SUPREME COURT OF INDIA

Dharmendra Kirthal

Vs.

State of U.P.

Writ Petition (Crl.) No. 100 of 2010

(H.L.Gokhale and Dipak Misra JJ.)

02.08.2013

JUDGMENT

DIPAK MISRA, J.

1. In this writ petition preferred under Article 32 of the Constitution of India, the petitioner who is undergoing trial before the learned Special Judge, District Baghpat, U.P., has called in question the constitutional validity of number of provisions of the Uttar Pradesh Gangsters and Anti- Social Activities (Prevention) Act, 1986 (Act 7 of 1986) (for short "the Act") being violative of Articles 14, 21, 22(4) and 300A of the Constitution of India and further prayed for issue of a writ of certiorari for quashment of the First Information Report dated 2.5.2010 giving rise to Crime No. 100 of 2010 registered at Police Station Ramala, District Baghpat.

2. At the very outset, it is imperative to state that this Court, on 20th September, 2010, while issuing notice, had passed the following order: -

> "Issue notice in regard to the validity of Section 12 of the U.P. Gangster & Anti-Social Activities (Prevention) Act, 1986."
>
> Regard being had to the aforesaid, we shall only dwell upon and delve into the constitutional validity of the section 12 of the Act.

3. It is necessary to state here that the validity of the Act was called in question before the High Court of Judicature at Allahabad and a Full Bench of the High Court in Ashok Kumar Dixit v. State of U.P. and another[1] upheld the

constitutional validity and dismissed the writ petition. The assail to the constitutional validity travelled to this Court in Subhash Yadav v. State of U.P. andanother[2] and a two-Judge Bench of this Court referred the matter to the Constitution Bench by stating thus: -

> "Heard learned counsel for the parties at some length.
>
> We are informed that the question of vires of the Terrorist Affected Areas (Special Courts Act) 1984, is pending before a Constitution Bench. In the light of this, in our opinion, it would be proper that these matters wherein the constitutional validity of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, is challenged, should also be heard by the Constitution Bench."

4. When the matter was listed before the Constitution Bench along with connected matters, the larger Bench in Kartar Singh v. State of Punjab[3] observed as follows:-

> "Though originally, a number of other matters falling under various Acts such as the U.P. Gangsters and Anti-social Activities (Prevention) Act, 1986 (U.P. Act 7 of 1986), the Prevention of Illicit Traffic of Narcotics Drugs and Psychotropic Substances Act, 1988 and some provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), were listed for hearing, we have fully and conclusively heard only the matters pertaining to the Act of 1984, Act of 1985 and Act of 1987 and U.P. Act 16 of 1976."

5. Thus, the constitutional validity of the Act was not decided by the said Constitution Bench. Thereafter, the matters relating to this Act were placed before another Constitution Bench. The Court, in Subhash Yadav v. State of U.P. and another[4], took note of the challenge and the decision rendered in Ashok Kumar Dixit (supra) and observed thus: -

> "3. We had started hearing arguments in the writ petitions when the matters remained part-heard. We have now been informed that Subhash Yadav, petitioner in Writ Petition (Crl.) No. 317 of 1987 was discharged by the trial court as early as on 3-4-1990 while Amar Mani Tripathi, petitioner in Writ Petition (Crl.) No. 407 of 1987 was acquitted by the trial court on 20-5-1992. Learned counsel for Jitender, petitioner in Writ Petition (Crl.) No. 562 of 1987 submits that despite numerous attempts made to contact the

petitioner and find out about the position of the criminal case against him, there is no response. Learned counsel has, therefore, reported no instructions to pursue the writ petition any further.

4. In view of the developments which have taken place by the discharge of petitioner Subhash Yadav and acquittal of petitioner Amar Mani Tripathi and no instructions having been reported on behalf of petitioner Jitender, nothing survives for consideration in these writ petitions, as the exercise to determine the constitutional validity of the Act, would now be only of an academic interest insofar as these cases are concerned. Writ Petitions (Crl.) Nos. 317 and 407 of 1987 are, therefore, dismissed as infructuous while Writ Petition (Crl.) No. 562 of 1987 is dismissed for non-prosecution."

6. In view of the aforesaid position, the constitutional validity of the Act is still alive, but as a restricted notice was issued pertaining only to the validity of Section 12 of the Act and the learned counsel for the parties confined their submissions in that regard, we would, as stated earlier, address ourselves singularly on that point. Be it noted, Section 12 of the Act provides that the trial under the Act of any offence by special court shall have precedence over the trial of any other case against the accused in any other court and shall be concluded in preference to the trial of such other case and accordingly trial of such other case shall remain in abeyance.

7. We have heard Mr. D.K. Garg, learned counsel for the petitioner, and Mr. Irshad Ahmad, learned Additional Advocate General for the State of U.P.

8. Assailing the validity of the said provision, Mr. Garg, learned counsel for the petitioner, has raised the following contentions: -

a) The provision frustrates the basic tenet of Article 21 of the Constitution as has been interpreted by this Court to encapsulate in a sacrosanct manner the concept of speedy and fair trial, for the trial before the other courts are kept in abeyance and precedence is given to the trial before the special courts under this Act as a consequence of which the trial in other Court does not take place.

b) The precedence conferred on the cases before the special courts tantamounts to illegal detention of an accused as he is deprived of his liberty as the trial in other cases are not allowed to proceed and the accused is compelled to languish in custody.

c) The detention which is virtually in the nature of a preventive detention violates Article 22(4) of the Constitution.

d) The accused, who is tried by the special courts under this Act, is treated differently because trial in other courts are kept in abeyance whereas the accused tried by other courts gets the benefit of speedy trial. There is no justification to treat the accused under this Act in such a manner as it violates the equal treatment before the law as envisaged under Article 14 of the Constitution.

9. Mr. Irshad Ahmad, learned Additional Advocate General for the State of U.P., resisting the aforesaid proponements, contended as follows:-

i) The submission that the fundamental concept of speedy trial is throttled and stifled is neither correct nor sustainable as, on the contrary, the purpose of the legislature is to guarantee speedy trial by providing the precedence of the trial under this Act over other cases and keeping other cases before other courts in abeyance. From the scanning of the scheme of the Act, the emphasis on speedy trial is luminous and, hence, the ground urged on this score deserves to be repelled.

ii) The liberty of the accused is not jeopardized but schematic canvas and conceptual interpretation would reveal that the command of the legislature is for speedy trial and further there are provisions for grant of bail.

iii) The contention that it is in the nature of preventive detention has no legs to stand upon as preventive detention and detention in connection with the crime under the Act have different connotations altogether.

iv) The accused in other cases, who is not tried under this Act, stands on a different footing altogether and such a classification is permissible in the constitutional backdrop and, therefore, it does not invite the frown of Article 14 of the Constitution.

10. To appreciate the rival submissions raised at the Bar in their proper perspective, we think it seemly to refer to the Statement of Objects and reasons of the Act which is as follows: -

> "Gangsterism and anti-social activities were on the increase in the State posing threat to lives and properties of the citizens. The existing measures were not found effective enough to cope with this new menace. With a view to break the gangs by punishing the gangsters and to nip in the bud their conspiratoral designs it was considered necessary to make special provisions for the prevention of, and for coping with gangsters and anti-social activities in the State.
>
> Since the State Legislature was not in session and immediate legislative action in the matter was necessary, the Uttar Pradesh Gangsters and Anti-social Activities (Prevention) Ordinance 1986 (U.P. Ordinance No. 4 of 1986) was promulgated by the Governor on January 15, 1986, after obtaining prior instructions of the President.
>
> The Uttar Pradesh Gangsters and Antisocial Activities (Prevention) Bill, 1986 is accordingly introduced with certain necessary modifications to replace the aforesaid Ordinance."

11. The Preamble of the Act reads as follows: -

> "An Act to make special provisions for the prevention of, and for coping with gangsters and anti-social activities and for matters connected therewith or incidental thereto."

12. Reference to the Statement of Objects and Reasons and the Preamble of the Act is meant to appreciate the background and purpose of the legislation. In this context we may refer with profit to the dictum in Gujarat University and another v. Shri Krishna Ranganath Mudholkar and others[5], where the majority observed as follows: -

> "Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute, but in interpreting the Statute they must be ignored."

13. In Shashikant Laxman Kale and another v. Union of India and another[6], a three-Judge Bench of this Court has expressed: -

> "For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was

passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady."

14. In New India Assurance Co. Ltd. v. Asha Rani and others[7], the Court referred to the Statement of Objects and Reasons of the Motor Vehicles Amendment Act, 1994 to understand the purpose behind the legislation.

15. The Statement of Objects and Reasons and Preamble make it quite clear that the Legislature felt the compulsion to make special provisions against gangsterism and anti-social activities. While speaking about terrorism, the majority in Kartar Singh (supra) opined that it is much more rather a grave emergent situation created either by external forces particularly at the frontiers of this country or by anti-nationals throwing a challenge to the very existence and sovereignty of the country in its democratic polity. The learned Judges put it on a higher plane than public order disturbing the "even tempo of the life of community of any specified locality" as has been stated by Hidayatullah, C.J., in Arun Ghosh v. State of West Bengal[8].

16. The present Act deals with gangs and gangsters to prevent organized crime. Section 2 of the Act is the dictionary clause. Section 2(b) defines the term "gang" and we think it apt to quote the relevant part which is as follows: -

> ""Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti- social activities"
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> After so defining, the legislature has stipulated the offences which are punishable under the Act, but they need not be referred to.

17. The term "gangster" has been defined under Section 2(c) which is as follows: -

> ""gangster" means a member or leader or organizer of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities."

18. Section 3 of the Act deals with penalty. It is apt to reproduce the same:-

> "3. Penalty. –
>
> (1) A gangster, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:
>
> Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.
>
> (2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any Court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine."

19. Section 5 of the Act deals with Special Courts and Section 5(1) provides that for the interest of speedy trial of offences under this Act, the State Government may, if it considers necessary, constitute one or more special courts. Section 7 deals with the jurisdiction of the Special Courts. Section 7(1) provides that notwithstanding anything contained in the Code, where a Special Court has been constituted for any local area, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Special Court within whose local jurisdiction it was committed, whether before or after the constitution of such Special Court. Sub-section (2) of Section 7 lays the postulate that all cases triable by a Special Court, which immediately before the constitution of such Special Court were pending before any court, shall on creation of such Special Court having jurisdiction over such cases, stand transferred to it.

20. Section 8 deals with the power of Special Courts with respect to other offences which reads as follows: -

> "8. Power of Special Courts with respect to other offences. –

(1) When trying any offence punishable under this Act a Special Court may also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial.

(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof."

21. Section 10 provides the procedure and powers of Special Courts and Section 11 provides for protection of witnesses. Section 12, the validity of which is under attack, is as follows:-

> "12. Trial by Special Courts to have precedence. – The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance."

22. At this juncture, we may profitably recapitulate that it is the duty of the Court to uphold the constitutional validity of a statute and that there is always the presumption in favour of the constitutionality of an enactment. In this context, we may fruitfully refer to the decision inCharanjit Lal Chowdhury v. The Union of India and others[9] wherein it has been ruled thus:-

> "It is the accepted doctrine of American Courts, which I consider to be well founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles."

23. In Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others[10], this Court had ruled that there is always a presumption in favour of the constitutionality of an enactment and the burden is on him who challenges the same to show that there has been a clear transgression of the constitutional principles and it is the duty of the Court to sustain that there is a presumption of constitutionality and in

doing so, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislations.

24. In State of Bihar and others v. Bihar Distillery Limited[11], the said principle was reiterated.

25. In Burrakur Coal Co. Ltd. v. Union of India[12], Mudholkar, J., speaking for the Constitution Bench, observed: -

> "Where the validity of a law made by a competent legislature is challenged in a court of law, that court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained."

26. In Pathumma and others v. State of Kerala and others[13], the seven- Judge Bench has opined thus:-

> "The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people. This Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interests of society, so that when such a right clashes with the larger interest of the country it must yield to the latter."

> Again in the said judgment, it has been ruled thus: -

> "It is obvious that the Legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds."

27. The said principles have been reiterated by the majority in another Constitution Bench in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others[14].

28. At this juncture, we think it condign to sit in a time machine and refer to the opinion expressed by Krishna Iyer, J., in R.S. Joshi, Sales Tax Officer, Gujarat and others v. Ajit Mills Limited and another[15]: -

> "A prefatory caveat. When examining a legislation from the angle of its vires, the Court has to be resilient, not rigid, forward-looking, not static, liberal, not verbal – in interpreting the organic law of the nation. We must also remember the constitutional proposition enunciated by the U.S. Supreme Court in Munn v. Illinois[16] viz., 'that courts do not substitute their social and economic beliefs for the judgment of legislative bodies'. Moreover, while trespasses will not be forgiven, a presumption of constitutionality must colour judicial construction. These factors, recognized by our Court, are essential to the modus vivendi between the judicial and legislative branches of the State, both working beneath the canopy of the Constitution."

29. We have referred to the aforesaid authorities for the sanguine reason that the submissions raised at the Bar are to be considered in the backdrop of the aforesaid "caveat". The "Modus Vivendi" which needs a purposive and constructive ratiocination while engaged in the viceration of the provision, which draws its strength and stimulus in its variations from the Constitution, we have to see whether the provision trespasses the quintessential characteristics of the Organic Law and, therefore, should not be allowed to stand.

30. Keeping the aforesaid enunciation in view, we shall presently proceed to deal with the stand and stance of both the sides. The first submission which pertains to the denial of speedy trial has been interpreted to be a facet of Article 21 of the Constitution. In Kartar Singh (supra), the majority, speaking through Pandian,J., has expressed thus: -

> "85. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for

> quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.
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> 86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure."

31. Be it noted, the Court also referred to the pronouncements in Hussainara Khatoon (I) v. Home Secretary, State of Bihar[17], Sunil Batra v. Delhi Administration (I)[18], Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, Patna[19], Hussainara Khatoon (VI) v. Home Secretary, State of Bihar, Govt. of Bihar, Patna[20], Kadra Pahadia v. State of Bihar (II)[21], T.V. Vatheeswaran v. State of T.N.[22], and Abdul Rehman Antulay v. R.S. Nayak[23].

32. The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial of such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial.

33. As far as fair trial is concerned, needless to emphasise, it is an integral part of the very soul of Article 21 of the Constitution. Fair trial is the quintessentiality of

apposite dispensation of criminal justice. In Zahira Habibulla H. Sheikh and another v. State of Gujarat and others[24], it has been held as follows: -

> "33. The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation—peculiar at times and related to the nature of crime, persons involved—directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system."

>> In the said case, emphasis was laid on the triangulation of the interest of the accused, the victim and the society and stress was further laid on the fact that it is the community that acts through the State and the prosecuting agencies and the interests of the society are not to be treated completely with disdain and as persona non grata. In paragraphs 39 and 40 of the said judgment, it has been ruled thus: -

>> "39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

> 40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

34. In Mohd. Hussain alias Julfikar Ali v. State (Government of NCT of Delhi)[25], this Court observed that "speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the right of the accused to fair trial. Unlike the right of the accused to fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself.

35. Same principle was reiterated in Niranjan Hemchandra Sashittal and another v. State of Maharashtra[26].

36. On a careful scrutiny of the provision, it is quite vivid that the trial is not hampered as the trial in other courts is to remain in abeyance by the legislative command. Thus, the question of procrastination of trial does not arise. As the trial under the Act would be in progress, the accused would have the fullest opportunity to defend himself and there cannot be denial of fair trial. Thus, in our considered opinion, the aforesaid provision does not frustrate the concept of fair and speedy trial which are the imperative facets of Article 21 of the Constitution.

37. The next limb of attack pertains to scuttling of liberty of the person who is made an accused for an offence under the Act. There can never be any shadow of doubt that sans liberty, the human dignity is likely to be comatosed. The liberty of an individual cannot be allowed to live on the support of a ventilator. Long back in the glory of liberty, Henry Patrick, had to say this:-

> "Is life so dear, or peace so sweet as to be purchased at the price of chains and slavery? – Forbid it, Almighty God! – I know not what course others may take, but, as for me, give me liberty or give me death.[27]"

38. When the liberty of an individual is atrophied, there is a feeling of winter of discontent. Personal liberty has its own glory and is to be put on a pedestal in trial to try offenders, it is controlled by the concept of "rational liberty". In essence, liberty of an individual should not be allowed to be eroded but every individual has an obligation to see that he does not violate the laws of the land or affect others' lawful liberty to lose his own. The cry of liberty is not to be confused with or misunderstood as unconcerned senile shout for freedom. It may be apt to add here that the protection of the collective is the bone marrow and that is why liberty in a civilized society cannot be absolute. It is the duty of the courts to uphold the dignity of personal liberty. It is also the duty of the court to see whether the individual crosses the "Lakshman Rekha" that is carved out by law is dealt with appropriately. In this context, we may profitably reproduce a passage from the judgment in Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another[28]: -

> "17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society.

> However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

39. From the aforesaid, it is quite clear that no individual has any right to hazard others' liberty. The body polity governed by Rule of law does not permit anti-social acts that lead to a disorderly society. Keeping the aforesaid perspective in view, the submission of the learned counsel for the petitioner and the argument advanced in oppugnation by the learned counsel for the respondent are to be appreciated. It is urged that an accused tried under this Act suffers detention as the trial in other cases are not allowed to proceed. As far as other cases are concerned, there is no prohibition to move an application taking recourse to the appropriate provision under the Code of Criminal Procedure for grant of bail. What is stipulated under Section 12 of the Act is that the trial in other case is to be kept in abeyance. Special courts have been conferred with the power to try any other offence with which the accused under the Act is charged at the same trial. Quite apart from the above, the Act empowers the special courts to grant bail to an accused under the Act though the provision is rigorous. Sections 19(4) and 19(5) deal with the same. They are as follows: -

> "19. Modified application of certain provisions of the Code –
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> > (4) 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.

(5) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code."

40. The said provisions are akin to the provisions contained in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

41. The provision under Section 37 of the NDPS Act, though lays conditions precedent and they are in addition to what has been stipulated in the Code of Criminal Procedure, yet there is no deprivation of liberty. Be it noted, a more stringent provision is contained in MCOCA under Section 21 (5). It reads as under:-

> "21(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question."
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> A three-Judge Bench in State of Maharashtra v. Bharat Shanti Lal Shah and Others[29] dealing with said facet has opined thus:-
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> "63. As discussed above the object of MCOCA is to prevent the organized crime and, therefore, there could be reason to deny consideration of grant of bail if one has committed a similar offence once again after being released on bail but the same consideration cannot be extended to a person who commits an offence under some other Act, for commission of an offence under some other Act would not be in any case in consonance with the object of the Act which is enacted in order to prevent only organized crime."
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> Thereafter, the learned judges observed that the expression "or under any other Act" in the provision being discriminatory was violative of Articles 14 and 21 of the Constitution. Such a provision is absent in Section 19 of the Act. Thus, there being a provision for grant of bail, though restricted, we are

disposed to think that the contention that the accused is compelled to languish in custody because of detention under the Act does not deserve acceptation and is, accordingly, negatived.

42. The next submission of the learned counsel is that it is in the nature of preventive detention as is understood under Article 22(4) of the Constitution of India. The said contention is to be taken note of only to be rejected, for the concept of preventive detention is not even remotely attracted to the arrest and detention for an offence under the Act.

43. The next proponement, as noted, pertains to the violation of the equality clause as enshrined under Article 14 of the Constitution. Mr. Garg has endeavoured to impress upon us that the accused who is only tried by other courts gets the benefit of speedy trial whereas the accused tried under this Act has to suffer because trial in other courts are kept in abeyance. We have already expressed our view that the concept of speedy and fair trial is neither smothered nor scuttled when the trial in other courts are kept in abeyance. As far as Article 14 is concerned, we do not perceive that the procedure provided in the Act tantamounts to denial of fundamental fairness in trial. It does not really shock the judicial conscience and by no stretch of imagination, it can be said to be an anathema to the sense of justice. It is neither unfair nor arbitrary. It is apposite to note here that there is a distinction between an accused who faces trial in other courts and the accused in the special courts because the accused herein is tried by the Special Court as he is a gangster as defined under Section 2(c) of the Act and is involved in anti-social activities with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person.

44. It is a crime of a different nature. Apart from normal criminality, the accused is also involved in organized crime for a different purpose and motive. The accused persons under the Act belong to altogether a different category. The legislature has felt that they are to be dealt with in a different manner and, accordingly, the trial is mandated to be held by the special courts in an expeditious manner. The intention of the legislature is to curb such kind of organized crimes which have become epidemic in the society. In Kartar Singh (supra), the majority has said, "Legislation begins where Evil begins". The legislature, as it seems to us, being guided by its sacrosanct duty to protect the individual members of society to enjoy their rights without fear and see that some people do not become a menace to the society in a singular or collective manner, has enacted such a provision. In this context, we may refer with profit to the authority in The Works Manager, Central Railway Workshop, Jhansi v. Vishwanath and others[30], wherein a three- Judge Bench,

though in a different context, has observed that certain types of enactments are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms. We have referred to the said observations only to highlight how the legislature in a welfare State immediately steps in for social reforms to eradicate social vices. Similarly, sometimes it is compelled to take steps to control the frenzied criminal action of some anti-social people. In the case at hand it can be stated with certitude that the legislature has felt that there should be curtailment of the activities of the gangsters and, accordingly, provided for stern delineation with such activities to establish stability in society where citizens can live in peace and enjoy a secured life. It has to be kept uppermost in mind that control of crime by making appropriate legislation is the most important duty of the legislature in a democratic polity, for it is necessary to scuttle serious threats to the safety of the citizens. Therefore, the legislature has, in actuality, responded to the actual feelings and requirements of the collective.

45. Thus, the accused under the Act is in a distinct category and the differentiation between the two, namely, a person arrayed as an accused in respect of offences under other Acts and an accused under the Act is a rational one. It cannot be said to be arbitrary. It does not defeat the concept of permissible classification. The majority in Kartar Singh (supra) has expressed thus: -

> "218. The principle of legislative classification is an accepted principle whereunder persons may be classified into groups and such groups may differently be treated if there is a reasonable basis for such difference or distinction. The rule of differentiation is that in enacting laws differentiating between different persons or things in different circumstances which govern one set of persons or objects such laws may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different set of circumstances."

46. Tested on the touchstone of the abovestated principles, the irresistible conclusion is that the classification is in the permissible realm of Article 14 of the Constitution. Therefore, the submission that Section 12 invites the wrath of Article 14 of the Constitution is sans substratum and, accordingly, we have no hesitation in repelling the same and we so do.

47. In view of the aforesaid analysis, we uphold the constitutional validity of Section 12 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention)

Act, 1986 as it does not infringe any of the facets of Articles 14 and 21 of the Constitution of India. Ex- consequenti, the writ petition, being devoid of merit, stands dismissed.

[1] AIR 1987 All 235
[2] Writ Petition (Crl.) No. 317 of 1987 dt. 9.12.1987 [3] (1994) 3 SCC 569
[4] (2000) 10 SCC 145
[5] AIR 1963 SC 703
[6] AIR 1990 SC 2114
[7] (2003) 2 SCC 223
[8] (1970) 1 SCC 98
[9] AIR 1951 SC 41
[10] AIR 1958 SC 538
[11] AIR 1997 SC 1511
[12] AIR 1961 SC 954
[13] (1978) 2 SCC 1
[14] (2005) 8 SCC 534
[15] (1977) 4 SCC 98
[16] (1876) 94 US 113 (quoted in Labor Board v. Jones & Laughlin, 391 US 1, 33-34-Corwin, Constitution of the USA, Introduction, p. XXXI)
[17] (1980) 1 SCC 81
[18] (1978) 4 SCC 494
[19] (1980) 1 SCC 98
[20] (1980) 1 SCC 115
[21] (1983) 2 SCC 104
[22] (1983) 2 SCC 68
[23] (1992) 1 SCC 225
[24] (2004) 4 SCC 158
[25] (2012) 9 SCC 408
[26] (2013) 4 SCC 642
[27] HENRY, Patrick, Speech in the Virginia Revoluntionary Council, Richmond, 1175 in Henry, William Writ, Patrick Henry: Life Correspondence and Speeches (New York: Charles Scribner's Sons, 1891), Vol. 1, p.268.
[28] (2012) 9 SCC 446
[29] (2008) 13 SCC 5
[30] (1969) 3 SCC 95