

# GUJARAT HIGH COURT

N.H. Dave

Vs.

Mohmed Akhtar Hussain alias Ibrahim alias Iqbal alias Kadar Amad Wagher

Spl. Cri. Appln. No. 585 of 1982

(M.P. Thakkar and R.J. Shah, JJ.)

20.08.1982

## JUDGMENT

**M.P. Thakkar, J.**

1. "Purposeless and Pointless" is a phrase the existentialist philosophers may unhesitatingly employ in connection with their views on "life". But a Court of Law would be extremely reluctant to employ such a phrase in the context of a provision of law enacted by the Parliament in its wisdom. Considerations regarding respect for the law-makers apart, the Court itself would be understandably anxious to interpret a provision in a manner which renders it "meaningless". And if this approach is made it is impossible to assent to the proposition that the whole purpose of empowering a Customs Officer to arrest a person reasonably believed to have committed an offence under the Customs Act is to enable the Magistrate (before and he is required to be produced within twenty-four hours) to see his face and permit him to go without anything more.

2. The Customs Officer it is said, has the power to arrest and release on bail. If he refuses to release him or the arrested person refuses to be released the only power is to produce him before a Magistrate within twenty-four hours. But thereafter he has no power to do anything but to release him. The Magistrate concerned has no power to release on bail or even on personal bond. Nor the power to keep him in judicial custody. The order passed by the learned Chief Metropolitan Magistrate on May, 23, 1982 as per Annexure 'D' below application marked as M/48 made by respondent No. 7 herein (Shri Jayantilal Maneklal Soni) wherein such a view has been taken and the learned Magistrate has ordered release of the said respondent No. 7 who was produced by an officer of customs before him, has been challenged by way of the present petition under Article 227 of the Constitution of India instituted by the Inspector of Customs (P) Ahmadabad. So also the order as per Annexure 'C' passed by the learned Chief Metropolitan Magistrate simultaneously with the impugned order as per Annexure 'D' whereby even the persons who had not made any request for being released from custody, regardless of whether or

not bail was applied for and/or was granted or not, were released, has also been challenged before us by way of the present petition.

3. On April 15, 1982 the Customs Officers of Headquarters (Preventive), Ahmedabad effected a seizure of contraband gold valued at about Rs. 1.40 crores. In connection with this seizure respondents Nos. 1 to 3 and 5 to 8 and one other person were arrested by the Customs Officer. They were arrested on different dates. We do not propose to give the particulars pertaining to the dates of arrest which are specified in paragraph 3 of the petition, as nothing turns on the dates and we do not propose to burden the record with unnecessary details. Each of the arrested persons was taken to the learned Chief Metropolitan Magistrate and produced before him before the expiry of 24 hours. The officer of customs who produced the arrested persons made a request to the learned Chief Metropolitan Magistrate to remand the persons so arrested by him and produced before the learned Magistrate to judicial custody instead of releasing the person arrested by him on bail in exercise of his powers under Section 104(3) of the Customs Act, 1962. Out of the seven persons who were arrested and produced before the learned Magistrate three were remanded to judicial custody. Three were released on bail by the learned Chief Metropolitan Magistrate. One was already detained under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act (COFEPOSA) and accordingly he was not physically produced before the learned Chief Metropolitan Magistrate but a report about his arrest was made within 24 hours to the learned Chief Metropolitan Magistrate for the sake of technical compliance. With the requirement of law (to produce the arrested persons before the Magistrate within 24 hours.) Respondent no. 7 herein, Jayantilal Soni, was one of the three persons who were remanded to judicial custody by the learned Chief Metropolitan Magistrate. He made two applications to the learned Chief Metropolitan Magistrate. One was an application for being released on bail. Another (which was made simultaneously with the application for bail) which was marked as M/48 was for being released forthwith without being required to furnish bail or being required to execute a personal bond. It is this application which has given rise to the present petition in view of the fact that the learned Chief Metropolitan Magistrate upheld his contention that he had no power or authority to remand the arrested person produced before him by an officer of customs to judicial custody or require him to furnish bail or to execute a bond and that in point of fact the Magistrate had no power but to direct that the person so arrested shall be released forthwith without anything more as soon as such a person was produced before the learned Magistrate. And it is legality and validity of this order which has been called in question by the petitioner in the present petition.

4. In order to comprehend the problem and the submission urged by the respective parties it is necessary to have a look at Section 104 of the Customs Act. It reads as under :-

"104. (1) If an officer of Customs empowered in this behalf by general or special order of the Collector of Customs has reason to believe that any person in India or within the Indian Customs Waters has been guilty of an offence punishable under Section 135, he

may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a Magistrate.

(3) Where an officer of Customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and subject to the same provisions as the officer-in-charge of a police station has and in subject to under the Code of Criminal procedure, 1898.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable."

An analysis of the above provisions reveals that :-

(1) A customs officer duly empowered in this behalf has the power to arrest a person in India or within Indian Customs Waters in case the officer concerned has reason to believe that the said person has been guilty of an offence punishable under Section 135 of the Customs Act;

(2) A customs officer who effects such an arrest is under an obligation to take him to a Magistrate without unnecessary delay. (Having regard to the mandate embodied in Article 22(2) of the Constitution of India such person would have to be produced before the nearest Magistrate within 24 hours of the arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate unless authority of the Magistrate is obtained for detaining the person beyond the said period);

(3) The officer of Customs who effects the arrest has the same powers to release the arrested person on bail or otherwise and is subject to the same provisions as an officer-in-charge of a police station has in this behalf under the Code of Criminal Procedure;

(4) An offence under the Customs Act is a non-cognizable offence regardless of whatever might have been mentioned in the Code of Criminal Procedure.

5. What is of importance to realise at this juncture is that Section 104 does not make any provision in regard to the manner in which the arrested person is required to be dealt with by the Magistrate before whom he is taken in obedience to the Mandate contained in Section 104(2). The provision is altogether silent about it. In other words, while Section 104 empowers an officer of Customs to effect an arrest and obliges him to take the person arrested before a Magistrate within the prescribed time limit, it does not make any provision as to how the Magistrate should deal with him when the arrested person is brought before him by the officer of Customs. It is because of the fact that Section 104 is silent in this behalf that the learned Magistrate has taken the view that he has no power to pass any order in regard to the custody of the arrested person when he is brought before him and all that he can do is to be a silent spectator of the fact that the person concerned is brought before him. Having taken a note of the fact that the person has been brought before him (such is his view) he has legal authority to pass any order in regard to the custody of the arrested person. It would also appear to be his view that he would have no power

even to require the arrested person to furnish bail or even to execute a personal bond to appear before any authority when required. It may be stated that if this view were to hold the field, Section 104 would be robbed of all efficacy and the power conferred by the said section to effect arrest of a person in respect of whom the officer of Customs has reason to believe that he has been guilty of an offence punishable under Section 135 would be rendered meaningless and purposeless. What purpose would be served by merely effecting arrest of the person in respect of whom there is reason to believe that he has been guilty of an offence punishable under Section 135 of the Customs Act, if he can arrest him only for the purpose of taking to the Magistrate and releasing him from his custody forthwith without anything more ? The power to arrest would be a power to arrest for no purpose and the obligation to produce will also be superfluous requirement of law or an empty formality to be completed with, for after producing him before the Magistrate the arrested person cannot be subjected to any restriction but would be required to be released forthwith. Why then arrest him ? Why then produced him before the Magistrate ? These are questions which would remain unanswered if the view taken by the learned Magistrate were to be accepted as the correct view of law. So also the arrest of such a person would be a meaningless exercise. The only purpose it could serve would be to apprise the arrested person that the officer of customs has had an occasion to entertain a reasonable belief that he has been guilty of an offence punishable under section 135 of the Customs Act and some harm is likely to fall him in future and therefore he may make himself scarce, secret himself, go underground or go abroad so that he keeps himself away from any likely harm. And so that he may not have face any proceedings in future and has not to incur any risk to his liberty. Counsel for petitioner has stressed his dimension of the matter and has argued that the Magistrate concerned has the power to remand him to judicial custody as also the power to release him on bail or to refuse to release him on bail or to direct his release on executing a personal bond. The following submissions are urged in support of this proposition :-

- (1) Section 104 of the Customs Act itself by necessary implication confers such power on the Magistrate;
- (2) Sub-section (2) of Section 4 of of the Code of Criminal Procedure which in effect provides that the provisions of the said Code would apply mutatis mutandis in respect of proceedings instituted in the context of offences under any law other than Indian Penal Code read with Sections 436 and 437 contained in Chapter XXXIII of the Code pertaining to the provisions as to bails and bonds confers the power to remand the arrested person produced before the Magistrate by the officer of customs to judicial custody or to grant him bail or refuse to grant bail or to direct that the said person be released on executing to grant bail or to direct that the said person be released on executing a personal bond;
- (3) Section 4(2) read with Section 167 of the Code also empowers the Magistrate to do so.

6. We need not examine the validity of all the three contentions. In our opinion, the contention urged by learned Counsel for petitioner in the context of sub-section (2) of Section 4 of the Code

read with Sections 436 and 437 of the Code is unanswerable. We will therefore deal with this contention in the first instance. But before we do so we must advert to the following propositions which emerge from the provisions of the Act and the Code which are not disputed even by the other side, namely :-

- (1) That an offence under Section 135 of the Customs Act is a non-cognizable offence, that is to say it is an offence which cannot be investigated by the police;
- (2) The Code of Criminal Procedure is applicable mutatis mutandis. To proceedings in relation to offences other than an offence under Indian Penal Code to the extent specified in sub-section (2) of Section 4 of the Code and that the Code would be applicable to this extent even in respect of an offence under Section 135 of the Customs Act.

7. So far as proposition No. (1) set out hereinabove is concerned. at one point of time there was some doubt and debate having regard to a decision rendered by a learned Single Judge of this Court in *Miscellaneous*<sup>1</sup> Therein the learned Single Judge has taken the view that an offence under Section 135 of the Customs Act is a bailable offence. It however

<sup>1</sup> Criminal Application No. 1202 of 1979 on December 10, 1979

appears that the provision contained in Part II of the First Schedule entitled "Classifications of offences against other laws" was not brought to the notice of the learned Single Judge. Part II of the First Schedule deserves to be reproduced :-

<b>Offence</b>	<b>Cognizable of non-cognizable</b>	<b>Bailable of no-bailable</b>	<b>By what Court triable</b>
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Ditto	Ditto	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate.

The first and the second entries are relevant for our purposes. By virtue of the first entry in respect of offences against other laws, that is to say, laws other than Indian Penal Code, an offence punishable with imprisonment for a period exceeding seven years is classified as non-bailable. So also by virtue of entry No. 2 an offence punishable with imprisonment for a period of three years and upwards but not exceeding seven years is also classified as non-bailable. (see column 2). An offence under Section 135 of the Customs Act is in any event punishable with a sentence of imprisonment exceeding three years. (When the value of the goods in respect of which the offence is committed does not exceed rupees one lac the offence is punishable with imprisonment for three years. When it exceeds rupees one lac Section 123 of the Customs Act is attracted. The conditions specified therein being satisfied the offence is punishable with imprisonment for seven years). Thus, regardless of the value of the goods in any event the offence is punishable with imprisonment for three years. Such being the position the offence is non-bailable. The view taken by the learned Single Judge in Miscellaneous Criminal Application No. 1202 of 1979 is not correct. The decision has been rendered per incuriam having regard to the fact that the aforesaid provisions of the Code were not brought to the notice of the learned Single Judge. It cannot be considered as good law. Counsel for the arrested persons also concedes that such is the position and does not dispute it. That is why we have referred to proposition No. (1) as an undisputed proposition.

8. We must mention that none of the arguments argued before us was canvassed before the learned Magistrate who has rendered the decision as per Annexures 'C' and 'D' in the light of the decision rendered by the High Court of Delhi in *Dalam Chand Baid v. Union of India and others*<sup>2</sup>, We may also mention that the aforesaid dimensions of the matter

<sup>2</sup>1982 Criminal Law Journal 747.

were not brought to the notice of the High Court of Delhi as would appear from the discussion made in the course of the Judgment.

9. The contention which appears to us to be unanswerable is the one which is urged in the context of Section 4(2) read with Sections 436 and 437 of the Code. Counsel for the arrested persons with his usual fairness frankly stated that he was not in a position to say that the Code of Criminal Procedure would not be applicable in relation to offences under the Customs Act subject to the limitations contained in sub-section (2) of Section 4. Now sub-section (2) of Section 4 provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions (that is to say, provisions of the Code of Criminal Procedure), subject to two limitations. In case there is some enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences the provisions contained of the said enactment would prevail as against the corresponding provisions of the Criminal Code. In the matter of the provisions made by the Code of Criminal Procedure as to bails and bonds embodied in Chapter XXXIII of the Code, the provisions concerned would be attracted even in regard to offences under the Customs Act by virtue of sub-section (2) of Section 4 of the Code. This must be so

because the provisions regarding bail is not a provision which is envisioned by the rider or limitation as regards the manner or place of investigating, inquiring into, trying or otherwise, dealing with such offences. And secondly because in any view of the matter, the Customs Act makes no provision in regard to the subject of bails and bonds in the context of the court. Counsel for the arrested persons is unable to dispute that with regard to the subject of bails and bonds the provisions contained in Chapter XXXIII of the Code would be attracted even in regard to an offence under the Customs Act. Thus there is no doubt or dispute in regard to the proposition that Sections 436 and 437 of the Code of Criminal Procedure would be attracted by virtue of the provisions contained in sub-section (2) of Section 4 of the Code. The Customs Act (it must be realised) confers on the officer of customs the power to release an arrested person on bail or otherwise and confers on him the same powers and subjects him to the same provisions as an officer in-charge of a police station is subjected to under the provisions of the Code of Criminal Procedure by virtue of sub-section (3) of Section 104. While powers releasing on bail are conferred on the customs officer, Section 104 makes no provision with regard to exercise of powers of bail on the part of the Magistrates, power to release on bail of necessity takes within its sweep the power to refuse bail. Thus an officer of customs is under no obligation to release an arrested person on bail. If he does not release the arrested person on bail, he has to produce him before the Magistrate within 24 hours as enjoined by Section 104(2) of the Act and the constitutional provisions. When he is produced before the Magistrate, the Magistrate would have also no power to release him on bail if one were to restrict oneself only to Section 104 of the Customs Act. When the arrested person is brought before the Magistrate the Magistrate would have the power to release such person on bail having regard to Section 437 of the Code which provides that when any person accused of or suspected of the commission of any non-cognizable offence is arrested or detained without warrant, the Magistrate would have the powers specified therein. At this juncture we wish to emphasize the significance of the expression "suspected of the commission of any non-cognizable offence". For the present we need not detain ourselves on the question as to whether or not a person arrested by an officer of customs under Section 104(1) upon entertaining a reasonable belief that such a person has been guilty of an offence punishable under Section 135 of the Customs Act, can be characterized as an accused or not. Assuming for the moment that such a person cannot be characterized as an accused, he would certainly fall within the orbit of the expression "Suspected of the commission of any non-bailable offence". It will be recalled that an offence under Section 135 is a non-cognizable offence as discussed earlier. So also a person arrested by the customs officer under section 104 would be a person suspected of the commission of such an offence inasmuch as the arrest itself is made when the officer of customs has reason to believe that such a person has been guilty of an offence punishable under Section 135 [see section 104(1) of the Customs Act]. Thus Section 437(1) in terms is applicable when any person arrested under Section 104 by an officer of customs is brought before the Magistrate. We will now proceed to examine what the powers of the Court before which such a person is brought are. An offence under Section 437 is an offence which is triable by a Court other than the High Court or the Court of session. In the present case the Court being the Court presided over by a Chief Metropolitan Magistrate he can be released on bail by

virtue of the power conferred on him by sub-section (1) of Section 437. Sub-section (3) of Section 437 provides that when a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years under any Act, (even an Act other than the Indian Penal Code) or of an offence under certain chapters of the Indian Penal Code, the court may impose the conditions envisioned by clauses (a), (b) or (c) of sub-section (3) of Section 437. It would also be incumbent on the court to record in writing the reasons for so doing as directed by sub-section (5) which confers on the Court a power to direct that the person released on bail pursuant to its order be arrested and committed to custody if the Court considers necessary to do so. Thus in respect of a person suspected of the commission of an offence under the Customs Act who has been arrested by the officer of Customs and produced before the Court, he can also be committed to custody if the Court consider it necessary to do so even after he has been released by the Court under sub-section (1) or sub-section (2). Thus, Section 437 in terms contemplates that the Court has the power to commit him to custody. Now it must be realized that since Section 437 empowers the Magistrate concerned to release him on bail and also obliges him to record reasons in writing whenever clause (4) is attracted, and to impose conditions envisaged in clause (3), it follows of logical necessity that the Court has the power to remand the person suspected of the commission of an offence under Section 135 of the Customs Act who has been arrested and produced before the Court, to judicial custody in a case where he does not consider it proper to release him on bail or where the person refused to be released on bail. If the power to release on bail of necessity includes the power to refuse to release him on bail, by necessary implication, confers on the Magistrate power to remand him to judicial custody. This position is made abundantly clear by sub-section (5) of Section 437, to which we have made reference a short while ago, which empowers the Magistrate in terms to direct that such a person be arrested and committed to custody, that is to say, judicial custody, even after such a person has been released on bail under sub-section (1) or sub-section (2) upon considering it necessary to do so. There is therefore no escape from the conclusion that the Magistrate before whom the person suspected by the officer of Customs, upon the officer concerned entertaining a reasonable belief that he has committed an offence under Section 135, is produced, has the power to commit such a person to judicial custody. Unless the provision contained in Section 104 of the Customs Act to arrest the person and to produce him before the Magistrate is to be considered to be meaningless, purposeless and a futile exercise undertaken for no purpose and unless we shut our eyes to Section 4(2) and Section 437, no other view is possible.

10. Having regard to the view that we are taking it is not necessary to dwell at length on the submissions urged in the context of Section 4(2) of the Code read with Section 167 of the Code. Section 167 to the extent necessary for the purpose of the discussion may be quoted :-

"167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if

he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction;

Provided that -

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding -

\* \* \* \*

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter;

(b) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him; \* \* \* \*

\* \* \* \*

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

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Numerous arguments have been addressed and considerable effort have been invested in the context of Section 167 on behalf of Counsel for the arrested persons. It has been argued that Section 167 pertains to the procedure prescribed by the Code when investigation cannot be completed in 24 hours and can never have any application having reached to the fact that the offence under Section 135 is a non-cognizable offence. No doubt, the proposition cannot be disputed that an offence under Section 135 is a non-cognizable offence as clearly provided by sub-section (3) of Section 104 of the Customs Act. Since it is non-cognizable, a police officer cannot be investigate it. Chapter XII of which Section 167 forms a part pertains to the powers of the police to investigate. Since an offence under Section 135 cannot be investigated by police, it is argued that Chapter XII cannot apply. As a necessary corollary it is contended that Section 167 which outlines the procedure prescribed by the Code when investigation (an investigation, it is

argued, means investigation by police), cannot be completed in 24 hours, cannot apply. Stress is also laid on the circumstance that there is a reference to officer in-charge of a police station in sub-section (1) of Section 167 and the fact that an officer of customs cannot be said to be an officer-in-charge of a police on *Illias v. The Collector of Customs, Madras*<sup>3</sup>, in support of the proposition that an officer of Customs is not a police officer. There is not the slightest doubt that an officer of Customs cannot be said to be an officer-in-charge of police station or a police officer. That however does not mean that Section 167 cannot be drawn upon in order to ascertain whether the Magistrate before whom an arrested person is brought has the power to remand him to judicial custody. It is no doubt true that sub-section (2) of Section 167 in terms refers to an accused person forwarded under the sub-section. A person arrested by a Customs officer upon entertaining a reasonable belief that the person concerned is guilty of an offence punishable under Section 135 of the Act cannot be said to be "an accused person forwarded to the Magistrate" under sub-section (1) of Section 167 because he is not a person who has been sent to him by a police officer or an officer in-charge of a police station making investigation in regard to an offence. We do not propose to examine whether or not the expression "accused person" can be employed in the context of a person arrested by the Customs officer under Section 104 on suspicion. Nor is it necessary to examine the submission that counsel for the arrested persons is not right in his submission that investigation under Section 167 must mean investigation only by a police officer in a cognizable offence. The expression "investigation" has been defined in Section 2(b). It is an inclusive definition. No doubt it will not strictly fall under the definition of "investigation" is so far as the inclusive part is concerned. But then it being an inclusive definition the ordinary connotation of the expression "investigation" cannot be overlooked. An "investigation" means search for material and facts in order to find out whether or not an offence has been committed. It does not matter whether it made by the police officer or a customs officer who intends to lodge a complaint. (In regard to an offence under the Customs Act a complaint in writing is required to be lodged after obtaining the requisite sanction, having regard to the provision contained in Section 137 cognizance cannot be taken save with the sanction of the Collector of Customs). But then, Counsel for the petitioners has argued that when Section 4(2) if the Code applies in regard to offence other the offences under the Indian Penal Code it applies mutatis mutandis to the extent possible and that as per the law declared by the Supreme Court in *Paresh Chandra Chatterjee v. The State of Assam and another*<sup>4</sup>, it would be permissible to apply the provisions mutatis mutandis with due alterations of details or proper changes in the phraseology for that purpose. Counsel has argued that the doctrine enunciated by the Supreme Court in Paresh Chandra's case (supra) can be invoked at least to a limited extent, a very limited extent, in order to read the power to remand or commit an arrested person brought before the Judicial Magistrate

<sup>3</sup> A.I.R. 1970 S.C. 1065

<sup>4</sup> A.I.R. 1962 S.C. 167

to judicial custody. It was argued that the Legislature in its wisdom would not have undertaken a futile exercise and enjoined Customs officers to produce an arrested

person before a Magistrate only for the sake of showing his face to the Magistrate. The purpose would be to empower the Magistrate to release the person on bail or to remand him to judicial custody in case he is of the opinion that bail should not be granted or in case the person produced refuses to furnish bail. In order to locate the power to remand to judicial custody Section 167 can be invoked to this limited extent. It is argued that in obeisance to the doctrine enunciated by the Supreme Court, a reference to 'production of a person' on the part of a police officer can be read as a reference to 'production of a person' on the part of the Customs Officer only for a limited purpose, namely, in order to locate the power in the Magistrate to remand the person so produced to judicial custody if bail is refused or the circumstances so demand, lest the obligation imposed by the Legislature on the Customs Officer to produce the arrested person before the Magistrate is not rendered meaningless. We do not wish to express our considered opinion on this question though we are of the opinion that this argument deserves serious consideration. Since it is not necessary to do so, we refrain from expressing any opinion on this question and leave the question open for being argued in future, if necessary. Since we have upheld the contention of learned Counsel for the petitioner on the first point, we have no hesitation in reaching the conclusion that the Magistrate had the power to remand the arrested persons produced before him by the officer of Customs to judicial custody.

11. The same reasoning would apply to an offence under Section 68 of the Gold Control Act. In fact, there is internal evidence in support of the proposition that the Magistrate has such a power having regard to the fact that Section 68 of the Gold Control Act in terms refers to the power of the Magistrate to authorize detention in custody beyond the period of 24 hours.

12. We therefore allow this petition.

13. Rule absolute to the aforesaid extent.

Petition Allowed.