

# ANDHRA PRADESH HIGH COURT

A Narayana Reddy

Vs

State of Andhra Pradesh

(Ramanujulu Naidu, J.)

26.02.1991

## JUDGEMENT

### **Ramanujulu Naidu, J.**

( 1. ) IT is true that in Writ Petitions Nos. 14954, 14986, 15806, 15038, 14975, 14039, 15037, 15022 and 14964 of 1990 disposed of by a Division Bench of this Court, I observed speaking on behalf of the Division Bench : "..... Even under Section 309(2) of the 1973 of Criminal Procedure for remanding an accused person to Judicial custody the requirement of natural justice particularly that of audi alteram partem should be complied with. Production of the accused person is an indispensable requirement of natural justice and fair procedure as the order of remand seeks to deprive him of his personal liberty. Even if S. 309(2) of the Code of Criminal Procedure in terms has not provided a right of hearing before the remand of the accused person the requirement must be read into the same as held by the Supreme Court in Maneka Gandhi v. Union of India, AIR 1978 SC 597." The Division Bench did not, however, held that non-production of the accused person either before the Magistrate or before the Sessions Judge, after filing of the charge-sheet before the Magistrate, or framing of charges by the Sessions Judge, as the case may be would entitle the accused person to grant of bail as a matter of right as no such requirement is enacted in Ss. 309(2), 167(2) of the Code of Criminal Procedure. We, therefore, make it clear that under S. 309(2) of the Code of Criminal Procedure, non-production of the accused person before the court after taking cognizance of an offence is not compulsory or mandatory, and that the Court after taking cognizance of an offence for commencement of trial finds it necessary to postpone commencement of, or adjourn trial, it may do so and may, by a warrant, remand the accused, if in custody. We, however, hasten to add that, if before taking cognizance of an offence, the accused continued to be in detention pursuant to successive orders of remand made by the court without production of the accused, the detention on the date when the court took cognizance of the offence would be illegal, and S. 309(2) of the Code of Criminal Procedure would not cure the illegal detention and the detained accused would be entitled to grant of bail on that account, as held by the Division Bench in the decision just now referred to. We may also add that, it is open to the accused person to move this court, for bail, under the Code of Criminal Procedure, or, under Art. 226 of the Constitution of India to secure his release depending upon facts of each case. The reference is accordingly answered. The learned counsel appearing for the petitioners sought to address arguments on merits of the applications for grant

of bail. This exercise shall be made before the learned single Judge.  
( 2. ) WE therefore, while answering the reference, remit these petitions to N. D. Patnaik, J. for disposal on merits. Order accordingly. ;