illegal, not authorised by law and without jurisdiction.

4. From the submissions made before this Court, the facts, which are undisputed and which emerge for consideration are as follows:

The husband of the petitioner is the first accused in Crime No.164 of 2016 on the file of Adibatla Police Station, Cyberabad District, registered for the offence punishable under Section 20 (b) of the NDPS Act. The said offence is punishable with imprisonment for a term of more than three years and is triable only by the Special Court constituted for the area in which the offence has been committed. On arrest of the husband of the petitioner/A1 on 25.06.2016, he was produced by the police before the learned IV Metropolitan Magistrate on the same day. The learned Magistrate authorised his detention in judicial custody. Therefore, he was lodged in Central Prison, Cherlapalli. Thereafter, without forwarding him and his case papers to the Special Court having jurisdiction, his confinement in judicial custody is being extended by successive orders of remand that are being passed by the learned Magistrate. Section 36A of the NDPS Act, which deals with offences triable by Special Courts, postulates that when a person like the husband of the petitioner herein who is accused of commission of an offence like the present one punishable under the provisions of the NDPS Act is forwarded to a Magistrate under Section 167 of CrPC and Section 36A of the NDPS Act, such Magistrate may authorise detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such a Magistrate is a Judicial Magistrate. After such first remand, the Special Court may exercise, in relation

to such person forwarded to it, the same power which a Magistrate having jurisdiction may exercise under Section 167 of CrPC in relation to the said person. In that view of the matter, the learned Magistrate ought not to have passed subsequent orders of remand extending judicial custody from time to time and for a period exceeding fifteen days as under law the learned Magistrate may authorise the detention of such accused person for a period not exceeding fifteen days in the whole. Further, as per the provision of Section 36A(d) of the NDPS Act, the Special Court may, upon perusal of police report of the facts constituting an offence under the said Act, take cognizance of the offence without the accused being committed to it for trial. Therefore, after the first order remanding the husband of the petitioner to judicial custody for fifteen days was passed by the learned Magistrate, the Magistrate ought to have passed appropriate orders forwarding A1/ petitioner's husband along with his case papers to the Special Court for further orders or the police concerned ought to have produced him, with the permission of the learned Magistrate, before the Special Court with an application for extension of remand and for appropriate orders as contemplated under law. However, the said course was not followed in the instant case.

5. In this backdrop, the learned counsel for the petitioner would contend that in view of the mandate of law under Sections 36A of the NDPS Act and 167 CrPC, the detention of the petitioner's husband/ A1 in judicial custody for a period exceeding fifteen days in the whole pursuant to the subsequent extension orders of remand passed by the learned Magistrate is *per se* illegal. He would also contend that since the confinement beyond the statutory period is illegal and it affected the right to life and personal liberty of the petitioner's husband, the writ of habeas corpus with the consequential relief for his release forthwith is maintainable and that the petitioner's husband is entitled to be set free forthwith. He would alternatively contend that the petitioner's husband is entitled to be enlarged on bail.

6. Per contra, the learned Special Government Pleader and the learned Public Prosecutor would contend as under:

The orders extending the remand beyond a period of fifteen days in the whole passed by the learned Magistrate are only defective or irregular and not illegal as the said orders were passed without noticing the command of law and by following a circular issued by the learned I Additional District Judge-cum-Metropolitan Sessions Judge, Cyberabad, directing all the Magistrates not to send the accused and the case records to the said Court in respect of crimes registered under the NDPS Act since his Court is flooded with number of remand prisoners and in ignorance of the orders of this Court dated 01.12.2015 in Criminal Revision Case 2684 of 2015, whereby the said circular was held to be illegal and was set aside. It is also submitted that after receiving notices in this writ petition, the learned Magistrate was already appraised of the legal position and that the case file was already forwarded by the learned Magistrate to the Special Court and that steps were initiated for forwarding the petitioner's husband to the Special Court to deal with his case appropriately and in accordance with law. The petitioner's husband was involved in the commission of a serious offence punishable under the provisions of the NDPS Act. Under the said Act all offences are cognizable and there are special provisions regarding granting of bail in non-bailable offences and there are limitations on granting of bail and those limitations are in addition to the limitations under the CrPC or any other law for the time being in force. The orders extending judicial custody beyond a period of first fifteen days are irregular. Such defective orders are curable on forwarding the accused person and his papers to the Special Court and on the Special Court passing appropriate orders. Therefore, on the mere extension of judicial remand by the learned Magistrate beyond the period of first fifteen days, the confinement of the petitioner's husband does not become illegal as the defective orders are curable. Hence, the writ of habeas corpus seeking the release of the

petitioner's husband is not maintainable. On the grounds urged by the petitioner, the petitioner's husband is not entitled to be enlarged on bail in view of the special provisions and the limitations on granting of bail under the NDPS Act. The writ petition for a writ of habeas corpus is misconceived and is not maintainable.

7. Before proceeding further, it is necessary to refer to the relevant provisions of law.

NDPS Act:

36A. Offences triable by Special Courts.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate;

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section

as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may 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.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.]

36B. Appeal and revision.—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

36C. Application of Code to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

36D. Transitional provisions.—

(1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), which is triable by a Special Court shall, until a Special Court is constituted under section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).

37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall 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 that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

CrPC: Sections 4, 5, 26 and 167:

4. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving, __

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

26. Courts by which offences are triable. Subject to the other provisions of this Code, -

- (a) any offence under the Indian Penal Code (45 of 1860), may be tried by-
 - (i) the High Court, or
 - (ii) the Court of Session, or
 - (iii) any other Court by which such offence is shown in the First Schedule to be triable;

Provided that any offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) shall be tried as far as practicable by a Court presided over by a woman.

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by-

- (i) the High Court, or
- (ii) any other Court by which such offence is shown in the First Schedule to be triable.

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

(1) Whenever any person is arrested and detained in custody, 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 well- founded, 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 is forwarded 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 an offence 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 any other 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 specially empowered 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.

(2A) Notwithstanding anything contained in sub- section (1) or sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an

Executive Magistrate under this sub- section shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub- section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons- case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons, and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub- section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub- section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

8. We have given earnest consideration to the facts and submissions. We have carefully gone through the provisions of law, which are relied upon and which are relevant.

9. In this setting of facts, law and the rival submissions, the key question which falls for determination is whether the orders passed from time to time by the learned IV Metropolitan Magistrate authorising the detention of the petitioner's husband in judicial custody for a period exceeding fifteen days in the whole are either illegal or irregular or defective and are curable or not.

10. Section 36A(1)(a) confers the jurisdiction on the Special Court constituted under Section 36 to try offences under the NDPS Act which are punishable with imprisonment for a term of more than 3 years. Section 36A(1)(b) allows a Magistrate to forward an accused suspected of committing an offence under the NDPS Act to a Special Court. Section 36A(1)(b) of the said

Act states that where a person accused of or suspected of a commission of an offence under the Act, was forwarded to a Magistrate under sub-section (2) or sub-section (2A) of Section 167 CrPC such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding 15 days in the whole where such Magistrate was a Judicial Magistrate and 7 days in the whole where the Magistrate was an Executive Magistrate. The proviso appended to Section 36(A)(1)(b) provides that in cases which are triable by the Special Court, the Magistrate, where upon or at any time before the expiry of such period of detention authorized by him considers that the detention of such person is unnecessary, shall order such person accused of or suspected of the commission of an offence under the NDPS Act to be forwarded to the Special Court having jurisdiction. Section 36A(1)(c) of the NDPS Act stipulates that, the Special Court would exercise, in relation to the person forwarded to it under Section 36A(1)(b), the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 CrPC in relation to the accused person forwarded under that section. Section 36A(4) of the NDPS Act increased the number of days occurring in sub-section (2) of Section 167 of CrPC from 90 days to 180 days. It also provided that, if it was not possible to complete the investigation within the period of 180 days the Special Court is empowered to extend such period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reason for detention of the accused beyond the said period of 180 days. Section 36A(1)(d) allows the Special Court, upon perusal of police report of the facts constituting an offence under the NDPS Act or upon complaint made by any officer of the Central Government or a State Government authorized in this behalf, to take cognizance of offence without the accused being committed to it for a trial. Sub-section (2) of Section 36A allows the Special Court to try an offence other than an offence under the NDPS Act with which the accused may, under the CrPC be charged at the same trial. The

Special Courts are empowered by Section 36A(5) to try summarily, offences under the NDPS Act punishable with imprisonment of a term of not more than three years.

10.1 Sections 36A(1)(a)(b) and (c) reflect that a Special Court under the NDPS Act is not a Court for the first production of the accused for obtaining orders of judicial remand and that a Court of the learned Judicial Magistrate is a Court of first production for the purpose of authorising the detention of the person accused of commission of an offence in such custody as it thinks fit for a period not exceeding fifteen days in the whole. The Section of law itself provides that an accused, suspected of committing an offence under the NDPS Act would be forwarded by a Magistrate to the Special Court. Therefore, a contention that the learned Magistrate has no inherent jurisdiction or no jurisdiction at all to authorise detention in judicial custody on production of an accused before him cannot be countenanced. Section 36A of the NDPS Act which begins with the non-obstante clause "Notwithstanding anything contained in the Code of Criminal Procedure, 1973....." indicates that the provision of the said Section would prevail over the provisions of the CrPC. In the event of any conflict between the provisions of CrPC and the provisions of Section 36A, the provisions of the said section under the NDPS Act would override the provisions of the CrPC.

10.2 The offence which the petitioner's husband was alleged to have committed is one punishable under Section 20(b) of the NDPS Act and is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years besides fine as the accusation reflects that the contraband involved is of commercial quantity. The special powers of the High Court regarding bail under Section 438 of CrPC are retained under Section 36A(3) of the NDPS Act. In *Narcotics Control Bureau V/s*

*Kishan Lal and Ors.*¹, it was held that the power of the High Court to grant bail under Section 439 of the CrPC is subject to the limitations contained in the amended Section 37 of the NDPS Act since those additional limitations are applicable to the High Court also in the matter of granting bail. The position in regard to granting of bail is elucidated by Section 37 of the NDPS Act which starts with a non-obstante clause. It states that no person accused of an offence punishable for offences set out in Section 37(1)(b) shall be released on bail or on his own bond, unless the conditions prescribed therein are satisfied. Further, limitations on granting of bail which are specified in clause (b) of sub-section (1) are in addition to the limitations under the CrPC or any other law for the time being in force.

11. The facts brought before us clearly indicate that the learned IV Metropolitan Magistrate had acted beyond his authority while passing the orders authorising detention of the petitioner's husband in judicial custody for a period exceeding fifteen days. The act of the learned Magistrate in entertaining the further applications for remand and granting orders of extension of judicial remand exceeding fifteen days in the whole without forwarding the petitioner's husband and his case papers to the Special Court is not proper though not illegal. Trite to note that at the times of State Conferences and other State events, which the Judicial officers would be invited to attend leaving their stations of work, the powers of granting or extending remands would be delegated to or conferred upon the Executive Magistrates and therefore, delegation of the powers of granting remands and extending remands is not opposed to settled and accepted practice and procedure. Be that as it may. The petitioner's husband is not enlarged on bail by the Special Court. In fact, at the expiry of the 15th day of judicial custody, in the light of the law adverted to supra, whether the accused was in judicial custody pursuant to the orders of a Magistrate or that of a Judge of the

¹ 1991CriLJ654

Special Court does not make any difference for him, as in either case, the custody remains judicial and his detention in judicial custody is necessary as he was not enlarged on bail. What matters in the instant case is the non forwarding of the accused and the initial police papers on the basis of which the remand was granted to the Special Court by the learned Magistrate. Therefore, the custody of the petitioner's husband cannot be termed as illegal and it is only defective or in any event it is only irregular. And therefore merely because some default or irregularity is committed either in not physically forwarding the accused or the police papers pertaining to him to the Special Court, that by itself cannot be held to be sufficient to hold mechanically that the same confers a right on the accused to either seek a writ of habeas corpus and his release or seek bail invoking writ jurisdiction. The release of the petitioner's husband by granting a writ order in this writ as prayed for or by granting bail as alternatively sought for, would amount to either permitting the accused to circumvent the special bail provisions under the NDPS Act or adding an additional ground for release on bail of the petitioner's husband, who is in judicial custody on the accusation that he had committed some serious non-bailable offences under the NDPS Act, for trial of which the Legislature has enacted a special law and provided a special provision under Section 37 (amended in the years 1989 and 2001) placing limitations on the powers of granting of bail by the Courts.

12. Before concluding, it is necessary to state that the learned counsel for the petitioner called in aid the decision in *State of Tamil Nadu V/s Paramasiva Pandyan*². The facts of the cited case disclose that the respondents therein were alleged to have committed offence punishable under the Essential Commodities Act (hereinafter, 'EC Act') and were remanded to judicial custody from time to time by the Special Court even though it had ceased to function as a Special Court in respect of the cases under the EC Act

² 2002(1) Supreme Court Cases 15

due to the lapse in 1998 of EC (Special Provisions) Act, 1981, by efflux of time and therefore, the High Court held that the orders of remand passed by the aforesaid Special Court in cases under EC Act, long after it ceased to be a Special Court, as invalid. The Supreme Court held that the orders of the High Court are unassailable. In view of the facts peculiar to the cited case, the decision is not helpful to the petitioner herein. Further, our view in the instant case gathers support from an unreported decision dated 01.12.2015 of a learned Single Judge of this Court in CrI.R.C.No.2684 of 2015 (Sukka Narasimha Goud and two others V/s State of Telangana), wherein the facts are more or less similar. The facts of the said case disclose that when a learned Magistrate extended the remand of the petitioners therein accused of offences punishable under the NDPS Act for a period exceeding fifteen days in the whole following the circular of the learned I Additional District Judge directing to do so, this Court set aside the said circular holding it as illegal and arbitrary and directed the learned Magistrate to forward the petitioners/accused with case material to the Special Court within the date specified in the orders to enable the special Court to pass appropriate orders in accordance with law and refused the request of the petitioners/accused for grant of bail but reserved liberty to them to file a fresh application for bail before the Special Court. In our opinion the irregularity or defect in the order of the learned Judicial Magistrate extending remand and authorising detention of the petitioner's husband, without the authority of law, beyond the period of fifteen days in the whole in judicial custody stand cured, on the special Court passing the subsequent orders of remand authorising the detention of the petitioner's husband in judicial custody. Hence, the petitioner, whose husband was arrested on the accusation of commission of offence punishable under the NDPS Act, would not be entitled to seek a writ of habeas corpus or bail on the grounds that her husband's detention in judicial custody was either unauthorised or that it does

not get validated or cured by the subsequent legal and valid orders passed by a special Court.

13. On the above analysis, we are of the considered view that the writ of habeas corpus seeking the relief of release of the petitioner's husband is misconceived and that in this writ no bail orders as sought for can be granted for the release of the petitioner's husband and that the writ petition filed without seeking the enlargement of the petitioner's husband/ A1 on bail before the special Court by following the procedure established by law cannot be entertained.

14. In the result, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.



JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

27.09.2016
Vjl