

Brij Mohan And 20 Ors. vs State And Ors. on 20 March, 1995

Equivalent citations: 1995(3)WLC321, 1995(1)WLN451

JUDGMENT

N.K. Jain, J.

1. Since all the writ petitions are arising out of the same matter and the petitioners have claimed almost same relief, they are being disposed of by this common order.

2. S.B. Civil Writ Petition No. 2884 of 1994:

Briefly stated the facts of the case as alleged by the petitioner are that during the search of premises of one Poonam Chand Vishnoi, Mr. Chain Singh Rajpurohit, State House Officer Police Station Bajju District Bikaner recovered some arms from his possession. It is alleged that the accused Poonam Chand Vishnoi during the Course of interrogation admitted that he was involved in the smuggling of arms and ammunition from Pakistan and he had sold some arms and ammunitions to the persons. In pursuance of the information given by Poonam Chand Vishnoi, an FIR (Annex. 1) dt. 28.9.93 was chalked out and a case under Sections 3 & 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the TADA') read with Sections 3/25 of the Indian Arms Act was registered against Poonam Chand Vishnoi, Gulam Nabi, Hanuman Poonla, Mohan Ram, Ramjan and Sri Chand. It is also alleged that during the course of investigation, one Shri Narayan was also arrested and he gave information to the police that the petitioner purchased one Pistol, one Magazine and 28 Cartridges from one Hari Singh. The petitioner was arrested on 2.1.1994 on the basis of said information. It is further alleged that the petitioner was made to admit that one Pistol, One Magazine and 28 Cartridges were sold to him by Hari Singh and on the basis of this Information given by the petitioner, the recovery was made by the Police from an open field one Pistol, 22 cartridges alongwith six empty 'Khokhas' were recovered. Thereafter, a case under Section 3 and 5 of the TADA and Section 3/25 of the Indian Arms Act was registered against the petitioner on the basis of the information given by Shri Narayan and on the basis of the information given by the petitioner Under Section 27 of the Indian Evidence Act and recoveries made from him., After completion of the investigation, a charge sheet has been submitted before the Designated Court for Rajasthan, Ajmer. Being aggrieved with the proceedings initiated by the respondents No. 1 & 2 before the Judge, Designated Court for Rajasthan at Ajmer, the petitioner has approached this Court by means of this writ petition under Article 226 to quash the FIR No. 81/93 lodged at P.S. Bajju District Bikaner. It has been prayed that charge sheet and proceedings pending in pursuance of the said FIR in the Designated Court for

Rajasthan, Ajmer under Sections 3 and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 read with Section 3/25 of the Indian Arms Act may also be quashed. This writ petition has been filed on 29.6.1994. On 1.7.1994, the petitioner moved an application stating that vide order dt. 20.6.1994, he has been released on interim bail by the Designated Court, Ajmer for 11 days and he is required to surrender before the closing hours of 5.7.1994. The petitioner applicant prayed that the application may be allowed and additional fact may be taken on record on 11.7.1994, counsel for the petitioner submitted that a number of writ petition resulting of the same FIR i.e. 81/93 Police Station Bajju are pending in this S.B. Civil Writ Petitions No. 861/94, 3014/94 and other writ petitions, details of which have been given by the petitioner in para 2 of this writ petition. It was prayed that order in same terms as passed on 27.5.1994 in S.B. Civil Writ Petition 861/94 be passed in this case also. This Court passed order accordingly. on 5.9.1994, counsel appearing for the State submitted that he does not want to file any separate reply in this petition and shall adopt the same reply as filed in S.B. Civil Writ Petition No. 861/94 and this Court permitted to do so.

3. S.B. Civil Writ Petition No. 3328/94.

Briefly stated the facts of the case as alleged by the petitioner are that after the arrest of Poonam Chand and registering of FIR No. 81 /93 dt. 28.9.93 the accused Poonam Chand vide Anex.3 informed that the petitioner (Shankerlal) purchased one pistol with two magazines and 10 cartridges. It is alleged that due to enmity, the petitioner has been falsely implicated in this case by the main accused Poonam Chand. It has been prayed that the FIR No. 81/93 be quashed and the petitioner be set at liberty.

4. S.B.Civil Writ Petition No. 3341/94.

According to the petitioner after recording of FIR No. 81/93 main FIR and another FIR No. 354/93 came to be registered after interrogation from one Shiv Narayan, it appears that the police may manipulation make Poonam Chand to make a statement before the Superintendent of Police, Bikaner on 26.11.1993 that the petitioner was also one of the recipient of fire arms and ammunitions. It is alleged that the investigation commenced against him in connection with the FIR No. 81/93 is illegal and wholly unwarranted. The petitioner has prayed that the investigation undertaken against the petitioner in pursuance of the FIR No. 81/93 (Annex. 1) of the P.S. Bajju qua the petitioner so also the investigation be quashed. This writ petition has been filed on 19.7.1994. On 22.7.1994, this Court ordered that meanwhile, the petitioner be not arrested in connection with FIR No. 81/91.

5. S.B. Civil Writ Petition No. 328/95.

In brief the facts of this case are that after registering the FIR No. 81/93 dt. 28.9.1993, Poonam Chand in his statement recorded under Section 15 of the TADA Act stated that he sold some arms and ammunition to Shiv Narayan. Thereafter, Shiv Narayan was also arrested and in his statement

under Section 15 he stated that he handed over three cartridges and a magazine to the petitioner. In the search made at the premises of the petitioner, the police recovered three cartridges and one empty magazine. On 19.1.1995, the petitioner applied for interim bail before the Designated Court on the ground of marriage of his two real sisters which was granted to him for a period of ten days upto 29.1.1995. On 24.1.1995, the petitioner has filed this writ petition praying that the FIR No. 81/93 P.S. Bajju (Annex. 1) may be quashed and the case under Section 3/25 be transferred to a Court of Criminal Jurisdiction. On 22.1.1995 this Court ordered to list the case on 7.3.1995 alongwith connected matters and continued the parole on the same bond till 7.3.1995.

6. S.B. Civil Writ Petition No. 1570/94.

The writ petition No. 1570/94 is also arising out of the FIR No. 81/93 as during the course of further investigation Poonam Chand Vishnoi stated that he sold arms to various persons and also disclosed the name of the petitioner stating that he had sold one pistol, two magazines and about twelve cartridges for Rs. 8000/-. It is alleged that pursuant to the information given by Poonam Chand, the petitioner was taken into custody and a case under Section 3 and 5 of the TDA Act and Section 3/25 of the Arms Act was registered. It is also alleged that recoveries were effected on the information given by the petitioner. The petitioner in his statement confessed the alleged purchase of pistol from Poonam Chand with magazines and cartridges. The petitioner has filed this writ petition on 19.3.1994 under Article 226 of the Constitution seeking to quash the proceedings pending before the Judge, Designated Court for Rajasthan at Ajmer under Section 3 and 5 of the TADA Act and to transfer the proceedings pending under Section 3/25 of the Arms Act to a competent Court of Criminal Jurisdiction. Notice to show cause was issued on 1.4.1994. On 16.11.94, this Court ordered not to arrest the petitioner and the parole may not be cancelled.

7. S.B.Civil Writ Petition No. 861/94.

Briefly stated the facts of the case as alleged by the petitioner are that he had a motorparts shop and the accused Poonam Chand Vishnoi owes Rs. 3000/- to the petitioner. It is alleged that one month ago from the date of arrest of Poonam Chand, he had come to the petitioner and offered him a pistol with a blank magazine for the amount he owed to the petitioner. The petitioner has alleged that he accepted the offer and the accused Poonam Chand Vishnoi when gave the statement in the FIR No. 81/93 during the course of investigation disclosed the name of the petitioner stating that a pistol was sold to him with magazine and some cartridges. It is alleged that he was arrested under Section 3 and 5 of the TADA Act and on this information one pistol with an empty magazine was recovered from a pond in village, Bap, Tehsil Phalodi. The petitioner also made a confessional statement before the S.P. He moved a bail application before the Judge, Designated Court on the ground that Section 5 of the TADA Act is not attracted in his case but the same was rejected vide order dt. 23.12.1993 observing that confessional statements of the petitioner and like others have been recorded and investigation is going on, and the learned Judge of the Designated Court rejected the bail application. Thereafter, the petitioner moved another bail application before the Designated Court but that too was rejected observing that it is a very serious case. It has been observed that according to the prosecution it is a case of conspiracy to smuggle arms and ammunitions from Pakistan to India for terrorist activities, and rejected the bail application on 3.2.1994. Dis-satisfied

with the rejection of bail application, the petitioner filed this writ petition on 15.2.1994. Seeking the relief to quash proceedings under TADA Act. This Court issued notice to show cause on 18.2.1994. On 23.5.1994, this Court ordered that the petitioner Manohar lal Paliwal shall not be arrested in FIR No. 81/93 P.S. Bajju District Bikaner till next date. An application was moved by the petitioner seeking modification of the said interim order stating that he was on parole at the time, when the order was made and the learned Designated Court may cancel his parole bonds unless, the parole is extended. On 27.5.1994, this Court ordered that the petitioner shall not be arrested or his parole be not cancelled till further orders.

8. S.B. Civil Writ Petition No. 3407/94.

In brief the facts of the case as alleged by the petitioner are that after registration of FIR No. 81/93 dt. 28.9.93 his name was disclosed by the main accused Poonam Chand Vishnoi who in his statement stated that the petitioner purchased one pistol with the Magazines and 10 cartridges. It is alleged that recovery was effected from the petitioner. Dis-satisfied with the initiation of proceedings under the TADA Act in the Designated Court, the petitioner has filed this writ petition on 22.7.1994 to quash FIR No. 81/93 qua the petitioner and not to arrest him. On 26.7.1994, this Court ordered that the petitioner be not arrested in connection with FIR No. 81/93.

In pursuance to show cause notice, the non-petitioners filed reply raising a preliminary objection that this writ petition is not maintainable and the only remedy available to the petitioner is to approach Designated Court and thereafter to the Supreme 'Court. On merits also, the State has submitted that the matter pertains to smuggling of arms and ammunition from Pakistan to Indian for the purpose of terrorist activities and this Court should not Interfere under Article 226 as there is material on the basis of which it cannot be said that no case is made out against the petitioner. No rejoinder has been filed on behalf of the petitioner.

9. S.B. Civil Writ Petition No. 3552/94.

According to the petitioner, during the course of investigation in connection with FIR No. 81/93, statement of Shri Narayan was also recorded. In his statement he informed the police that he had entered into arms dealings with Poonam Chand and sold pistols and rifles to Dungar Ram, Mam Raj, Ram Kishan, Ladu Ram and Jagdish. In his statement he also stated that Mam Raj, Doongar Ram and Ram Kishan felt that if I will be arrested, the discloser will follow that arms have been sold by him to these persons and therefore they kept him in their custody. He has also stated that these person forcibly handed over their arms to him. He further stated that the petitioners took him to Jaipur where they stayed in Raj Hans Hotel from where he eloped. The arms and ammunitions were recovered from the room in which Shiv Narayan stayed. On the basis of the statement of Shiv Narayan, FIR No. 354/93 P.S. Nayasahar was recorded. The petitioners Sukh Ram and Sahi Ram were charged sheeted in the Court of Addl. Munsif and Judicial Magistrate No. 2, Bikaner. The learned Sessions Judge, Bikaner granted them bail vide orders dt. 13.1.1994 and 17.1.1994. It is alleged, that while presenting challan in the case arising out of FIR No. 81/93 in the Designated Court, the names of the petitioners were mentioned in the Charge sheet and against them it has been referred that the investigation is pending against them under Section 173(8) of the Cr.PC.

Hence, the petitioners have preferred this writ petition on 28.7.1994 to issue a direction to the respondents not to arrest them in FIR No. 81/93 and 354/93. It has been prayed that the entire proceedings initiated under the TADA Act may be quashed. On 4.8.1994, this Court while directing the respondents not to arrest the petitioners in FIR No. 81/93 ordered petitioners to present themselves for the purpose of interrogation as and when they are so required by the authorities investigation the case. In pursuance to the show cause notice, the respondents in their reply raised preliminary objection that in view of the decision of the Supreme Court rendered In State of Maharashtra v. Abdul Hamid Haji 1994 CrLR (SC)- 168, the writ petition merits dismissal and the petitioners may be directed to approach the appropriate legal forum which in the present case is Designated Court for Rajasthan At Ajmer and if the writ petitions are allowed despite there being special court then admittedly and obviously it will frustrate the object to be achieved by the enactment of Act of 1987 and consequently appointment of Designated Court particularly when the orders passed by the Designated Court are only appealable before the Hon'ble Supreme Court. It has been stated that arms and ammunitions possessed by the petitioners are part of the huge recovery of arms and ammunitions which were smuggled to country through across the Pakistan for over rawing terror and dis stablise peace and tranquillity of the country and it is an offence against the society, nation and human beings. It has also been stated that till the petitioners are not arrested and investigation and interrogation is not made, approaching this Hon'ble Court is pre-mature. No counter to the reply has been filed by the petitioner to rebut the fact as stated in reply.

10. S.B.Civil Writ Petition No. 3622/94.

As alleged by the petitioner Ram Pal, the facts of the case are that an FIR No. 81/93 was registered on the strength of detailed interrogation made from Poonam Chand Vishnoi in connection with FIR No. 77/93 wherein Poonam Chand Vishnoi disclosed his involvement in purchase and sale of arms to various persons. It is alleged that in the FIR names of six persons were mentioned. It is alleged that one Shri Narayan Vishnoi also on interrogation made certain disclosures whereupon a case was registered on 15.11.93 vide FIR No. 354 under Sections 342,364,365 and 120B IPC wherein he named eight persons to whom he had delivered, sold or passed arms and ammunitions etc. obtained from Poonam Chand. On 26.11.1993, Poonam Chand Vishnoi was further interrogated by the police but the name of the petitioner was not disclosed. However, on the basis of the statement of Poonam Chand Vishnoi one Jagdish Chandra Vishnoi son of Labu Ram was arrested. On interrogation on 8.1.1994, Jagdish Chandra stated that he received a rifle from Shri Narayan at the house of Labu Ram in Nokha. It is alleged that when Jagdish Chandra heard of the arrest of Poonam Chand Vishnoi at that time he gave his Rifle to the petitioner for disposing the same. It is also alleged that on the basis of the statement of Jagdish Chandra, the petitioner has been implicated in this case. The petitioner also moved for anticipatory bail under Section 438 Cr.PC but the same was not pressed owing to the judgment of the Hon'ble Supreme Court. The petitioner has approached this Court by filing the writ petition under Article 226 seeking to quash the investigation undertaken against the petitioner in pursuance of the FIR No. 81/93 qua the petitioner and also to direct the respondents not to arrest the petitioner. This writ petition has been filed on 3.8.1994. Notice to show cause was issued on 8.8.1994. On 11.8.1994, this Court ordered not to arrest the petitioner in connection with the FIR No. 81/93. The petitioner shall however cooperate with the investigating agency for further interrogation as and when so called, The Court also ordered that in case it is

reported by the Investigating Agency that the petitioner is not cooperating, the order staying his arrest shall stand vacated.

11. S.B. Civil Writ Petition No. 5317/94.

Briefly stated the facts of the case as alleged by the petitioner are that during the search of premises of Shri Poonam Chand Vishnoi, arms and ammunitions were recovered from his possession and on interrogation, it was revealed that he was involved in smuggling of 'arms' and 'ammunition' from Pakistan and had sold some arms and ammunitions to the persons named in the FIR No. 81/93 dt. 28.9.93 registered under Sections 3 and 5 of the TADA Act read with Section 3/25 of the Indian Arms Act against Poonam Chand Vishnoi, Gulab Nabi, Hanuman Poonia, Mohanram, Ramjas and Sri Chand etc. On the basis of information given by Poonam Chand Vishnoi, one Shiv Narayan was also arrested by the Police and in his statement Shiv Narayan stated that he purchased some arms and ammunitions from Poonam Chand Vishnoi and sold it to the petitioner, but no recovery has been made from the petitioner. It is alleged that while the petitioner was in the police custody, his statement under Section 15 of the TADA Act was recorded by the Superintendent of Police, Bikaner and the petitioner was pressurised to admit the fact that Shiv Narayan sold arms and ammunitions to him. It is also alleged that he was forced to sign his statement prepared by the Superintendent of Police, Bikaner in the same line as was given by Shiv Narayan. Thus, the petitioner has challenged the initiation of proceedings against him under the TADA Act in the Designated Court in this writ petition and prays that the FIR No. 81/93 P.S. Bajju and the Charge Sheet along with the proceedings under sections 3 and 5 of the TADA Act may be quashed. The writ petition has been filed on 15.11.1994. On 16.11.1994, this Court ordered that the petitioner shall not be arrested and parole shall be deemed to be extended till next date of hearing. The non-petitioners have filed reply raising preliminary objection about the maintainability of the writ petition on the ground that as per Section 14(1) of the Act of 1987, the Designated Court has exclusive jurisdiction for the trial of the offences under the Act and writ petition does not lie. It has been stated that the petitioner is absconding with a view to avoid interrogation and investigation, therefore, he is not entitled to any equity. It has also been stated that arms and ammunitions were not recovered from the possession of the petitioner. However, the petitioner had in possession of arms and ammunitions but he sold the same to Mamraj and on account of this he is also liable to be prosecuted under the TADA Act. It has been further stated that against the petitioner and like others case under Sections 3 & 4 of the TADA Act is established and it cannot be said that these provisions are not attracted.

12. S.B. Civil Writ Petition No. 4588/94.

Briefly stated the facts of the case as alleged by the petitioner are that his son accused Poonam Chand Vishnoi was arrested by the police and arms and ammunitions were recovered from him. It is alleged that Poonam Chand stated that he transferred three pistols, 30 cartridges and six magazines to one Bhom Raj Bhattar son of Hari Ram and on the basis of the statement a case against Bhom Raj Bhattar was registered. It is alleged that in the month of March, 1994, Poonam Chand Vishnoi submitted an application before the Designated Court that the statement made by him implicating Bhom Raj Bhattar was made by him under order to falsely rope said Bhom Raj Bhattar and he is in position to get the arms and ammunition recovered, but nothing was done in this regard by the

police. It is also alleged that when the petitioner was cultivating his field on 14.8.1994, he found some goods hidden under the earth in a plastic bag which appeared to be some arms and ammunitions. The petitioner submitted an application on 14.8.1994 before the Collector, Bikaner stating all these facts and made other efforts but no action whatsoever was taken by any of the police authorities or the executive authorities. It is also alleged that on 25.8.1994 the police persons arrived on the scene and recovered the arms and ammunitions. Thereafter, the petitioner was sent to the Judicial custody vide order dt. 25.8.1994 instead of police remand. Feeling aggrieved against the action of the respondents in registered a case against him under Sections 3 and 5 of the TADA Act and section 3/25 of the Indian Arms Act, the petitioner has filed this writ petition to quash the FIR No. 81/93 lodged at P.S. Bajju District Bikaner under Sections 3 and 5 of the TADA Act and Section 3/25 of the Indian Arms Act, qua the petitioner. Notice was issued on 21.9.1994. On 11.11.1994, this court ordered on the basis of the statement of the counsel for the petitioner made at the Bar that the petitioner is on parole, that the parole be not cancelled and petitioner be not arrested till the next date of hearing.

13. S.B. Civil Writ Petition No. 5583/94.

The facts of the case as alleged by the petitioner in brief are that after the arrest of Poonam Chand Vishnoi FIR No. 81/93 dt. 29.8.93 came to be registered and during the course of interrogation Poonam Chand Vishnoi in his statement made under Section 15 of the TADA Act recorded by S.P., Bikaner alleged that one Rifle was sold to the petitioner through Shiv Narayan alongwith some magazines and cartridges. Thereafter, the petitioner was taken into custody and in the police custody his statement Under Section 15 was recorded and the petitioner was pressurised to admit the fact the Poonam Chand Vishnoi sold one Rifle to the petitioner through Shiv Narayan and the petitioner was forced to sign his statement prepared by the Superintendent of Police, Bikaner in the same line as was given by Poonam Chand. It is also alleged that even after a through investigation, the petitioner was not found in possession of any arms and ammunitions in the notified area so as to attract the provisions of Section 5 of the Act. The petitioner also obtained interim bail from the Designated Court on the ground of illness of his wife and get his wife operated, the Designated Court vide order dt. 2.12.1994 granted interim bail to the petitioner upto 12.12.1994. Being dis-satisfied with the initiation of the proceedings in pursuance of the FIR No. 81/93 under the TADA Act the petitioner filed this writ petition on 8.2.1994. On 12.12.1994, this Court issued notice and ordered that the parole of the petitioner be not cancelled and the petitioner be not arrested till the next date. The respondents in their reply while raising preliminary objection has stated that the jurisdiction of this Court under Article 226 is ousted as has been affirmed by the Supreme Court in State of Maharashtra v. Abdul Hamid Haji It has been stated that the petitioner had purchased arms and ammunitions from Shiv Narayan to whom accused Poonam Chand sold one rifle AK 56, two magazines and 10 cartridges to one Ramjas son of Gaju r/o Mankasar and same were sold by the petitioner and hence no question at all arise to recover the same from the possession of the petitioner and therefore, offence under the TADA Act is made out against the petitioner.

14. S.B. Civil Writ Petition No. 329/95.

In brief the facts as alleged by the petitioner are that during the search of premises of Poonam Chand, SHO Police Station, Bajju recovered some arms from his possession and on his interrogation, it was revealed that he was involved in smuggling of arms and ammunition from Pakistan and he sold arms and ammunition to persons named in FIR No. 81/93 dt. 28.9.93. Hence, a case under Section 3 and 5 of the TADA and 3/25 of the Indian Arms Act was registered. In the statement made under Section 15 of the TADA Act he alleged that he sold some arms and ammunition to Shiv Narayan. Shiv Narayan was also arrested and while he was in custody his statement was also recorded under duress, coercion and force and he was made to confess that he purchased some arms and ammunition from Poonam Chand and thereafter sold some arms and ammunition to the various persons. It is alleged that an FIR No. 41/91 was lodged at Police Station, Nachna on 14.8.1991 against on Ajit singh and other persons and during the investigation in the said case on the basis of the statement given by Shri Mehardeen that he sold one Gun, 2 magazines and 44 live cartridges to the petitioner. The petitioner was also arrested by the police in the said case on 3.9.1991. It is also alleged that during the police custody under duress, coercion and force, the petitioner was made to confess that he purchased said arms and ammunition from Mehardeen. On the basis of alleged information given by the petitioner, one gun, two magazines and cartridges were recovered from the premises of the petitioner on 4.9.1991 and the case under Section 3 & 4 of the TADA read with Section 3/25 of the Arms Act was registered against the petitioner and challan has been filed in the Designated Court on 1.7.1992. The petitioner is in jail since 3.9.1991. Vide order dt. 13.1.1995 the petitioner was released on interim bail by the Designated Court from 17.1.1995 to 27.1.1995. The writ petition has been filed on 24.1.1995. On 27.1.1995, this Court ordered to continue parole on the same bond and extended the parole upto the next date. The petitioner by way of the writ petition prayed that FIR No. 81/93 P.s. Bajju and FIR No. 41/91 P.S. Nachna District Jaisalmer may be quashed qua the petitioner and further proceedings taken in pursuance of the FIR may be quashed.

15. S.B. Civil Writ Petition No. 140/95.

Briefly stated the facts of the case as alleged by the petitioner are that after registration of FIR No. 81/93 Poonam Chand during interrogation stated that he sold some arms and ammunition to Shiv Narayan brother of the petitioner. It is alleged that Shiv Narayan was also arrested and while he was in custody his statement was also recorded under coercion and he was made to confess that he purchased some arms and ammunitions from Poonam Chand and thereafter he also sold one pistol and some magazines to the petitioner. The petitioner was arrested and during police custody, the petitioner was pressurised to admit the fact that Shiv Narayan sold some arms and ammunition to him. It is alleged that the petitioner has been ordered to be released on bail on interim by the Designated Court vide order dt. 2.1.1995 for a period of 15 days upto 17.1.1995. The petitioner has filed this writ petition on 11.1.1995 for quashing the FIR No. 81/93 qua the petitioner and also for quashing further proceedings taken in pursuance of FIR No. 81/93 before the Judge Designated Court for Rajasthan at Ajmer. On 13.1.1995 this Court while issuing notice ordered that the parole granted to the petitioner be not cancelled and he shall not be arrested for three weeks.

16. S.B. Civil Writ Petition No. 3014/94.

Briefly stated the facts of the case as alleged by the petitioner are that after the registration of FIR No 81/93 the petitioner came to know from one of the co-accused that a challan has been submitted by the Police Station Bajju in the Designated Court against 24 persons for the offences under Sections 3,4,5 and 6 of the TADA Act read with Section 3/25 and 27 of the Indian Arms Act. In, the challan It has been mentioned that though some poisons have been found connected with the offence but the Investigation could not be completed against them on account of their non-availability. The petitioner's name also find place in the list of such persons. It is alleged that no specific allegation have been made against the petitioner except for the fact that one of the accused Shiv Narayan in his statement said that he brought a pistol, two magazines and 60 cartridges from Poonam Chand and gave them to the petitioner but the same were returned by the petitioner to Poonam Chand through said Shiv Narayan. Being aggrieved with the initiation of proceedings under the TADA, the petitioner has filed this writ petition on 6.7.1994 for quashing the FIR No. 81/93 lodged at Police Station Bajju and the charge sheet filed In the Designated Court qua the petitioner. It has been prayed that the respondents may be directed not to arrest the petitioner in pursuance of the FIR No. 81/93. On 8.7.1994, while admitting the matter, this Court ordered that the petitioner shall not be arrested. The respondents in their reply raised preliminary objection that the writ petition is not maintainable In the proceedings under the TADA before this Court. It has been stated that the petitioner is absconding and investigation against him is pending under Section 173(8) of the Cr.PC and quashing of the proceedings would amount to killing a child who is yet not born. It has also been stated that the petitioner has been named by Shiv Narayan who was a middleman for the sale and purchase of the arms and ammunitions for accused Poonam Charid. He has stated in his confessional statement that he had seen one pistol, two magazines and 10 cartridges with the petitioner which he had purchased from Poonam Chand. Shiv Narayan has further stated that the petitioner had given him one pistol, two magazines and 10 cartridges for delivering to Poonam Chand which he delivered but he retained 10 cartridges with him. According to the respondents, it is thus clear that the petitioner had with him arms and ammunitions which is offence under Section 5 of the TADA.

17. S.B. Civil Writ Petition No 1037/94.

Briefly stated the facts of the case as alleged by the petitioner are that during investigation in FIR No. 77/93 P.S. Bajju, Poonam Chand was arrested who purchased huge quantity of weapons from terrorists. Poonam Chand sold out these weapons to Mohan Ram, Hanuman, Ramjas and Sri Chand. He stated that he sold these weapons to various persons amongst petitioners also. It is alleged that Poonam Chand has not said about the petitioner on 12.3.1993 so also on 15.10.1993 but on 19.10.1993 all of a sudden in memo of the information he said that the petitioner (Bhom Raj) purchased 2-3 pistols with six magazines and 30 cartridges due to enmity which cropped up due to demand of loan of Rs. 3500/- taken by a brother of the main accused Poonam Chand from petitioner's father's shop. It is alleged that at that time Deva Ram, brother of main accused started abuse and said that he will see the petitioner so that the petitioner will not again demand his amount in future. It is also alleged that he made a representation dt. 28.12.1993 to the Director General of Police showing that he is an innocent and has been falsely implicated by Poonam Chand, brother of Deva Ram. Being aggrieved with the initiation of proceedings, the petitioner has filed this writ petition on 23.2.1994 to quash the FIR No. 81/93 and directed the respondents to set the

petitioner at liberty. This Court issued notice to show cause on 25.2.1994. On 23.5.1994 This Court ordered that meanwhile, the petitioner Bhom Raj shall not be arrested in FIR No. 81/93 P.S. Bajju District Bikaner till the next date.

In pursuance to the notice, the respondents filed reply as has been filed in the other cases and stated that the State of Rajasthan being a border State certain anti-social elements are active and involved in smuggling the un-authorised arms through Rajasthan to the terrorists of Punjab and Kashmir. The present case is also related to one of the racket which was involved in selling and supplying unauthorised smuggled arms to the terrorists of Punjab through this racket which is active in Rajasthan specially the sensitive area Banner, Jaisalmer, Jodhpur and Bikaner. It has been stated that on the basis of confession statement made by the main accused Poonam Chand matter had been investigated and a challan was filed against 20 persons including Poonam Chand on 25.5.94 and for 29 persons including the petitioner, investigation is pending as they are absconding.

18. S.B. Civil Writ Petition No. 2058/94.

The petitioner has alleged that on 8.10.1993, he summoned at P.S.Bajju and was questioned there till 30.10.93 by the S.P., Bikaner and on being satisfied that he was not involved or concerned with any criminal case in any manner, whatsoever was allowed to leave the Police Station. It is alleged that while he was in South, the SHO Chain Singh Rajpurohit asked his father to produce the petitioner. It is also alleged that apprehending his arrest the petitioner applied to the learned Sessions Judge, Bikaner for anticipatory bail under Section 438 Cr.PC but an application was moved by the SHO that the petitioner is wanted in connection with FIR No. 81/93. The petitioner has alleged that his name does not appear in the FIR No. 81/93 and 354/93. It is also alleged that Poonam Chand was coerced to make a statement before the Superintendent of Police, Bikaner on 26.11.1993 that the petitioner was also one of the recipient of fire arms and ammunitions. Hence, this writ petition filed on 25.4.1994 to quash the FIR No. 81/93 qua the petitioner so also to quash the investigation under taken in pursuance of the FIR. On 28.4.1994, notice to show cause was issued on 28.4.1994. On 19.5.1994 it was ordered that the petitioner will not be arrested for the offence in FIR No. 81/93 P.S. Bajju District Bikaner.

Reply to the writ petition has been filed on 14.7.1994, raising preliminary objection of non-maintainability of the writ petition under Article 226. It has been stated that the petitioner was never called at Police Station Bajju on 8.10.1993 rather the petitioner knowingly and intentionally that he has been named by the accused Poonam Chand for purchase of arms and ammunition absconded and till date he is concealing his presence. It has also been stated that accused Poonam Chand in his confessional statement clearly stated that he sold one pistol two magazines and 20 cartridges to Parasmal for a sum of Rs. 3000/-. In rebuttal, no rejoinder has been filed.

19. S.B. Civil Writ Petition No. 4854/94.

Briefly stated the facts of the case as alleged by the petitioner are that after the arrest of Poonam Chand, he was thoroughly interrogated by the police and in his statement under Section 15 of the TADA was recorded by the Superintendent of Police, Bikaner and in the said statement he alleged

that one Rifle was sold by him to the petitioner through one Shiv Narayan alongwith some magazines and cartridges. It is alleged that on the basis of the statement of Poonam Chand, the petitioner was taken into custody and his statement under Section 15 of the TADA Act was recorded by the S.P., Bikaner wherein under the pressure of police he admitted that Poonam Chand sold one rifle to him through Shiv Narayan. It is also alleged that even after a thorough investigation, the petitioner was not found in possession of any arms of ammunitions. Hence, this writ petition under Article 226 has been filed on 1.10.1994 for quashing the FIR No. 81/93 P.S. Bajju and the charge sheet and proceedings pending in pursuance of the said FIR in the Designated Court for Rajasthan at Ajmer under Sections 3,4 & 5 of the TADA read with Section 3/25 of the Indian Arms Act. On 4.10.1994 this Court ordered that parole be not cancelled and the petitioner be not arrested till the next date of hearing, which was granted to him by the Designated Court on 26.9.1994 on the ground of operation of his wife for a period of two months.

Reply to the writ petition has been filed raising preliminary objection about the maintainability of the writ petition. It has been stated that the petitioner in his statement has stated that he purchased arms and ammunitions from Shiv Narayan to whom accused Poonam Chand sold one AK 56 Rifle, two Magazines and cartridges and he sold to one Rampal Bishnoi r/o Alap. It has also been stated that purchase and possession of arms and ammunitions is an offence under the said Act. No rejoinder has been filed to controvert the facts stated in the reply.

20. S.B. Civil Writ Petition No. 2158/94.

According to the petitioner on the statement of the accused Poonam Chand about his involvement in smuggling of arms and ammunitions for terrorist activities, an FIR No. 81/93 was recorded on 28.9.1993. It is alleged that during the course of investigation one Shiv Narayan was also arrested and on his statement, another FIR No. 354/93 was registered on 15.11.1993, who stated that he alongwith Poonam Chand Vishnoi sold one pistol to Mamraj and one pistol to Ram Kishan. Shiv Narayan also stated that these persons viz Mam Raj and Ram Kishan though if he will be arrested he may disclose this fact, therefore, they returned those weapons to him. Shiv Narayan further stated that these persons and some other persons took him in the truck and they wanted to kill him by over running the truck over him. It is alleged by the petitioners that thereafter they moved bail application under Section 438 Cr.PC before the learned Sessions Judge, Bikaner which was granted to them vide order dt. 13.1.1994 and 17.1.94. It is also alleged that as the police was after them for arresting them in FIR recorded in P.S. Bajju for the offence under Section 3 and 5 of the TADA Act, they approached the Designated Court for Rajasthan at Ajmer under Section 438 Cr.PC which was rejected by the Designated Court vide order dt. 3.2.1994. It is further alleged by the petitioners that they moved a bail application under Section 438 Cr.PC bearing No. 281/94 before this Court but the same was rejected on 5.4.94 on the basis of the Supreme Court decision rendered in Kartar Singh v. State of Punjab (1994(2 SC-423). Hence, this writ petition has been filed on 2.5.1994 for quashing the FIR No. 81/93 and 354/93. On 4.5.94 while issuing notice, this Court directed the respondents not to arrest the petitioner in FIR No. 81/93 P.S. Bajju. The State while raising preliminary objection in the reply about the maintainability of the writ petition; it has been stated that both the petitioners had purchased arms and ammunitions from Shiv Narayan, It has also been stated that they have been in possession of arnjs and ammunitions and thus, the provisions of Act of 1987 have rightly

been made applicable to them.

21. S.B.Civil Writ Petition No. 2129/94.

In brief the facts of the case as alleged by the petitioner are that he was arrested on 20.9.93 at 11.00 p.m. and a pistol was recovered from him. An FIR No. 77 was drawn and a case under Section 3/26 of the Arms Act was registered. It is alleged that the petitioner was granted bail on 22.9.1993 by the Addl, Chief Judicial Magistrate, Bikaner. It is alleged that an FIR came to be lodged at Police Station Bajju on 28.9.93 naming six persons therein, whereupon a case under Sections 3 and 5 of the TADA Act read with Section 3/25 of the Indian Arms Act was registered vide FIR No. 81/93. It is also alleged that Poonam Chand Vishnoi, one of the key accused from whose possession arms and ammunitions were recovered and the said FIR No. 81/93 was recorded, has stated that he had given one pistol and magazine one empty and other filled with cartridges and so also one A.K. 56 Rifle with two magazines one filled and other empty and obtained a sum of Rs. 22000/- from him. It is further alleged that the petitioner moved a petition under Section 482 Cr.PC bearing No. 6/94 but the petition was not pressed in view of the latest "judgment of the Apex Court rendered in Kartar Singh's case (JT 1994 (2) SC - 423). Hence, this writ petition for quashing FIR No. 81/93 of the P.S. Bajju qua the petitioner, has been filed on 29.4.1994. On 3.5.1994 notice to show cause was issued. On 11.5.1994, this Court ordered that the petitioner will not be arrested for the offence mentioned in FIR No. 81/93 P.S.Bajju District Bikaner. On 5.9.1994, this court allowed the State to adopt the reply filed in other writ petitions arising out of the same FIR, in S.B. Civil Writ Petition No. 861/94 in this case.

22. S.B. Civil Writ Petition No. 412/95.

The petitioner has alleged that during the search of premises of one Poonam Chand Vishnoi, SHO P.S. Bajju recovered some arms from him and on his interrogation, it was revealed that he was involved in smuggling of arms and ammunitions from Pakistan and he had sold some arms and ammunitions to various persons. A case under Section 3 and 5 of the TADA read with Section 3/25 of the Indian Arms Act was registered against Poonam Chand vide FIR No. 81/93 dt. 28.9.93. It is alleged that while in police custody the statement of accused Poonam Chand under Section 15 of the TADA Act was recorded by the Superintendent of Police, Bikaner and in the said statement he alleged that he sold some arms and ammunition to the petitioner. It is also alleged that the petitioner was also thereafter arrested and while he was in custody his statement was also recorded under duress, coercion and force and he was made to confess that the arms and ammunitions were sold by Poonam Chand through him to the various persons. It is further alleged that in the challan the only allegation levelled against the petitioner is that at the information furnished by the petitioner on 19.12.1993 one magazine and 82 cartridges were recovered, It is also stated that vide order dt. 2.1.95 one Doongar Ram and Shiv Narayan were granted parole on the condition that one will release after the surrender of other. Doongar Ram was granted interim bail on 17.1.95. The petitioner has further alleged that he applied for interim bail before the Designated Court and vide order dt. 23.1.1995 the petitioner has been granted interim bail for a period of 15 days upto 7.2.1995 vide Annex.2. Thereafter, the petitioner has filed this writ petition on 31.1.95 to quash the FIR No. 81/93 lodged at P.S. BaJJu District Bikaner and also to quash the further proceedings taken in

pursuance of the FIR No. 81/93.

It was stated that identical matters have already been admitted and parole granted by the Designated Court is extended upto the disposal of the writ petition. Therefore, this Court vide order dt. 3.2.1995 ordered that the petitioner should continue on parole on the same bond and his parole is extended upto 7.3.1995. The matter was ordered to be listed on 7.3.1995 alongwith connected matters. Hence, it has come up for hearing alongwith all the cases mentioned above.

23. As agreed by the learned Counsel for the parties, all these matters have been heard finally.

24. Learned Counsel for the petitioners have contended that there is no information with regard to the involvement of the petitioners in the offences arising under the provisions of TADA. It has been contended that before registering the FIR under the TADA no prior approval of the Superintendent of Police was obtained, which is mandatory under Section 20A of the TADA and, therefore, no action can be taken against the petitioners. It has also been contended that the essential ingredients of Section 3 and 5 of the TADA are not present in the present case and case Under Section 3/25 of the Indian Arms Act could have been registered against the petitioners and they could have been tried by the ordinary Criminal Court. Reliance has been placed on a decision of Andhra Pradesh High Court rendered in *K. Balagopol v. Gout. of A.P. and Others* (1994 Cr.L.J.- 1715).

25. Mr. Vyas, learned Counsel appearing on behalf of the State has submitted that during the course of investigation in FIR No. 77/93 on the interrogation from Poonam Chand arms were recovered from the accused petitioners from "notified area" and main accused has admitted that these arms were smuggled from Pakistan for terrorist activities. He has also submitted that the provisions of the TADA have been fully complied with and the facts mentioned in the FIRs and other material fully discloses the commission of the offences under the TADA Act. He has relied on *State of Maharashtra v. Abdul Horrid Haji Mohd.* (Cr.LR 1994 (SCJ-2), *Sonjay Dutt v. The State Through C.B.I., Bombay* (CrLR (SC) 1994-679) and *State of Maharashtra v. Abdul Hamid Haji Mohd.* (1995 CrLJ - 415).

26. I have given my earnest and thoughtful consideration to the rival contentions made at the Bar. I have also perused the relevant provisions as well as the case law cited at the Bar.

27. Before, I proceed with the matter, it would be appropriate to carefully read some of the decisions of their lordships of the Supreme Court on the Subject.

28. In *State of Maharashtra v. Abdul Hamid Hajl Mohd.* (supra), a writ petition was filed by the respondent in the High Court under Articles 226 & 227 of the Constitution seeking issuance of a writ of certiorari quashing all the proceedings initiated under the provisions of TADA and also quashing and setting aside the order of the learned Judge of the Designated Court dt. 4.6.1993 remanding the respondent to judicial custody, In addition to the said reliefs, there was one more prayer that to admit the respondent to bail. The High Court after hearing the parties passed the order directing the respondents to be released on interim bail attached with certain conditions. Their lordships of the Supreme Court held as under:

13. After going through the impugned Order, we are at loss to understand as to what were the reasons that prompted the High Court to take a contrary view to that of the Designated Court observing that "the petitioner has made out a case of releasing him on bail during the pendency of the petition" and to pass the impugned interim order granting bail especially when the question of the jurisdiction of the High Court to entertain a bail application with regard to offences under the provisions of TADA is under serious challenge. Therefore, we are of the view that it would be just and proper if the High Court after hearing the parties both on the question of law and fact, passes a reasoned order either on the main Writ Petition or on the ancillary relief sought for i.e. bail so that this Court may be in a better position to understand and examine the reasonings of the High Court.

29. In *Sanjay Dutt v. The State through C.B.I. Bombay* their lordships has observed as under:

The construction made of any provision of this Act must, therefore, promote the object of its enactment to enable the machinery to deal effectively with persons involved in, and associated with, terrorist and disruptive activities while ensuring that any person not in that category should not be subjected to the rigours of the stringent provisions of the TADA Act. It must, therefore, be borne in mind that any person who is being dealt with and prosecuted in accordance with the provisions of the TADA Act must ordinarily have the opportunity to show that he does not belong to the category of persons governed by the TADA Act. Such a course would permit exclusion from its ambit of the persons not intended to be covered by it while ensuring that any person meant to be governed by its provisions, will not escape the provisions of the TADA Act, which is the true object of the enactment. Such a course while promoting the object of the enactment, would also prevent its misuse or abuse. Such a danger is not hypothetical but real in view of serious allegations supported by statistics of the misuse of provisions of the TADA Act and the concern to this effect voiced even by the National Human Rights Commission.

Their lordships while considering the question whether words 'Arms and ammunition' should be read conjunctively for the purpose of Section 5 of the TADA Act, have observed as under:

Section 5 applies where 'any person is in possession of any arms and ammunition specified in columns 2 and 3 of category I or category Ill(a) of Scheduled I to the Arms Rules, 1962, or...unauthorisedly in a notified area'. After specifying the forbidden arms and ammunition. Section 5 proceeds to include in that category other substances by using the expression 'or bombs, dynamite or other explosive substances.' It is clear that unauthorised possession in a notified area is forbidden of 'any arms and ammunition' which is specified 'or bombs or dynamite or other explosive substances.' The other forbidden substances being read disjunctively, the only question is: Whether in this context the words 'arms and ammunition' in Section 5 should be read conjunctively? We do not think so.

30. In a recent decision of the Supreme Court given in *State of Maharashtra v. Abdul Hamid Haji* (Supra), an appeal was filed by the State of Maharashtra against the judgment of the High Court quashing the prosecution against the respondent under the provisions of the TADA Act in the writ jurisdiction holding that the provisions of TADA are not attracted. The High Court also held that respondent be prosecuted under the Arms Act, 1959. It was contended before their lordships of the Supreme Court on behalf of the appellant that the High Court was not empowered to exercise of its extra ordinary Jurisdiction under Article 226 of the Constitution to quash a prosecution launched for the punishment of offences under the TADA Act and, therefore, the impugned Judgment is liable to be set aside for this alone. On the other hand it was argued on behalf of the respondent that the only material against the respondent, placing the prosecution case at the highest is the alleged discovery of six AK-56 Rifles and twelve empty magazines. It was also contended that material necessary to constitute the offence of conspiracy or the offences punishable under Section 3 and/or 5 or 6 of TADA Act is totally absent even if the allegations made in the charge sheet are accepted at their face value. It was further contended that the provisions of TADA Act cannot be invoked and the only offence which can be made out against the respondent on these allegations is that punishable under the Arms Act. Their lordships of the Supreme Court has held as under:

It is no doubt true that in an extreme case if the only accusation against the accused prosecuted in the Designated Court in accordance with the provisions of TADA Act is such that ex facie it cannot constitute an offence punishable under TADA Act, then the High Court may be justified in invoking the power under Art 226 of the Constitution on the ground that the detention of the accused is not under the provisions of TADA Act. This can happen only in extreme cases which would be rare and that power of the High Court is not exercisable in cases where it may be debatable whether the direct accusation made in conjunction with the attendant circumstances if proved to be true, is likely to result in conviction for an offence under TADA Act. The moment there is a debatable area in the case, it is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution and the gamut of the procedure prescribed under TADA Act must be followed, namely, raising the objection before the Designated Court and, if necessary, challenging the order of the Designated Court by appeal in the Supreme Court as provided in Section 19, TADA Act. In view of the express provision of appeal to the Supreme Court against any judgment, sentence or order, not being an interlocutory order of a Designated Court, there is no occasion for the High Court to examine merits of the order made by the Designated Court that the Act applies. Therefore, in the instant case wherein the High Court had to perform the laboured exercise of scrutinising the material containing the accusation made against the accused and the merits of the finding recorded by the Designated Court holding that the provisions of TADA Act were attracted, there was sufficient indication that the writ Jurisdiction of the High Court under Article 226 of the Constitution was not available.

Their lordships while considering the merits of the case has observed as under:

We do not propose to make any observation on the merits of the rival contentions except to say that, as we read the charge sheet, it is not correct to say that the only accusation therein against the respondent is merely of discovery of six Chinese AK-56 Rifles and twelve empty magazines made by him. We may also add that a Chinese Ak-56 rifles is not to be equated with a country made pistol and the number of rifles along with the several magazines concealed in the manner alleged, if proved, may also have significance together with the other circumstances alleged against the respondent relating to terrorist activities. This is, however, a matter of appreciation of evidence at the trial and it cannot be said that the allegations made against the respondent in the charge sheet can constitute merely an offence punishable under the Arms Act and not under TADA Act. The view taken by the High Court on this aspect is contrary to law apart from being unjustified and impermissible in exercise of its jurisdiction under Article 228 of the Constitution.

31. In the instant case; mainly three questions have been raised on behalf of the petitioner; that the FIR itself deserves to be quashed as no prior approval of the District Superintendent of Police was obtained before registering the FIR in view of Section 20A of the TADA Act, that no offence under TADA Act is made out against the petitioner as is clear from the FIR since the essential ingredients of Sections 3/5 of the TADA Act are not present and at the most the petitioners' case may be transferred to competent criminal court for trial of offences under the Indian Penal Code and Indian Arms Act.

32. It may be stated that the questions raised by the petitioners are crucial but whether this Court under Article 226 of the Constitution can examine such questions or not. Certainly the answer which can be given in view of the aforesaid Supreme Court decisions is in negative. Since, their lordships of the Supreme in State of Maharashtra v. Abdul Hamid Hazi's case (1995 Cr.LJ-415), have held that the moment there is a debatable area in the case, it is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution and the gamut of the procedure under the TADA Act must be followed, namely raising the objection before the Designated Court and, if necessary challenging the order of the Designated Court by appeal in the Supreme court as provided in Section 19, TADA Act. Therefore, in view of the expression provision of appeal to the supreme Court provided under the TADA Act and in view of the Supreme Court decision, in my opinion, it would not be proper for this Court to examine the questions at this stage.

33. It is no doubt true that offences punishable under the Penal Code/Arms Act etc. should not be converted into TADA by abusing or misusing the same with ulterior motive and in the case where ex-facie no case under the TADA Act is made out, the High Court can invoke extra ordinary Jurisdiction but this power is to be exercised very sparingly and only in rare of the rarest cases. In the instant case, during the course of investigation and search of premises of one Poonam Chand Vishnoi, it was revealed that he was involved in smuggling of arms and ammunition from Pakistan and he had sold arms and ammunition to the persons who are in one way or the other took part in this dealing. On the basis of the information given by Poonam Chand Vishnoi, a case Under Sections 3 and 5 of the TADA Act read with Section 3/25 of the Indian Arms Act was registered against Poonam Chand Vishnoi, Gulam Nabi, Hanuman Poonia, Mohan Ram, Ram Jas and Sri Chand.

Thereafter during the course of investigation confessional statements of the accused-petitioner were also recorded admitting their guilt and the police found that several persons are involved and they were also apprehended, after registration of the case. Some of the accused are absconding and proceedings Under Sectionec. 173(8) Cr.PC are going on due to which trial is delayed. Under the Circumstances without expressing any opinion on the merits of the case and keeping in view the object for which this special Act was enacted, I just say that the accusation made against the petitioners is not of such a nature wherein FIR can be quashed at this stage in the extra ordinary jurisdiction. The contention of the petitioners can be examined by the Designated Court. The Designated Court will examine the case of each and every person carefully and if in its opinion, no prima facie case is made out under the TADA Act on the facts of given case, the Designated Court may transfer the case to any other Court housing jurisdiction under the Criminal Procedure Code, under Section 18 of the TADA Act. It is pertinent to note that the petitioners Instead of getting the case decided promptly from the Designated Court have approached this Court after getting parole on compassionate grounds from the Designated Court. Whereas against any order passed by the Designated Court, remedy of appeal/revision under Section 19 of the TADA Act lies to the Apex Court only, which can be availed by the petitioner for redressal of their grievances at appropriate stage.

34. So far the argument that prior approval under Section 20A s of the TADA Act was not obtained before registering the case is concerned, the Additional Government Advocate has urged that the point has not been agitated before the Designated Court and not even in most of the writ petitions but has been raised before this Court during the Course of arguments, therefore, the same is of no avail particularly when section 20A has been inserted just to ensure application of mind by the higher authorities, which is present in the present cases in hand as the authorities have fully complied with the provisions and further earlier the FIR No. 77/93 was registered under the provisions of Indian Penal Code and Indian Arms Act but later on after recovery of huge arms and ammunitions and confessional statements of accused about involvement in smuggling activities of arms and ammunition for terrorist activities from Pakistan coupled with the other evidence FIR No. 81/93 under the TADA Act has been recorded. Be that as it may. As stated above, keeping in view that to discuss the arguments in the back ground of present case involving terrorist activities, at this premature stage may prejudice the case of the either side, in my opinion, it would be appropriate for the petitioners to raise all these objections and can rebut the statutory presumption by adducing evidence before the Designated Court. It is expected that the Designated Court will decide the matter after hearing the parties according to law. In view of this, the case cited by the counsel for the petitioners reported in 1994 CrLJ - 1715 (K.Balagopal v. Govt. of A.P.) is of no avail and they cannot derive any benefit out of the said decision.

35. Before parting with the case I think it proper to observe that the petitioners who were granted interim bail parole for some days by the Designated Court on the compassionate grounds of marriage and illness of relatives etc., without giving full particulars and details, most of the petitioners by ways of these writ petitions got the same continued from this Court whereas for seeking relief under Article 226 one must come with clean hands. Some of the petitioners, who are alleged to be absconding and proceedings Under Section 173(8) Cr.PC are going on as per reply, they also obtained interim orders alleging that in similar and identical matters orders to the effect that

"the petitioner shall not be arrested in FIR No. 81/93" have been passed and such orders have been obtained, which is not appropriate in view of the decision of the Apex Court in State of Maharashtra v. Abdul Hamid Haji (1994 Cr L.R. SC 2), wherein the Supreme Court directed to decided the main petition instead of granting interim orders for bail. In such cases, the State should respond immediately bringing full fact before this unscrutinised giving rise to complicacies and delay in trial frustrating the object of the Act.

36. In view of what I have discussed above, there in no force in these writ petitions. These writ petitions are hereby dismissed. The ad-interim orders passed in these writ petitions are discharged. The petitioners are directed to surrender before the concerned authority immediately on or before 28th of March, 1995, failing which the authorities will free to proceed according to law. A copy of this order be placed in each and every writ petition.