Raghubir Singh & Others Etc vs State Of Bihar on 19 September, 1986

Equivalent citations: 1987 AIR 149, 1986 SCR (3) 802, AIR 1987 SUPREME COURT 149, 1986 (4) SCC 481, 1986 CRIAPPR(SC) 285, 1986 SCC(CRI) 511, 1986 CURCRIJ 277, 1987 BLT (REP) 1, 1986 JT 481, (1987) SC CR R 29, 1986 CRILR(SC MAH GUJ) 491, (1986) EASTCRIC 795, (1986) KER LJ 899, (1986) 3 SCJ 599, (1987) 1 CRILC 1, (1986) ALLCRIR 639, (1986) ALLCRIC 507, (1986) ALL WC 1134

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, M.M. Dutt

PETITIONER:
RAGHUBIR SINGH & OTHERS ETC.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT19/09/1986

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
DUTT, M.M. (J)

CITATION:
1987 AIR 149 1986 SCR (3) 802
1986 SCC (4) 481 JT 1986 481
1986 SCALE (2)452
CITATOR INFO :
F 1990 SC 71 (11)

ACT:
Constitution of India, 1950.
Arts. 32 and 136-Petitions against framing of charges by the Trial Court-Whether maintainable-Supreme Court cannot convert itself into a trial court to consider sufficiency of evidence justifying framing of charges.
Article 21-Right to speedy trial-When violated-Factors to be taken in consideration-Question ultimately one of fairness in the administration of criminal justice.
Criminal Law Amendment Act, s. 6-Creation of Special

Judge's Court-Justification of-Trial entrusted to Special Court in the interest of security and convenience of the accused-Whether rule of law violated.

Indian Penal Code, ss. 120A & 124A-Accused need not be a participant throughout to constitute offence of conspiracy-Distribution and circulation of seditious material-Whether sufficient for constituting offence.

Criminal Procedure Code , 1973, ss. 167(2), 309(2), 437(5) and 439(2)-Order for release on bail-No limit within which bail bond may be executed-Order for release on bail effective until an order under s. 437(5) or 439(2) is made-Order not extinguished either by discharge of surety/by lapse of time/the filing of chargesheet/remand to custody under s. 309(2).

HEADNOTE:

The petitioners-accused were arrested by the Security Police Patrol Party in the State of Bihar while attempting to cross Indo-Nepal border. One of them was identified Simranjit Singh Mann-a dismissed Police Officer who had gone underground after an order of detention under the National Security Act was passed against him. As a result of
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the search, currency notes and a number of documents and other articles were seized from the petitioners. It is alleged that one of the accused also offered a bribe to the police officers. The police registered a first information report and commenced investigation. A chargesheet was filed on 11th December, 1985 before judicial Magistrate First Class against the five accused-petitioners for offences under ss. 121-A, 123, 124-A, 153A, 165-A, 505 and 120-B of the Indian Penal Code. However, before the chargesheet was filed, the accused-petitioner, Simranjit Singh Mann was served with an order of detention under the National Security Act and sent to Bhagalpur jail. The other four accused were also detained under the National Security Act at Bhagalpur.

All the petitioners moved the Judicial Magistrate for bail in the aforesaid criminal case claiming to be released under proviso (a) of s. 167(2) of the Code of Criminal Procedure. They were granted bail but, they could not be released because of their detention under the National Security Act. While so, the surety for all the five accused filed a petition requesting the Magistrate to discharge him from suretyship as he did not want to continue to be the surety of the accused persons. The Magistrate discharged the surety from suretyship and issued formal warrants of arrest under s. 444(2) of the Code of Criminal Procedure. At this stage, the High Court of Punjab and Haryana made an order quashing the detention of Simranjit Singh Mann.

The Magistrate took cognizance of the case under ss.

121A, 123, 124A, 153A, 165A and 120B of the Indian Penal Code on December 18, 1985. Thereafter the investigating Officer filed a petition requesting expeditious trial as the case was one of special importance. All the petitioners except Simranjit Singh Mann filed fresh bail bonds. The said bail bonds were rejected on December 20, 1985 as the surety could not name either the accused persons or their fathers. The accused moved another petition for recalling the order dated December 20, 1985 and accepting the same person as surety. This petition was rejected on the ground that the earlier order could not be reviewed. The High Court also rejected the bail applications of these accused persons.

The case was thereafter, transferred to the Special Judge (Vigilance) North Bihar, Patna. The accused Simranjit Singh Mann moved an application before the Special Judge offering cash security and asking for bail but it was rejected on the ground that the High Court had alread rejected the application of the other four accused. The case was later transferred to the Court of Special Judge, Bhagalpur and was

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finally adjourned to August 8, 1986 for arguments on the question of charges to be framed and on the question of jurisdiction. At this stage, the Special Public Prosecutor filed a petition stating that the offences under s. 165 and ss. 165A read with s. 34 were not committed in the course of the same transaction as the offences under ss. 124-A etc., and therefore it was necessary that the offences under ss. 165 and 165A read with s. 34 should be tried separately from the offences under secs. 124A etc. The accused also filed a petition to the same effect. The Special Judge allowed the aforesaid petition holding that the offences were not committed in the course of the same transaction and therefore the trial for the offences under ss. 165 and 165A read with s. 34 should be separated from the other offences. It was further held that he was not competent to try the accused for the offences under secs. 121A, 124A etc. as the case had not been committed to the court of Sessions by the Trial Magistrate and directed that in regard to those offences the record be sent back to the District and Sessions Judge, Purnea for proceeding further in accordance with law.

Alleging that the Special Public Prosecutor had never been instructed to file such a petition before the Special Judge, the respondent State of Bihar filed a writ petition in the High Court and obtained a stay of further proceedings before the Special Judge.

The accused-petitioners filed special leave petitions and writ petitions before the Supreme Court against the rejection of their bail applications and for quashing the proceedings before the Special Judge.

It was contended on behalf of the petitioners (a) that the fundamental right of the petitioners under Art. 21 of

the Constitution had been frustrated by the tactics of the State whose only object was to somehow keep the petitioners in prison; (b) that there was no material whatever to substantiate the offences of waging war etc. and that the proceedings deserved to be quashed on that ground also; (c) that the proceedings before the Special Judge, Purnea were without jurisdiction both for the reason that he was not competent to try the offences under s. 121A and s. 124A etc. and also for the reason that he came to be seised of the case at the instance of the Executive Government, who had no authority to transfer the case from the court of the Special Judge, Patna to the Court of the Special Judge, Purnea, since the rule of law would be defeated if the Executive Government were to be permitted to have cases decided by Judges of their choice; (d) that the High Court and the Special Judge were wrong in not permitting the accused to offer fresh sureties or cash security; (e) that the High Court and the Special
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Judge were wrong in holding that the order of the Magistrate directing them to be released on bail under s. 167(2) had come to an end by the passage of time, particularly after cognizance had been taken of the case; (f) that there was no material whatsoever to warrant the framing of charges for any of the offences mentioned in the charge-sheet other than sec. 165A; (g) that in the case of the accused persons other than Simranjit Singh Mann, there was nothing whatever to connect them with the offences under ss. 121A and 124A. On behalf of the respondent-State it was argued that the order for release on bail stood extinguished on the remand of the accused to custody under s. 309(2) of the Code of Criminal Procedure.

Dismissing the petitions,

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HELD: 1.1 The delay in the investigation and in the trial of the case is not so unfair as to warrant quashing the proceedings on the ground of infringement of the right of the accused to a speedy trial, a part of their fundamental right under Art. 21 of the Constitution. Having regard to the entirety of the circumstances, the long lapse of time since the original order for bail was made, the consequent change in circumstances and situation, and the directions that were now given for the expeditious disposal of the case, there would be no justification for exercising the court's discretion to interfere under Art. 136 of the Constitution at this stage. [818G-H; 827A-B]

1.2 The High Court is directed to dispose of the criminal revision petition before it as expeditiously as possible preferably within three or four weeks. Whatever be its outcome the High Court should also direct the Special Judge or other Judge who may have to try the case, or the cases as the case may be, to try the cases expeditiously setting a near date for the trial and to proceed with the

trial from day to day. [820D-]

2. The right to a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Art. 21 of the Constitution. The question whether this right has been infringed is ultimately a question of fairness in the administration of criminal justice even as "acting fairly" is of the essence of the principles of natural justice. A "fair and reasonable procedure" is what is contemplated by the expression "procedure established by law" in Art. 21.[815F-G]

Hussainara Khatoon (I) v. State of Bihar, [1979] 3 SCR 169, Kadra Pehadiya (I) v. State of Bihar, AIR 1981 SC 939, Kadra Pehdiya(II) v. State of Bihar, AIR 1982 SC 1167, State of Maharashtra
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v. Champa Lal Punjaji Shah, [1981] 3 SCC 610 and Menaka Gandhi's case followed.

Strunk v. United States, 37 Law Ed. 2nd 56, Barkar v. Wingo, 407 US 514 and Boll v. Director of Public Prosecutions, Jamaica, [1985] (II) All ER 585, referred to.

3.1 The question whether there was any material whatsoever to warrant the framing of charges for any of the offences mentioned in the charge-sheet other than sec. 165A is not a matter to be investigated by the Supreme Court in a petition under Art. 32 of the Constitution. This Court cannot convert itself into the court of a Magistrate or a Special Judge to consider whether there is evidence or not justifying the framing of charges. [819A-B]

3.2 The questions relating to the jurisdiction of the Special Judge to try the accused for the offences under secs. 121, 121A, etc. and the link between the offences under secs. 165A and 165A read with sec. 34 on the one hand and the offences under secs. 121 and 121A etc. on the other are questions which are awaiting the decision of the High Court. These questions are left to be decided by the High Court. [819C]

4. There was no evil design in the creation of a Special Judge's court for Purnea Division at Bhagalpur under the Criminal Law Amendment Act and the designation of a Judge to preside over that court. All that has, in fact happened is that a Special Judge's court was created for Purnea Division under s. 6 of the Criminal Law Amendment Act and Shri Bindeshwari Prasad Verma, Additional District Judge West Champaran, who was under orders of transfer as Additional District Judge Bhagalpur was designated as the Special Judge. The case Jogbani P.S. No. 110/84, was mentioned within brackets as that was apparently the only case awaiting trial in Purnea Division under the Criminal Law Amendment Act. The Special Judge's court was created for Purnea Division as it was thought that it would be more convenient for the accused and also in the interests of security if the case was tried at Bhagalpur where the accused were imprisoned rather than to have the trial of the

case at Patna to which place the accused would have to be taken from Bhagalpur for every hearing. [819E-]

5. The authorship of seditious material alone is not the gist of any of the offences. Distribution or circulation of seditious material may also be sufficient on the facts and circumstances of a case. To act as a courier is sometimes enough in a case of conspiracy. It is also not
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necessary that a person should be a participant in a conspiracy from start to finish. Conspirators may appear and disappear from stage to stage in the course of a conspiracy. [820B-C]

In the instant case, whether such evidence as may now be available in the record to justify the framing of charges is a matter for the trial court and not for the Supreme Court.[820C]

6.1 The effect of the proviso to s. 167(2) of the Code of Criminal Procedure, 1973, is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days. A person released on bail under the proviso to s. 167(2) for the default of the investigating agency is statutorily deemed to be released under the provisions of Chapter 33 of the Code for the purposes of that Chapter. That is provided by the proviso to s. 167(2) itself. This means, first, the provisions relating to bonds and sureties are attracted. Section 441 provides for the execution of bonds, with or without sureties, by persons ordered to be released on bail. One of the provisions relating to bonds is s. 445 which enables the court to accept the deposit of a sum of money in lieu of execution of a bond by the person required to execute it with or without sureties. If the bond is executed (or the deposit of cash is accepted), the court admitting an accused person to bail is required by s. 442(1) to issue an order of release to the officer in charge of the jail in which such accused person is incarcerated. Sections 441 and 442 are in the nature of provisions for the execution of orders for the release on bail of accused persons. [821D-G]

6.2 There is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of accused persons may not be acceptable to the court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straight away. [821G-H; 822A]

6.3 Orders for release on bail are effective until an order is made under s. 437(5) or s. 439(2). These two provisions enable the Magistrate who has released an accused

on bail or the court of Session or the High Court to direct the arrest of the person released on bail and to commit him to custody. The two provisions deal with what is known as cancella-
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tion of bail. Since release on bail under the proviso to s. 167(2) is deemed to be release on bail under the provisions of Chapter XXXIII, an order for release under the proviso to s. 167(2) is also subject to the provisions of s. 437(3) and 439(2) and may be extinguished by an order under either of these provisions. [822A-C]

6.4 The order for release on bail is not extinguished and is not to be defeated by the discharge of the surety and the inability of the accused to straight away produce a fresh surety. The accused person may yet take advantage of the order for release on bail by producing a fresh, acceptable surety. [822E-F]

6.5 Section 309(2) merely enables the court to "remand the accused if in custody". It does not empower the court to remand the accused if he is on bail. It does not enable the court to "cancel bail" as it were. That can only be done under s. 437(5) and s. 439(2). When an accused person is granted bail, whether under the proviso to s. 167(2) or under the provision of Chapter XXXIII the only way the bail may be cancelled is to proceed under s. 437(5) or s. 439(2). [822F-H]

7.1 An order for release on bail made under the proviso to s. 167(2) is not defeated by lapse of time, the filing of the chargesheet or by remand to custody under s. 309(2). The order for release on bail may however be cancelled under s. 437(5) or s. 439(2). Generally the grounds for cancellation of bail, broadly, are interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. [826B-C]

7.2 Where bail has been granted under the proviso to s. 167(2) for the default of the prosecution is not completing the investigation in sixty days, after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed. [826D-E]

In the instant case, the High Court and following the High Court, the Special Judge have held that the order for release on bail came to an end with the passage of time on the filing of the chargesheet. That is not a correct view. The order for release on bail was not an order on merits but was, what one may call an order-on-default, an order that could be
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rectified for special reasons after the defect was cured.

The order was made long ago but for one reason or the other, the accused failed to take advantage of the order for several months. Probably for that reason, the prosecuting agency did not move in the matter and seems to have proceeded on the assumption that the order had lapsed with the filing of the chargesheet. Having regard to the entirety of circumstances the Court did not exercise its discretion under Art. 136 of the Constitution. [826F-H]

Natabar Parida v. State of Orissa, AIR 1975 SC 1465, Bashir v. State of Haryana, [1977] 4 SCC 410 and Talab Hazi Hussain v. Mondkar, AIR 1958 SC 376, referred to.

JUDGMENT:

ORIGINAL/CRIMINAL APPELLATE JURISDICTION:

Writ Petition (Criminal) No. 136 of 1986.

Under Article 32 of the Constitution of India with Special Leave Petition (Criminal) No. 630 of 1986 From the Judgment and Order dated 17.1.1986 of the Patna High Court in Crl. Misc. No. 367 of 1986.

and Writ Petition (Criminal) No. 137 of 1986 Under Article 32 of the Constitution of India.

with Special Leave Petition (Criminal) No. 577 of 1986. From the Judgment and Order dated 7.2.1986 of the Special Judge (Vigilance) Bihar, Patna in S.C. No. 6 of 1986.

Ram Jethmalani, Miss Rani Jethmalani, K.N. Madhusoodhanan and Ashok Sharma for the Petitioners.

A.N. Mulla, D.Goburdhan and Basudeo Prasad for the Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. On the intervening night of November 29/30, 1984, the Security Police Petrol on duty near Jogbani Checkpost noticed a jeep speeding towards the Indo-Nepal border. The jeep was stopped. There were five occupants in the jeep. One of them was Simranjit Singh Mann who had been dismissed from the Indian Police Service. An order of preventive detention under the National Security Act had been made against him on August 28, 1986. He was wanted in that connection but had gone 'underground'. On being questioned by the police petrol party, they first refused to disclose their names and identity. This aroused the suspicions of the police party. One of the officers was able to identify Simranjit Singh Mann. The five occupants in the jeep were searched as also their baggage. A sum of Rs.62,722 was found with one of the occupants, who it is

alleged offered the police party a large amount as bribe if they were allowed to cross the Indo-Nepal Border. As a result of the search, a number of documents and other articles were seized. From the person of Simranjit Singh Mann were seized, a copy of a letter dated June 2, 1984 from Simranjit Singh Mann to the Chief Secretary, Punjab, a copy of the letter of resignation dated June 18, 1984 of Simranjit Singh Mann, the Passport of Simranjit Singh Mann, two photographs of Jarnail Singh Bhindrawala, a letter from Simranjit Singh Mann to Birbal Nath, a letter addressed to one Arun Kumar Agarwal asking him to help the bearer in all possible ways and Raghubir Singh. Kamikar Singh was the person who had made the offer of bribe. A First Information Report was then registered at the Jogbani Police Station for references under secs. 121-A, 124-A, 123, 153-A, 505 and 120-B of the Indian Penal Code and s. 5(iii) of the Prevention of Corruption Act. Investigation started. On December 11, 1985 a charge-sheet was submitted before the Judicial Magistrate First Class Araria against the five accused persons for offences under secs. 121-A, 123, 124-A, 153-A, 165-A, 505 and 120-B of Indian Penal Code.

Before the charge-sheet was filed, on December 4, 1984 Simranjit Singh Mann was served with the order of detention under the National Security Act and sent to Bhagalpur Jail. The other four accused were also detained under the National Security Act at Bhagalpur. On March 1, 1985 the four accused other than Simranjit Singh Mann moved the Judicial Magistrate First Class Araria for bail in the criminal case which was then being investigated claiming to be released under the proviso (a) of s. 167(2) of the Code of Criminal Procedure. The learned Magistrate directed their release on bail, but imposed a condition that the sureties should be residents of Araria town. The four accused persons filed a petition requesting the Magistrate to accept sureties from Purnea or cash. Anonymous letter warning Simranjit Singh Mann of likely attempts to liquidate him and advertising him to leave the country. Simranjit Singh Mann refused to sign the seizure memo. From Kamikar Singh's person, currency notes of the value of Rs.62,722 were seized. An amount of Rs.25,000, it is said, was offered as bribe to the Police Officers. From Jagpal Singh's suitcase was seized a booklet in English entitled 'Sikhs and Foreign Affairs' and a combined road map of India, Pakistan, Bangladesh, Sri Lanka and Nepal. Among other articles seized were a booklet in English written by Narinder Singh Bhuller said to contain anti-Government and Sikh separatist propaganda, a notebook containing meterial about the world's leading underground organisations said to be in Mann's hand-writing, a register in which Mann was said to be writing the history of Amritsar in which the Indian Army is said to have been described as the enemy, consequent on operation Blue-Star, extremist Sikhs are said to be described as nationalists and defendars of the motherland and Mrs. Gandhi, the then Prime Minister is described in a derogatory fashion. At the check-post, a photograph of Simranjit Singh Mann was available and it was varified that the person suspected to be Simranjit Singh Mann was actually Simranjit Singh Mann. The other persons gave their names as Kamikar Singh, Charan Singh, Jagpal Singh. The petition was rejected. Ultimately the four accused were able to get sureties from Araria, but even so they could not be

released as they were under detention under the National Security Act. Simranjit Singh Mann was also directed to be released under the proviso to sec. 167(2) on his application on October 28, 1985. The same condition was imposed that the sureties should be from Araria. He furnished necessary sureties on October 29, 1985, but could not be released as he was under detention under the National Security Act. While so Gauri Shankar Jha who was a surety for all the five accused filed a petition and personally appeared in court praying that he may be discharged from suretyship as he did not want to continue to be a surety of the accused persons. On December 5, 1985 the learned Magistrate made an order discharging the surety and issuing formal warrants of arrest under s. 444(2) of the Code of Criminal Procedure. It was at that stage that the order of detention against Simranjit Singh Mann was quashed by the High Court of Punjab and Haryana on December 9, 1985. The charge-sheet in the court of the Judicial Magistrate First Class Araria was filed on December 14, 1985.

The learned Magistrate took cognizance of the case under sec-

tions 121A, 123, 124A, 153A, 165A and 120-B Indian Penal Code on December 18, 1985. On the same day he also made an order that Simranjit Singh Mann should be kept in the Central Jail at Bhagalpur in the interests of security. On December 19, 1985, the Investigating Officer filed a petition requesting expeditious trial of the case as it was one of special importance. On December 20, 1985, fresh bail bonds were filed on behalf of the accused Raghubir Singh, Jagpal Singh, Kamikar Singh and Charan Singh. However the bail bonds were rejected as the surety, Kirtyanand Mishra could not name either the accused persons or their fathers. On January 2, 1986 all the accused persons were produced from custody before the Magistrate who further remanded them to custody till January 13, 1986. The learned Magistrate took up for hearing a petition which had been previously filed on behalf of the accused persons requesting that Kirtyanand Mishra may be accepted as a surety as he had once previously been accepted as surety. It was prayed that the order dated December 20, 1985 might be recalled. The petition was rejected on the ground that the earlier order could not be reviewed. Later, on the same day, two sureties, Mir Majid and Kirtyanand Mishra filed petitions requesting that they should be discharged from suretyship as they did not want to continue as sureties for the accused persons. On January 7, 1986 the Session Judge, Purnea transferred the case from the file of Shri R.B. Roy, Joint Magistrate, First Class, Araria to the Court of Shri U.N. Yadav, Joint Magistrate, First Class, Araria. On January 10, 1986, the learned Magistrate made an order fixing January 11, 1986 for the supply of 'police papers and necessary orders'. On January 11, 1986 the five accused persons were produced before the Magistrate. A petition was filed on behalf of the State to commit the case to the Court of session after delivering the police papers to the accused persons and thereafter to cancel the bail of the accused persons and remand them to custody. Another petition was filed on behalf of the accused to transfer the case to the Special Judge, Purnea. The accused persons also filed a petition to adjourn the case. The Magistrate requested the accused to receive the documents furnished under s. 207

Criminal Penal Code but the accused refused to receive the same claiming that their petition should be disposed of first so that if necessary they may go to the higher court in revision. The Public Prosecutor objected to the petition of the accused on the ground that the accused persons were merely trying to delay the disposal of the commitment proceedings. The advocate for the accused persons appears to have made a submission that the case was triable by the Court of Special Judge and therefore it should be transferred to him. The learned Magistrate held that cognizance had already been taken of the case by his court and the order taking cognizance could not be recalled. The question whether the case should be transferred to the court of Special Judge could be considered at the stage when the question whether there was a prima facie case was to be considered. The learned Magistrate then fixed January 18, 1986 as the date for furnishing copies of documents to the accused persons.

On January 16, 1986 the learned Magistrate rejected an application by the accused other than Simranjit Singh for acceptance of cash deposit or in the alternative sureties from outside Araria town. The learned Magistrate held that he had no power to review his earlier order. They then moved to the High Court for Bail but that application was also rejected. On January 18, 1986, the learned Magistrate purported to transfer the record of the case to the Special Judge (Vigilance), North Bihar, Patna and directed the accused to be produced before the Special Judge on January 31, 1986. On January 31, 1986 Simranjit Singh Mann offered cash security and that the joint trial was not permissible. The learned Special Judge upheld that submissions and held that the offences were not committed in the course of the same transaction and therefore the trial for the offences under secs. 165A and s. 165A read with s. 34 should be separated from the other offences. The learned judge further held that he was not competent to try the accused for the offences under secs. 121A, 124A etc. as the case had not been committed to the court of Session by the Magistrate of Araria. In regard to those offences the learned special Judge directed the record to be sent back to the District and Sessions Judge, Purnea for proceeding further in accordance with law.

Alleging that the Special Public Prosecutor had never been instructed to file a petition before the special Judge suggesting that the offences under secs. 165 and 165A read with s. 34 and the remaining offences under s. 121A, 124A etc. were not committed in the course of the same transaction and that they should be tried separately, the State of Bihar filed a writ petition in the High Court of Patna and obtained a stay of further proceedings before the Special Judge. The question of the link between the offences under secs. 165A and 165A read with s. 34 and the offences under secs. 121A, 124A etc. and the question of the jurisdiction of the Special Judge to try the offences under secs. 121A, 124A etc. were also raised before us but we refrain from expressing any opinion on these questions as these questions are to be considered by the High Court in the Revision Petition before it.

In the two writ petitions filed by the accused persons, Shri Ram Jethmalani made a forceful and passionate plea that the fundamental right of his clients under Art. 21 of the Constitution has been frustrated by the tactics of the State of Bihar whose only object was to somehow keep the petitioners in prison. He submitted that the case of bribery rested on what took place on the night of 29/30 November, 1984 and that investigation into that part of the case was complete in the course of a few days. The offences of waging war etc. rested primarily on the letters said to have been written by Simranjit Singh Mann to the President of India and others and investigation into these offences could not possibly take very long as all that was necessary was to examine the recipients of the letters. Yet the chargesheet was filed only in December, 1985 and even thereafter various tactics were adopted by the prosecution to prevent the trial of the case. According to Shri Jethmalani, the prosecution being fully aware that there was no merit in the allegations was merely trying to prolong the case as long as possible to harass the accused and to keep them in prison. He submitted that there was no material whatever to substantiate the offences of waging war etc. and that the proceedings deserved to be quashed on that ground also. He argued that if the offences of waging war etc. rested on the letters written by Simranjit Singh Mann to the President of India and the Chief Secretary, as indeed they were, then the prosecution could have been launched as soon as the letters were received. There was no need to launch the prosecution now and link it with the offence of bribery where the letters had been published in the daily press long ago. It was also submitted the proceedings before the Special Judge, Purnea were without jurisdiction both for the reason that he was not competent to try the offences under s. 121A, s. 124A etc. and also for the reason that he came to be seised of the case at the instance of the Executive Government, who had no authority to transfer the case from the court of the Special Judge, Patna to the court of the Special Judge, Purnea. Shri Jethmalani submitted that the very principle of rule of law would be defeated if the Executive Government were to be permitted to have cases decided by judges of their choice.

In the Special leave petitions, Shri Jethmalani submitted that the High Court and the Special Judge were wrong in not permitting the accused to offer fresh sureties or cash security. He submitted that the High Court and the Special Judge were wrong in holding that the order of the Magistrate directing them to be released on bail under s. 167(2) had come to an end by the passage of time, particularly after cognizance had been taken of the case.

The constitutional position is now well-settled that the right to a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Art. 21 of the Constitution: Vide Hussainara Khatton (I) v. State of Bihar, [1979] 5 SCR 169 (per Bhagwati and Koshal, JJ), Kadra Pehdiya (I) v. State of Bihar, AIR 1981 SC 939 (per Bhagwati and Sen, JJ.), Kadra Pehdiya (II) v. State of Bihar, AIR 1982 SC 1167 (per Bhagwati and Eradi, JJ) and State of Maharashtra v. Champa Lal Punjaji Shah, [1981] 3 SCR 610 (per Chinnappa Reddy, Sen and Baharul Islam, JJ). In foreign jurisdictions also, where the right to a fair trial within a reasonable time is a

constitutionally protected right, the infringement of that right has been held in appropriate cases sufficient to quash a conviction or to stop further proceedings: Strunk v. United States, 37 Law Ed. 2d 56 and Barkar v. Wingo, 407 US 514 two cases decided by the United States Supreme Court and Bell v. Director of Public Prosecutions. Jamaica, [1985] (II) All ER 585 a case from Jamaica decided by the Privy Council. Several questions arise for consideration. Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the wilfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defence? Was the delay due to causes beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his defence, was the very length of the delay sufficiently prejudicial to the accused? Some of these factors have been identified in Barker v. Wingo (supra). A host of other questions may arise which we may not be able to readily visualise just now. The question whether the right to a speedy trial which forms part of the fundamental right to life and liberty guaranteed by Art. 21 has been infringed is ultimately a question of fairness in the administration of criminal justice even as 'acting fairly' is of the essence of the principles of natural justice (In re H.K. 1967(1) All ER 226) and a 'fair and reasonable procedure' is what is contemplated by the expression 'procedure established by law' in Art. 21(Maneka Gandhi).

What do we have here? Five persons were seen in a jeep going towards the Indo-Nepal border, obviously in an attempt to cross the border. The border patrol thought that their movements were suspicious. Their answers to questions regarding their names and parentage were not satisfactory. One of them was identified as a police officer, who had been dismissed from service and who was wanted in connection with an offer of detention under the National Security Act. In the light of contemporary history and in the light of the documents lound in the possession of the accused, (to the contents of one of which we will presently refer), the police party suspected that they were crossing the border and going to Nepal in the course of a conspiracy to commit the offences of waging war, etc. Their suspicion must have been strengthened by the offer of a bribe to be allowed to cross the border. The police officer whom they apprehended, though apparently a Punjabi, had previously served in the State of Maharashtra while the others were from Calcutta. That several persons from different parts of the country with no apparent connection with each other except that they appeared to belong to the same Community were together trying to cross the country's frontier, apparently made the police suspect, in the context of the political situation in the country, that they belonged to some group of persons of that community who were campaigning against the Government, call it what you will, agitating or waging war, a suspicion which must have been further influenced by the letters found in their possession. It may be that these circumstances may lead to no

more than suspicion but the suspicion was enough to justify an investigation by the Police.

We may digress here and consider a submission of Mr. Jethmalani that the letter addressed to the President showed that Simranjit Singh Mann wanted to devote himself to the rehabilitation of those who had suffered during the army action and the letter could never possibly be evidence of a conspiracy to wage war against the Government. It is true that in this long letter, there is a sentence. "In future, I will devote myself to the rehabilitation of those who have suffered during the army action." It is sufficient for us to mention that there is in the letter enough incendiary material to ignite the combustible. We do not want to refer to the various other statements made in the letter. It is possible that the effect of some of those statements on the minds and actions of the susceptible could be disastrous. Simranjit Singh Mann, as a highly educated person and as a highly placed officer, was bound to emerge, on his dismissal from service, as a hero and martyr in the eyes of a certain section of the people. His statements would be accepted by them as gospel truths and pronouncements of the oracle on the basis of which they should act. If the letter remained addressed to the President and not publicised, it would cause little or no harm. But the letter though addressed to the president was clearly meant to be what is called an 'open letter', to be given wide publicity. Indeed its full text had been published in the daily press and the accused them-

selves had such a copy in their possession when they were stopped and searched. We do not know whether any of the accused' was responsible for the publicity and whether it was in pursuance of the conspiracy. It may be that Simranjit Singh Mann meant no harm and that the contents of the letter were no more than the vehement outpourings of a bitter, and distressed but honest mind in the zealot's jargon. On the other hand it is possible that the letter was designed to become or became an instrument of faith and used as such. All these are matters for evidence at the trial.

Reverting to what we were saying earlier, if the police officers had some justification for suspecting a conspiracy, they would be well justified in suspecting ramifications of the conspiracy elsewhere in the country necessitating investigation into the conspiracy in Punjab, Delhi, Maharashtra, Calcutta and other parts of the country. If the Investigating agency suspected a conspiracy to wage war, it was its bounden duty to search for evidence wherever it could be found and not content itself by reading the letters and examining the recipients of the letters. It is not again correct to say that the case of waging war is founded entirely on the letters addressed to the President of India, etc. and that all that was necessary for the investigating agency to do was to examine the recipients of the letters. The letters are only items of evidence and not the totality of the evidence.

From the affidavits filed on behalf of the State of Bihar and from the records produced before us, we find that the investigating agency conducted enquiries not only at Jogbani(Purnea), but also at Delhi, Calcutta and Bombay and in Punjab, Maharashtra and Nepal. It is one thing to analyse and arrange the facts and plan an orderly course of action when all the facts are known, it is quite another thing to do when the facts are to be discovered or unearthed, particularly in cases of suspected conspiracies bristling with all manner of complexities and complications including those of a sensitive, political nature, where the investigating agency has to tread warily and with circumspection. The investigating agency cannot, therefore, be blamed for the slow progress that

they made in investigating a case of this nature. It is true that there were what appeared to be lulls in investigation for fairly long spells but we are unable to see anything sinister in the lulls. We have to remember that investigation of this case was not the only task of the investigating agency. There must have been other cases and tasks. In our country, the police are not only incharge of the investigation into crimes, but they are also incharge of Law and Order. We have to take into account the extraordinary law and order situation obtaining in various parts of the country necessitating the placing of a great addi-

tional burden on the police. We are satisfied that such delay as there was in the investigation of this case was not wanton and that it was the outcome of the nature of the case and the general situation prevailing in the country. We may also note in passing that the accused in the present case do not belong to the category of persons who are not well able to take care of themselves. They are persons who are capable of asserting their rights whenever and wherever necessary and who did in fact asserts their rights as and when necessary, as is evident from the number of petitions filed before the Magistrate, and the special judge, from time to time. We do not suggest that the ability of the accused to assert their rights should penalise them and still the voice of protest against the delay. But, as pointed out by Powell, J. in Barker v. Wingo (supra) and by Lord Templeman in Bell v. DPP of Jamaica, (supra) one of the factors to be considered in determining whether an accused person has been deprived of his right is the responsibility of the accused for asserting his rights. It was said:

> "Whether, and how, a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain."

Until the filing of the present writ petitions we find that there was no serious protest by the accused about any delay. After the charge-sheet was filed, we notice that at least on two occasions the prosecuting agency expressed an anxiety to have the case disposed of as expeditiously as possible. We find from the order-sheet of the learned Special Judge that on December 19, 1985 the Public Prosecutor filed a petition before him requesting expeditious trial of the case as it was a case of a special importance. From the order-sheet we find that on January 9, 1986, another petition was filed by the Public Prosecutor again requesting that an early date may be fixed for the speedy disposal of the case. Having regard to all the circumstances of the case, we do not think that the delay in the investigation and in the trial of the case is so unfair as to warrant our quashing the proceedings on the ground of infringement of the right of the accused to a speedy trial, a part of their fundamental right under Art. 21 of the Constitution. We think that a direction by us that the trial should start soon and proceed from day to day is all that is called for in the present case.

It was strenuously contended by Shri Jethmalani that there was no material whatsoever to warrant the framing of charges for any of the offences mentioned in the charge- sheet other than sec. 165A. We desire to express no opinion on this question. It is not a matter to be investigated by us in a petition under Art. 32 of the Constitution. We wish to emphasise that this Court cannot convert itself into the court of a Magistrate or a Special Judge to consider whether there is evidence or not

justifying the framing of charges.

Two other questions, one relating to the jurisdiction of the Special Judge to try the accused for the offences under secs. 121, 121A, etc. and the other the question of the link between the offences under secs. 165-A and 165-A read with sec. 34 on the one hand and the offences under secs. 121 and 121A etc. on the other are questions which are awaiting the decision of the High Court of Patna and we leave those questions to be decided by the High Court.

Another question which was raised before us was that the Special Judge, Purnea was chosen by the Executive Government to try the present case. The submission was that it was destructive of the very principle of Rule of law and Equality before the Law if the Prosecutor is to be permitted to have the Judge of his choice to try the case. Nothing as drastic as that suggested by Mr. Jethmalani has happened. All that has in fact happened is that a Special Judge's court was created for Purnea Division under sec. 6 of the Criminal Law Amendment Act and Shri Bindeshwari Prasad Verma, Additional District Judge, West Champaran, who was under orders of transfer as Additional District Judge, Bhagalpur was designated as the Special Judge. The case, Jogbani P.S. No. 110/84, was mentioned within brackets as that was apparently the only case awaiting trial in Purnea Division under the Criminal Law Amendment Act. A Special Judge's court was created for Purnea Division as it was thought that it would be more convenient for the accused and also in the interests of security if the case was tried at Bhagalpur where the accused were imprisoned rather than to have the trial of the case at Patna to which place the accused would have to be taken from Bhagalpur for every hearing. The accused had to be imprisoned at Bhagalpur, as already mentioned by us, in the interests of security. We are unable to see any evil design in the creation of a Special Judge's court for Purnea Division at Bhagalpur under the Criminal Law Amendment Act and the designation of a Judge to preside over that court.

Shri Jethmalani urged that in the case of the accused persons other than Simranjit Singh Mann, there was nothing whatever to connect them with the offences under secs. 121-A, 124-A, etc. It was said that they were not even the authors of any of the letters which were found in the course of the search. We do not want to express any opinion except to say that authorship of seditious material alone is not the gist of any of the offences. Distribution or circulation of seditious material may also be sufficient on the facts and circumstances of a case. To act as a courier is sometimes enough in a case of conspiracy. It is also not necessary that a person should be a participant in a conspiracy from start to finish. Conspirators may appear and disappear from stage to stage in the course of a conspiracy. We wish to say no more on the submission of the learned Counsel. Whether such evidence as may now be available in the record to justify the framing of charges is a matter for the trial court and not for us. We refrain from expressing any opinion.

Having regard to the subsequent events that have taken place, we think that the only appropriate direction that we can give is to request the Patna High Court to dispose of the criminal revision petition before it as expeditiously as possible preferably within three or four weeks. Whatever be the outcome of the criminal revision petition, the High Court should also direct the Special Judge or other Judge who may have to try the case, or the one or the other of the cases as the case may be, to try the cases expeditiously, setting a near date for the trial of the case or cases and to proceed with

the trial from day to day.

We then come to the two special leave petitions filed by the accused persons. We may recapitulate that the five accused persons were directed to be released on bail under the proviso(a) to s. 167(2) for the default of the prosecution in not completing the investigation within 60 days. It may be remembered that there was no provision corresponding to the proviso to sec. 167(2) in the old Code of Criminal Procedure. The proviso was introduced for the first time in the new Code of 1973. The reason for the introduction of the proviso was stated in the Statement of Objects and Reasons as follows:

> "At present s. 167 enables the Magistrate to authorise detention of an accused in custody for a term not exceeding 15 days on the whole. There is a complaint that this provision is honoured more in the breach than in the observance and that the police investigation takes a much longer period in practice. The practice of doubtful legality has grown whereby the police file a "preliminary" or incomplete chargesheet and move the court for a remand under s. 344 which is not intended to apply to the stage of investigation. While in some cases, the delay in the investigation may be due to the fault of the police, it cannot be denied that there may be genuine cases where it may not be practicable to complete investigation in 15 days. The Commission recommended that the period should be extended to 60 days, but if this is done, 60 days would become the rule and there is no guarantee that the illegal practice referred to above would not continue. It is considered that the most satisfactory solution to the problem would be to extend the period of detention beyond 15 days whenever he is satisfied that adequate grounds exist for granting such detention." (s. 344 of the Old Code Corresponded to s. 309 of the present Code.) The effect of the new proviso is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days. A person released on bail under the proviso to s. 167(2) for the default of the investigating agency is statutorily deemed to be released under the provisions of Chapter 33 of the Code for the purposes of that chapter. That is provided by the proviso to s. 167(2) itself. This means, first, the provisions relating to bonds and sureties are attracted. S. 441 provides for the execution of bonds, with or without sureties, by persons ordered to be released on bail. One of the provisions relating to bonds is s. 445 which enables the court to accept the deposit of a sum of money in lieu of execution of a bond by the person required to execute it with or without sureties. If the bond is executed (or the deposit of cash is accepted), the court admitting an accused person to bail is required by s. 442(1) to issue an order of release to the officer in charge of the jail in which such accused person is incarcerated. Sections 441 and 442, to borrow the language of the Civil Procedure Code, are in the nature of provisions for the execution of orders for the release on bail of accused persons. What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons

the sureties produced on behalf of accused persons may not be acceptable to the court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straight away. Orders for release on bail are effective until an order is made under s. 437(5) or s. 439(2). These two provisions enable the Magistrate who has released an accused on bail or the court of Session or the High Court to direct the arrest of the person released on bail and to commit him to custody. The two provisions deal with what is known in ordinary parlance as cancellation of bail. Since release on bail under the proviso to s. 167(2) is deemed to be release on bail under the provisions of Chapter XXXIII, an order for release under the proviso to s. 167(2) is also subject to the provisions of s. 437(5) and 439(2) and may be extinguished by an order under either of these provisions. It may happen that a person who has been accepted as a surety may later desire not to continue as a surety. Section 444 enables such a person, at any time, to apply to a Magistrate to discharge a bond either wholly or so far as it relates to the surety. On such an application being made, the Magistrate is required to issue a warrant of arrest directing the person released on bail to be brought before him. On the appearance of such person or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as it relates to the surety, and shall call upon such person to find other sufficient surety and if he fails to do so, he may commit him to jail. (sec. 444). On the discharge of the bond, the responsibility of the surety ceases and the accused person is put back in the position where he was immediately before the execution of the bond. The order for release on bail is not extinguished and is not to be defeated by the discharge of the surety and the inability of the accused to straight away produce a fresh surety. The accused person may yet take advantage of the order for release on bail by producing a fresh, acceptable surety. The argument of the learned counsel for the State of Bihar was that the order for release on bail stood extinguished on the remand of the accused to custody under s. 309(2) of the Code of Criminal Procedure. There is no substance whatever in this submission. Section 309(2) merely enables the Court to 'remand the accused if in custody.' It does not empower the Court to remand the accused if he is on bail. It does not enable the Court to 'cancel bail' as it were. That can only be done under s. 437(5) and s. 439(2). When an accused person is granted bail, whether under the proviso to s. 167(2) or under the provisions of Chapter XXXIII the only way the bail may be cancelled is to proceed under s. 437(5) or s. 439(2).

In Natabar Parida v. State of Orissa, AIR 1975 SC 1465 the Court explained the mandatory character of the requirement of the proviso to s. 167(2) that an accused person is entitled to be released on bail if the investigation is not completed within sixty days. The Court said, "But then the command of the Legislature in proviso (a) is that the accused person has got to be released on bail if he is prepared to and does furnish bail and cannot be kept in detention beyond the period of 60 days even if the investigation may still be proceeding. In serious offences of criminal conspiracy-murders dacoities, robberies by interstate gangs or the like, it may not be

possible for the police, in the circumstances as they do exist in the various parts of our country, to complete the investigation within the period of 60 days. Yet the intention of the Legislature seems to be to grant no descretion to the court and to make it obligatory for it to release the accused on bail. Of course, it has been provided in proviso (a) that the accused released on bail under s. 167 will be deemed to be so released under the provisions of Chapter XXXIII and for the purposes of that Chapter. That may empower the court releasing him on bail, if it considers necessary so to do to direct that such person be arrested and committed to custody as provided in sub- section (5) of s. 437 occuring in Chapter XXXIII. It is also clear that after the taking of the cognizance the power of remand is to be exercised under s. 309 of the New Code. But if it is not possible to complete, the investigation within a period of 60 days then even in serious and ghastly types of crimes the accused will be entitled to be released on bail. Such a law may be a "paradise for the criminals," but surely it would not be so, as sometimes it is supposed to be because of the courts. It would be so under the command of the Legislature."

In Bashir v. State of Haryana, [1977] (4) SCC 410, the question arose whether a person who has been released under the proviso to s. 167(2) could later be committed to custody merely because a challan was subsequently filed. The court held that he could not be so committed to custody. But, the bail could be cancelled under s. 437(5) if the court came to the conclusion that there were sufficient grounds, after the filing of the challan to believe that the accused had committed a nonbailable offence and that it was necessary to arrest him and commit him to custody. The court said, "Sub-section (2) of Section 167 and proviso (a) thereto make it clear that no Magistrate shall authorise the retention of the accused person in custody under this section for a total period exceeding sixty days. On the expiry of sixty days the accused person shall be released on bail if he is prepared to and does furnish bail. So far there is no controversy. The question arises as to what is the position of the person so released when a challan is subsequently filed by the police."

* * * * "Sub-section (5) to section 437 is important. It provides that any court which has released a person on bail under sub-section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody. As under Section 167(2) a person who has been released on the ground that he had been in custody for a period of over sixty days is deemed to be released under the provisions of Chapter XXXIII, his release should be considered as one under s. 437(1) or (2). Section 437(5) empowers the court to direct that the person so released may be arrested if it considers it necessary to do so. The power of the court to cancel bail if it considers it necessary is preserved in cases where a person has been released on bail under s. 437(1) or (2) and these provisions are applicable to a person who has been released under Section 167(2). Under Section 437(2) when a person is released pending inquiry on the ground that there are not sufficient grounds to believe that he has committed a nonbailable offence may be committed to custody by court which released him on bail if it is satisfied that there are sufficient grounds for so doing after inquiry is completed. As the provisions of Section 437(1), (2) and (5) are applicable to a person who has been released under section 167(2) the mere fact that subsequent to his release a challan has been filed, is not sufficient to commit him to custody. In this case the bail was cancelled and the appellants were ordered to be arrested and committed to custody on the ground that

subsequently a chargesheet had been filed and that before the appellants were directed to be released under Section 167(2) their bail petitions were dismissed on merits by the Session Court and the High Court. The fact that before an order was passed under Section 167(2) the bail petitions of the accused were dismissed on merits is not relevant for the purpose of taking action under Section 437(5). Neither is it a valid ground that subsequent to release of the appellants a challan was filed by the police. The Court before directing the arrest of the accused and committing them to custody should consider it necessary to do so under Section 437(5). This may be done by the Court coming to the conclusion that after the challan had been filed there are sufficient grounds that the accused had committed a non-bailable offence and that it is necessary that he should be arrested and committed to custody. It may also order arrest and committal to custody on other grounds such as tampering of the evidence or that his being at large is not in the interests of justice. But it is necessary that the Court should proceed on the basis that he has been deemed to have released under Section 437(1) and (2)." In Talab Hazi Hussain v. Mondkar, AIR 1958 SC 376 a case arising under the old code, the court considered the grounds on which bail might be cancelled. It was said.

> "There can be no more important requirement of the ends of justice than the uninterrupted progress of a fair trial; and it is for the continuance of such a fair trial that the (inherent) powers of the High Courts are sought to be invoked by the prosecution in cases where it is alleged that accused persons, either by suborning or intimidating witnesses, are obstructing the smooth progress of a fair trial. Similarly, if an accused person who is released on bail jumps bail and attempts to run to a foreign country to escape the trial, that again would be a case where the exercise of the (inherent) power would be justified in order to compel the accused to submit to a fair trial and not to escape its consequences by taking advantage of the fact that he has been released on bail and by absconding to another country. In other words, if the conduct of the accused person subsequent to his release on bail puts in jeopardy the progress of a fair trial itself and if there is no other remedy which can be effectively used against the accused person, in such a case the (inherent) power of the High Court can be legitimately invoked. In regard to non-bailable offences there is no need to invoke such power because s. 497(5) specifically deals with such cases."

The result of our discussion and the case-law in this:

> An order for release on bail made under the proviso to s. 167(2) is not defeated by lapse of time, the filing of the chargesheet or by remand to custody under s. 309(2). The order for release on bail may however be cancelled under s. 437(5) or s. 439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar

or other unlawful acts. Where bail has been granted under the proviso to s. 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.

In the present case, the High Court and following the High Court, the Special Judge have held that the order for release on bail came to an end with the passage of time on the filing of the chargesheet. That we have explained is not a correct view. The question now is what is the appropriate order to make? The order for release on bail was not an order on merits but was what one may call an order-on- default, an order that could be rectified for special reasons after the defect was cured. The order was made long ago but for one reason or the other, the accused failed to take advantage of the order for several months. Probably for that reason, the prosecuting agency did not move in the matter and seems to have proceeded on the assumption that the order had lapsed with the filing of the chargesheet. The question is should we now send the matter down to the High Court to give an opportunity to the prosecution to move that court for cancellation of bail? Having regard to the entirety of the circumstances, the long lapse of time since the original order for bail was made, the consequent change in circumstances and situation, and the directions that we have now given for the expeditious disposal of the case, we do not think that we will be justified in exercising our discretion to interfere under Art. 136 of the Constitution in these matters at this stage. The special leave petitions are, therefore, dismissed. Nothing that we have said is to be construed as an expression of opinion on the merits of the case.

M.L.A. Petitions dismissed.