

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2016

DELIVERED ON : 16.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

H.C.P.Nos.1642 and 2058 to 2062 of 2015

R.Thiruselvam ... Petitioner in HCP.1642/2015
Karthik ... Petitioner in HCP.2058/2015
John Martin @ John ... Petitioner in HCP.2059/2015
R.Kalailingam ... Petitioner in HCP.2060/2015
Thangaraj @ Thamizharasan ... Petitioner in HCP.2061/2015
Kaviyarasan ... Petitioner in HCP.2062/2015

Vs.

1. The Deputy Superintendent of Police,
National Investigation Agency
Hyderabad
(Camp at Puducherry).

2. The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents in all H.C.Ps.

Prayer in H.C.P.No.1642 of 2015: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the petitioner, R.Thiruselvam, son of K.Raman, aged about 33 years now confined in Central Prison, Madurai as a remand prisoner before the Hon'ble Court and set him at liberty forthwith.

Prayer in H.C.P.No.2058 of 2015: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the petitioner, Karthik, Son of Vijayan, aged about 29 years, now confined in Central Prison, Madurai as a remand prisoner before the Hon'ble Court and set him at liberty forthwith.

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Prayer in H.C.P.No.2059 of 2015: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for

issuance of a Writ of Habeas Corpus directing the respondents to produce the petitioner, John Martin @ John, Son of Arokiam, aged about 24 years, now confined in Central Prison, Madurai as a remand prisoner before the Hon'ble Court and set him at liberty forthwith.

Prayer in H.C.P.No.2060 of 2015: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the petitioner, R.Kalailingam, Son of K.Raman, aged about 34 years, now confined in Central Prison, Madurai as a remand prisoner before the Hon'ble Court and set him at liberty forthwith.

Prayer in H.C.P.No.2061 of 2015: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the petitioner, Thangaraj @ Thamizharasan, son of Mani, aged about 38 years, now confined in Central Prison, Madurai as a remand prisoner before the Hon'ble Court and set him at liberty forthwith.

Prayer in H.C.P.No.2062 of 2015: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the petitioner, Kaviyarasan, S/o.Ganesan aged about 30 years, now confined in Central Prison, Madurai as a remand prisoner before the Hon'ble Court and set him at liberty forthwith.

For Petitioners : Mr.M.Radhakrishnan
in all H.C.Ps. For M/s.P.Pugalenth

For Respondents : Dr.(Mr.)D.Simon,
Central Govt. Standing Counsel
for R1 in all H.C.Ps.
Mr.A.N.Thambidurai
Additional Public Prosecutor
for R2 in all H.C.Ps.
Mr.R.Muthukumarasamy
Senior Counsel for
Madras High Court

COMMON ORDER

M.SATHYANARAYANAN, J.

As the issue involved in these habeas corpus petitions, is one and the same, all petitions are taken up together for disposal and this common order is passed.

NIA cases, Puducherry and according to them, for the period between 18.07.2014 and 12.09.2014, no orders have been passed by the Special Court for NIA cases, Puducherry, extending their period of remand, and alleging violation of Article 21 of the Constitution of India, they came forward to file these respective Habeas Corpus Petitions, praying for appropriate direction directing the respondents to produce and set them at liberty forthwith.

3.H.C.P.No.1642 of 2015:-

3(i). The petitioner would submit that he was arrested at Melur by the Q-Branch of Tamil Nadu Police on 10.03.2014, and falsely implicated in a case in Crime No.47/2014, on the file of Othakkadai Police Station, and produced before the Court of Judicial Magistrate, Melur, Madurai District, on 11.03.2014, and remanded to judicial custody in the said case, and lodged at Central Prison, Madurai. It is further stated by him that on 03.04.2014, the first respondent made a formal arrest, while he was lodged at Central Prison, Madurai and on 09.04.2013, he was produced under Prisoners Transfer (PT) Warrant, before the Special Court for National Investigation Agency (NIA) cases, Puducherry and remanded to judicial custody in RC.No.01/2014/NIA/HYD, under Section 307 IPC, Sections 3 and 4 of Explosive Substances Act, 1908 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967.

3(ii). He would further state that the case of the prosecution/first respondent is that on 29.01.2014, at about 08.20 hours, the complainant, namely N.Prem Kumar, while on sentry duty at the residence of a former Union Minister at No.5, Ellai Amman Kovil Street, Puducherry, found an object suspected to be some explosive material, in the car parking area and on receipt of the complaint, the Sub-Inspector of Police, Odian Salai Police Station, Puducherry has registered a case in Crime No.25/2014, under Section 4 of the Explosive Substances Act, 1908, against some unknown persons, and thereafter, the case was transferred to the National Investigation Agency.

3(iii). It is further stated by the petitioner that he is in judicial custody for more than one year and though the period of 90 days expired on 07.07.2014, on an earlier occasion, the Special Court for trial of NIA cases extended the period of remand from 20.06.2014 to 18.07.2014, based on the request of the first respondent, who, again, made a request to extend the remand for a period of 30 days from 18.07.2014, as per the provisions of Section 43-D of the Unlawful Activities (Prevention) Amendment Act, 2008. However, the Special Court for trial of NIA Cases, did not pass any orders extending the period of judicial custody from 18.07.2014, and on subsequent hearing dates on 14.08.2014 and 12.09.2014 also, the period of remand had not been extended and therefore, would contend that his custody from 18.07.2014 is not only illegal, but also violative of Article 21 of the Constitution of India.

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3(iv). He would state that his father earlier had filed H.C.P.No.2700 of 2014 for issuance of a Writ of Habeas Corpus

directing the respondents therein to produce his son's (petitioner herein) personal body before the Court and set him at liberty and this Court, vide order dated 04.12.2014, dismissed the said petition as not maintainable, in view of the fact that his remand was pursuant to the orders passed by the Court and he also filed Crl.O.P.SR.No.23418/2015 for quashing the order dated 18.07.2014, passed by the Special Judge for NIA Cases, Puducherry in R.C.No.1/2014/NIA/HYD and it was posted for maintainability and this Court upheld the objections raised by the Registry, on the ground that it cannot be numbered in the absence of an order extending the remand of the petitioner on 18.07.2014, and however, granted liberty to him to file a fresh petition along with the order extending his remand beyond 18.07.2014, and his counsel has also applied for copy of the order extending the judicial custody and he was informed that no order for extension of remand was passed by the Special Court on 18.07.2014.

3(v). The grievance expressed by the petitioner, is that he was sent to prison from Court without there being any order of extension of remand passed by the Special Court for NIA cases, and hence, he came forward to file this petition.

4. H.C.P.No.2058 of 2015:- The petitioner would state that on 08.04.2014, he surrendered before the V Metropolitan Magistrate Court, Chennai in connection with the case in Crime No.47/2014, on the file of Othakkadai Police Station, and was remanded to judicial custody and lodged at Central Prison, Madurai. He would further state that on 03.04.2015, the Deputy Superintendent of Police, National Investigation Agency, Hyderabad, made a formal arrest, while the petitioner was lodged at Central Prison, Madurai, and on 09.04.2014, he was produced under PT Warrant before the Special Court for NIA cases, Puducherry and remanded to judicial custody. The petitioner, alleging that beyond 18.07.2014, there was no valid order of remand, raised similar contentions put forward by the petitioner in H.C.P.No.1642/2015, and came forward to file this Habeas Corpus Petition.

5. H.C.P.No.2059 of 2015:- The petitioner would state that on 27.03.2014, he was arrested at Chennai, by the Q-Branch of Tamil Nadu Police and falsely implicated in Crime No.47/2014, on the file of Othakkadai Police Station, and produced before the Judicial Magistrate Court, Melur, Madurai District, on 28.03.2014, and remanded to judicial custody and at present, he is confined in Central Prison, Madurai. He would further state that on 03.04.2014, the Deputy Superintendent of Police, National Investigation Agency, Hyderabad, made a formal arrest, while the petitioner was lodged at Central Prison, Madurai and on 09.04.2014, he was produced under PT Warrant before the Special Court for NIA cases, Puducherry, and remanded to judicial custody and also raised similar contentions as that of the petitioners in H.C.P.Nos.1642 and 2058 of 2015.

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6. H.C.P.No.2060 of 2015:- The petitioner would state that on 13.03.2014, he was arrested at Melur, by the Q-Branch of

Tamil Nadu Police and falsely implicated in Crime No.47/2014, on the file of Othakkadai Police Station, and produced before the Judicial Magistrate Court, Melur, Madurai District, on 14.03.2014, and remanded to judicial custody and at present, he is confined in Central Prison, Madurai. He would further state that on 03.04.2014, the Deputy Superintendent of Police, National Investigation Agency, Hyderabad, made a formal arrest, while the petitioner was lodged at Central Prison, Madurai and on 09.04.2014, he was produced under PT Warrant before the Special Court for NIA cases, Puducherry, and remanded to judicial custody and also raised similar contentions as that of the petitioners in H.C.P.Nos.1642 and 2058 of 2015.

7. H.C.P.No.2061 of 2015:- The petitioner would state that on 10.03.2014, he was arrested at Melur, by the Q-Branch of Tamil Nadu Police and falsely implicated in Crime No.47/2014, on the file of Othakkadai Police Station, and produced before the Judicial Magistrate Court, Melur, Madurai District, on 11.03.2014, and remanded to judicial custody and at present, he is confined in Central Prison, Madurai. He would further state that on 03.04.2014, the Deputy Superintendent of Police, National Investigation Agency, Hyderabad, made a formal arrest, while the petitioner was lodged at Central Prison, Madurai and on 09.04.2014, he was produced under PT Warrant before the Special Court for NIA cases, Puducherry, and remanded to judicial custody and also raised similar contentions as that of the petitioners in H.C.P.Nos.1642 and 2058 of 2015.

8. H.C.P.No.2062 of 2015:- The petitioner would state that on 10.03.2014, he was arrested at Melur, by the Q-Branch of Tamil Nadu Police and falsely implicated in Crime No.47/2014, on the file of Othakkadai Police Station, and produced before the Judicial Magistrate Court, Melur, Madurai District, on 11.03.2014, and remanded to judicial custody and at present, he is confined in Central Prison, Madurai. He would further state that on 03.04.2014, the Deputy Superintendent of Police, National Investigation Agency, Hyderabad, made a formal arrest, while the petitioner was lodged at Central Prison, Madurai and on 09.04.2014, he was produced under PT Warrant before the Special Court for NIA cases, Puducherry, and remanded to judicial custody and also raised similar contentions as that of the petitioners in H.C.P.Nos.1642 and 2058 of 2015.

9. In H.C.P.No.1642 of 2015, the first respondent has filed a counter affidavit denying the averments made in the affidavit filed in support of the said Habeas Corpus Petition, and raised a preliminary objection stating that the Tamil Nadu State Police should have been made as a party and further, that since the custody of the accused is not with them, the Habeas Corpus Petition filed as against them, is not maintainable. The first respondent, on the merits of the case, stated that the petitioner along with three other accused, had filed CrI.O.P.No.32224 of 2014, on the file of this Court, to quash the above case on the ground that their custody from 07.07.2014 to 18.07.2014, is illegal and also prayed for quashing of the order of remand and this Court, vide order dated 03.06.2015, has

recorded the fact that final report was filed on 30.09.2014 itself, and taken on file in Special S.C.No.5 of 2014, by the Special Court for NIA Cases, and after compliance of Section 207 Cr.P.C., the case is posted for framing charges and in the light of the fact that final report has been filed within 180 days, as provided under proviso to Section 43-D(2) of the Unlawful Activities (Prevention) Act, subsequent remand stood regularized under Section 309 Cr.P.C., and hence, dismissed the said petition.

10. The first respondent further stated in the counter affidavit, that the remand period of the said petitioner and other accused was extended originally from 22.05.2014 to 20.06.2014, and then to 18.07.2014, 14.08.2014, 12.09.2014 and 06.10.2014 and subsequently, the Public Prosecutor has filed a report on 30.06.2014, citing bonafide reasons for extending the detention of the accused beyond the period of 90 days, since the investigation by the first respondent was in progress at that point of time. The first respondent would further state that each time the remand period is extended, and there is a docket order in that regard, and endorsement made in the warrants are being produced before the Jail Authorities, without which, the prisoner shall not be allowed to be lodged inside the jail, and in the light of the said orders of remand, it cannot be said that the petitioner and other detenus are in illegal custody.

11. It is further stated by the first respondent that in the light of the order dated 04.12.2014, passed by this Court in H.C.P.No.2700 of 2014, dismissing the Habeas Corpus Petition as not maintainable, and also granting liberty to challenge the order of the learned Special Judge before the appropriate forum, and seek appropriate remedy as per law, they should have availed that remedy, but have failed to do so. The first respondent also took a stand that in the light of the fact that the remand period has been extended periodically and the same is also borne out by records, it cannot be said that there is an error or illegality and would further state that after filing of the charge sheet, which was taken on file by the Special Court, charges were also framed against the accused on 08.06.2014, and trial is going to commence very shortly and hence, prays for dismissal of the Habeas Corpus Petition (HCP No.1642 of 2015).

12. Mr.M.Radhakrishnan, learned Counsel appearing for the petitioners, would contend that on three hearing dates i.e., 18.7.2014, 14.8.2014 and 12.9.2014, though accused No.1 to 6 were produced before the Special Judge for Trial of NIA Cases, Puducherry, no specific orders have been passed on the remand requisitions, and though for subsequent periods, orders have been passed extending the period of remand and presently, charge sheet has been filed and taken on file, the fact remains that between 18.7.2014 and 6.10.2014, the petitioners were in illegal custody and therefore, prayed for their production and setting them at liberty forthwith.

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13. Per contra, Mr.R.Muthukumarasamy, learned Senior Counsel, representing the High Court, pursuant to the orders

dated 8.3.2016, passed by this Court in these petitions, would contend that vide Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., the judicial custody of the petitioners herein was extended on 18.7.2014, 14.8.2014 and 12.9.2014, upto 6.10.2014, and on the date of filing these habeas corpus petitions, there were valid orders of remand and prays for appropriate orders.

14. Dr.(Mr.)D.Simon, learned Central Government Standing Counsel, appearing for the first respondent, has drawn the attention of this Court to the counter affidavit of the first respondent and would submit that similar relief was sought in CrI.O.P.No.32224 of 2014 praying for quashing of the case on the ground that their custody from 7.7.2014 to 18.7.2014 was illegal, and a consequential prayer to quash the order of remand, and this Court vide order dated 3.6.2014, dismissed the said petition stating that since the charge-sheet was taken on file in Special S.C.No.5 of 2014, by the Special Court for NIA Cases, after compliance of Section 207 of Cr.P.C., and it has been filed before the expiry of 180 days, as provided under the proviso to Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967, subsequent remand stood regularised under Section 309 of Cr.P.C., and raising similar contentions, the petitioners again came forward to file these habeas corpus petitions and therefore, the petitions deserve dismissal.

15. It is the further submission of the learned Central Government Standing Counsel appearing for the first respondent, that there is no uniform practice being adopted, as to the passing of order on remand requisition and neither the Code of Criminal Procedure, nor the Criminal Rules of Practice provides any specific guideline in that regard, and therefore, the Court is formulating it's own procedure as to the passing of order extending the period of remand, and therefore, the procedure adopted by the Special Court for Trial of NIA Cases, cannot be faulted with.

16. The learned Central Government Standing Counsel appearing for the first respondent, would further contend that subsequently, charge-sheet has been filed and taken on file and the remand and the remand and custody of the petitioners had also been extended under Section 309 of Cr.P.C., and on the date of filing these petitions, they were in custody pursuant to the valid order of remand, and therefore, these petitions per se are not maintainable and liable to be dismissed.

17. In response to the said submissions, the learned Counsel appearing for the petitioners, has drawn the attention of this Court to the Constitution Bench decision of the Hon'ble Supreme Court reported in AIR 1953 SUPREME COURT 277 : 1953 CRI.L.J. 1113 (RAM NARAYAN SINGH V. THE STATE OF DELHI AND OTHERS), and would submit that in similar facts and circumstances, the Hon'ble Supreme Court was not satisfied that there was any order of remand committing the accused to further custody and further observed that in habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the

time of return and not with reference to the institution of proceedings and on the facts of the case, found that the material date is 10th March, when the affidavit on behalf of the Government was filed justifying the detention as a lawful one; but, there was no order remanding the four persons to custody and therefore, granted relief to them.

18. The learned Counsel appearing for the petitioners, has also drawn the attention of this Court to the unnumbered Criminal Miscellaneous Petitions filed by these petitioners before the Special Court in SR Nos.7754 and 10277 of 2014 dated 11.7.2014 and 6.9.2014 respectively, and would submit that the said petitions were filed under Section 167(2)(i) of Cr.P.C., for enlarging them on bail and instead of numbering and entertaining these petitions, the same have been returned on the ground that since the detention of the accused may be made upto 180 days for completing the investigation and it is not yet completed, the petitions are not maintainable and the orders returning the petitions, would exhibit total non-application of mind on the part of the Special Court for Trial of NIA Cases, Puducherry and prays for appropriate direction to entertain these petitions and pass orders in accordance with law.

19. In response to the said submission, the learned Central Government Standing Counsel appearing for the first respondent, has invited the attention of this Court to the decision of this Court reported in 2015 (1) MWN (CR.) 416 (K.ANANDAN V. K.MANOCHARAN AND ANOTHER), and would submit that on the facts of that case, this Court found that the Chief Judicial Magistrate, Coimbatore has no power to authorise a Magistrate, who has no jurisdiction over the case, either to extend the remand of the accused under Section 167 of Cr.P.C., or to remand the accused under Section 309 of Cr.P.C. and in the absence of videoconferencing facility, it may not be possible for a Magistrate to remand the accused under those provisions, and further found that in that case, the learned Chief Judicial Magistrate, Coimbatore and the learned Judicial Magistrate No.II, Coimbatore have acted according to the age old practice and therefore, inclined to condone their action. He would further submit that admittedly, the remand of the accused during those three days, is reflected in the Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., and therefore, made an alternate plea that the act of the Special Court for Trial of NIA Cases, Puducherry, in that regard, may be condoned.

20. Mr.A.N.Thambidurai, learned Additional Public Prosecutor, appearing for the second respondent-State, would contend that the petitioners are in custody pursuant to the valid orders of remand and the proceedings in Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., would disclose the remand extension on those three days, and in the light of the same, there is no question of illegal detention of the petitioners and prays for dismissal of the petitions.

21. This Court paid its anxious consideration and best attention to the rival submissions and also perused the records available, as well as the records summoned from the Special Court for Trial of NIA Cases.

22. It is relevant and useful to refer to some of the provisions of the Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967) (in short, the Unlawful Activities Act). Section 2(c) defines "Code", which means the Code of Criminal Procedure, 1973 (Central Act 2 of 1974). Section 43-C of the said Act says that the provisions of the Code (Cr.P.C.) shall apply insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act. Section 43-D speaks about the modified application of certain provisions of the Code, and it is relevant to extract the same as under:-

"43-D: Modified application of certain provisions of the Code.-

(1) Notwithstanding anything contained in the Code or 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 shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),-

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

(b) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that-

(a) the reference in sub-section (1) thereof-

(i) to "the State Government" shall be construed as a

reference to "the Central Government or the State Government";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) 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.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided, that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

23. As per the First Proviso to sub-section (2) of Section 43-D, if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 ninety days, extend the said period upto one hundred and eighty days. Accordingly, the Special Public Prosecutor for NIA Cases, Puducherry, has filed a report under Section 43-D(2)(b) of the said Act setting out in detail, the nature and progress made in the investigation, and prayed for extending the judicial custody of the six accused/petitioners herein, for further investigation beyond the period of 90 days, upto 180 days as provided under law. The Special Court vide order dated 4.7.2014, having taken note of the fact that A-1, A-2, A-3 and A-4 were arrested and remanded to judicial custody on 9.4.2014, and A-5 and A-6 were arrested

and remanded to judicial custody on 8.5.2014, has extended their period of remand upto 18.7.2014.

24. On 18.7.2014, The Investigation Officer/first respondent filed a remand extension report praying for extension of judicial custody for a period of 30 days from 18.7.2014, as per Section 43-D of the Unlawful Activities Act, and also produced all the accused and the Special Court in Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., had extended the period of remand of each accused in judicial custody upto 14.8.2014. On 14.8.2014, the Investigation Officer once again, filed remand extension report praying for extension of judicial custody for a period of 30 days from 14.8.2014, as per the said provision and also produced all the accused and the Special Court has extended the remand of all the accused in judicial custody till 12.9.2014. On 12.9.2014, once again, the Investigation Officer/first respondent prayed for extension of judicial custody from 12.9.2014, for a period of 30 days, as per the said provision, and produced all the accused and their remand in judicial custody was extended upto 6.10.2014. Earlier to 18.7.2014, the first respondent/Investigation Officer prayed for remand extension for a period of 30 days from 20.6.2014 and in the remand extension report, the learned Special Judge for NIA Cases, Puducherry, has made the following endorsement:-

"Acc. Pro. R.E. Till 18/7/14"

25. The learned Counsel appearing for the petitioners/accused No.1 to 6, has invited the attention of this Court to the said order and would submit that in the remand extension requisition dated 20.6.2014, the learned Special Judge passed an order extending the period of judicial custody till 18.7.2014, whereas in the subsequent remand requisitions dated 18.7.2014, 14.8.2014 and 12.9.2014, no orders have been passed and therefore, there was no valid orders of remand extending the period of judicial custody of the petitioners herein till 14.8.2014, 12.9.2014 and 6.10.2014 respectively, and de hors the filing of the final report, their custody between 18.7.2014 till 6.10.2014, is to be considered or taken as an illegal one and therefore, they are to be set at liberty forthwith.

26. It is to be pointed out that no specific procedure/guideline is given as to how the order extending the period of remand under Section 167 Cr.P.C., is to be passed. It is also brought to the knowledge of this Court by the learned Senior Counsel appearing for the High Court, that no circular to that effect has also been issued. Therefore, the Judicial Officers exercising power under Section 167 of Cr.P.C., are adopting their own procedure for passing orders extending the period of remand/judicial custody and in fact, this Court in a judgment reported in 2015 (1) MWN (CR.) 416 (K.ANANDAN V. K.MANOCHARAN AND ANOTHER) though found that the learned Chief Judicial Magistrate, Coimbatore has no power to authorise a Magistrate, who has no jurisdiction over the case either to extend the remand of the accused under Section 167 of Cr.P.C., or to remand the accused under Section 309 of Cr.P.C., has

condoned their action on the ground that both of them had acted according to age old practice.

27. Let this Court consider some of the decisions rendered by the Hon'ble Supreme Court of India, Allahabad High Court, Patna high Court as well as by this Court, which are relevant to decide the whole issue involved in these petitions.

28. A Division Bench of Allahabad High Court has considered the scope of Section 209(b) of Cr.P.C. - commitment of case to Court of Session when offence is triable exclusively by it, in 1984 CRI. L.J. 838 (PUSHPENDRA SINGH V. SUPERINTENDENT, DISTRICT JAIL, NAINITAL AND OTHERS) and while deciding the validity of detention of the petitioner therein on two grounds; firstly, the order passed by the learned Magistrate, is not a proper order and does not fulfill the requirements of provisions contained in Section 209(b), and secondly, the order passed by the learned Magistrate, has not been communicated to the jail authorities, has taken into consideration it's earlier decisions reported in 1973 CRI.LJ 1458 (FULL BENCH) (UROOJ ABBAS V. STATE OF UTTAR PRADESH) and 1984 ALL.LJ 375 (FULL BENCH) (SURJEET SINGH V. STATE OF U.P.), and held as follows:-

"6. The power to detain an accused vests in the criminal courts and the jail authorities simply carry out the orders by keeping an accused in physical custody. So the power of detention vests in the courts and not in the jail authorities. In the instant case the detaining authority is the Magistrate who has directed the petitioner's detention by virtue of the mandate under S. 209 (b) of the Code. As discussed above the order of detention passed by the learned Magistrate is perfectly valid and the detention of the petitioner on the basis of the aforesaid order would continue to remain valid till the conclusion of the trial. The order so passed by the Magistrate is only subject to the provisions of the Code relating to bail. Communication of the order is no doubt necessary to inform the jail authorities about the order passed and authorize them to keep the accused in detention but its non-communication does not render the order of detention illegal. Non-communication of the order of detention to the authorities is a grave irregularity and the jail authorities are also guilty of culpable negligence in not requiring the Court concerned to send the order of detention, but the detention cannot be said to be illegal if it is actually in pursuance of a perfectly legal order passed under S. 209 (b) of the Code. The officers responsible for the irregularities and negligence should be severely dealt with and suitable steps should be taken to avoid repetition of such irregularities but on that score the detention which is based on a perfectly valid order cannot be held to be illegal. It is to be borne in mind that the detention under the provisions of S. 209 (b) and S. 309 of the Code is neither punitive nor preventive.

The main object on the other hand is to secure the attendance of the accused during the trial and at the time of the pronouncement of the judgment. The cause of justice should not be made to suffer on account of some negligence on the part of the officers. In the instant case there is a valid order of detention passed under S. 209 (b) of the Code which cannot be rendered illegal due to its non-communication to the jail authorities, though as observed above the non-communication amounts to grave irregularity and culpable negligence. In the result the detention of the petitioner during and until the conclusion of the trial by virtue of the order passed under Section 209 (b) of the Code would continue to be legal, till the conclusion of the trial subject to the provisions of the Code relating to bail."

29. In the said judgment, it has been held that "custody" under S. 309 of the Code includes illegal custody. So even if the custody of the petitioner was illegal up to 20th of June, 1983 it was validated by virtue of the order of remand passed on 20th of June, 1983 under S. 309 of the Code."

30. As per the said decision, if there is a valid order of detention passed under Section 209(b) of Cr.P.C., it cannot be rendered illegal due to its non-communication to the jail authorities, though non-communication amounts to grave irregularity and culpable negligence.

31. In AIR 1988 PATNA 199 : 1987 CRI. L.J. 1489 (FULL BENCH) (RAMESH KUMAR RAVI ALIAS RAM PRASAD AND OTHERS V. STATE OF BIHAR AND OTHERS), it has been held that, "Once an accused person is produced before a Magistrate he is in a legal sense in custodia legis and it is the Court's responsibility and power whether he is to be remanded to further custody or granted bail or released altogether. By no stretch of imagination can this power of the Court be whittled down and be indeed passed on to the mere discretion of the investigating agency alone." and that, "A Magistrate has jurisdiction to pass an order of remand despite the absence of any formal written application or a request for such remand being made by the Police or the prosecution."

32. In the above cited decision, it has been further held that the non-production of the accused under Section 167(2) of Cr.P.C. and Section 309 of Cr.P.C., is not per se illegal for the reason that if it is physically impossible to produce the accused in person, then his mere non-production would not render his remand to further custody illegal and the wholesome provisions of the Code requiring physical production have to be viewed reasonably and not to an impossibly logical extreme.

33. The following decisions were relied on in the above

cited decision :-
<https://hcservices.ecourts.gov.in/hcservices/>

(i) 1972 CRI.L.J. 505 : AIR 1972 SC 711 (GAURI SHANKAR

JHA V. STATE OF BIHAR);

(ii) 1971 CRI.L.J. 244 : AIR 1971 SC 178 (RAJ NARAIN V. SUPERINTENDENT, CENTRAL JAIL, NEW DELHI);

(iii) 1971 CRI.L.J. 253 : AIR 1971 SC 186 (A.LAKSHMANRAO V. JUDICIAL MAGISTRATE, FIRST CLASS, PARVATIPURAM) and

(iv) 1974 CRI.L.J. 740 : AIR 1974 SC 871 (SANDIP KUMAR DEY V. THE OFFICER-IN-CHARGE, SAKCHI P.S.JAMSHEDPUR).

34. In the said decision, it has been further held that, "The true test for the legality or otherwise of the detention is on the date of the hearing itself. A defect in a earlier order of remand of an accused person is not incurable and he cannot claim a writ of habeas corpus on that score alone if on the date of hearing he is in custody under a valid order of remand." and reliance was placed upon the decisions reported in AIR 1971 SC 62 (TALIB HUSSAIN V. STATE OF JAMMU AND KASHMIR) and AIR 1971 SC 2197 (COL. DR. B.RAMACHANDRA RAO V. THE STATE OF ORISSA).

35. The Full Bench has also considered the issue as to the entertainment of writ of certiorari to quash the judicial orders of a Criminal Court and held that "The essence of the matter is whether the order is that of a Court established by law and the character of the said order is judicial in nature. Once it is so, such an order may be challenged by way of an appeal or revision provided by law, but its validity is not open to be challenged and quashed by certiorari writ proceedings."

36. In fact, the Hon'ble Supreme Court of India in the decision reported in AIR 1953 SUPREME COURT 277 : 1953 CRI. L.J. 1113 (cited above), has held that in a writ of habeas corpus, the illegality or otherwise of the detention has to be determined at the time of return and not at the time of initiation of proceedings.

37. A Division Bench of this Court in the decision reported in (2007) 2 MLJ (CRL) 1768 (SHEETAL D/O JAGADESH V. STATE OF TAMIL NADU AND OTHERS), had taken into consideration the decisions in 1983 LW CRL. 121 (ELUMALAI V. STATE OF TAMIL NADU), AIR 1988 PATNA 199 (FULL BENCH) (cited supra), and (1993) MLJ (CRL) 628 (T.MOHAN V. STATE OF INSPECTOR OF POLICE, CB CID, MADRAS), and on the facts of the case, found that on the date of hearing of the Habeas Corpus Petition, the accused were in judicial custody under valid orders of remand and distinguished the above cited cases on the ground that the initial order of remand and subsequent order extending the remand, was illegal and without jurisdiction and there was a mechanical extension of remand in terms of Section 167(2) in many cases without producing the accused before the Magistrate.

38. In (2008) 2 MLJ (CRL) 130 (P.NAVANEETHA KRISHNAN V. COMMISSIONER OF POLICE AND OTHERS), the detenu was produced before the Court and his remand was extended till 4.8.2006, and thereafter, he was not produced before the Court for further extension and mechanically, without application of mind, the learned Judicial Magistrate, Tambaram, adjourned the hearings

without insisting for production of the detenu and it was contended on behalf of the State, that as on date, a valid remand order is in force as against the detenu. It is relevant to extract the following paragraphs of the said judgment:-

"5. Though it has been submitted on behalf of the State that the detenu is in valid remand for two other cases, we deem it worthwhile to emphasise here that it is the bounden duty of the Magistrate to be watchful to see that the liberty of an individual is not violated by the police unreasonably while remanding or passing extension of remand. In other words, only on production of the individual for the particular case in respect of which remand/extension of remand is sought for, the Magistrate would be in a position to satisfy himself with regard to the above aspect. Further, remand orders are not to be passed by Courts mechanically without verifying diaries and without personally satisfying about the real necessity for remand or its extension. Non-production of the accused will amount to violation of the provisions of the Criminal Procedure Code and the Constitution of India. The Jail Authorities also do not have any right to keep any person without a valid order of remand or extension of remand from the judicial Magistrate concerned beyond the period of remand. Once final report/charge sheet is filed before the Magistrate concerned and cognizance is taken by him, remand order will be passed under Section 309 Cr.P.C. During the course of investigation, as per the requisition made by the Investigating Officer, remand will be made under Section 167 Cr.P.C. After the Magistrate having taken cognizance, requisition from the Investigating Officer is not necessary and it is the Magistrate who, under Section 309 Cr.P.C., on production of the person accused on the date of expiry of remand and on application of mind, can extend the remand or release the person accused of the offence on bail. In this regard, it is pertinent to extract Section 309(2) Cr.P.C.,

"309. Power to postpone or adjourn proceedings.--(1)

(2) If the court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

<https://hcservices.ecourts.gov.in/hcservices/>,

....

7. While disapproving the conduct of the learned

Magistrate as well as the Jail Authorities with reference to the proceedings between 4.8.2006 and 12.9.2007, by taking note of the fact that a remand order is in force as on today and in the light of the other surrounding circumstances as pointed out earlier, we may hasten to hold that the detenu is in valid remand. Further, the submission made by the State cannot be so easily brushed aside. In view of the reason that the petitioner is in judicial custody as a life convict in one of the cases and under-trial prisoner in remand in another case, all put together, we are of the considered view that the petitioner is not in illegal detention as alleged."

39. The Division Bench has also issued the following directions:-

"31. In the light of our foregoing discussion, we deem it necessary to issue the following directions:

(a) The learned Judicial Magistrates/Judges having jurisdiction are directed to maintain a separate Register for each Court in this regard so that close monitoring is ensured and lapses and lacunae could be averted. The Circular and the decisions of this Court, adumbrating various directives and guidelines with regard to the issue discussed herein should be scrupulously followed by the subordinate judicial Magistrates and the Principal District Judges are directed to initiate suitable proceedings against the errant Magistrates/Judges.

(b) Equally, the jail authorities are also directed to maintain a separate Register in respect of the prisoners for extension of remand and in the event of any extraordinary situation/exigency leading to non-production, the same shall be immediately communicated to the Court, failing which, the concerned officers must be proceeded against in accordance with law for the failure on their part.

(c) The Magistrates, in co-operation with the Jail authorities, may arrange the timings of extension of remand through Video Conferencing System and see that, at any rate, the order of extension of remand is passed on the relevant day itself.

(d) As per the undertaking given in the Report submitted by the Secretary to Government, Home, P & E Department, dated 26.9.2007, the Government is directed to provide Video Conferencing equipments to the remaining Court and Prisons at the earliest.

(e) The Officers of the Subordinate Judiciary, during their Jail visits as mandated in the Circulars, must examine the irregularities, in particular non-production of the prisoners, and if anything comes to their adverse notice, they must act immediately to rectify the same. Specific noting to this effect must be made in the Jail Visit Reports that are periodically sent to this Court.

(f) The Additional Director General of Prisons,

Chennai is directed to monitor and supervise the state of affairs through his subordinate Officers by making periodical check-up in various Prisons throughout Tamil Nadu.

We are earnestly hopeful that the aforesaid directions will be followed scrupulously so that there may not be recurrence of any such irregularity in future.

With the above directions, the Habeas Corpus Petition is closed."

40. It is an admitted fact that the present case after investigation, has culminated in a charge-sheet, which was taken on file by the Special Court for Trial of NIA cases in Special Sessions Case No.5 of 2014, and the remand/judicial custody of these petitioners is being extended under Section 309 of Cr.P.C.

41. The father of accused No.1, viz. K.Raman, filed HCP No.2700 of 2014, on the file of this Court, praying for production of his son/A-1 viz. Thiruselvam @ Murasu @ Sankar - petitioner in HCP No.1642/2015, A-4 viz. Kalailingam - petitioner in HCP No.2060/2015, A-2 viz. Thangaraj @ Thamizharasan - petitioner in HCP No.2061/2015, and A-3 viz. Kaviyarasan - petitioner in HCP No.2062/2015, and setting them at liberty, contending that the said detenus are in judicial custody for more than 90 days and the first respondent therein has not filed any charge-sheet before the concerned Court at Puducherry and the said period expired on 7.7.2014, and the petitions filed under Section 167(2) Cr.P.C., were returned by the Special Court on 11.7.2014, and since their custody is illegal beyond the statutory period of 90 days, prayed for appropriate orders to set them at liberty.

42. A Division Bench of this Court after taking into consideration the rival submissions, as well as the decision rendered by the Hon'ble Supreme Court of India and reported in 2014 (8) SCALE : 2014 (8) SCC 656 - SAURABH KUMAR THROUGH HIS FATHER V. JAILOR, KONEILA JAIL AND ANOTHER, found that the bail application was returned on the ground that the period of detention can be extended upto 180 days for completing the investigation and without challenging the judicial order and exhausting alternative and efficacious remedy, the petitioner therein cannot maintain the habeas corpus petition and accordingly, dismissed the petition, and however, granted liberty to him to approach the proper forum and seek appropriate remedy as per law, if he is so advised.

43. In the light of the factual aspect coupled with the decisions, the following facts emerge:-

43(i). In the remand extension requisitions/reports dated 18.7.2014, 14.8.2014 and 12.9.2014 respectively, no specific orders have been passed on those reports itself, like that of the one passed by the Special Court in the remand extension report dated 20.6.2014. However, in the Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., the learned Special Judge for trial of NIA Cases,

Puducherry, had passed orders on those three dates recording the production of all the accused, and extension of their remand in judicial custody till 14.8.2014, 12.9.2014 and 6.10.2014 respectively.

43(ii). The Investigating Agency after obtaining extension of period for completing the investigation (180 days), had also filed a charge-sheet and it was taken on file by the Special Court in Special S.C.No.5 of 2014, and the remand/judicial custody of these petitioners is periodically extended under Section 309 of Cr.P.C.

43(iii) In the light of the above cited decisions, the relevant date for the purpose of considering whether the custody was illegal or not, would be the date of hearing of the habeas corpus petition and not the earlier anterior date.

43(iv). These habeas corpus petitions came to be filed on 6.7.2015 and 19.8.2015 respectively, and admittedly, even prior to the said dates, final report/charge-sheet was filed on 30.9.2014 itself, and taken on file in Special S.C.No.5 of 2014 by the Special Court and therefore, this Court, prima facie, is of the view that their custody/remand can be treated as legal.

43(v). In (1983) L.W. (CRL) 121 (ELUMALAI V. STATE OF TAMIL NADU), this Court while laying down propositions for guidance of Criminal Courts, observed that "The Courts should not mechanically pass orders of remand without verifying the entries in the diaries and satisfying themselves about the real necessity for granting the remand or extension of remand."

43(vi). Incidentally, a question also arises for consideration i.e., whether any detailed order is required at the time of remanding the accused to judicial custody?

43(vii). The Hon'ble Supreme Court of India in the decision reported in (2000) 1 SCC 722 (KANTI BHADRA SHAH AND ANOTHER V. STATE OF W.B.), has considered the issue as to whether reasons are to be recorded at the time of framing of charges and in paragraph No.12, held as under:-

"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings

before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985."

43(viii). A Division Bench of Patna High Court in the decision reported in 2001 CRI. L.J. 2811 (DR.GHANSHYAM NARAYAN SINGH V. STATE OF BIHAR AND OTHERS), after taking note of RAM NARAYAN SINGH V. STATE OF DELHI (AIR 1953 SC 277); JOGINDER KUMAR V. STATE OF U.P (AIR 1994 SC 1349), D.K.BASU V. STATE OF W.B. (1997 (1) SCC 406) as well as (2000) 1 SCC 722 (cited above), held as follows:-

"8. In a writ of habeas corpus, legality or otherwise of the detention has to be determined at the time of return and not at the time of initiation of the proceedings (See Ram Narayan Singh v. State of Delhi, AIR 1953 SC 277 : 1953 Cri LJ 1113). Admittedly, when the matter was being taken up for final disposal, the petitioner has already been released on bail by a competent Court and as such his prayer for issuance of a writ of habeas corpus does not survive for adjudication at all. However, at this stage, I would like to state that the submission, advanced on behalf of the petitioner that the absence of the reason at the time of remand will vitiate the order of remand, is wholly unfounded and this point is no longer res integra. Even recently, the Apex Court in the case of Kanti Bhadra Sha v. State of West Bengal, reported in (2000) 1 SCC 722 : (2000 Cri LJ 746) held that a detailed order may be passed in a criminal case for culminating the proceedings but it is quite unnecessary to write detailed orders at other stages, such as issuing processes, remanding the accused to custody, framing of charges, passing over to next stages in the trial.

9. Thus, if the Magistrate has not assigned any reason at the time of remand then on that ground remand order itself would not be invalidated. The Court will see the materials on the record to find out as to whether the ground of remand exists or not. In this case, the allegation was also made by the victim lady against the petitioner. The forwarding letter, as appears, contained the details of the allegations and the materials and as such the remand of the petitioner was a valid one and his detention was not illegal by virtue of the order of remand passed by the Chief Judicial Magistrate on 9-10-1999.

11. Thus, enough constitutional safeguards have been provided to the citizens to protect life and personal liberty. The Police has no unfettered and uncanalised power to arrest any person in a mechanical way. The arrest has to be made by the Police without warrant in the circumstances enumerated in the Code and, thereafter, the Police cannot detain the arrested person more than 24 hours of his arrest and he has to produce the person before the nearest Magistrate and it is for the Magistrate to decide under S. 167 of the Code as to whether there should be further remand, which may be either Police remand or judicial remand depending upon the facts and circumstances of the case as well as the prayer for Police remand made by the Police."

43(ix). In the light of the said decisions, no detailed order giving out reasons, is necessary for extending the remand under Section 167 of Cr.P.C. But, the only infirmity pointed out, is that in the remand extension reports dated 18.7.2014, 14.8.2014 and 12.9.2014 respectively, no specific orders have been passed and instead, in Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., orders have been passed extending the period of remand. In the absence of any specific guideline as to the order to be passed extending the period of remand under Section 167 of Cr.P.C., i.e., whether on the remand extension report itself, or by way of separate order, this Court is of the view that the orders passed by the Special Court for Trial of NIA Cases, Puducherry, in Form of Order for the Detention in Custody of an Accused Person under Section 167 of Cr.P.C., cannot be faulted with.

43(x). It is also a well settled position of law as enunciated in the above cited decisions, the legality or otherwise of the detention has to be determined in a writ of habeas corpus, at the time of return and not at the time of initiation of proceedings. In the case on hand, even at the time of filing of these habeas corpus petitions on 6.7.2015 and 19.8.2015 respectively, the charge-sheet has been filed on 30.9.2014, and taken on file in Special S.C.No.5 of 2014. Therefore, the judicial custody/remand of the petitioners, cannot be said to be illegal.

43(xi). The efforts made by A-1, A-2, A-3 and A-4 challenging their custody between 7.7.2014 and 18.7.2014, as illegal, has also ended in failure in the form of order dated 3.6.2015, made in CrI.O.P.No.32224 of 2014. Further, the effort made by the petitioners for entertaining their petitions for getting statutory bail, became futile vide orders of return dated 11.7.2014 and 6.9.2014, made in CrI.M.P.SR Nos.7754 and 10277 of 2014 respectively, by the Special Court. Admittedly, Charge Sheet has been filed and taken on file and therefore, the above said applications cannot be maintained for the relief under Section 167(2)(i) CrPC and also in the light of the order dated 03.06.2015 made in CrI.O.P.No.32224 of 2014.

44. Since no specific procedure as to how an order extending the period of remand under Section 167 of Cr.P.C., is to be made, is in place and the Presiding Officers are adopting their own procedure, this Court is of the view that the Registry shall issue appropriate guidelines as to the passing of specific orders extending the period of remand, on the requisition made for extension of remand, so that these kind of litigations may not emanate in future. It is needless to say that confinement of an accused person in judicial custody, by way of remand (or) extension of remand, also touches upon personal liberty. Therefore, the concerned Judicial Officers are expected to apply their mind judiciously by going through the Case Diaries and satisfy themselves about the necessity for remand or its extension.

45. In the light of the reasons assigned above, these Habeas Corpus Petitions are dismissed subject to above observations.

S.NAGAMUTHU, J.

46. I had the benefit of going through the draft judgment of my Esteemed Brother Hon'ble Mr. Justice M. Sathyanarayanan. I fully concur with the conclusions arrived at by my Brother. However, in support of the said conclusions, I wish to give my own reasons as follows:

47. These Habeas Corpus petitions have been filed seeking to set the detenus at liberty on the allegation that their detention in the Central Prison, Madurai in connection with the case in R.C.No.01/2014/NIA/HYD under Section 307 I.P.C., Sections 3 and 4 of Explosive Substances Act, 1908 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 on the file of the first respondent is illegal.

48. The crux of the allegations made in the affidavits filed in support of these petitions is that the detenus after their arrest, in the above case were all remanded to custody by the Special Court for N.I.A. cases Puducherry. There is no dispute that there was a valid remand order to detain the detenus in connection with the above case till 18.07.2014. The remand period expired on 18.07.2014. They were all produced before the Special Court on 18.07.2014. The Investigating Officer / first respondent filed a report before the Special Court with a request to extend the period of detention for another 30 days from 18.07.2014, as provided under Section 43-D of the Unlawful Activities (Prevention) Act, 1967 and Section 167 Cr.P.C.

49. The contention of the petitioners is that on 18.07.2014, on the request made by the first respondent, there was no order passed at all by the learned Special Judge extending their remand for 30 days. However, they were detained in Central Prison, Madurai. They were again produced before the Court on 14.08.2014, on which date also, the first respondent filed a special report requesting for extension of remand for a further period of 30 days. But, according to the petitioners, no order, whatsoever, was passed by the learned Special Judge extending

their remand for any number of days beyond 14.08.2014. However, they were again detained in the Central Prison, Madurai.

50. It is the further contention of the petitioners that the detenus were again produced before the Special Court on 12.09.2014 on which date also, the first respondent made a further request for extension of remand for a period of 30 days. On that date also, the learned Special Judge did not pass any order extending the remand beyond 12.09.2014. This time also, without there being an order of remand, they were detained in the Central Prison, Madurai.

51. Finally, the detenus were produced on 06.10.2014, on which date, again, similar request was made by the first respondent for extension of remand. The records reveal that on that day, a valid order extending remand was made. On the subsequent days also, the detenus were remanded by means of proper judicial orders periodically.

52. The learned counsel appearing for the petitioners would submit that since there were no valid remand orders passed for the period between 18.07.2014 till 06.10.2014, the detenus are entitled for being set at liberty as their detention in Central Prison, Madurai is illegal.

53. But the learned counsel appearing for the respondents making reference to the counter and the records would submit that on 18.07.2014, 14.08.2014 and 12.09.2014, when the detenus were produced, the first respondent filed appropriate requests for extension of remand and the learned Special Judge extended the remand by making necessary orders on the remand warrant itself. The second respondent has produced a copy of the warrant which shows that such extensions were given by making endorsement by the learned Judge on the remand warrant itself. Thus, according to the learned counsel for the respondents, there was no illegal detention at all.

54. We have perused the records which revealed that though the first respondent filed appropriate written requests for extension of remand for 30 days on 18.07.2014, 14.08.2014 and 12.09.2014 respectively, we find that the learned Special Judge had not passed any order extending the remand. Therefore, we requested the standing counsel for the High Court Mr.R.Muthukumarasamy, Senior Advocate to make his submissions on instructions from the Registrar General as to the procedure being followed in this State, in particular in this case.

55. On instructions from the Registrar General of this Court and after perusing the records he submitted that it is true that there were no orders passed by the learned Special Judge on the requests made by the first respondent on 18.07.2014, 14.08.2014 and 12.09.2014. He has further submitted that however there were orders passed on the remand warrant itself extending the period of remand periodically. He would further submit that since there were valid remand orders as on the date of filing of these petitions these petitions are liable to be dismissed.

56. We have considered the above submissions.

57. As we have already pointed out, factually, the records reveal that before 18.07.2014, the accused were produced before the Special Court on 20.06.2014 and on that day, on the request made by the first respondent seeking extension of the remand for a period of 30 days as provided under Section 43-D of the Unlawful Activities (Prevention) Act, the learned Special Judge had passed the following order:

" Acc. Pro. R.E. Till 18/7/14"

58. We find it difficult to understand these telegraphic abbreviation in the order of the learned Special Judge. But, Mr.R.Muthukumarasamy, learned standing counsel for the High Court explained the abbreviations and we also infer that 'Acc.' means "accused", 'Pro.' means "produced" and 'R.E.' means "Remand Extended".

59. This practice of the Courts using unfamiliar abbreviations needs to be necessarily deprecated. The orders passed by the Courts should be understandable by a common man more particularly the person in whose favour or against the order is passed. We only expect that the judicial officers in this State and in the Union Territory of Puducherry, shall not hereinafter use these kinds of abbreviations understandable only to the maker of the abbreviations. They are expected to write orders legibly without using unfamiliar abbreviations.

60. From the above, it is crystal clear that the detention of these detenus were extended till 18.07.2014 by means of a valid order. On 18.07.2014, indisputably, there was no order passed on the request made by the first respondent. The learned Special Judge did not pass any order extending the remand on similar requests on 14.08.2014 and 12.09.2014 also. However, in the warrant issued initially remanding these detenus to custody, the learned Special Judge has made the following endorsement on 18.07.2014 viz.,:

"Accused produced. The remand of accused in judicial custody is extended till 14.08.2014"

On 14.08.2014, the learned Special Judge made the following endorsement in the warrant:

"Accused produced. Remand of the accused in judicial custody is extended till 12.09.2014."

On 12.09.2014, the learned Judge made the following endorsement in the warrant:

"Accused produced. The remand of accused in judicial custody is extended till 06.10.2014."

61. These endorsements, in our considered view, cannot be treated as valid orders of remand passed by the learned Special Judge. On all the three occasions, the Special Judge ought to have passed orders extending the remand period by considering the request and the records.

62. Section 167 of the Code of Criminal Procedure, of course, empowers a Magistrate to pass an order of remand, if the requirements of sub-section (1) of Section 167 are satisfied. Section 167(1) came to be interpreted in a catena of decisions, wherein, the Hon'ble Supreme Court and this Court have taken the view that an order of remand cannot be passed in a mechanical fashion without application of judicial mind.

63. Deprivation of personal liberty and life of an individual can be had only by following the procedure established by law. The Hon'ble Supreme Court in *Menka Gandhi Vs. Union of India* reported in AIR 1978 SC 597 has declared that such procedure both substantive as well as procedural, should be fair, just and reasonable. The Hon'ble Supreme Court has further held that the principle of "audi alteram partem" is inbuilt in Article 21 of the Constitution of India and therefore, before passing an order, sufficient opportunity should be afforded to the person who is likely to be affected by the said order. Since an order of remand deprives the personal liberty of the detenus, the learned Magistrate who is empowered to remand an accused is expected to afford sufficient opportunity to the accused, peruse the records and if only he finds that further detention is necessary, he can pass a valid order of remand.

64. The Hon'ble Supreme Court in *Hussainara Khatoon Vs. Home Secretary, State of Bihar* reported AIR 1979 SC 1360 has declared that the State is under a Constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of poverty and whatever is necessary for his purpose has to be done by the State. According to the Hon'ble Supreme Court this Constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also arises when the accused is for the first time produced before the learned Magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a learned Magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage.

65. From the declaration of law in *Hussainara Khatoon* case as referred to above, it is crystal clear that at the time when the accused is produced for extension of remand, the learned Magistrate is required to afford sufficient opportunity to him including legal aid so that he could resist the remand to police or jail custody. In other words, an order of remand cannot be passed in a mechanical fashion.

<https://hcservices.ecourts.gov.in/hcservices/>

66. In *Manubhai Ratilal Patel Tr.Ushaben V. State of Gujarat*, reported in 2013 (1) SCC 314, the Hon'ble Supreme Court

has held as follows:

"The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner." (Emphasis supplied)

67. In *Elumalai Vs. State of Tamil Nadu* reported in 1983 L.W.(Crl.) 121, a Division Bench of this Court has held that at the time when the accused is produced before the learned Magistrate for remand, he has got a right of representation and that too by a learned counsel, it is crystal clear that as and when an accused is produced for extension of remand, the police officer should produce necessary records and the learned Magistrate shall peruse a copy of the case diary and the learned Magistrate, after affording sufficient opportunity to the accused and after hearing him has to pass a judicial order remanding him to custody. Such an order should reflect application of the judicial mind by the learned Magistrate.

68. In the instant case, on 18.07.2014, 14.08.2014 and 12.09.2014 the learned Special Judge did not pass any such order on considering the request of the first respondent and on perusal of the records. But at the same time, the learned Judge had made an endorsement only in the warrant authorising his detention in prison. Issuing a warrant remanding the accused to prison is only a consequential act and that cannot be equated to an order of judicial remand. It is the common perception that the warrant is a document to be kept in a prison to show that the custody of the inmate in the prison is in pursuance of a judicial order passed by the Court. An order of remand is undoubtedly made on the request made by the police and on considering the materials available and after hearing the accused. Therefore, in the instant case, it is crystal clear that without passing any order of remand applying his judicial mind, as required under law after affording sufficient

opportunity to the accused, the learned Special Judge has simply made endorsement on the warrant of remand thereby authorising their detention in prison. This, in our considered view, is not in accordance with law and thus we have got no hesitation to accept the contention of the learned counsel for the petitioners that the custody of the detenus in prison between 18.07.2014 to 12.09.2014 was not in pursuance of any legal order of remand.

69. But subsequently, on the request made by the first respondent, a valid remand order was passed and periodically such orders were passed thereafter under Section 309 Cr.P.C. after taking cognizance of the offences on the police report.

70. Now the question is, whether the detenus should be set at liberty because their detention between 18.07.2014 to 12.09.2014 was not by means of any legally valid order of remand. The Hon'ble Supreme Court in *Sadhvi Pragyna Singh Thakur Vs. State of Maharashtra* reported in Manu/SC/1101/2011 has held that even if it is assumed for the sake of argument that there was any violation by the police by not producing the Appellant within 24 hours of arrest, the Appellant could seek her liberty only so long as she is in the custody of the police and after she is produced before the Magistrate, and remanded to custody by the learned Magistrate, the Appellant cannot seek to be set at liberty on the ground that there had been non-compliance of Article 22(2) or Section 167 of the Code of Criminal Procedure by the police.

71. Similarly, the Hon'ble Supreme Court in *Saptawna Vs. The State of Assam* reported in AIR 1971 SC 813 in paragraph 3 has held as follows:

"3. It seems to us that even if the petitioner had been under illegal detention between January 10 to January 24, 1968 - though we do not decide this point - the detention became lawful on January 24, 1968 when he was arrested by the Civil Police and produced before the Magistrate on January 25, 1968. He is now an under trial prisoner and the fact that he was arrested in only one case does not make any difference. The affidavit clearly states that he was also treated to have been arrested in the other cases pending against him."

72. In *Sanjay Dutt v. State through CBI*, 1994 (5) SCC 410 while dealing with the scope of the writ of habeas corpus, vis a vis the validity of an order of remand, the Hon'ble Supreme Court has held as follows:-

"It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order."

Following the above said judgment in Munubhai Ratilal Patel case cited supra, the Hon'ble Supreme Court in para 32 has held as follows:

"21. The principle laid down in Kanu Sanyal (AIR 1973 SC 2684), thus, is that any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits."

73. In view of the above judgments of the Hon'ble Supreme Court, in the instant case, though the detention of the detenus between 18.07.2014 and 12.09.2014 was not by means of any valid order of remand, since on their subsequent production before the Special Court, there were valid orders of remand passed, the detention as of now, cannot be stated to be illegal and so they cannot be set at liberty.

74. The learned counsel for the appellant submitted that for the illegal detention of the detenus depriving their fundamental rights, for the period between 18.07.2014 to 12.09.2014, compensation should be ordered to be paid by the State. We do not want to go into this issue because there is no such relief sought for in these petitions.

75. Before concluding, we would like to make it clear that the learned Magistrates and other Courts in the State of Tamil Nadu as well as the Union Territory of Puducherry shall hereinafter follow uniform procedure of passing an order of remand reflecting application of judicial mind by considering the request of the prosecuting agency and after hearing the accused besides considering all the relevant records including the case diary. If once such order is passed, it shall be followed by a warrant of remand to the jail authorities. We only hope that this shall be followed scrupulously.

76. In the result, the habeas corpus petitions are dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jvm/nsv

To

1. The Special Court for Trial of NIA Cases
Puducherry.

2. The Deputy Superintendent of Police,
National Investigation Agency
Hyderabad.
(Camp at Puducherry).

3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Director
Tamilnadu State Judicial Academy,
Chennai.
5. The Public Prosecutor
High Court, Madras
6. The Special Public Prosecutor for NIA Cases,
Puducherry.
7. The Section Officer,
'B' Section,
High Court, Madras 104.
8. The Section Officer,
'F' Section,
High Court, Madras 104.
9. The Registrar(Judl),
High Court, Madras 104.
10. The Section Officer,
Criminal Section,
High Court, Madras 104.

+1cc Dr.D.Simon, CGSC, S.R.No.10286

+1cc to Mr.P.Pugalenth, Advocate, S.R.No.10697

HCP Nos.1642 and 2058 to
2062 of 2015

EV(CO)
CA(28.02.2017)

सत्यमेव जयते

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