itself is a matter gone in favour of the appellant. We do not find any justification to further enhance the market value.

6. The question of discrimination in the payment of interest at 4% on enhanced market value also has no foundation. No doubt, the reasons given by the Division Bench to deny the claim may not be sound but the fact remains that no distinction was made between lands acquired either for public purpose by the Central Government or the State Government. Section 2 of the State Amendment Act, 1953 amended the interest payable under the Act and reduced the rate of interest from 6% to 4% uniformly being awarded for all the acquisitions in the State of A.P. Under these circumstances, the view of the High Court in that behalf, though for different reasons, is correct and accordingly it is upheld. The appeals are accordingly dismissed. But in the circumstances parties are directed to bear their own costs.

(1994) 4 Supreme Court Cases 602

(BEFORE DR A.S. ANAND AND FAIZAN UDDIN, JJ.)

HITENDRA VISHNU THAKUR AND OTHERS .. Appellants;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Criminal Appeal Nos. 732-735 of 1993† with Crl. A. Nos. 736-37 of 1993, 738-39, 740-41 of 1993, SLP (Crl.) Nos. 2800 of 1993, 138-139 of 1994 and Crl. A. No. 364 of 1994, decided on July 12, 1994

A. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 3(1) — When attracted — "Terrorist act", meaning of — Not defined by the Act — Need to deal with a terrorist and "terrorist acts" differently from the ordinary criminal law — Essential conditions for invoking S. 3(1) are (i) the criminal activity must be committed with the requisite intention or motive contemplated by S. 3(1), (ii) weapons mentioned in S. 3(1) must have been used, and (iii) which has caused or is likely to result in the offences mentioned in S. 3(1) — Mere consequences of the acts being covered by S. 3(1) not enough if the requisite intention is absent — While general considerations stated, held, each case to be decided on its own facts — Onerous duty therefore cast on Designated Court to exercise extra care to scrutinise the material on record and apply its mind to the evidence before charge-sheeting under TADA — Mere opinion or statement of the investigating agency therefore not enough — Designated Court must record its satisfaction about the existence of a prima facie case on the basis of the material on the record before framing the charge-sheet under TADA — Even thereafter Designated Court obliged to examine the evidence with extra care before recording a conviction — Where after taking cognisance the Designated Court finds S. 3(1) inapplicable it must, for reasons to be recorded, act under S. 18 and transfer the case to the ordinary criminal court for trial**

The present batch of criminal appeals and special leave petitions raised the following questions : (1) When can the provisions of Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the

† From the Judgment and Order dated 31-7-1993 of the Designated Court, Pune in Application Nos 81, 83-85 and 94 of 1993

TADA) be attracted? (2) Is the 1993 Amendment, amending Section 167(2) of the Code of Criminal Procedure by modifying Section 20(4)(*b*) and adding a new provision as 20(4)(*bb*), applicable to the pending cases i.e. is it retrospective in operation? and (3) What is the true ambit and scope of Section 20(4) and Section 20(8) of TADA in the matter of grant of bail to an accused brought before the Designated Court and the factors which the Designated Court has to keep in view while dealing with an application for grant of bail under Section 20(4) and for grant of extension of time to the prosecution for further investigation under clause (*bb*) of Section 20(4) and incidentally whether the conditions contained in Section 20(8) TADA control the grant of bail under Section 20(4) of the Act also?

Held :

Analysis of Section 3(1) shows that *whoever with intent* (*i*) to overawe the Government as by law established; or (*ii*) to strike terror in the people or any section of the people; or (*iii*) to alienate any section of the people; or (*iv*) to adversely affect the harmony amongst different sections of the people, *does any act or things by using* (*a*) bombs or dynamite, or (*b*) other explosive substances, or (*c*) inflammable substances, or (*d*) firearms, or (*e*) other lethal weapons, or (*f*) poisons or noxious gases or other chemicals, or (*g*) any other substances (whether biological or otherwise) of a hazardous nature *in such a manner as to cause or as is likely to cause* (*i*) death, or (*ii*) injuries to any person or persons, (*iii*) loss of or damage to or destruction of property, or (*iv*) disruption of any supplies or services essential to the life of the community, or (*v*) detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, *commits a 'terrorist act'* punishable under Section 3 of TADA. It may be noted that most of the criminal activities constituting a terrorist act and offences under the penal law, do overlap. However, where an act complained of is punishable under Section 3 of TADA, it invites more stringent punishment than the punishment prescribed for the offence under the ordinary penal law. (Paras 5 and 6)

"Terrorism" has not been defined under TADA nor is it possible to give a precise definition of "terrorism" or lay down what constitutes "terrorism". It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. (Para 7)

Experience shows that "terrorism" is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. (Para 7)

It is therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. (Para 7)

Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the *requisite intention* as contemplated by Section 3(1) of the Act by *use* of such weapons as have been enumerated in Section 3(1) and which *cause or* are likely to *result in* the offences as mentioned in the said section. (Para 7)

Therefore even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. (Para 7)

Hence an activity which is sought to be punished under Section 3(1) of TADA has to be such which cannot be classified as a mere law and order problem or disturbance of public order or even disturbance of the even tempo of the life of the community of any specified locality but is of the nature which cannot be tackled as an ordinary criminal activity under the ordinary penal law by the normal law enforcement agencies because the *intended extent and reach* of the criminal activity of the 'terrorist' is such which travels beyond the gravity of the mere disturbance of public order even of a 'virulent nature' and may at times transcend the frontiers of the locality and may include such anti-national activities which throw a challenge to the very integrity and sovereignty of the country in its democratic polity. (Para 11)

Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the *intention* as envisaged by that section *by means of the weapons* etc. as are enumerated therein *with the motive* as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the *intention* as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a *consequence* of the criminal act that fear, terror or/and panic is caused but the *intention* of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the *intention* to achieve the result as envisaged by the section and not merely where the *consequence* of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. (Paras 11 and 15)

Kartar Singh v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: JT (1994) 2 SC 423, *followed*

Usmanbhai Dawoodbhai Memon v. *State of Gujarat*, (1988) 2 SCC 271: 1988 SCC (Cri) 318; *Niranjan Singh Karam Singh Punjabi, Advocate* v. *Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76: 1991 SCC (Cri) 47, *relied on*

State of W.B. v. *Anwar Ali Sarkar*, 1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510; *Abdul Rehman Antulay* v. *Union of India*, (1988) 2 SCC 602, 764 at (appendix), *referred to*

While it is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under Section 3(1) of TADA, each case will have to be decided on its own facts and no rule of thumb can be applied. (Para 11)

Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said provision. (Para 11)

Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. (Para 11)

It is necessary to sound a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the investigating officer at some stage of the investigation chooses to add an offence under some provisions of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise. The Designated Courts should always consider carefully the material available on the record and apply their mind to see whether the provisions of TADA are even prima facie attracted. (Para 13)

An onerous duty is therefore cast on the Designated Courts to take extra care to scrutinise the material on the record and apply their mind to the evidence and documents available with the investigating agency before charge-sheeting an accused for an offence under TADA. The stringent provisions of the Act coupled with the enhanced punishment prescribed for the offences under the Act make the task of the Designated Court even more onerous, because the graver the offence, greater should be the care taken to see that the offence must strictly fall within the four corners of the Act before a charge is framed against an accused person. (Para 14)

Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed *with the intention* as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the *motive* as postulated by the said section. (Para 15)

Therefore, it is the obligation of the investigating agency to *satisfy* the Designated Court from the material collected by it during the investigation, and not merely by the *opinion* formed by the investigating agency, that the activity of the "terrorist" falls strictly within the parameters of the provisions of TADA before seeking to charge-sheet an accused under TADA. (Para 14)

The Designated Court must record its satisfaction about the existence of a prima facie case on the basis of the material on the record before it proceeds to frame a charge-sheet against an accused for offences covered by TADA. Even after an accused has been charge-sheeted for an offence under TADA and the prosecution leads evidence in the case, it is an obligation of the Designated Court to take extra care to examine the evidence with a view to find out whether the provisions of the Act apply or not. The Designated Court is, therefore, expected to carefully examine the evidence and after analysing the same come to a firm conclusion that the evidence led by the prosecution has established that the case of the accused falls strictly within the four corners of the Act before recording a conviction against an accused under TADA. (Paras 13 and 14)

Hence, where it is only the *consequence* of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the *intention* as envisaged by Section 3(1) to achieve the objective as envisaged by the section,

an accused should not be convicted for an offence under Section 3(1) of TADA. (Para 15)

To bring home a charge under Section 3(1) of the Act, the terror or panic etc. must be actually intended with a view to achieve the *result* as envisaged by the said section and not be merely an incidental fall out or a consequence of the criminal activity. So, unless the panic, fear or terror was *intended* and was sought to achieve either of the objectives as envisaged in Section 3(1), the offence would not fall *stricto sensu* under TADA. (Para 15)

Kartar Singh v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: JT (1994) 2 SC 423, *followed*

Where the Designated Court finds, after taking cognisance of the offence, that the offence does not even prima facie fall under TADA, it must proceed to act under Section 18 of TADA. That section vests jurisdiction in a Designated Court to transfer the case for trial by any court having jurisdiction under the CrPC where after taking cognisance of an offence, the Designated Court is of the opinion, for reasons to be recorded, that the offence is not such as is triable by the Designated Court inasmuch as the offence does not fall within the true ambit and parameters of the provisions of TADA. (Paras 16 and 17)

B. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4) r/w S. 167(2), CrPC — Effect of Amending Act 43 of 1993 whereby S. 20(4)(b) amended and S. 20(4)(bb) inserted — Modification thereby of S. 167(2), CrPC in relation to TADA matters by substituting "180 days" for "one year" at both places and adding second proviso in S. 167(2) providing for extension of period to one year only on Public Prosecutor showing progress of the investigation and the specific reasons for extension beyond 180 days — Nature of accused's right to get bail under TADA and effect of the 1993 Amendment — Amendment whether to operate retrospectively and apply to cases pending investigation in which charge-sheet or challan not filed till 22-5-1993, the date on which the amendment came into force — Held, S. 167(2) proviso, CrPC r/w S. 20(4)(b), TADA create an indefeasible right in an accused to seek bail on default of investigating agency in completing the investigation within the prescribed period — In such situation Court duty bound to inform the accused of his right to seek bail and enable him to make an application — But release on bail not automatic — Accused must make an application for bail of which notice to be issued to PP to oppose it or secure extension under clause (bb) — Then also, notice of the report submitted by PP for extension under clause (bb), to be issued to the accused for opportunity to oppose the extension on all legitimate and legal grounds — Issuance of notice to both sides and hearing them subserves the ends of justice and fair play — It meets the requirements of natural justice — Further held, the amendment by Act 43 of 1993 being procedural in nature would operate retrospectively and so both clause (b) (as amended) and clause (bb) of S. 20(4) apply to cases pending investigation on 22-5-1993 in which challan/charge-sheet not filed in court — CrPC, 1973, Ss. 167(2), 57, 437 and 439 — Constitution of India, Art. 22(4) — Words and phrases — "order-on-default"**

C. **Natural justice — Applicability to criminal proceedings**

Held .

(1) The Constitution of India as well as the Code of Criminal Procedure expect that an arrested person, who has been detained in custody, shall not be kept in detention for any unreasonable time and that the investigation must be completed as far as possible within 24 hours. Else, the police is obliged to forward the accused

along with the case diary to the nearest Magistrate for further remand of the accused person. The Magistrate must scrutinise the same carefully and consider whether the arrest was legal and proper and whether the formalities required by law have been complied with and then to grant further remand, if the Magistrate is so satisfied. The law enjoins upon the investigating agency to carry out the investigation, in a case where a person has been arrested and detained, with utmost urgency and complete the investigation with great promptitude in the prescribed period. (Para 20)

The object behind the enactment of Section 167 of the Code was that the detention of an accused person should not be permitted in custody pending investigation for any unreasonably longer period. However, realising that it may not be possible to complete the investigation in every case within 24 hours or even 15 days, as the case may be, even if the investigating agency proceeds with utmost promptitude, Parliament introduced the proviso to Section 167(2) of the Code prescribing the outer limit within which the investigation must be completed. The proviso to sub-section (2) fixes the outer limit within which the investigation must be completed and in case the same is not completed within the said prescribed period, the accused would acquire a right to seek to be released on bail and if he is prepared to and does furnish bail, the Magistrate *shall* release him on bail and such release shall be deemed to be grant of bail under Chapter XXXIII of the Code of Criminal Procedure. (Para 20)

Section 167 read with Section 20(4) of TADA, thus, strictly speaking is not a provision for "grant of bail" but deals with the maximum period during which a person accused of an offence may be kept in custody and detention to enable the investigating agency to complete the investigation and file the charge-sheet, if necessary, in the court. The proviso to Section 167(2) of the Code read with Section 20(4)(*b*) of TADA, therefore, creates an indefeasible right in an accused person on account of the 'default' by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. (Para 20)

Such order is generally termed as an "order-on-default" as it is granted on account of the default of the prosecution to complete the investigation and file the challan within the prescribed period. (Para 20)

With the amendment of clause (*b*) of sub-section (4) of Section 20 read with the proviso to sub-section (2) of Section 167 of CrPC an indefeasible right to be enlarged on bail accrues in favour of the accused if the police fails to complete the investigation and put up a challan against him in accordance with law under Section 173 CrPC. An obligation, in such a case, is cast upon the court, when after the expiry of the maximum period during which an accused could be kept in custody, to decline the police request for further remand except in cases governed by clause (*bb*) of Section 20(4). (Para 20)

There is yet another obligation also which is cast on the court and that is to inform the accused of his right of being released on bail and enable him to make an application in that behalf. (Para 20)

So once the period for filing the charge-sheet has expired and either no extension under clause (*bb*) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court *shall* release him on bail, if the accused seeks to be so released and furnishes the requisite bail. (Para 21)

Aslam Babalal Desai v *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1, *Hussainara Khatoon* v. *Home Secy., State of Bihar*, (1980) 1 SCC 98: 1980 SCC (Cri) 40: AIR 1979 SC 1369, *followed*

Rajnikant Jivanlal Patel v. *Intelligence Officer, Narcotic Control Bureau, New Delhi*, (1989) 3 SCC 532: 1989 SCC (Cri) 612: AIR 1990 SC 71, *relied on*

But that does not mean that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail *on its own motion* even without any application from an accused person on his offering to furnish bail. The accused will be required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency and once such an application is made, the court should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (*bb*) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'. (Para 21)

But accused is not entitled to be released if he does not press his bail application. (Paras 71 and 73)

Similarly, when a *report* is submitted by the public prosecutor to the Designated Court for grant of extension under clause (*bb*), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. (Para 21)

Even though neither clause (*b*) nor clause (*bb*) of Section 20(4), TADA provide for the issuance of such a notice but the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party. (Para 21)

(2) Since both the clauses (*b*) and (*bb*) as introduced by the Amendment Act fall within the realm of procedural law, these would be applicable to pending cases since there is no vested right in an accused in the procedural law. (Para 27)

The Amendment Act 43 of 1993 regulating the period of compulsory detention and the procedure for grant of bail, being procedural in nature is therefore retrospective in operation and both clauses (*b*) and (*bb*) of sub-section (4) of Section 20 of TADA apply to the cases which were pending investigation on the date when the amendment came into force with effect from 22-5-1993 and in which the challan had not been filed till then. (Paras 27 to 29)

D **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4) and S. 20(8) — Scope of and interrelation between — Factors and consideration the Designated Court must keep in mind while dealing with a bail application under S. 20(4) and application by prosecution under S. 20(4)(bb) for more time for further investigation — Effect of S. 20(8) on grant of bail under S. 20(4) — Held, objection to grant of bail on default under S. 20(4) cannot be made on ground of gravity of the case, seriousness of the offence or character of the offender, etc. — Remand to further custody can only be made up to the period prescribed in S. 20(4)(b) or the extended period under S. 20(4)(bb) on fulfilling its conditions — On default, court has no power to remand on ground of gravity or seriousness of the offences involved — General considerations under Section 20(8) also inapplicable to grant of bail under Section 20(4) — Both S. 20(4) and S. 20(8) operate in different situations and are controlled and guided by different considerations — Further held, it is immaterial whether application for bail on ground of default under S. 20(4) is filed first or the report of PP envisaged by clause (bb) for extension is filed first, so long both are considered in granting or refusing bail**

The objection to the grant of bail to an accused on account of the 'default' of the prosecution to complete the investigation and file the challan within the maximum period prescribed under clause (*b*) of sub-section (4) of Section 20 of TADA or within the extended period as envisaged by clause (*bb*) has to be limited to cases where either the factual basis for invoking the 'default' clause is not available or the period for completion of investigation has been extended under clause (*bb*) and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution. (Para 21)

Hence an application for grant of bail under Section 20(4) has to be decided on its own *merits* for the default of the prosecuting agency to file the charge-sheet within the prescribed or the extended period for completion of the investigation uninfluenced by the *merits or the gravity* of the case. The court has *no power* to remand an accused to custody beyond the period prescribed by clause (*b*) of Section 20(4) or extended under clause (*bb*) of the said section, as the case may be, if the challan is not filed, only on the ground that the accusation against the accused is of a serious nature or the offence is very grave. These grounds are irrelevant for considering the grant of bail under Section 20(4) of TADA. (Para 22)

It is totally inconceivable and unacceptable that the considerations for grant of bail under Section 20(8) would be applicable to and control the grant of bail under Section 20(4) of the Act. The two provisions operate in different and independent fields. The basis for grant of bail under Section 20(4) is entirely different from the grounds on which bail may be granted under Section 20(8) of the Act. (Para 22)

Strictly speaking Section 20(8) is not the source of power of the Designated Court to grant bail but it places further limitations on the exercise of its power to grant bail in cases under TADA, as is amply clear from the plain language of Section 20(9). (Para 22)

Sub-section (8) of Section 20, commences with a non obstante clause and in its operation imposes a ban on release of a person accused of an offence punishable under TADA or any rule made thereunder on bail unless the twin conditions contained in clauses (*a*) and (*b*) thereof are satisfied. No bail can be granted under Section 20(8) unless the Designated Court is satisfied after notice to the public prosecutor that there are reasonable grounds for believing that the accused is not

guilty of such an offence and that he is not likely to commit any offence while on bail. (Para 22)

Sub-section (9) qualifies sub-section (8) to the extent that the two conditions contained in clauses (*a*) and (*b*) are *in addition* to the limitations prescribed under the Code of Criminal Procedure or any other law for the time being in force relating to the grant of bail. (Para 22)

Thus the ambit and scope of Section 20(8) of TADA is no longer *res integra* and it follows that both the provisions i.e. Sections 20(4) and 20(8) of TADA operate in different situations and are controlled and guided by different considerations. (Para 22)

In conclusion, an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of 'default' of the prosecution and the court *shall* release the accused on bail after notice to the public prosecutor *uninfluenced* by the gravity of the offence or the *merits of the prosecution case* since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (*bb*) by filing a *report* for the purpose before the court. However, no extension shall be granted by the court *without notice* to an accused to have his say regarding the prayer for grant of extension under clause (*bb*). (Para 30)

In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the *report* as envisaged by clause (*bb*) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (*b*) of Section 20(4) has expired and the court does not grant an extension on the *report* of the public prosecutor made under clause (*bb*), the court *shall* release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (*bb*) but the charge-sheet is not filed within the *extended* period, the court *shall* have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (*bb*) can be granted by the Designated Court except on a *report* of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (*bb*) which must be strictly construed. (Para 30)

Kartar Singh v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: JT (1994) 2 SC 423, *followed*

Usmanbhai Dawoodbhai Memon v. *State of Gujarat*, (1988) 2 SCC 271: 1988 SCC (Cri) 318, *relied on*

E. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4) — Rejection of a bail application that is not pressed, held, not improper — The accused was thereby not "prepared to" be released on bail — This is so even where the period has been wrongly extended under S. 20(4)(bb) — CrPC, 1973, S. 167(2)** **(Paras 71 and 73)**

F. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4)(bb) — Procedure for seeking extension of time for remand beyond 180 days when not possible to complete investigation during that period — Held, Public Prosecutor and not investigating officer to make application for extension of time with a report indicating progress of the investigation — IO to submit himself to the scrutiny of the PP who is an independent statutory authority and must so act — He must apply his mind before submitting the**

report — Such report must reflect his application of mind and satisfaction with the progress of the investigation and why grant of further time necessary — Filing of report not a mere formality — Designated Court must be independently satisfied with the justification for seeking extension — Substance and not form of the request to be seen — Extension to be granted only for completion of the investigation — Accused to be put on notice and be permitted to object to the grant of extension — Hence on failure to file report by PP or on its non-acceptance by the Designated Court, held, accused acquires an indefeasible right to seek bail — On facts (in Crl. A. 732-735 of 1993) merely supporting application of IO by PP cannot be considered as filing of report by PP — Moreover grounds relevant to S. 20(8) were used to deny bail under S. 20(4) which was erroneous — Order denying bail, therefore, set aside

G. **Criminal Procedure Code, 1973 — S. 24 — Public prosecutor — Nature of post of — Held, PP is not part of the investigating agency but an independent statutory authority**

On a plain reading of clause (*bb*) of sub-section 4 of Section 20, the Legislature has provided for seeking extension of time for completion of investigation on a *report of the public prosecutor*. The legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. (Para 23)

This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. (Para 23)

A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a *report* to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. It is not enough if the public prosecutor merely 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court. That is not to be construed a *report* of the public prosecutor. He must act in the manner as provided by the section and in no other manner. Clause (*bb*) has to be read and interpreted on its plain language without addition or substitution of any expression in it. (Para 23)

The use of the expression "on the *report* of the public prosecutor *indicating the progress* of the investigation *and the specific reasons* for the detention of the accused beyond the said period" as occurring in clause (*bb*) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the *report* of the public prosecutor. (Para 23)

A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been

unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any *report* to the court under clause (*bb*) to seek extension of time. *Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report* to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his *report*, as envisaged under clause (*bb*), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. (Para 23)

The *report* of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (*bb*). The request of an investigating officer for extension of time is no substitute for the *report* of the public prosecutor. (Para 23)

Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the *report* of the public prosecutor, to grant extension of time to complete the investigation. (Paras 23 and 28)

It is not merely the question of form in which the request for extension under clause (*bb*) is made but one of substance. The contents of the *report* to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Whether the public prosecutor labels his *report* as a *report* or as an *application* for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (*bb*) (supra). (Paras 23 and 64)

A Designated Court which overlooks and ignores the requirements of a valid *report* fails in the performance of one of its essential duties and renders its order under clause (*bb*) vulnerable. (Para 23)

Where either no *report* as is envisaged by clause (*bb*) is filed or the *report* filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (*bb*) is neither a formality nor automatic, the necessary corollary would be that an accused *would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail* as required by the Designated Court. (Para 23)

Therefore, the absence of an appropriate *report* the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. (Para 23)

Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period *except to enable the investigation* to be completed and as already stated before any extension is granted under clause (*bb*), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension. (Para 23)

Hence, where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20. (Para 23)

On facts (in Crl. A. Nos. 732-35 of 1993), merely because the application of the investigating officer was *supported* by the Public Prosecutor, the request of the investigating agency could not be treated as the *report* of the Public Prosecutor when read with the objections filed by the Public Prosecutor to the bail application. And no extension under clause (*bb*) could have been granted by the Designated Court without the receipt of the *report* of the Public Prosecutor. Besides it appears from a bare perusal of the application of the investigating officer that the Public Prosecutor did not even endorse the application with any comments to indicate as to whether or not he was agreeing with the statements contained in the application. The Public Prosecutor obviously did not apply his mind to the request of the investigating agency and merely acted as its 'post office'. The Designated Court was deprived of the opportunity of scrutinising the *report* of the Public Prosecutor before granting extension. (Para 38)

The objections filed by the Public Prosecutor to the bail application read with the application of the investigating officer cannot be held to be substantial compliance with the requirements of clause (*bb*). (Para 38)

Moreover it transpires that the application of the investigating officer was submitted *direct* to the Designated Court by the investigating officer (*see* para 4) and not by the Public Prosecutor and the prayer for release on bail of the applicant under Section 20(4) was opposed mainly on grounds which are relevant under Section 20(8) of TADA and not under Section 20(4) of the Act. The grounds on which bail may be denied under Section 20(8) of TADA are irrelevant for the consideration of the prayer for release on bail on account of the 'default' of the prosecution under Section 20(4) of TADA. (Para 40)

Hence in this case the extension of custody under clause (*bb*) was erroneously granted by an improper exercise of the jurisdiction by the Designated Court by placing an incorrect interpretation on the requirements as contemplated by clause (*bb*) by treating the application of the investigating officer read with his objections to the bail application as a *report* of the Public Prosecutor though without effecting the validity of further investigation. In the absence of grant of valid extension of custody to complete the investigation and file the challan, the applicant had acquired an indefeasible and absolute right to be released on bail as per the provisions of Section 20(4) of the Act, since the accused had offered to be released on bail on such terms as the Designated Court may prescribe. The Designated Court was, therefore, under an obligation to admit and release the appellant on bail under Section 20(4) of TADA read with Section 167(2) CrPC on the merits of the application under Section 20(4) itself uninfluenced by any other considerations. The order of the Designated Court is set aside and he be released on bail on completing the formalities. (Paras 41 and 42)

H **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(4)(bb) — Purpose for which extension of time can be given is completion of the investigation and no other — Extension cannot be granted to overcome administrative difficulties — Hence extension for obtaining sanction of Govt. for filing charge-sheet against a police officer improper**

Held :

The grant of extension beyond the period prescribed by clause (*b*) very seriously affects the liberty of a citizen and the Designated Court commits an error

in the exercise of its jurisdiction if it grants extension of time ignoring the provisions of clause (*bb*). Grant of extension under clause (*bb*) on grounds extraneous thereto, at the whims of the investigating agency, cannot be permitted. The very object of the clause would be defeated if the period of compulsory detention is to be extended in a casual manner for reasons other than those envisaged by clause (*bb*). So the Designated Court can grant extension of time under clause (*bb*) on the *report* of the Public Prosecutor for *completion of the investigation* and filing the challan thereafter and for no other purpose. The Legislature has limited the grounds on which extension could be granted and the Designated Court could not add to those grounds. Since, on its plain reading clause (*bb*) could be invoked only if the *investigation* was not complete, the Public Prosecutor could not be permitted to seek extension of time under that clause for 'administrative difficulties' or obtaining 'sanction' or the like grounds if investigation was already complete. (Paras 29 and 30)

I **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20-A(2) — Order of sanction assailed — Designated Court only to see if a prima facie case has been established showing application of mind by the sanctioning authority — Truth of the allegations to be established at the trial — Reference by competent authority to pre-1987 criminal activities of the accused, held, not fatal — Moreover, it is improper for applicant to raise question of applicability of TADA to his case while assailing the sanction under S. 20-A(2)**

Held :

It is true that at the stage when the challenge was laid to the sanction order under Section 20-A(2) of the Act, it is only the 'prima facie' case which was required to be established to show that the sanctioning authority had applied its mind to the facts of the case before sanction was accorded. Whether or not the allegations on the basis of which sanction has been accorded are true or not would be established at the trial. Merely because the competent authority also referred to the past history or the earlier activities of some of the accused while according sanction under Section 20-A(2) of TADA, it would not vitiate the sanction which prima facie appears to be legal and valid. (Paras 57 and 58)

On a perusal of the order of sanction it is found that the competent authority had after proper appraisal of the record and after proper application of its mind accorded the sanction. (Para 57)

Moreover, it appears that while challenging the validity of sanction accorded by the competent authority under Section 20-A(2) of TADA, the accused had also tried to once again raise a fresh challenge to the applicability of the provisions of TADA to their case which matter stood already rejected by the Designated Court and a writ petition against that order failed up to the Supreme Court. This was not a permissible course to be adopted by the accused. The Designated Court rightly rejected both the prayers made in the application i.e. to declare the sanction as invalid and to hold that the provisions of TADA were not prima facie attracted to the case. (Para 58)

J. **Statute Law — Amendment Act — When operates retrospectively — Principles for determination of stated**

The illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation are as follows:

(*i*) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a

construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(*ii*) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(*iii*) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(*iv*) a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(*v*) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." (Para 26)

K. **Judicial review — Proper forum — Where record of any court is assailed, a review in that court and not an SLP or an appeal in the Supreme Court is the remedy — Constitution of India, Arts. 133 and 136 — Practice and procedure** **(Para 70)**

State of Maharashtra v. *Ramdas Shrinivas Nayak*, (1982) 2 SCC 463: 1982 SCC (Cri) 478. (1983) 1 SCR 8; *Apar (P) Ltd.* v. *Union of India*, 1992 Supp (1) SCC 1: JT (1991) 4 SC 61, *relied on*

M/13193/CR

Advocates who appeared in this case :

Kapil Sibal, N.T. Vanamalai, Swaraj Kaushal, U.R. Lalit, K.M. Reddy and K.G. Bhagat, Senior Advocates (P.N. Gupta, Bharat Raman, P.M. Hegde, Kailash Vasudev, A.M. Khanwilkar, Yatendra Sharma, Raju Ramachandran, M.D. Rukar, Ejaz Maqbool, A.S. Bhasme, U.U. Lalit, Rajeev Sharma, P.N. Bhan and Joy Basu, Advocates, with them) for the appearing parties;

K.T.S. Tulsi, Additional Solicitor General and K.M. Reddy, Senior Advocate (A.S. Bhasme, Advocate, with them) for the States.

The Judgment of the Court was delivered by

DR ANAND, J.— In this batch of criminal appeals and special leave petitions (criminal) the three meaningful questions which require our consideration are : (1) When can the provisions of Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the TADA) be attracted? (2) Is the 1993 Amendment, amending Section 167(2) of the Code of Criminal Procedure by modifying Section 20(4)(*b*) and adding a new provision as 20(4)(*bb*), applicable to the pending cases i.e. is it retrospective in operation? and (3) What is the true ambit and scope of Section 20(4) and Section 20(8) of TADA in the matter of grant of bail to an accused brought before the Designated Court and the factors which the Designated Court has to keep in view while dealing with an application for grant of bail under Section 20(4) and for grant of extension of time to the prosecution for further investigation under clause (*bb*) of Section 20(4) and incidentally whether the conditions contained in Section 20(8) TADA control the grant of bail under Section 20(4) of the Act also? We shall take up for consideration these questions in seriatim.

2. When can the provisions of Section 3(1) of TADA be attracted?

Learned counsel for the appellants submitted that even though the constitutional validity of Section 3 of TADA has been upheld by a Constitution Bench of this Court in *Kartar Singh* v. *State of Punjab*[1], nonetheless keeping in view the stringent nature of the provisions of TADA the offence constituted by Section 3 of TADA must be the one which qualifies stricto sensu as a 'terrorist act' and unless the crime alleged against an accused can be classified as a 'terrorist act' in letter and in spirit, Section 3(1) of TADA has no application and an accused shall have to be tried under the ordinary penal law and in such a fact situation, it is a statutory obligation cast on the Designated Court to transfer the case from that court for its trial by the regular courts under the ordinary criminal law in view of the provisions of Section 18 of TADA. It is submitted that the Designated Court should not, without proper application of mind, charge-sheet or convict an accused under Section 3 of TADA simply because the investigating officer decides to include that section while filing the challan and that it is not open to the State to apply TADA to the ordinary problems arising out of disturbance of law and order or even to situations arising out of the disturbance of public order — a more serious type of crime alone would justify trial under TADA.

3. Shri K.T.S. Tulsi, the learned Additional Solicitor General and Shri Madhava Reddy, Senior Advocate, appearing for the State on the other hand submitted that since the constitutional validity of Section 3 of TADA has been upheld by a Constitution Bench in *Kartar Singh case*[1], it is not permissible for this Bench to re-examine its validity on the basis of some argument which might have been raised before the Constitution Bench but was not so raised. It was pointed out that the three grounds of challenge which were raised before the Constitution Bench to question the legality and the efficaciousness of Sections 3 and 4 of TADA viz. : (SCC p. 650, para 140)

> "(1) These two sections cover the acts which constitute offences under ordinary laws like the Indian Penal Code, Arms Act and Explosive Substances Act;
>
> (2) There is no guiding principle laid down when the executive can proceed under the ordinary laws or under this impugned Act of 1987; and
>
> (3) This Act and the Sections 3 and 4 thereof should be struck down on the principle laid down in *State of W.B.* v. *Anwar Ali Sarkar*[2] and followed in many other cases including *Abdul Rehman Antulay* v. *Union of India*[3]."

were considered by the Constitution Bench and while upholding the vires and validity of Sections 3 and 4 of TADA, all the three grounds of challenge were negatived and therefore after the Constitution Bench judgment, it is not permissible to read within the provisions of Section 3 anything more than

1 (1994) 3 SCC 569: 1994 SCC (Cri) 899: JT (1994) 2 SC 423: 1994 (1) Apex Decisions SC (Cri) 413
2 1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510
3 (1988) 2 SCC 602, 764 at (appendix)

what the Legislature has specifically provided therein. It was urged that to combat the menace of terrorism, it is necessary that restrictive interpretation should not be placed on the provisions of Section 3 of TADA and simply because the offences under Section 3 of TADA and under the ordinary penal law overlap, the court should not lay down as a general proposition that Section 3 of TADA is inapplicable in all such situations where the offences overlap.

4. The expression 'terrorist act' has been defined in Section 2(1)(*h*) of TADA. It provides that the expression terrorist act "has the meaning assigned to it in sub-section (1) of Section 3". Section 3(1) provides as under:

> "3. *Punishment for terrorist acts.*— (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

5. Section 3 when analysed would show that *whoever with intent* (*i*) to overawe the Government as by law established; or (*ii*) to strike terror in the people or any section of the people; or (*iii*) to alienate any section of the people; or (*iv*) to adversely affect the harmony amongst different sections of the people, *does any act or things by using* (*a*) bombs or dynamite, or (*b*) other explosive substances, or (*c*) inflammable substances, or (*d*) firearms, or (*e*) other lethal weapons, or (*f*) poisons or noxious gases or other chemicals, or (*g*) any other substances (whether biological or otherwise) of a hazardous nature *in such a manner as to cause or as is likely to cause* (*i*) death, or (*ii*) injuries to any person or persons, (*iii*) loss of or damage to or destruction of property, or (*iv*) disruption of any supplies or services essential to the life of the community, or (*v*) detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, *commits a 'terrorist act'* punishable under Section 3 of TADA.

6. It is, thus, seen that most of the criminal activities constituting a terrorist act and offences under the penal law, do overlap. However, where an act complained of is punishable under Section 3 of TADA, it invites more stringent punishment than the punishment prescribed for the offence under the ordinary penal law. Section 6 of TADA even provides for imposition of enhanced penalties for a person who with the intent to aid any terrorist or disruptionist activity, contravenes any of the provisions of or any rule made

under the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 and renders him liable to punishment for not less than 5 years. The punishment may, in certain cases, extend to imprisonment for life with fine, notwithstanding anything contained in the provisions of acts or the rules made under the respective acts.

7. 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of 'terrorism', aims to achieve for himself acceptability and respectability in the society because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth. It is therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the *requisite intention* as contemplated by Section 3(1) of the Act by *use* of such weapons as have

been enumerated in Section 3(1) and which *cause* or are likely to *result in* the offences as mentioned in the said section.

8. The Constitution Bench noticed that the offences arising out of a terrorist or disruptive activity may overlap the offences covered by the ordinary penal law and dealing with the situation under which the provisions of TADA would be attracted, observed : (SCC p. 653, para 145)

> "As we have indicated above, the Act tends to be very harsh and drastic containing the stringent provisions and provides minimum punishments and to some other offences enhanced penalties also. The provisions prescribing special procedures aiming at speedy disposal of cases, departing from the procedures prescribed under the ordinary procedural law are evidently for the reasons that *the prevalent ordinary procedural law was found to be inadequate and not sufficiently effective to deal with the offenders indulging in terrorist and disruptive activities, secondly that the incensed offences are arising out of the activities of the terrorists and disruptionists which disrupt or are intended to disrupt even the sovereignty and territorial integrity of India or which may bring about or support any claim for the cession of any part of India or the secession of any part of India from the Union, and which create terror and a sense of insecurity in the minds of the people. Further the Legislature being aware of the aggravated nature of the offences have brought this drastic change in the procedure under this law so that the object of the legislation may not be defeated and nullified.*"
>
> (emphasis supplied)

9. In *Usmanbhai Dawoodbhai Memon* v. *State of Gujarat*[4], this Court observed : (SCC p. 285, para 17)

> "The legislature by enacting the law has treated terrorism as a special criminal problem and created a special court called a Designated Court to deal with the special problem and provided for a special procedure for the trial of such offences. ... The Act is a special Act and creates a new class of offences called terrorist acts and disruptive activities as defined in Sections 3(1) and 4(2) and provides for a special procedure for the trial of such offences."

10. Again, in *Niranjan Singh Karam Singh Punjabi, Advocate* v. *Jitendra Bhimraj Bijjaya*[5], after noticing with approval the opinion of this Court in *Usmanbhai case*[4] it was observed : (SCC p. 86, para 8)

> "... the provisions of the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of the land. It is only in those cases where the law-enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorist and disruptive activities that resort should be had to the drastic provisions of the Act. While invoking a criminal statute, such as the Act, the prosecution is

4 (1988) 2 SCC 271: 1988 SCC (Cri) 318

5 (1990) 4 SCC 76: 1991 SCC (Cri) 47

duty-bound to show from the record of the case and the documents collected in the course of investigation that facts emerging therefrom prima facie constitute an offence within the letter of the law. When a statute provides special or enhanced punishments as compared to the punishments prescribed for similar offences under the ordinary penal laws of the country, a higher responsibility and duty is cast on the Judge to make sure there exists prima facie evidence for supporting the charge levelled by the prosecution. Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

The Court then considered the facts in *Niranjan Singh case*[5] and referred to the statement of the witnesses which had been relied upon by the prosecution to attract the provisions of Section 3(1) of the Act. The Court found that the intention of the accused persons in that case was merely to eliminate Raju and Keshav for gaining supremacy in the underworld. The Bench noticed that a statement had been made by the investigating agency to the effect that the activities of the accused were aimed at creating terror and fear in the minds of the people in general and observed : (SCC p. 88, para 10)

> "A mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to oppose them cannot constitute an offence under Section 3(1) of the Act. That may indeed be the fall out of the violent act but that cannot be said to be the intention of the perpetrators of the crime. It is clear from the statement extracted earlier that the intention of the accused persons was to eliminate the rivals and gain supremacy in the underworld so that they may be known as the bullies of the locality and would be dreaded as such. But it cannot be said that their intention was to strike terror in the people or a section of the people and thereby commit a terrorist act. It is clear that there was rivalry between the party of the accused on the one hand and Raju and Keshav on the other. The former desired to gain supremacy which necessitated the elimination of the latter. With that in view they launched an attack on Raju and Keshav, killed the former and injured the latter. Their intention was clearly to eliminate them and not to strike terror in the people or a section of the people. It would have been a different matter if to strike terror some innocent persons were killed. In that case the intention would be to strike terror and the killings would be to achieve that objective. In the instant case the intention was to liquidate Raju and Keshav and thereby achieve the objective of gaining supremacy in the underworld. The consequence of such violence is bound to cause panic and fear but the intention of committing the crime cannot be said to be to strike terror in the people or any section of the people."

11. Thus, keeping in view the settled position that the provisions of Section 3 of TADA have been held to be constitutionally valid in *Kartar*

Singh case[1] and from the law laid down by this Court in *Usmanbhai*[4] and *Niranjan*[5] cases, it follows that an activity which is sought to be punished under Section 3(1) of TADA has to be such which cannot be classified as a mere law and order problem or disturbance of public order or even disturbance of the even tempo of the life of the community of any specified locality but is of the nature which cannot be tackled as an ordinary criminal activity under the ordinary penal law by the normal law-enforcement agencies because the *intended extent and reach* of the criminal activity of the 'terrorist' is such which travels beyond the gravity of the mere disturbance of public order even of a 'virulent nature' and may at times transcend the frontiers of the locality and may include such anti-national activities which throw a challenge to the very integrity and sovereignty of the country in its democratic polity. The Constitution Bench in *Kartar Singh case*[1] repelled the submission of Mr Jethmalani that the preamble of the Act gives a clue "that the terrorist and disruptive activities only mean a virulent form of the disruption of public order" and found the argument to be "inconceivable and unacceptable". Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the *intention* as envisaged by that section *by means of the weapons* etc. as are enumerated therein *with the motive* as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the *intention* as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a *consequence* of the criminal act that fear, terror or/and panic is caused but the *intention* of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the *intention* to achieve the result as envisaged by the section and not merely where the *consequence* of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the *requisite intention* as contemplated by the section, the offence would not attract Section 3(1) of TADA. On the other hand, if a crime was committed with the *intention* to cause terror or panic or to alienate a section of the people or to disturb the harmony etc. it would be punishable under TADA, even if no one is killed and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of Section 3(1) of TADA would be squarely attracted. Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said

provision. Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. It is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under Section 3(1) of TADA. Each case will have to be decided on its own facts and no rule of thumb can be applied.

12. Of late, we have come across some cases where the Designated Courts have charge-sheeted and/or convicted an accused person under TADA even though there is not even an iota of evidence from which it could be inferred, *even prima facie*, let alone conclusively, that the crime was committed with the *intention* as contemplated by the provisions of TADA, merely on the statement of the investigating agency to the effect that the *consequence* of the criminal act resulted in causing panic or terror in the society or in a section thereof. Such orders result in the misuse of TADA. Parliament, through Section 20-A of TADA has clearly manifested its intention to treat the offences under TADA seriously inasmuch as under Section 20-A(1), notwithstanding anything contained in the Code of Criminal Procedure, no information about the commission of an offence under TADA shall even be recorded without the prior approval of the District Superintendent of Police and under Section 20-A(2), no court shall take cognisance of any offence under TADA without the previous sanction of the authorities prescribed therein. Section 20-A was thus introduced in the Act with a view to prevent the abuse of the provisions of TADA.

13. We would, therefore, at this stage like to administer a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the investigating officer at some stage of the investigation chooses to add an offence under same (*sic* some) provisions of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise. The Designated Courts should always consider carefully the material available on the record and apply their mind to see whether the provisions of TADA are even prima facie attracted.

14. The Act provides for the constitution of one or more Designated Courts either by the Central Government or the State Government by notification in the Official Gazette to try specified cases or class or group of cases under the Act. The Act makes every offence punishable under the Act or any rule made thereunder to be a cognizable offence within the meaning of Section 2(*c*) of the CrPC. The Act vests jurisdiction in the Designated Court to try all such offences under the Act by giving precedence over the trial of any other case against an accused in any other court (not being a Designated Court) notwithstanding anything contained in the Code or any other law for the time being in force. The conferment of power on the Designated Courts to try the offences triable by them, punishable with imprisonment for a term not exceeding three years or with fine or with both,

in a summary manner in accordance with the procedure prescribed in the CrPC notwithstanding anything contained in Section 260(1) or 262 CrPC by applying the provisions of Sections 263-265 of the Act is a marked departure. The right of appeal straight to the Supreme Court against any judgment, sentence or order not being an interlocutory order vide Section 19(1) of the Act demonstrates the seriousness with which Parliament has treated the offences under TADA. An onerous duty is therefore cast on the Designated Courts to take extra care to scrutinise the material on the record and apply their mind to the evidence and documents available with the investigating agency before charge-sheeting an accused for an offence under TADA. The stringent provisions of the Act coupled with the enhanced punishment prescribed for the offences under the Act make the task of the Designated Court even more onerous, because the graver the offence, greater should be the care taken to see that the offence must strictly fall within the four corners of the Act before a charge is framed against an accused person. Where the Designated Court without as much as even finding a prima facie case on the basis of the material on the record, proceeds to charge-sheet an accused under any of the provisions of TADA, merely on the statement of the investigating agency, it acts merely as a post office of the investigating agency and does more harm to meet the challenge arising out of the 'terrorist' activities rather than deterring terrorist activities. The remedy in such cases would be worse than the disease itself and the charge against the State of misusing the provisions of TADA would gain acceptability, which would be bad both for the criminal and the society. Therefore, it is the obligation of the investigating agency to *satisfy* the Designated Court from the material collected by it during the investigation, and not merely by the *opinion* formed by the investigating agency, that the activity of the 'terrorist' falls strictly within the parameters of the provisions of TADA before seeking to charge-sheet an accused under TADA. The Designated Court must record its satisfaction about the existence of a prima facie case on the basis of the material on the record before it proceeds to frame a charge-sheet against an accused for offences covered by TADA. Even after an accused has been charge-sheeted for an offence under TADA and the prosecution leads evidence in the case, it is an obligation of the Designated Court to take extra care to examine the evidence with a view to find out whether the provisions of the Act apply or not. The Designated Court is, therefore, expected to carefully examine the evidence and after analysing the same come to a firm conclusion that the evidence led by the prosecution has established that the case of the accused falls strictly within the four corners of the Act before recording a conviction against an accused under TADA.

15. Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed *with the intention* as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the *motive* as postulated by the said section. Even at the cost of repetition, we may say that where it is only the

consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the *intention* as envisaged by Section 3(1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3(1) of TADA. To bring home a charge under Section 3(1) of the Act, the terror or panic etc. must be actually intended with a view to achieve the *result* as envisaged by the said section and not be merely an incidental fall out or a consequence of the criminal activity. Every crime, being a revolt against the society, involves some violent activity which results in some degree of panic or creates some fear or terror in the people or a section thereof, but unless the panic, fear or terror was *intended* and was sought to achieve either of the objectives as envisaged in Section 3(1), the offence would not fall *stricto sensu* under TADA. Therefore, as was observed in *Kartar Singh case*[1] by the Constitution Bench : (SCC p. 759, para 451)

> "Section 3 operates when a person not only intends to overawe the Government or create terror in people etc. but he uses the arms and ammunition which results in death or is likely to cause death and damage to property etc. In other words, a person becomes a terrorist or is guilty of terrorist activity when intention, action and consequence all the three ingredients are found to exist."

16. Where the Designated Court finds, after taking cognisance of the offence, that the offence does not even prima facie fall under TADA, it must proceed to act under Section 18 of TADA. That section reads as follows :

> "18. *Power to transfer cases to regular courts.*—Where, after taking cognisance of any offence, a Designated Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognisance of the offence."

17. Section 18 vests jurisdiction in a Designated Court to transfer the case for trial by any court having jurisdiction under the CrPC where after taking cognisance of an offence, the Designated Court is of the opinion, for reasons to be recorded, that the offence is not such as is triable by the Designated Court inasmuch as the offence does not fall within the true ambit and parameters of the provisions of TADA, it is obliged to transfer the case to the court of competent jurisdiction for its trial and on such transfer, the court to which the case is so transferred acquires the jurisdiction to proceed with the trial of the offence, as if the transferee court had itself taken cognisance of the offence.

18. Thus, having dealt with the ambit and scope of Section 3(1) of TADA and considered the situations where its provisions may be attracted in the established facts and circumstances of the case, we shall now take up for consideration questions 2 and 3 mentioned in the earlier part of this

judgment. Both these questions essentially revolve around the grant of bail to an accused under TADA.

19. Section 20(4) of TADA makes Section 167 of CrPC applicable in relation to case involving an offence punishable under TADA, subject to the modifications specified therein. Clause (*a*) thereof, provides that reference in sub-section (1) of Section 167 to "Judicial Magistrates" shall be construed as reference to "Judicial Magistrate" or "Executive Magistrate" or "Special Executive Magistrates" while clause (*b*) provided that reference in sub-section (2) of Section 167 to '15 days', '90 days' and '60 days' wherever they occur shall be construed as reference to '60 days', 'one year' and 'one year' respectively. This section was amended in 1993 by the Amendment Act 43 of 1993 with effect from 22-5-1993 and the period of 'one year' and 'one year' in clause (*b*) was reduced to '180 days' and '180 days' respectively, by modification of sub-section (2) of Section 167. After clause (*b*) of sub-section (4) of Section 20 of TADA, another clause (*bb*) was inserted which reads :

> "(*bb*) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—
>
> 'Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days; and' " .

20. Section 57 of the Code of Criminal Procedure provides that a person arrested shall not be detained in custody by the police for a period longer than that which is reasonable but that such period shall not exceed 24 hours exclusive of the time necessary for journey from the place of arrest to the court of the Magistrate in the absence of a special order under Section 167 of the Code. The Constitution of India through Article 22(2) mandates that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of arrest to that court and that no person shall be detained in custody beyond that period without the authority of the Magistrate. Thus, the Constitution of India as well as the Code of Criminal Procedure expect that an arrested person, who has been detained in custody, shall not be kept in detention for any unreasonable time and that the investigation must be completed as far as possible within 24 hours. Where the investigation of the offence for which accused has been arrested cannot be completed within 24 hours and there are grounds for believing that the accusation or information against the accused is well-founded, the police is obliged to forward the accused along with the case diary to the nearest Magistrate for further remand of the accused person. The Magistrate, on the production of the accused and the case diary, must

scrutinise the same carefully and consider whether the arrest was legal and proper and whether the formalities required by law have been complied with and then to grant further remand, if the Magistrate is so satisfied. The law enjoins upon the investigating agency to carry out the investigation, in a case where a person has been arrested and detained, with utmost urgency and complete the investigation with great promptitude in the prescribed period. Sub-section (2) of Section 167 of the Code lays down that the Magistrate to whom the accused is forwarded may authorise his detention in such custody, as he may think fit, for a term specified in that section. The proviso to sub-section (2) fixes the outer limit within which the investigation must be completed and in case the same is not completed within the said prescribed period, the accused would acquire a right to seek to be released on bail and if he is prepared to and does furnish bail, the Magistrate *shall* release him on bail and such release shall be deemed to be grant of bail under Chapter XXXIII of the Code of Criminal Procedure. The said chapter comprises of Sections 436 to 450 but for our purposes it is only Sections 437 and 439 of the Code which are relevant. Both these sections empower the court to release an accused on bail. The object behind the enactment of Section 167 of the Code was that the detention of an accused person should not be permitted in custody pending investigation for any unreasonably longer period. However, realising that it may not be possible to complete the investigation in every case within 24 hours or even 15 days, as the case may be, even if the investigating agency proceeds with utmost promptitude, Parliament introduced the proviso to Section 167(2) of the Code prescribing the outer limit within which the investigation must be completed. Section 167 read with Section 20(4) of TADA, thus, strictly speaking is not a provision for "grant of bail" but deals with the maximum period during which a person accused of an offence may be kept in custody and detention to enable the investigating agency to complete the investigation and file the charge-sheet, if necessary, in the court. The proviso to Section 167(2) of the Code read with Section 20(4)(*b*) of TADA, therefore, creates an indefeasible right in an accused person on account of the 'default' by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. It is for this reason that an order for release on bail under proviso (*a*) of Section 167(2) of the Code read with Section 20(4) of TADA is generally termed as an "order-on-default" as it is granted on account of the default of the prosecution to complete the investigation and file the challan within the prescribed period. As a consequence of the amendment, an accused after the expiry of 180 days from the date of his arrest becomes entitled to bail irrespective of the nature of the offence with which he is charged where the prosecution fails to put up challan against him on completion of the investigation. With the amendment of clause (*b*) of sub-section (4) of Section 20 read with the proviso to sub-section (2) of Section 167 of CrPC an indefeasible right to be enlarged on bail accrues in favour of the accused if the police fails to complete the investigation and put up a challan against

him in accordance with law under Section 173 CrPC. An obligation, in such a case, is cast upon the court, when after the expiry of the maximum period during which an accused could be kept in custody, to decline the police request for further remand except in cases governed by clause (*bb*) of Section 20(4). There is yet another obligation also which is cast on the court and that is to inform the accused of his right of being released on bail and enable him to make an application in that behalf. (*Hussainara Khatoon case*[6]). This legal position has been very ably stated in *Aslam Babalal Desai* v. *State of Maharashtra*[7] where speaking for the majority, Ahmadi, J. referred with approval to the law laid down in *Rajnikant Jivanlal Patel* v. *Intelligence Officer, Narcotic Control Bureau, New Delhi*[8] wherein it was held that : (SCC p. 288, para 9)

> "The right to bail under Section 167(2) proviso (*a*) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds."

21. Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (*bb*) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court *shall* release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail *on its own motion* even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/ prosecuting agency and once such an application is made, the court should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (*bb*) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused

6 *Hussainara Khatoon* v. *Home Secy., State of Bihar*, (1980) 1 SCC 98: 1980 SCC (Cri) 40: AIR 1979 SC 1369

7 (1992) 4 SCC 272: 1992 SCC (Cri) 870. AIR 1993 SC 1

8 (1989) 3 SCC 532 1989 SCC (Cri) 612: AIR 1990 SC 71

obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'. Similarly, when a *report* is submitted by the public prosecutor to the Designated Court for grant of extension under clause (*bb*), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (*b*) nor clause (*bb*) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party. We must as already noticed reiterate that the objection to the grant of bail to an accused on account of the 'default' of the prosecution to complete the investigation and file the challan within the maximum period prescribed under clause (*b*) of sub-section (4) of Section 20 TADA or within the extended period as envisaged by clause (*bb*) has to be limited to cases where either the factual basis for invoking the 'default' clause is not available or the period for completion of investigation has been extended under clause (*bb*) and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution.

22. An application for grant of bail under Section 20(4) has to be decided on its own *merits* for the default of the prosecuting agency to file the charge-sheet within the prescribed or the extended period for completion of the investigation uninfluenced by the *merits or the gravity* of the case. The court has *no power* to remand an accused to custody beyond the period prescribed by clause (*b*) of Section 20(4) or extended under clause (*bb*) of the said section, as the case may be, if the challan is not filed, only on the ground that the accusation against the accused is of a serious nature or the offence is very grave. These grounds are irrelevant for considering the grant of bail under Section 20(4) TADA. The learned Additional Solicitor General rightly did not subscribe to the argument of Mr Madhava Reddy (both appearing for the State of Maharashtra) that while considering an application for release on bail under Section 20(4), the court has also to be guided by the

general conditions for grant of bail as provided by Section 20(8) TADA. Considering the ambit and scope of the two provisions, we are of the opinion that it is totally inconceivable and unacceptable that the considerations for grant of bail under Section 20(8) would be applicable to and control the grant of bail under Section 20(4) of the Act. The two provisions operate in different and independent fields. The basis for grant of bail under Section 20(4), as already noticed, is entirely different from the grounds on which bail may be granted under Section 20(8) of the Act. It would be advantageous at this stage to notice the provisions of Section 20(8) and (9) of the Act.

> "(8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless—
>
> (*a*) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
>
> (*b*) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that *he is not likely to commit any offence while on bail.*
>
> (9) The limitations on granting of bail specified in sub-section (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail."

As would be seen from the plain phraseology of sub-section (8) of Section 20, it commences with a non obstante clause and in its operation imposes a ban on release of a person accused of an offence punishable under TADA or any rule made thereunder on bail unless the twin conditions contained in clauses (*a*) and (*b*) thereof are satisfied. No bail can be granted under Section 20(8) unless the Designated Court is satisfied after notice to the public prosecutor that there are reasonable grounds for believing that the accused is not guilty of such an offence and that he is not likely to commit any offence while on bail. Sub-section (9) qualifies sub-section (8) to the extent that the two conditions contained in clauses (*a*) and (*b*) are *in addition* to the limitations prescribed under the Code of Criminal Procedure or any other law for the time being in force relating to the grant of bail. Strictly speaking Section 20(8) is not the source of power of the Designated Court to grant bail but it places further limitations on the exercise of its power to grant bail in cases under TADA, as is amply clear from the plain language of Section 20(9). The Constitution Bench in *Kartar Singh case*[1] while dealing with the ambit and scope of sub-sections (8) and (9) of Section 20 of the Act quoted with approval the following observations from *Usmanbhai case*[4]: (SCC p. 704, para 344)

> "Though there is no express provision excluding the applicability of Section 439 of the Code similar to the one contained in Section 20(7) of the Act in relation to a case involving the arrest of any person on an

accusation of having committed an offence punishable under the Act or any rule made thereunder, but that result must, by necessary implication, follow. It is true that the source of power of a Designated Court to grant bail is not Section 20(8) of the Act as it only places limitations on such power. This is made explicit by Section 20(9) which enacts that the limitations on granting of bail specified in Section 20(8) are 'in addition to the limitations under the Code or any other law for the time being in force'. But it does not necessarily follow that the power of a Designated Court to grant bail is relatable to Section 439 of the Code. It cannot be doubted that a Designated Court is 'a court other than the High Court or the Court of Session' within the meaning of Section 437 of the Code. The exercise of the power to grant bail by a Designated Court is not only subject to the limitations contained therein, but is also subject to the limitations placed by Section 20(8) of the Act."

and went on to add: (SCC p. 704, para 345)

"Reverting to Section 20(8), if either of the two conditions mentioned therein is not satisfied, the ban operates and the accused person cannot be released on bail but of course it is subject to Section 167(2) as modified by Section 20(4) of the TADA Act in relation to a case under the provisions of TADA."

Thus, the ambit and scope of Section 20(8) of TADA is no longer *res integra* and from the above discussion it follows that both the provisions i.e. Section 20(4) and 20(8) of TADA operate in different situations and are controlled and guided by different considerations.

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

may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any *report* to the court under clause (*bb*) to seek extension of time. *Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report* to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his *report*, as envisaged under clause (*bb*), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the *report* of the public prosecutor *indicating the progress* of the investigation *and the specific reasons* for the detention of the accused beyond the said period" as occurring in clause (*bb*) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the *report* of the public prosecutor. The *report* of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (*bb*). The request of an investigating officer for extension of time is no substitute for the *report* of the public prosecutor. Where either no *report* as is envisaged by clause (*bb*) is filed or the *report* filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (*bb*) is neither a formality nor automatic, the necessary corollary would be that an accused *would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail* as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (*bb*) is made but one of substance. The contents of the *report* to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the *report* of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public

prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the *report* of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (*bb*) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the *report* of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his *report* must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (*bb*) of sub-section (4) of Section 20. Since the law requires him to submit the *report* as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid *report* fails in the performance of one of its essential duties and renders its order under clause (*bb*) vulnerable. Whether the public prosecutor labels his *report* as a *report* or as an *application* for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (*bb*) (*supra*). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (*bb*) and it would not be a proper report to seek extension of time. In the absence of an appropriate *report* the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period *except to enable the investigation* to be completed and as already stated before any extension is granted under clause (*bb*), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.

24. We shall now consider whether the amendment brought about by Act 43 of 1993 would apply to the pending cases i.e. the cases which were pending investigation on the date when the amendment came into force and in which the charge-sheet or challan had not been filed till 22-5-1993.

25. We have already noticed that clause (*b*) of sub-section (4) of Section 20 was amended by the Amendment Act No. 43 of 1993 with effect from 22-5-1993. Besides reducing the maximum period during which an accused under TADA could be kept in custody pending investigation from one year to 180 days, the Amendment Act also introduced clause (*bb*) to sub-section (4) of Section 20 enabling the prosecution to seek extension of time for

completion of the investigation. Does the Amendment Act No. 43 of 1993 have retrospective operation and does the amendment apply to the cases which were pending investigation on the date when the Amendment Act came into force? There may be cases where on 22-5-1993 the period of 180 days had already expired but the period of one year was not yet over. In such a case, the argument of learned counsel for the appellant is that the Act operates retrospectively and applies to pending cases and therefore the accused should be *forthwith* released on bail if he is willing to be so released and is prepared to furnish the bail bonds as directed by the court, an argument which is seriously contested by the respondents.

26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(*i*) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(*ii*) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(*iii*) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(*iv*) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(*v*) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

27. In fairness to the learned Additional Solicitor General Mr Tulsi, it may be stated that he did not controvert the legal position (both in his oral submissions and written arguments) that Amendment Act 43 of 1993 regulating the period of compulsory detention and the procedure for grant of bail, being procedural in nature, would operate retrospectively. We need not, therefore, detain ourselves to further examine the question of retrospective operation of the Amendment Act. On the basis of the submissions made by learned counsel for the parties, we uphold the finding of the Designated

Court, for the reasons recorded by it and those noticed by us above that the Amendment of 1993 would apply to the cases which were pending investigation on 22-5-1993 and in which the challan had not till then been filed in court.

28. The learned Additional Solicitor General, however, submitted that since the Amendment Act had introduced clauses (*b*) and (*bb*) to sub-section (4) of Section 20 also, it would be appropriate and desirable that both the clauses (*b*) and (*bb*) must be considered together and treated on a par insofar as the retrospective operation is concerned meaning thereby that clause (*bb*) would also be available to be invoked where the challan had not been filed till the amendment came into force. Mr Tulsi argued that since the modification brought about by the Amending Act curtailed the period granted to the investigating agency to complete the investigation, the Legislature had designedly introduced clause (*bb*) to enable the public prosecutor to make a *report* to the court when the investigation was still in progress indicating progress of the investigation and seek extension of the time beyond 180 days by assigning specific reasons for seeking extension and as such it would not be proper to treat clause (*b*) only as applicable to the pending cases and not clause (*bb*). We find substance in the submission of the learned Additional Solicitor General. Both the clauses have to be harmonised and the legislative intent given a full play. Since both the clauses (*b*) and (*bb*) as introduced by the Amendment Act fall within the realm of procedural law, these would be applicable to pending cases since there is no vested right in an accused in the procedural law. The object which influenced Parliament to introduce clause (*bb*) after curtailing the period of compulsory detention in custody to 180 days from one year by amendment of clause (*b*) clearly appears to be that if the investigating agency, which originally, had one year's time allowed to it to complete the investigation, could not complete the investigation when the period was suddenly curtailed to 180 days, it should not be put to a disadvantage for no fault of its and should be in a position to seek extension of time for completing the investigation beyond the period of 180 days. However, to prevent an abuse of clause (*bb*) and to avoid seeking of extension of time in a routine manner, the Legislature provided a safeguard in clause (*bb*) itself, namely, that extension in such cases could be granted by the court provided it is satisfied from the *report* of the public prosecutor that there are sufficient grounds for grant of such extension. In case clause (*b*) only and not clause (*bb*) is held to be applicable to pending cases as was suggested by Mr Khanwilkar, it would render clause (*bb*) almost otiose insofar as pending cases are concerned and defeat the legislative intent and further put the prosecution to an unfair disadvantage. The Amendment Act was not enacted with the object of giving benefit to an accused and subjecting the prosecuting agency to an unfair disadvantage and leaving it almost with no remedy for seeking further custody of an accused. We are, thus, of the opinion that Amendment Act 43 insofar as it modifies the period prescribed in clause (*b*) and introduces clause (*bb*) to sub-section (4) of Section 20 would apply retrospectively and

apply to pending cases as well. We are unable to persuade ourselves to agree with Mr Khanwilkar that clause (*b*) only and not clause (*bb*) of sub-section (4) of Section 20 should be held to have retrospective operation. The acceptance of such an argument would result in the creating of an anomalous situation and defeat the very object with which clause (*bb*) was introduced after the period of compulsory detention was curtailed under clause (*b*) of Section 20(4) of the Act.

29. As a result of our above discussion, it follows that Amendment Act 43 of 1993 is retrospective in operation and both clauses (*b*) and (*bb*) of sub-section (4) of Section 20 of TADA apply to the cases which were pending investigation on the date when the amendment came into force with effect from 22-5-1993 and in which the challan had not been filed till then.

30. In conclusion, we may (even at the cost of repetition) say that an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of 'default' of the prosecution and the court *shall* release the accused on bail after notice to the public prosecutor *uninfluenced* by the gravity of the offence or the *merits of the prosecution case* since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (*bb*) by filing a *report* for the purpose before the court. However, no extension shall be granted by the court *without notice* to an accused to have his say regarding the prayer for grant of extension under clause (*bb*). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the *report* as envisaged by clause (*bb*) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (*b*) of Section 20(4) has expired and the court does not grant an extension on the *report* of the public prosecutor made under clause (*bb*), the court *shall* release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (*bb*) but the charge-sheet is not filed within the *extended* period, the court *shall* have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (*bb*) can be granted by the Designated Court except on a *report* of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (*bb*) which must be strictly construed.

31. Having answered the questions posed by us in the opening part of the judgment, we shall now take up individual cases.

Criminal Appeal Nos. 732-35 of 1993

32. These appeals are directed against the common judgment and order of the Designated Court dated 31-7-1993 and though have been preferred by S/Shri Hitendra Vishnu Thakur, Raja Maruti Jadhav, Dilip Shankar Waghcoude and Dhyaneshwar Bhaskar Patil, the same have been pressed

and argued on behalf of Hitendra Vishnu Thakur only by Mr N.T. Vanamalai and Mr Swaraj Kaushal, learned Senior Advocates. A brief reference to the facts of the case at this stage is desirable.

33. On 9-10-1989 one Suresh Narsinh Dubey, a Real Estate Developer, was shot dead at about 10.30 a.m. at Nalasopara Railway Station in District Thane in the presence of his brother-in-law A.S. Tripathi who is the eyewitness. The brother of the deceased, Shri Shyam Sunder Dubey, on receipt of the information went to Palghar Police Station and a first information report was lodged resulting in the registration of a case CR No. 90 of 1989. During the investigation, Patrick Frances Truskar and Ananda Ramachandra Patil were arrested in connection with the said case on 20-10-1989. A charge-sheet was filed against them in the Court of Sessions on 8-7-1990. Sessions Case No. 88 of 1991 is pending disposal in that connection.

34. In February 1992, the DIG of Police (Maharashtra Railway Police) visited Palghar Police Station and after going through the record of the case was of the opinion that the investigation had not been properly conducted in CR No. 90 of 1989 and he, therefore, summoned the complainant Shyam Sunder Dubey. Subsequently, however, the wife of the deceased met the DIG of Police and presented an application dated 18-5-1992 executed by Shyam Sunder Dubey, the complainant. The DIG of Police on receipt of the application ordered reinvestigation. An application was also addressed to the Sessions Judge, Thane under Section 173(8) CrPC by the prosecuting agency seeking permission for reinvestigation after detailing the reasons therein, which was granted by the court. During the reinvestigation, some more accused persons were arrested in the said case and remanded to judicial custody on various days. Petitioner 1 Hitendra Vishnu Thakur and two others read a news item in some local newspaper indicating that they were likely to be arrested in respect of the murder of the deceased Suresh Narsinh Dubey in CR No. 90 of 1989 and therefore they approached the Bombay High Court for grant of anticipatory bail on 25-9-1992. After notice to the Public Prosecutor, the Bombay High Court granted *interim* anticipatory bail to the applicants on 29-9-1992. On 30-9-1992, the prosecution filed an application in the High Court stating that since in the instant case provisions of TADA were applicable the accused could not be admitted to anticipatory bail because Section 438 CrPC was excluded in its application to offences under TADA. The High Court consequently dismissed the anticipatory bail application of Hitendra Vishnu Thakur and others but kept effective the order of *interim* anticipatory bail for a period of one week to enable the applicants to take recourse to further proceedings. On 1-10-1992, petitioner 1 and others filed Writ Petition No. 1261 of 1992 in the High Court of Bombay for a declaration that for the reasons stated in the writ petition the provisions of TADA were not attracted to the facts of the case. The writ petition was, however, dismissed on 23-10-1992 by the High Court with the observation that the Designated Court may go into the question of the applicability of the provisions of TADA independently at the appropriate

stage. Not satisfied with the order of the High Court of Bombay dated 23-10-1992 petitioner 1 and others filed Special Leave Petition (Crl.) No. 2736 of 1992 against the said order of the Bombay High Court. On 17-11-1992 the Special Leave Petition (Crl.) No. 2736 of 1992 was dismissed by this Court. It was, thereafter, that on 5-12-1992 petitioner 1 Hitendra Vishnu Thakur along with one other co-accused surrendered before the Director General of Police, Maharashtra. On 4-1-1993 he was remanded to judicial custody. An application, being TMA No. 62 of 1992, for grant of bail under Section 20(8) of TADA was dismissed by the Designated Court on 17-7-1993. Another application, TMA No. 76 of 1992, filed by the petitioner on 29-9-1992 urging that the provisions of TADA were not attracted and that the case be not tried by the Designated Court was also dismissed on 2-9-1993 adopting the reasoning given in the order dated 17-7-1993 in TMA No. 62 of 1992. While the matters rested thus, Parliament enacted Amendment Act No. 43 of 1993 which came into force on 22-5-1993. Among the other amendments made to TADA Section 20(4)(*b*) was amended by which the time for filing the charge-sheet was reduced from one year to 180 days. The Amendment Act also introduced a new provision in the form of clause (*bb*) providing for grant of extension of time for completion of investigation and filing of challan on a *report* of the public prosecutor indicating the progress of investigation and the specific reasons for detention by the Designated Court, subject however to the maximum period of compulsory detention of one year.

35. On 6-7-1993 the petitioner Hitendra Vishnu Thakur filed an application for grant of bail under Section 20(4) of the Act on the ground that 180 days had expired on 4-6-1993 but no charge-sheet/challan had been filed. On 12-7-1993 the Public Prosecutor presented a request of the investigating officer dated 29-6-1993 to the Designated Court seeking extension of time to complete the investigation and objections were also filed to the application for bail filed by Hitendra Vishnu Thakur under Section 20(4) of the Act by the Public Prosecutor. The bail application was dismissed by the Designated Court on 31-7-1993 and the prosecution was granted extension of time till 30-8-1993 to file the challan/charge-sheet treating the application of the investigating officer as a *report* of the Public Prosecutor. M/s Vanamalai and Swaraj Kaushal, Senior Advocates, have assailed the order dated 31-7-1993 by urging that the extension to complete the investigation has been granted ignoring the requirements of law as contemplated by clause (*bb*) and that the prayer for bail under Section 20(4) has been rejected on extraneous considerations. Learned counsel submitted that once it is found that extension under clause (*bb*) was erroneously granted, the right to be released on bail under Section 20(4) of TADA could not be defeated on any account. Learned counsel for the respondent on the other hand submitted that the Designated Court rightly rejected the application for grant of bail sought under Section 20(4) of TADA by taking into consideration the objections filed by the public prosecutor and the application of the investigating officer seeking extension after detailing the

progress of the investigation and furnishing specific reasons for seeking extension of time.

36. The application for extension which was treated as a *report* of the Public Prosecutor by the Designated Court and on which extension of time for completion of investigation and filing of charge-sheet was granted has been filed by the appellant as an Annexure P-5 which is available at page 110 of the paper-book and reads thus :

"Out Ward No. 90/89-P-1993
Sub-Divisional Police Officer,
Western Railway,
Churchgate, Bombay.

Date : June 29, 1993

To,
Hon'ble Designated Judge,
Designated Court,
Pune.

Sub : Regarding progress of investigation and request for extension of period to file the charge-sheet under CR No. 90 of 1989 under Sections 302, 338, 114, 120(*b*), 147, 148, 149 of IPC and under Sections 3/25(1)(*c*) of Indian Arms Act and under Section 3 of TADA registered at Palghar Police Railway Station.

Respected Sir,

With regard to the above, I have to state that with permission of District and Sessions Judge of Thane the investigation of the above case is continued from 23-9-1992. In the present case 20 accused all named out of these 12 accused are arrested at several places from 23-9-1992 and all are in judicial custody. We have collected sufficient evidence to enable to file case in the court against the arrested accused. According to Section 20 of TADA Act, before filing the case in Designated Court it is necessary to get the sanction of Director General of Police, Maharashtra State, Bombay for which the detailed report with papers have been sent.

Further it is found that four police officers are involved in this case and to file the case against them a separate report is being sent to Maharashtra Government for the sanction. We are ready to file the case as soon as we get the above mentioned both permission. Therefore we request you to extend the period for two months for investigation.

According to the TADA Act it is necessary to file the charge-sheet against the arrested accused within one year to the Designated Court. But as per Indian Government Order No. 6/8/93, Legal Cell, Government of India, Ministry of Home Affairs, New Delhi, dated 19-5-1993, the TADA Act has been amended. As per amended Act it is necessary to file the charge-sheet within 180 days against the

arrested accused. It is not mentioned in the amendment the date from which it comes in force.

Received on 12-7-1993
Sd/—
Judge.

Respectfully submitted
Date : 29-6-1993
Sd/—
(M.V. Deshmukh)
Sub-Divisional Police Officer
D.R.
Churchgate, Bombay.

Submitted to :
Shri Vijay Sawant,
Specially appointed Government Pleader,
Designated Court, Pune."

37. As would be seen from the application itself, it is not a report of the Public Prosecutor but an application filed by the Sub-Divisional Police Officer and is addressed to the Designated Judge of the Designated Court. Even if it be assumed from the endorsement at the bottom of the letter which reads thus :

"Submitted to :
Shri Vijay Sawant,
Specially appointed Government Pleader,
Designated Court, Pune."

that the application was submitted to the Public Prosecutor and not directly to the Designated Court, in vain have we searched for any material on the record to show that the Public Prosecutor filed any *report* along with this application before the Designated Court. In fact learned counsel for the respondents admitted that besides the application, extracted above, no other *report* was filed by the Public Prosecutor to seek extension of time for completion of the investigation as envisaged by clause (*bb*) of Section 20(4) of TADA though the Public Prosecutor had filed his objections to the bail application filed under Section 20(4) of TADA read with Section 167(2) of the Code. The Designated Court treated the application of the investigating officer as a *report* from the Public Prosecutor as is obvious from the following observations of the Designated Court :

"It is pertinent to note that in *these applications the Investigating Officer had forwarded the report indicating the progress of the investigation on 29-6-1993* and in the said progress report he prayed for extension of two months' time for submitting the charge-sheet on the ground that the prosecution wants to seek sanction of the Inspector General of Police. It may be noted that as per the Amendment Act, 1993, Section 20-A has been added and as per this provision, the previous sanction of the Inspector General of Police would be necessary. Similarly, it is mentioned in the said report that in this matter four police officers have also been involved and prior sanction of the Government

for prosecuting the government servants as per the provisions of Section 197 CrPC (is required). Thus, the investigating officer wants time for making compliance of law. *Taking into consideration very serious and complicated nature of the offence the prayer for extension of two months' time from 29-6-1993 appears reasonable for seeking sanction to file charge-sheet.* It is contended on behalf of the applicant-accused that a report of the Public Prosecutor is necessary. *It may be noted that the Public Prosecutor while giving his reply has referred to this report of the investigating officer and prayed for extension of time.* The Public Prosecutor is also required to obtain the report from the investigating officer and on the basis of that report the Public Prosecutor files the reply in the court. *The reply of the Public Prosecutor, read with the report dated 29-6-1993 of the investigating officer, is sufficient compliance of the report contemplated under the proviso (bb) indicating the progress of the investigation.* Therefore the extension will have to be granted to the investigating machinery for two months from 29-6-1993. In the result the bail cannot be granted." (emphasis ours)

38. We are unable to persuade ourselves to accept the view of the Designated Court that since the application of the investigating officer was *supported* by the Public Prosecutor, the request of the investigating agency could be treated as the *report* of the Public Prosecutor when read with the objections filed by the Public Prosecutor to the bail application. The observations of the Designated Court show that the said court lost sight of the importance of the *report* and treated the whole thing in a rather casual manner. The application of the investigating officer dated 29-6-1993, reproduced above, can by no stretch of imagination be construed as a *report* of the Public Prosecutor as envisaged by Section 20(4)(*bb*) of TADA and therefore no extension under clause (*bb*) could have been granted by the Designated Court without the receipt of the *report* of the Public Prosecutor. That apart, even if we ignore the discrepancy in the various dates regarding the presentation of the application in the court it appears from a bare perusal of the application of the investigating officer that the Public Prosecutor did not even endorse the application with any comments to indicate as to whether or not he was agreeing with the statements contained in the application. The Public Prosecutor obviously did not apply his mind to the request of the investigating agency and merely acted as its 'post office'. The Designated Court was deprived of the opportunity of scrutinising the *report* of the Public Prosecutor before granting extension. We need not, therefore, even comment upon the reasons given by the investigating officer in the application to test their correctness or otherwise because we are firmly of the view that the said letter/application of the investigating officer cannot be construed or treated as a substitute for the *report* of the Public Prosecutor as contemplated by clause (*bb*) of Section 20(4) of TADA. Faced with this situation, learned counsel for the respondents submitted that the objections filed by the Public Prosecutor to the bail application read with the

application of the investigating officer may be held to be substantial compliance with the requirements of clause (*bb*). We cannot agree.

39. The application filed by the appellant Hitendra Vishnu Thakur for his release on bail under Section 20(4) of the Act reads as follows :

"1. That the accused above named was arrested on 5-12-1992 in the above referred Crime Register No. (90 of 1993). The accused is now in Magistrate's custody. The charge-sheet against accused has not been filed in this case till date in spite of the fact that 180 days have elapsed since his arrest.

2. The Terrorist and Disruptive Activities (Prevention) Act was amended on 22-5-1993 vide which period allowed for the investigating agency for filing of the charge-sheet has been amended to one hundred and eighty days.

3. The accused prays that he be released on bail for the following amongst other grounds.

GROUNDS

1. That the investigating agency has not filed the charge-sheet within the stipulated period of 180 days.

2. That the Public Prosecutor or the investigating agency has not filed till date an application or report before this Hon'ble Court indicating the progress of the investigation and specific reasons for the detention of the accused beyond the period of 180 days and further they have not obtained an order from this Hon'ble Court to extend the said period of detention beyond 180 days.

3. In view of the above the accused as of right is entitled to be released on bail.

4. The accused is ready and willing to furnish bail as may be ordered by this Hon'ble Court.

It is therefore prayed that the applicant-accused be released on bail.

Date : 6-7-1993 Sd/—

(Advocate for accused)"

The Public Prosecutor filed his objections to the above application and in the objections it was inter alia stated :

"4. *The concerned investigating officer on 29-6-1993 had forwarded his report to the Hon'ble Court* relating to the progress of the investigation. He had also pointed out that the steps were taken for obtaining sanction from Director General of Police. Under these circumstances averments in para 2 turned up to be false and misleading.

* * *

6. Without prejudice to the above contention it is submitted that the investigation is not completed as yet. There are serious charges of murder, goondaism, land grabbing etc. against the accused. The accused, it is apprehended, are having complicity in the course of

investigation. The investigating agency has seized pistols and other lethal firearms. The report from the Ballistic Expert is also obtained indicating the link between the crime and its participators.

* * *

10. (*a*) From the record there appears prima facie evidence to show that the applicant is a party to the conspiracy and he knowingly facilitated the commission of the terrorist act or an act preparatory to a terrorist act. Considering the facts and circumstances and the material on record, there are reasonable grounds for believing that the applicant-accused is guilty of the offence under the TADA Act.

* * *

10. (*e*) There is evidence to show that the applicant has also indulged in land grabbing and witnesses have stated during the investigation about the nefarious activities of the applicant and his gangsters pointing out that the applicant was working for the criminal conspiracy hatched at the Thakur's criminal empire.

* * *

10. (*k*) The broad daylight murder of the builder Suresh Dubey on a railway platform was a part of criminal conspiracy by the applicant's gang to spread terror among the people and indicate that those who oppose, they will have to pay the penalty in one form or the other, even face total elimination in the process. In short the intention will be to strike terror and the killing will be to achieve that object.

11. The prosecution submits considering the facts and circumstances and the material on record, under these circumstances it cannot be said that the applicant will not abscond, if released on bail. On the other hand, his close relatives Bhai Thakur, Deepak Thakur, Bhaskar Thakur are proclaimed offenders and they have successfully evaded arrest so far and, therefore, it is quite possible that this applicant, if released on bail, will contact them and create hindrance in the smooth going investigation. The prosecution further states that the release of these top conspirators at this crucial juncture will cause irreparable damage in proper conduct of investigation in the cases involving them and the kind of clout they enjoy sufficient for them to muzzle out any note of dissent and even go to the extent of trying to damage evidence against them as they had done in the past. The prosecution submits that for unfolding the crime in question, the prosecution pleads to the Hon'ble Court not to grant bail to the conspirators involved in this crime."

40. From the perusal of the objections of the Public Prosecutor, extracted above, it transpires that the application of the investigating officer was submitted *direct* to the Designated Court by the investigating officer (*see* para 4) and not by the Public Prosecutor and the prayer for release on bail of the applicant Hitendra Vishnu Thakur under Section 20(4) was opposed

mainly on grounds which are relevant under Section 20(8) of TADA and not under Section 20(4) of the Act. The grounds on which bail may be denied under Section 20(8) of TADA are irrelevant for the consideration of the prayer for release on bail on account of the 'default' of the prosecution under Section 20(4) of TADA.

41. From the above discussion and the admitted fact situation (date of arrest and period for completion of investigation and not filing of challan within the prescribed period not being in dispute), in the case of Hitendra Vishnu Thakur, we find that the extension of custody under clause (*bb*) was erroneously granted by an improper exercise of the jurisdiction by the Designated Court by placing an incorrect interpretation on the requirements as contemplated by clause (*bb*) by treating the application of the investigating officer read with his objections to the bail application as a *report* of the Public Prosecutor though without effecting the validity of further investigation. In the absence of grant of valid extension of custody to complete the investigation and file the challan, Hitendra Vishnu Thakur had acquired an indefeasible and absolute right to be released on bail as per the provisions of Section 20(4) of the Act, since the accused had offered to be released on bail on such terms as the Designated Court may prescribe. The Designated Court was, therefore, under an obligation to admit and release the appellant on bail under Section 20(4) of TADA read with Section 167(2) CrPC on the merits of the application under Section 20(4) itself uninfluenced by any other considerations.

42. From the aforesaid discussion it follows that the order of the Designated Court granting extension of time for completion of investigation to the investigating agency to file the challan and therefore authorising his detention beyond the prescribed period of compulsory custody in the case of appellant Hitendra Vishnu Thakur and the refusal of bail to him under Section 20(4) of the Act on extraneous considerations cannot be sustained and we, consequently, accept the appeal of Hitendra Vishnu Thakur to that extent and set aside the order of the Designated Court refusing to grant bail to him under Section 20(4) of the Act. We further direct that Hitendra Vishnu Thakur be released on bail on his furnishing bail bonds in the sum of Rs 30,000 with two sureties of the like amount to the satisfaction of the Designated Court subject, however, to the following conditions :

(1) That appellant, (Hitendra Vishnu Thakur), shall before being released on bail furnish the correct and complete address of the place where he would be residing within the jurisdiction of the Designated Court.

(2) That the appellant shall report at the police station nearest to the place of his residence every week on Mondays; and

(3) The appellant shall not leave the place of his residence and move out of the jurisdiction of the Designated Court without seeking permission from the Designated Court and informing the police station concerned about the same.

43. We wish, however, to clarify that since we have directed the release of the appellant on account of the default of the prosecution to complete the investigation and file the challan within the prescribed time as required by Section 20(4) of TADA, our reference to the facts and circumstances of the case and the discussion, should be considered only as relevant for that purpose and nothing said by us expressly or by implication, should be construed as any expression of opinion on the merits of the case.

Criminal Appeal No. 738 of 1993

44. Since, bail has been granted to the appellant in Criminal Appeal Nos. 732-735 of 1993, we grant the prayer of Mr Kaushal and dismiss Criminal Appeal No. 738 of 1993 as not pressed at this stage, without expressing any opinion on merits.

Special Leave Petition (Crl.) No. 2800 of 1993

45. Heard.

46. Leave granted.

47. This appeal is preferred against the order of the Designated Court, Pune dated 2-9-1993.

48. This appeal, by special leave, is also filed by Hitendra Vishnu Thakur.

49. The appellant filed an application under Section 18 of TADA, being TMA No. 76 of 1992, asserting that the offence in CR No. 90 of 1989 is not covered by the provisions of TADA and therefore the said case needs to be transferred to a regular court for trial. The learned Designated Court by its order dated 2-9-1993, rejected the application holding that "there are reasonable grounds to believe that the accused has committed the offences under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987. Consequently, the Designated Court, Pune has the exclusive jurisdiction to try the offences under the TADA Act and, therefore, the case against the applicant cannot be transferred to a regular court under Section 18 of the TADA Act." This order has been put in issue in this appeal.

50. While dealing with Criminal Appeal Nos. 732-735 of 1993, we have adverted to the brief facts of the case (CR No. 90 of 1989). In its order dated 17-7-1993, in Criminal Misc. Application No. 62 of 1992, the Designated Court has dealt with some of the statements of the witnesses recorded during the investigation. Since the investigation was not complete and extension had been granted to the investigating agency to further investigate and submit the challan within the extended period, it is obvious that the investigating agency may have recorded some more evidence in the case after 17-7-1993. At the time when TMA No. 76 of 1992 was filed the investigation in the case obviously was going on and it would have been premature for the Designated Court, without scrutiny of the entire material collected during the investigation, to come to any firm conclusion that the case was not triable by the Designated Court and was required to be tried by the regular court. Some of the statements of the witnesses recorded during

the investigation, as referred to in the order of the Designated Court, do indicate that some of the witnesses have deposed to the activities of the appellant and others which could be construed as offences triable under TADA. It was in this fact situation that the Designated Court rejected the application filed by the appellant under Section 18 of the Act holding that there were reasonable grounds to believe that an offence under the provisions of TADA had been committed. In the facts and circumstances of the case the view expressed by the Designated Court on 2-9-1993 in TMA No. 76 of 1992, when the investigation itself was also not complete, read with the evidence adverted to in its order dated 17-7-1993 cannot be said to be unreasonable much less perverse. It is also relevant at this stage to refer to the reply affidavit filed by Shri M.W. Deshmukh, the investigating officer, in reply to Criminal Writ Petition No. 1261 of 1992, which had been filed by the appellant stating that the provisions of TADA were not attracted to the facts and circumstances of the case (CR No. 90 of 1989). In para 4 of the said affidavit the investigating officer stated :

> "4. I say and submit that the statements recorded after the *further* investigation by way of reinvestigation of the case itself bring the case of the petitioner within the meaning of Section 3 of TADA. Apart from the relations of the deceased, the statements also have been recorded of the eyewitnesses who had seen the actual assault which also authenticates that at the time of incident, people had ran helter-skelter in order to save their lives but one passer-by had sustained bullet injury on his person i.e. on the left side of the chest by inges (*sic*). It is further pertinent to note that at the relevant time, Platform No. 2 of Nalasopara Railway Station was crowded and there were about more than one thousand people waiting for the arrival of the train and at which time, associates of the petitioners arrived and fired *at random*. I say and submit that this act of the associates of the petitioners was pursuant to the conspiracy hatched by and between them and the facts of conspiracy only came on surface after the commencement of further investigation by way of reinvestigation. The statement (of witnesses) relied upon by the investigation required to be maintained secrecy as they apprehend danger to their lives if their names are disclosed to the petitioners or their associates. I, therefore, crave leave to refer to and rely upon the statements hitherto recorded from the time of commencement of further investigations by way of reinvestigation at the time of hearing of this petition."

51. The SLP against the dismissal of the writ petition was dismissed by this Court. Moreover, on 23-11-1993 while disposing of SLP Nos. 1643-46 of 1993 (Batch) titled *Hitendra Vishnu Thakur & Ors.* v. *State of Maharashtra & Ors.*, this Court issued directions to the Designated Court to frame the charges on or before 13-12-1993 and expedite the trial recording therein the undertaking of counsel for the parties that they would not seek any adjournment on any account thereafter. Thus, in view of the circumstances referred to above and the facts adverted to in the order of the

Designated Court, no fault can be found with the order of the Designated Court rejecting the application of the appellant under Section 18 of the Act.

52. We would, however, not like to express any opinion on the merits of the case at this stage because the entire evidence had not been collected much less scrutinised and analysed by the investigating agency or the Designated Court when the application under Section 18 of TADA was filed and disposed of by the court. It shall be open to the appellant to satisfy the Designated Court at the appropriate stage that there is no sufficient or satisfactory evidence of any offence under TADA having been committed by the appellant and when such a situation should arise, we have no doubt that the Designated Court will examine and dispose of the matter in accordance with law. With these observations, the criminal appeal directed against the order dated 2-9-1993 in TMA No. 76 of 1992 is dismissed.

Special Leave Petition (Crl.) Nos. 138-139 of 1994

53. Leave granted.

54. The facts leading to the registration of the case CR No. 90 of 1989 and the rejection of the application filed by the appellant Hitendra Vishnu Thakur under Section 20(4) of TADA read with Section 167(2) CrPC have been examined to and dealt with by us while dealing with Criminal Appeal Nos. 732-735 of 1993 and it is not necessary to repeat the same.

55. It transpires from the perusal of the memorandum of appeal filed by the appellant that the charge-sheet was filed against the appellant and others under Section 173 CrPC on 26-8-1993. In the said charge-sheet, names of four police officers along with 12 other accused besides the absconding accused were also mentioned. A note was appended to the charge-sheet that a supplementary charge-sheet against them would be filed after obtaining requisite sanction from the authorities concerned. The supplementary charge-sheet was filed on 13-12-1993 which happened to be the last date for framing of charges vide the directions of this Court in SLP (Crl.) No. 2230 of 1993 dated 23-11-1993. The appellant and some of his co-accused made an application before the Designated Court challenging the validity of sanction accorded by Respondent 2, authorising the Designated Court to take cognisance of the offence against the accused. The written sanction was filed in the Designated Court on 24-8-1993, while the application challenging the validity of sanction was filed on 6-12-1993. Apart from oral arguments even written submissions were filed in support of their respective contentions regarding the validity or otherwise of the sanction under Section 20-A(2) of TADA by learned counsel for the parties.

56. Section 20-A of TADA which was introduced for the first time by Amendment Act No. 43 of 1993 and deals with the "cognisance of offence" and reads as under :

> "20-A. (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognisance of any offence under this Act without the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police."

The section was obviously introduced to safeguard a citizen from any vexatious prosecution under TADA. Vide Section 20-A(2) of TADA no court can take cognisance of an offence under TADA unless there is a valid sanction accorded by the competent authority as prescribed by the section. The grievance that since the sanction order referred to some of the activities of the accused person in the year 1984 etc. when the 1987 Act had not even come into force, it rendered the sanction granted by the competent authority as invalid was repelled by the Designated Court and the correctness of that order has been assailed before us.

57. We have gone through the order of sanction under Section 20-A(2) of TADA which has been reproduced by the Designated Court in the order impugned before us and find that the competent authority had after proper appraisal of the record and after proper application of its mind accorded the sanction. The Designated Court came to the conclusion that the order of sanction prima facie appeared to be valid. We agree with the Designated Court, as at the stage when the challenge was laid to the sanction order under Section 20-A(2) of the Act, it is only the 'prima facie' case which was required to be established to show that the sanctioning authority had applied its mind to the facts of the case before sanction was accorded.

58. Whether or not the allegations on the basis of which sanction has been accorded are true or not would be established at the trial. Merely because the competent authority also referred to the past history or the earlier activities of some of the accused while according sanction under Section 20-A(2) of TADA, it would not vitiate the sanction which prima facie appears to be legal and valid. It appears that while challenging the validity of sanction accorded by the competent authority under Section 20-A(2) of TADA, the accused had also tried to once again raise a fresh challenge to the applicability of the provisions of TADA to their case which matter stood already rejected by the Designated Court and a writ petition against that order failed up to this Court. This was not a permissible course to be adopted by the accused. The Designated Court rightly rejected both the prayers made in the application i.e. to declare the sanction as invalid and to hold that the provisions of TADA were not prima facie attracted to the case. Nothing has been brought to our notice either during the oral submissions or in the written submissions to show as to how the order of sanction under Section 20-A(2) is invalid.

59. We do not find that the sanction order suffers from any infirmity whatsoever. There is, therefore, no merit in these appeals and the same are hereby dismissed.

Criminal Appeal Nos. 736-737 of 1993

60. These appeals are directed against the order of the Designated Court dated 31-7-1993 in Crl. Misc. Application No. 91 of 1993 and Crl. Misc.

Application No. 93 of 1993. The appeals are confined to the limited question whether the appellant ought to have been released under Section 20(4) of TADA read with Section 167(2) CrPC because of the default of the investigating agency to complete the investigation and file the charge-sheet within the prescribed time.

61. The appellant was arrested on 22-9-1992. The appellant was working as Circle Police Inspector, Thane, during the relevant time. On being produced before the Magistrate, he was remanded to custody from time to time and on 20-10-1992 he was directed to be produced before the Designated Court since the offence of which he was accused of was one under TADA. On 23-10-1992, the appellant applied for bail to the Designated Court and provisional bail was granted to him. His bail application, however, came to be rejected on 16-1-1993 and he surrendered to the bail bonds. After Section 20 of TADA was amended by Act 43 of 1993 the investigating agency invoked the provisions of clause (*bb*) of sub-section (4) of Section 20 seeking extension of time for completing the investigation and filing the charge-sheet against the appellant through its application dated 6-7-1993. The appellant also preferred a bail application before the Designated Court under Section 20(4) of TADA read with Section 167(2) CrPC seeking release on bail on account of the default of the investigating agency to file the charge-sheet within the prescribed period. Both the applications were heard and disposed of together. The Designated Court by its order (impugned in these appeals) dated 1-7-1993 granted one month's time to the investigating agency to file the charge-sheet and rejected the appellant's application for release on bail.

62. On the facts of the present case, Mr Khanwilkar learned counsel for the appellant, submitted that the report of the Special Public Prosecutor was not a report in the eye of law and since bail under Section 20(4) of TADA was refused to the appellant only on account of the grant of extension of time, the order of the Designated Court deserved to be set aside. The Designated Court while dealing with the applications of the Public Prosecutor and appellant (CrMP Nos. 91 and 93 of 1993) held :

> "So far as the applicant-accused in T Crl MA No. 93 of 1993 is concerned, the applicant has filed the application on 8-7-1993, whereas the application for extension of time bearing T Crl MA No. 91 of 1993 has been filed by the Special Public Prosecutor on 6-7-1993. I have already held above whether the Public Prosecutor or the accused comes to the court first is not a criterion for seeking the relief under Section 167 CrPC. In this matter the preparedness of the applicant to seek bail from the Court be gathered from his application for provisional bail bearing T Crl MA No. 78 of 1993 which is still pending. The Special Public Prosecutor has prayed for extension of time on the ground that the investigating machinery has not received sanction as required under Section 197 CrPC for the prosecution of a public servant. He is involved in a very serious offence. The prosecution wants time to comply with the

provisions of the law for the purpose of filing charge-sheet. Therefore, a reasonable time of one month is granted."

63. Thus Crl. Misc. Application No. 93 of 1993 was rejected while in Crl. Misc. Application No. 91 of 1993, one month's time was granted, from the date of the order, to file the charge-sheet failing which the appellant was directed to be released on bail.

64. We have perused the record. The Public Prosecutor had submitted a *report* (Crl. Misc. Application No. 91 of 1993) in the form of an application under Section 20(4)(*bb*) of TADA. We find that the 'application' satisfies the requirements of law and merely because it is labelled as 'an application', it would not cease to be a *report* as envisaged by Section 20(4)(*bb*) of TADA. Learned counsel, however, argued that extension of time could be granted only for completion of investigation and that the ground on which extension was sought, namely, that the sanction from the Government to launch the prosecution under Section 197 CrPC was awaited, did not justify the grant of extension of time.

65. In the report of the Public Prosecutor, it has been stated that the appellant is a police officer and while the charge-sheet and supplementary charge-sheet against other accused persons have already been filed the charge-sheet against him would be submitted as soon as *sanction* from the Government is received. Sanction is not strictly speaking a part of the investigation and this legal position was conceded by Mr Tulsi, the learned Additional Solicitor General also relieving us of the need to refer to the settled law on this subject. In the absence of sanction there was no bar to file the charge-sheet and then produce the sanction of the competent authority subsequently with the permission of the court. We have dealt with in extenso the ambit and scope of clause (*bb*) of sub-section (4) of Section 20 of TADA elsewhere in the judgment. The Designated Court could grant extension of time under clause (*bb*) on the *report* of the Public Prosecutor for *completion of the investigation* and filing the challan thereafter and for no other purpose. The Legislature has limited the grounds on which extension could be granted and the Designated Court could not add to those grounds. Since, on its plain reading clause (*bb*) could be invoked only if the *investigation* was not complete, the Public Prosecutor could not be permitted to seek extension of time under that clause for 'administrative difficulties' or obtaining 'sanction' or the like grounds if investigation was already complete. If extension of time was to be granted on *grounds* other than the completion of the investigation, it would defeat the legislative intent clearly manifested in clauses (*b*) and (*bb*) as amended by Act 43 of 1993 — not to keep an accused in custody beyond the time prescribed by clause (*b*) or as extended by clause (*bb*). The grant of extension beyond the period prescribed by clause (*b*) very seriously affects the liberty of a citizen and the Designated Court commits an error in the exercise of its jurisdiction if it grants extension of time ignoring the provisions of clause (*bb*). Grant of extension under clause (*bb*) on grounds extraneous thereto, at the whims of the investigating agency, cannot be permitted. The very object of the clause would be defeated if the period of

compulsory detention is to be extended in a casual manner for reasons other than those envisaged by clause (*bb*). In the present case extension has been granted and bail declined to the appellant on *grounds* not sanctioned by clause (*bb*) and the order of Designated Court refusing bail to the appellant cannot be sustained. The order of the Designated Court in CrMP No. 93 of 1993 rejecting the prayer for release on bail under clause (*b*) of Section 20(4) of TADA because of the grant of extension of time under clause (*bb*) is, therefore, set aside. For the reasons noticed above as well as those given by us while dealing with the cases of Hitendra Vishnu Thakur (Crl. Appeal No. 732-735 of 1993) we direct that the appellant Malarao T. Kakodal be released on bail on his furnishing bail bonds in the sum of Rs 30,000 with two sureties of the like amount to the satisfaction of the Designated Court subject, however, to the following conditions :

(1) That appellant shall before being released on bail furnish the correct and complete address of the place where he would be residing within the jurisdiction of the Designated Court.

(2) That the appellant shall report at the police station nearest to the place of his residence every week on Mondays; and

(3) The appellant shall not leave the place of his residence and move out of the jurisdiction of the Designated Court without seeking permission from the Designated Court and informing the police station concerned about the same.

66. Since we are directing the release of the appellant on bail on account of the default of the prosecution to complete the investigation and file the challan within the prescribed time, nothing said hereabove should be construed as any expression of opinion on the merits of the case.

Criminal Appeal No. 739 of 1993

67. The appellant is aggrieved by the rejection of his bail application No. 186 of 1993 in TADA Spl. RA No. 86 of 1992 by the Designated Court on 3-8-1993. The Designated Court granted extension of time to the prosecution to file the charge-sheet under clause (*bb*) of sub-section (4) of Section 20 of TADA and rejected the prayer for his release on bail under Section 20(4) of TADA read with Section 167(2) of the Code.

68. The appellant was arrested in connection with TADA RA No. 61 of 1992 arising out of CR No. 217 of 1992 in connection with certain offences committed on 12-9-1992. After the amendment of Section 20(4) of TADA by Act 43 of 1993, the appellant sought his release on bail because of the default of the prosecuting agency to complete the investigation and file the charge-sheet within the modified period as prescribed under Section 20(4)(*b*) of TADA read with Section 167(2) of the Code.

69. That on the expiry of the prescribed period an accused in custody becomes entitled to an order for being released on bail, if he is prepared to and furnishes bail on account of the default of the prosecution to complete the investigation and file the charge-sheet within the prescribed period, is no

longer in doubt. In the present case, however, we find that when the bail application of the appellant filed under Section 20(4)(*b*) of TADA read with Section 167(2) of the Code was taken up for consideration, the appellant did not *press* the application and sought liberty of the court to *apply for bail on merits after the filing of the charge-sheet.* This becomes obvious from the following observations of the Designated Court:

> "I may mention here that this Court had taken up the bail applications of the applicants-accused for hearing on merits. The accused Suresh @ Pappu Kalani and Jayawant Dattaraya Suryarao did not press their applications on merits and sought liberty of the Court to apply for bail on merits after the charge-sheet is filed."

70. Since the appellant did not *press* the application for his release on bail no fault can be found with the order of the Designated Court in rejecting the application. Mr Khanwilkar, learned counsel for the appellant, however, submitted that at no point of time any concession was made on behalf of the appellant that he was not pressing the bail application and that the observations which have been extracted above were made by the Designated Court in a different context. The submission does not appeal to us. In case no such concession had been made it was open to the appellant to make an application before the Designated Court bringing that fact to its notice and seeking review and correction of the record. That course was not adopted by the appellant. It is well settled that if the record of a court is to be assailed, a review in that court and not an SLP or an appeal in the Supreme Court is the remedy (see with advantage *State of Maharashtra* v. *Ramdas Shrinivas Nayak*[9]; *Apar (P) Ltd.* v. *Union of India*[10]). It appears to us that the argument now being raised is clearly an afterthought as it was not even sought to be supported in the memorandum of appeal by any affidavit. In view of the clear observations of the Designated Court we cannot accept the submission of the learned counsel and doubt the correctness of the record of the Designated Court. The argument that the use of the expression "on merits" in the observations of the Designated Court as extracted above could apply only to an application for bail under Section 20(8) of the Act and not to an application filed under Section 20(4) of TADA is fallacious. Both the applications, whether filed under Section 20(4) of TADA or under Section 20(8) of TADA, are required to be disposed of on their own *merits* by the Designated Court and, therefore, the distinction which the learned counsel seeks to draw between the applications filed under Sections 20(4) and 20(8) of TADA by hair splitting is imaginary and has no basis. The observations of the Designated Court clearly go to show that the application filed by the appellant under Section 20(4) of TADA read with Section 167(2) of the Code alone was under consideration by that court and it was that application

9 (1982) 2 SCC 463: 1982 SCC (Cri) 478: (1983) 1 SCR 8

10 1992 Supp (1) SCC 1: JT (1991) 4 SC 61

which was not pressed. The appellant cannot now be heard to make any grievance about the dismissal of that bail application which he did not press.

71. In the written submissions filed by Mr Khanwilkar an alternative plea has also been raised in the following terms:

> "It is submitted without prejudice to the aforesaid that even assuming without admitting that the statement was made on behalf of the appellant that he was not pressing the application on merits and sought liberty for consideration of the said application after the charge-sheet was filed even then in law the position would not materially alter to the disadvantage of the appellant for the simple reason that as submitted earlier the relief that the appellant would be entitled would relate back to the date of his application."

The submission extracted above has no factual foundation on facts. From the observations (*supra*) of the Designated Court, it clearly emerges that *the appellant had not sought any liberty for consideration of the bail application after the charge-sheet was filed.* The statement made by the appellant in the Designated Court is that he did not press the application and *sought liberty* of the court to "*apply for bail on merits after the charge-sheet is filed*". The appellant certainly is at liberty to apply for bail on merits after the charge-sheet is filed and as and when such an application is filed the Designated Court would deal with it in accordance with law. As at present, however, no fault can be found with the order of the Designated Court in rejecting the bail application which *was not pressed* before that court. This appeal, thus, has no merits and is accordingly dismissed.

Criminal Appeal Nos. 740-41 of 1993

72. Ramesh Bhai Patel is the appellant in Crl. Appeal No. 740 of 1993 while Shanti Bhai Patel is the appellant in Crl. Appeal No. 741 of 1993. Both the appellants are aggrieved by the rejection of their bail applications filed under Section 20 (4) of TADA by the Designated Court vide its order dated 3-8-1993. The Designated Court has granted extension to the prosecution to complete the investigation and file the challan in the court on an application filed by the Senior Inspector of Police on 14-7-1993.

73. Mr K.G. Bhagat, the learned Senior Counsel, appearing for the appellants submitted that the Designated Court fell in error in granting extension to the prosecution on the *application* of the Senior Inspector of Police without any *report* from the Special Public Prosecutor and for reasons which are not contemplated by clause (*bb*) of Section 20(4) of TADA. We find substance in his submission. The application seeking extension of time which was filed before the Designated Court reads as follows:

> "*Application for extension for further period to file charge-sheet in DEB CID CR No. 217 of 1992.*
>
> MAY IT PLEASE YOUR HONOUR

I, Shri Shiwaji S. Sawant, Sr. Inspector of Police, DCB CID U-III, Bombay, do hereby state on solemn affirmation as under:

I say that I am Investigating Officer in DCB CID CR No. 217 of 1992 which was registered by Byculla Police Station vide CR No. 446 of 1992 and the same was transferred to DCB CID, Bombay, for further investigation.

2. I say and submit that this branch has arrested 19 accused till today on the dates mentioned against them.

3. I say and submit that in this case about 15 accused persons who are assailants as well as the main conspirator including Daud Ibrahim Kaskar, Dubai based don, his henchmen namely, Sunil Sawant, Sham Kishore Garikapatti, Bacchi Pande, Baba Gabrial and others have absconded. Non-bailable arrest warrants against the accused were returned as the same could not be executed in spite of all efforts. Interpoles, CBI, Central Government, State Government has been apprised of the facts of the case in order to book the absconding accused who had gone out of India. Application for proclamation has already been filed before the Hon'ble Court.

4. I say and submit that on 7-6-1993 this Bench has arrested accused Jaiprakash Singh, Shivcharan Singh @ Nacchi Singh and Prasad Ramakant Khade, who had taken active part in the commission of offence and also recovered AK-56 assault rifle, 3 hand grenades, 2 magazines and 16 live cartridges. From reliable sources it is learnt 2 to 4 more accused are likely to be arrested very soon and as such their interrogation, confrontation, identification, recovery have to be made. Because of these developments charge-sheet could not be filed earlier. I say and submit that as far as investigation of Accused 1 to 17 is already completed, the charges are prepared, except for some administrative difficulties, the charge-sheet could not be filed.

5. I say that in view of the recent amendment to the Principal Act of TADA and in view of the above explanation, I submit that Your Honour may in the interest of justice, kindly permit us further extension of time to file charge-sheet against Accused 1 to 17.

And for this act of kindness, the prosecution shall as in duty-bound ever pray.

(S.S. Sawant)
Sr. Inspector of Police
Solemnly affirmed at Bombay,
This 14th Day of July, 1993,
Identified by me
Before me
Special Public Prosecutor for Greater Bombay."

The application, extracted above, does not fall within the parameters of clause (*bb*) of sub-section (4) of Section 20 of TADA for the reasons which we have already given while dealing with the ambit and scope of clause (*bb*) of sub-section (4) of Section 20 of TADA. The Designated Court erred in treating the *application of the investigating officer* as the *report* of the Public Prosecutor. The mere identification by the Public Prosecutor of the deponent of the affidavit (investigating officer) could not justify the *application* to be treated as a *report* of the Public Prosecutor. Since there was no *report* filed by the Public Prosecutor before the Designated Court, the Designated Court faulted in granting extension "of compulsory custody" on the *application* of the investigating officer. That apart, the ground on which extension was sought, as emerging from para 4 of the application (*supra*) did not justify the grant of permission for the extended period in custody even on the report of the Public Prosecutor. Since it is admitted in the said paragraph that the investigation against Accused 1 to 17 is 'already completed' but that the challan could not be filed "for some administrative difficulties", it is obvious that the ground for seeking extension of the period of compulsory detention of the appellant was extraneous to the grounds contemplated by clause (*bb*) of Section 20(4) of TADA. The Designated Court, therefore, fell in error in granting the extension to the prosecution under the said provision. The consequence of the erroneous extension of time would have entitled the appellant to be released on bail under Section 20(4) of TADA read with Section 167(2) of the Code for the default of the investigating agency without in any way affecting the continuation of the investigation but we find that the appellants, in the peculiar facts and circumstances of the case, cannot derive any benefit on that account because before the Designated Court the appellants *did not press* their bail applications and requested the Designated Court for *consideration of the bail applications after the charge-sheet is filed* implying thereby that the appellants did not "offer" to be released on bail. The proviso to sub-section (2) of Section 167 of the Code read with Section 20(4)(*b*) of TADA expressly postulates that if the investigation is not completed within the prescribed period and the challan filed in court, the Designated Court shall release the accused on bail if "he is prepared to and does furnish bail". By not *pressing* their bail applications, the appellants cannot be said to be 'prepared to' be released on bail by furnishing the bail. Why the appellants chose not to press their applications is not for us to conjecturise? The argument of learned counsel for the respondent that being of the opinion that extension under clause (*bb*) was likely to be granted the appellants chose not to press their applications cannot be dismissed as a wholly fanciful argument. In any event, the fact remains that for the reasons best known to them, the appellants did not press and prosecute their bail applications before the Designated Court when the same were taken up for consideration on merits. Mr Bhagat, learned Senior Counsel appearing for the appellant, however, submitted that the observations of the Designated Court to the effect that "whereas the accused Shantilal Prabhubhai Patel and Ramesh Prabhubhai Patel requested this

Court to consider their bail applications on merits after the charge-sheet is filed" were not correct and that no such concession was made on behalf of the appellant. We have already rejected a similar argument while dealing with Criminal Appeal No. 739 of 1993. In these appeals also the appellants did not approach the Designated Court for correction of the record. Even in the grounds of appeal before us it was not asserted that the *concession* had been wrongly attributed to the appellants. The submission is clearly an afterthought and an attempt to get out of a situation of the appellants' own making. We, therefore, reject the argument as we find it wholly unacceptable. We are also not persuaded to accept the submission of Mr Bhagat that the reference to the application of the appellant *which was not pressed* before the Designated Court was to a *different* application and not to the bail applications filed under Section 20(4) of the Act read with Section 167(2) of the Code. The submission defies logic and is apparently an argument of despair. The two Bail Application Nos. 195 and 196 of 1993 which were being considered and dealt with by the Designated Court were the applications filed by the appellants under Section 20(4) of TADA read with Section 167(2) of the Code and it is futile to contend that the Designated Court while considering those applications recorded the 'concession' with regard to some other application which was not under consideration of the court. The submission of Mr Bhagat is without any basis and is unacceptable. Mr Bhagat lastly submitted that the Designated Court should have, keeping in view the mandate of Section 167(2) of the Code, admitted the appellants to bail because of the default of the prosecution ignoring the so-called concession. We cannot agree. Whereas the period of compulsory custody has been fixed by the Legislature, there is nothing in the Act which may introduce a stage of compulsory bail if the applicant chooses not to be released on bail or furnish the bail bonds. Since the appellants did not *prosecute* and press their bail applications for release on bail under Section 20(4) of the Act read with Section 167(2) of the Code before the Designated Court the rejection of their Bail Application Nos. 195 and 196 of 1993 by the Designated Court cannot be found fault with at all. In the facts and circumstances of the case, the impugned order of the Designated Court rejecting the bail applications does not merit any interference. Both the appeals have no merit and are hereby dismissed.

74. We may, however, clarify that the non-interference with the impugned order of the Designated Court, in the peculiar facts and circumstances of these appeals, should not be construed as any expression of opinion on the merits of the case. It has been submitted before us that applications under Section 20(8) of TADA have already been filed and are pending disposal before the Designated Court. The Designated Court shall deal with those applications on their own merits, uninfluenced by the dismissal of these appeals and dispose the same of expeditiously in accordance with law.