SUPREME COURT OF INDIA

Hussainara Khotoon

Vs.

Home Secretary, State of Bihar, Patna

Writ Petition No. 57 of 1979

(P. N. Bhagwati, R. S. Pathak and A. D. Koshal, JJ.)

12.02.1979

JUDGEMENT

BHAGWATI J.

(for himself and on behalf of **KOSHAL J.**):-

1. This petition for a writ of habeas corpus discloses a shocking state of affairs in regard to administration of justice in the State of Bihar. An alarmingly large number of men and women, children including, are behind prison bars for years awaiting trial in courts of law. The offences with which some of them are charged are trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial. We are shouting from house tops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But,

are we not denying human rights to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedoms from these neglected and helpless human beings who have been condemned to a life of imprisonment and degradation for years on end? Are expeditious trial and freedom from detention not part of human rights and basic freedoms? Many of these unfortunate men and women must not even be remembering when they entered the jail and for what offence? They have over the years ceased to be human beings; they are mere ticket-numbers. It is high time that the public conscience is awakened and the Government as well as the judiciary begin to realise that in the dark cells of our prisons there are large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice - a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system. The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy.

2. Though we issued notice to the State of Bihar two weeks ago, it is unfortunate that on the 5th February, 1979 no one has appeared on behalf of the State and we must, therefore, at this stage proceed on the basis that the allegations contained in the issues of the Indian Express dated 8th and 9th January, 1979 which are incorporated in the writ petition are correct. The information contained in these newspaper cuttings is most distressing and it is sufficient to stir the conscience and disturb the equanimity of any socially motivated lawyer or Judge. Some of the under trial prisoners whose names are given in the newspaper cuttings have been in jail for as many as 5, 7 or 9 years and a few of them, even more than 10 years, without their trial having begun. What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them. It is a travesty of justice that many poor accused, 'little Indians, are forced into long cellular servitude for little offences' because the bail procedure is beyond their meager means and trials don't commence and even if they do, they never conclude. There can be little doubt, after the dynamic interpretation placed by this Court on Article 21 in Maneka Gandhi v. Union of India, (1978) 2 SCR 621 : (AIR 1978 SC 597) that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of that Article. It is necessary, therefore, that the law as enacted by the legislature and as administered by the courts must radically change its approach to pretrial detention and ensure 'reasonable, just and fair' procedure which has creative connotation after Meneka Gandhi's case (supra).

3. Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor the courts mechanically and as a matter of course insist that the accused should produce

sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical privations of jail life, (2) they are prevented from contributing to the preparation of their defence and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family. It is here that the poor find our legal and judicial system oppressive and heavily weighed against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor. The Legal Aid Committee appointed by the Government of Gujarat under the Chairmanship of one of us, Mr. Justice Bhagwati, emphasised this glaring inequality in the following words:

"The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhatten Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail as fixed by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount."

The Gujarat Committee also pointed out how the practice of fixing the amount of bail with reference to the nature of the charge without taking into account relevant factors, such as the individual financial circumstances of the accused and the probability of his fleeing before trial, is harsh and oppressive and discriminates against the poor.

"The discriminatory nature of the bail system becomes all the more acute by reason of the

mechanical way in which it is customarily operated. It is no doubt true that theoretically the Magistrate has broad discretion in fixing the amount of bail but in practice it seems that the amount of bail depends almost always on the seriousness of the offence. It is fixed according to a schedule related to the nature of the charge. Little weight is given either to the probability that the accused will attempt to flee before his trial or to his individual financial circumstances, the very factors which seem most relevant if the purpose of bail is to assure the appearance of the accused at the trial. The result of ignoring these factors and fixing the amount of bail mechanically having regard only to the seriousness of the offence is to discriminate against the poor who are not in the same position as the rich as regards capacity to furnish bail. The Courts by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally produce inequality between the rich and the poor; the rich who is charged with the same offence in the same circumstances is able to secure his release while the poor is unable to do so on account of his poverty. These are some of the major defects in the bail system as it is operated today."

The same anguish was expressed by President Lyndon B. Johnson at the time of signing the Bail Reforms Act, 1966:

"Today, we join to recognize a major development in our system of criminal justice: the reform of the bail system.

This system has endured - archaic, unjust and virtually unexamined - since the Judiciary Act of 1789.

The principal purpose of bail is to ensure that an accused person will return for trial if he is released after arrest.

How is that purpose met under the present system? The defendant with means can afford to pay bail. He can afford to buy his freedom. But poorer defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any more likely to flee before trial.

He stays in jail for one reason only - because he is poor...."

The bail system, as it operates today, is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pretrial release without jeopardizing the interest of justice.

4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. Of course it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pretrial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our Courts in regard to pretrial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:

1. the length of his residence in the community,

2. his employment status, history and his financial condition,

3. his family ties and relationships,

4. his reputation, character and monetary condition,

5. his prior criminal record including any record or prior release on recognizance or on bail,

6. the identity of responsible members of the community who would vouch for his reliability.

7. the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and

8. any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear.

If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the court may not release the accused on his personal bond and may insist on bail with sureties. But in the majority of cases, considerations like family ties and relationship, roots in the community, employment status etc. may prevail with the court in releasing the accused on his personal bond had particularly in cases where the offence is not grave and the accused is poor or belongs to a weaker section of the community, release on personal bond could, as far as possible, be preferred. But even while releasing the accused on personal bond it is necessary to caution the court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond. Moreover, when the accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the court - and what we have said here in regard to the court must apply equally in relation to the police while granting bail - that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited. The inquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. We have no doubt that if the system of bail, even under the existing law, is administered in the manner we have indicated in this judgment, it would go a long way towards relieving hardship of the poor and to help them to secure pretrial release from incarceration. It is for this reason we have directed the

under-trail prisoner whose names are given in the two issues of the Indian Express should be released forthwith on their personal bond. We should have ordinarily said that personal bond to be executed by them should be with monetary obligation, but we directed as an exceptional measure that there need be no monetary obligation in the personal bond because we found that all these persons have been in jail without trial for several years, and in some cases for offences for which the punishment would in all probability be less than the period of their detention and moreover, the order we were making was merely an interim order. The peculiar facts and circumstances of the case dictated such an unusual course.

5. There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under-trail prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year on the commencement of the trial is bad enough: how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that,

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

So also Article 3 of the European Convention on Human Rights provides that,

"every one arrested or detained - shall be entitled to trial within a reasonable time or to release pending trial."

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India (AIR 1978 SC 597). We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, far or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and

essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Art. 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21? That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date. But one thing is certain and we cannot impress it too strongly on the State Government that it is high time that the State Government realised its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases. We may point out that it would not be enough merely to establish more courts but the State Government would also have to man them by competent Judges and whatever is necessary for the purpose of recruiting competent Judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word.

6. these are the reasons for which we made our order dated 5th February, 1979. We shall now proceed to hear the writ petition on 19th February, 1979.

7. **PATHAK, J :-** It is indisputable that an unnecessarily prolonged detention in prison of under-trials before being brought to trial is an affront to all civilized norms of human liberty. Any meaningful concept of individual liberty which forms the bedrock of a civilized legal system must view with distress patently long periods of imprisonment before persons awaiting trial can receive the attention of the administration of justice. The primary principle of criminal law is that imprisonment may follow a judgment of guilt. But should not precede it. But there is another principle which makes it desirable to ensure that the accused is present to receive his sentence in the event of being found guilty. Now, the Code of criminal Procedure, both the old Code and the new, include provision for the release of a person on bail or on the execution of a bond without sureties for his appearance. Nonetheless, as appears prima facie from the record before us, a large number of persons whose names, find mention in copies of the Indian Express of Jan. 8 and 9, 1979, have been in prison for long years without even being brought to trial. Although sufficient opportunity was given to the State of Bihar to meet the allegations made, it is unfortunate that no one has appeared on behalf of the State. In view of the importance of the questions arising on the habeas corpus petition, we have provided further opportunity to the State to appear and accordingly have posted the petition for final hearing on February 19, 1979. But at the same time we see no reason why interim relief should be denied to these under-trials. After carefully considering what has been said in respect of each individual under-trial, we have considered it appropriate, in the interests of justice, to make the order of February 5, 1979 directing the release of the persons mentioned in that order on their executing a personal bond. The order is somewhat unusual in that it directs that the personal bond to be taken in each case should not be based on any monetary obligation. The condition has been included as an exceptional measure, under the persuasive pressure of the particular facts and circumstances of the case.

8. In regard to the exercise of the judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance, I have to say this briefly. There is an amplitude of power in this regard within the existing provisions of the Code of Criminal Procedure and it for the Courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. I think it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the under-trial does not flee or hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account1 A synoptic impression of what the considerations could be may be drawn from the following provision in the United States Bail Reform Act of 1966:

1 . Section 440. Code of Criminal Procedure.

"In determining which conditions of releases will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and menta condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings."2

2 . 18 U.S.S. 3146 (b).

These are considerations which should be kept in mind when determining the amount of the security or monetary obligation. Perhaps, if this is done the abuses attendant on the prevailing system of pre-trial release in India could be avoided or, in any event, greatly reduced. See Moti Ram v. State of Madhya Pradesh, (1978) 4 SCC 47 : (AIR 1978 SC 1594).

9. I consider it desirable to refrain from making any final comment or observation on the legality and propriety of the continued detention of the under-trial prisoners whether on the ground of infringement of Article 21 of the Constitution or on other grounds. That, I think, should await the final determination of the habeas corpus petition.

10. These are the reasons which have influenced me in making the order dated February 5, 1979.

11. While concluding, it seems desirable to draw attention to the absence of an explicit provision in

the Code of Criminal Procedure enabling the release, in appropriate cases, of an under-trial prisoner on his bond without sureties and without any monetary obligation. There is urgent need for a clear provision. Undeniably, the thousands of under-trial prisoners lodged in Indian prisons today include many who are unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance. Where that is the only reason for their continued incarceration, there may be good ground for complaining of invidious discrimination. The more so under a constitutional system which promises social equality and social justice to all of its citizens. The deprivation of liberty for the reason of financial poverty only is an incongruous element in a society aspiring to the achievement of these constitutional objectives. There are sufficient guarantees for appearance in the host of considerations to which reference has been made earlier and, it seems to me, our law-makers would take an important step in defence of individual liberty if appropriate provision was made in the statute for nonfinancial releases.

12. **ORDER** (Dated Feb 26, 1979 by P. N. Bhagwati and A. P. Sen, JJ.) :- The Government of Bihar has filed before us a note containing the proposed clarification of paragraph 2 (e) of the Government Order dated 9th February, 1979, pursuant to the suggestion made by us in our order dated 19th February, 1979. This clarification states in paragraph one that where the police investigation in a case has been delayed by over two years, the Superintendent of Police will see to it that the investigation is completed expeditiously and final report or charge-sheet is submitted by the police as quickly as possible and the responsibility to ensure this has been laid personally on the Superintendent of Police. We are glad to note that the State government has responded to our suggestion but we are not at all sure whether it is enough merely to provide that the investigation would be completed expeditiously and the final report or charge-sheet submitted as quickly as possible. We are of the view that a reasonable time limit should be set by the State Government within which these steps should be taken, so that no further delay is occasioned in the submission of the final report or charge-sheet. We fail to see how any police investigation can take so long as two years and if police investigation cannot be completed within two years, then there must be something radically wrong with the police force in the State of Bihar. It appears that there are a number of cases where police investigation has not been completed for over two years and persons have been in jail as under-trial prisoners for long periods. This is a shocking state of affairs so far as the administration of law and order is concerned. We would, therefore, suggest that in those cases where police investigation has been delayed by over two years, the final report or charge-sheet must be submitted by the police within a further period of three months and if that is not done, the State Government might well withdraw such cases, because if after a period of over two years plus an additional period of three months, the police is not able to file a charge-sheet, one can reasonably assume that there is no case against the arrested persons.

13. The Government of Bihar has also filed a counter-affidavit made by Mr. Mrinmaya Choudhury, Assistant Inspector General of Prisons (1), Bihar setting out the particulars in regard to 18 under-trial prisoners who have been ordered to be released by us on their personal bond. The particulars given in this counter-affidavit make very distressing reading. It appears from this counter-affidavit that there are quite a few women prisoners who are in jail without even being accused of any offence, merely because they happen to be victims of an offence or they are required for the purpose of giving evidence or they are in "protective custody". The expression 'protective custody' is a euphemism calculated to disguise what is really and in truth nothing but imprisonment. It is an

expression intended to appease the conscience. It cannot be gainsaid that women who have been kept in jail under the guise of 'protective custody' have suffered involuntary deprivation of liberty for long periods without any fault on their part. We may point out that this so called 'protective custody' is nothing short of a blatant violation of personal liberty guaranteed under Article 21 of the Constitution, because we are not aware of any provision of law under which a woman can be kept in jail by way of 'protective custody' or merely because she is required for the purpose of giving evidence. The Government in a social welfare State must set up rescue and welfare homes for the purpose of taking care of women and children who have nowwhere else to go and who are otherwise uncared for by the society. It is the duty of Government to protect women and children who are homeless or destitute and it is surprising that the Government of Bihar should have come forward with the explanation that they were constrained to keep women in "protective custody" in jail because a welfare home maintained by the State was shut down. We direct that all women and children who are in the jails in the State of Bihar under 'protective custody' or who are in jail because their presence is required for giving evidence or who are victims of offence should be released and taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after.

14. We also find from the counter affidavit that Bhola Mahto was in jail from 23rd November, 1968 until 16th February, 1979 when he was released on his personal bond pursuant to the directions given by us by our order dated 5th February, 1979. He is accused in a case under Sections 363 and 368 of the Indian Penal Code and he was committed to the Court of Session on 13th September, 1972 but his sessions trial has not yet commenced. It is amazing that a sessions trial of a person committed to the Court of Session as far back as 13th September, 1972 should not have even commenced for about seven years. We direct that the Session Judge, Patna should forward to this Court through the High Court of Patna an explanation as to why the sessions trial of Bhola Mahto has not yet commenced. This is also a matter to which we would invite the attention of the High Court of Patna. The same may be said also of Ram Sagar Mistry who was admitted in jail on 28th March, 1971 and committed to the Court of Session on 28th June, 1972 on a charge under Section 395 of the Indian Penal Code but whose trial has not yet commenced before the Court of Session though a period of more than six years has elapsed since the date of his commitment and a period of eight years since the date of his imprisonment.

15. The counter-affidavit shows that Babloo Rai who is reported to be a Naxalite is in jail since 15th May, 1975. He is alleged to be involved in five cases which are set out in the counter affidavit. So far as he is concerned, it will be open to him to make an application to the Magistrate before whom he is produced, for being released on bail or on his personal bond and the Magistrate will deal with his application in accordance with the broad guidelines laid down by us in our judgment dated 12th February, 1979.

16. We are not all sure on reading the counter-affidavit whether the under-trial prisoners whose particulars are given there, are being produced periodically before the Magistrate a required by the proviso to Section 167 (2) of the Code of Criminal Procedure, 1973. we should like to know from the Government in a proper affidavit to be filed before us on or before 3rd March, 1979 whether

these under-trial prisoners were periodically produced before the Magistrate in compliance with the requirement of the proviso to S. 167 (2). The proviso to Section 167 (2) says that the Magistrate may authorise the detention of the accused person beyond the period of 15 days if he is satisfied that adequate grounds exist for doing so. We hope and trust that in these cases the Magistrates concerned did not act mechanically but applied their mind and satisfied themselves that adequate grounds existed for remanding these persons to judicial custody from time to time over a period varying from two to ten years, though we fail to see how the Magistrates could possibly have been satisfied about the existence of adequate grounds for remanding these persons to judicial custody for such long periods of time ranging from two to ten years for the purpose of police investigation. This is also a matter which we would like the High Court of Patna to consider after making a detailed inquiry.

17. The Government of Bihar has also filed before us a list giving particulars of the under-trial prisoners who are confined in 17 jails in Bihar for more than 18 months as on 1st Feb., 1979. The chart shows that there are under-trial prisoners confined in these jails for long periods of time and sometimes even exceeding the maximum punishment which could be awarded to them even if they are found guilty of the offences charged against them. To take an example, we find at Item 30 one Lambodar Gorain has been in Ranchi Jail since 18th June, 1970 for an offence under Section 25 of the Arms Act for which the maximum punishment is two years, with the result that he has been in jail as an under-trial prisoner for 8 1/2 years for an offence for which even if convicted, he could not have been awarded more than two years' imprisonment. There are many such cases in the chart, but it is not possible to identify them easily from the chart because the chart contains a large number of names of under-trial prisoners. We would, therefore, direct the Government of Bihar to submit to us on or before 3rd March, 1979 a revised chart showing yearwise break-up of the particulars of the under-trial prisoner in these jails after dividing them broadly into two categories, one of minor offences and the other, of major offences.

18. Our attention has also been drawn to Section 468 of the Code of Criminal Procedure 1973 which in sub-section (1) provides that except as otherwise provided elsewhere in the Code, no court shall take cognizance of an offence of the category specified in subsection (2) after the expiry of the period of limitation and under sub-section (2) the period of limitation provided is six months, if the offence is punishable with fine only, one year if the offence is punishable with imprisonment for a term not exceeding one year and three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. It would, therefore, be seen that the under-trial prisoners against whom chargesheets have not been filed by the police within the period of limitation provided in sub-section (2) of Section 468 cannot be proceeded against at all and they would be entitled to be released forthwith, as their further detention would be unlawful and in violation of their fundamental right under Article 21. We, therefore, direct the Government of Bihar to scrutinise the cases of undertrial prisoners charged with offences which are punishable with fine only or punishable with imprisonment for a term not exceeding one year or punishable with imprisonment for a term exceeding one year but not exceeding three years and release such of them who are not liable to be proceeded against by reason of the period of limitation having expired. This direction shall be carried out by the Government of Bihar within a period of six weeks from today and compliance reports containing particulars shall be submitted to this court, first at the end of four weeks and then at the end of the next two weeks.

19. We also find from Sec. 167 (5) of the Code of Criminal Procedure, 1973 that if in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence, unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary. We are not at all sure whether this provision has been complied with, because there are quite a few cases where the offences charged against the under-trail prisoners are triabal as summons cases and yet they are languishing in jail for a long number of years far exceeding six months. We, therefore, direct the Government of Bihar to inquire into these cases and where it is found that the investigation has been going on for a period of more than six months without satisfying the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary, the Government of Bihar will release the under-trial prisoners, unless the necessary orders of the Magistrate are obtained within a period of one month from today. We would also request the High Court to look into this matter and satisfy itself whether the Magistrates in Bihar have been complying with the provisions of S. 167 (5).

20. We adjourn the hearing of the Writ Petition to 5th March, 1979 and on that date, we shall proceed to hear and dispose of the Writ Petition on merits on the various questions arising for determination.

Ordered accordingly.