with the return and give benefit of deduction to the assessee in terms of Section 32AB (1).

(22) We also hold that the *view taken by Gujarat* High Court in *Gujarat Oil and Allied Industries's case (supra)* and Madras High Court in *A.R. Arunachalam's case (supra)* that Section 80J (6A) is not mandatory is correct and contrary view expressed by the Division Bench in *Commissioner of Income-tax versus jaideep Industries (supra)* does not represent the correct law.

(23) We are further of the view that the observations made in *Shahzedanand Charity Trust's case* (supra) that the view expressed by Gujarat High Court in *Commissioner of Income-tax Versus Gujarat Oil and Allied Industries* (supra) is similar to the one expressed by this Court in *Commissioner of Income-tax Versus Jaideep Industries* (supra) is based on an incorrect reading of the judgment of*Gujarat Oil and Allied Industries's* case because Gujarat High Court had, in fact, dissented from the view expressed in*Jaideep Industries's case.* That apart, in Shahzedanand Charity Trust's case, the Division Bench took the view that section 12A of the act cannot be read as mandatory.

(24) The appeal may now be listed before the Division Bench for disposal in accordance with law.

R.N.R.

Before V.M. Jain, J

CHARANJIT SINGH—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

Crl. M. No. 27680/M of 2000

22nd May, 2001

Code of Criminal Procedure, 1973—Ss. 267 to 270—Constitution of India, 1950—Art.21—Accused facing trial in various Courts in different States—Supdt. Jail refusing to produce the accused in the Courts in other States despite service of production warrants

by the Courts—Delay in the disposal of cases—Violation of Art. 21—Supdt.. Jail not competent to refuse to produce accused in Courts of other states merely because some cases are pending against them in the Courts where they are confined—Section 269 Cr. P.C. authorises an Officer Incharge of a jail to abstain from carrying out such orders of the Courts only in certain contingencies.

Held that, the accused are facing trail in the Courts at Delhi and are confined in Tihar Jail, Delhi. These accused are also facing trail in various Courts in Punjab and Haryana. However, these accused are not being sent by the Superintendent, Tihar Jail, Delhi, to appear in the Courts in Punjab and Haryana. This has resulted in the delay in the disposal of the various cases pending against these accused in the various Courts in Punjab and Haryana. There does not appear to be any justification for not Producing these accused in the Courts in Punjab and Haryana merely because some cases are pending against these accused in the Courts at Delhi. Of course, if there is a clash in dates, the same can be taken care of. However, the Superintendent Tihar Jail, Delhi cannot refuse to produce these accused in the various Courts in Punjab and Haryana before whom these accused are also facing trial merely on the ground that these accused are also facing trial in the Courts at Delhi. This would be just contrary to the principle of speedy trial embodied under Article 21 of the Constitution of India.

(Para 19)

Prisoners (Attendance in Courts) Act, 1955 (as amended by Punjab Act No. 25 of 1964)—Ss. 3 to 6—Code of Criminal Procedure, 1973—Ss. 267 to 270—Accused facing trial in various Courts in different States—Court issuing warrants for production—Officer-in-charge of the prison abstaining from complying with the orders of the Court—Whether the Officer-in-charge has power to abstain from complying with the order of the Court on the ground that the accused are facing trial in the Courts where they are confined—Held, no— Officer-in-charge is bound to comply with the warrant for production issued by the Court—However, he is entitled to refuse to produce the accused on account of their sickness etc. as mentioned in S. 6(a) and also on the grounds mentioned in S. 4 of the 1955 Act.

(Kanu Sanyal v. District Magistrate, Darjeeling and others, AIR 1974 SC 510, followed)

Held that, even if there is some difference in the language of Section 269 Cr. P.C. and Section 6 of the Prisoners (Attendance in Courts) Act, 1955, this would not authorise the Superintendent, Tihar Jail, Delhi not to comply with the directions given by the various Courts in Punjab & Haryana (or Chandigarh), while issuing production warrants for producing various accused in the various Courts in Punjab, Haryana and Chandigarh to face trial, even though those accused were also facing trial in the various Courts at Delhi and were lodged in Tihar Jail, Delhi. Section 269 of the Cr. P.C. thus would not authorise the Officer-in-charge of the prison not to produce the various accused in the various Courts in Punjab, Haryana and Chandigarh, in pursuance of the production warrants, merely on the ground that those accused were already facing trial in the Courts at Delhi. If there is a Clash in dates, he would be well within his rights to refuse the production of these accused in the various Courts outside Delhi. Similarly, he would also be entitled to refuse to produce these accused in various Courts in Punjab, Haryana and Chandigarh, on account of their sickness etc. as mentioned in Section 269 (a) of the Cr. P. C. and Section 6 (a) of the 1955 Act and also in view of the provisions of Section 268 Cr. P.C. and Section 4 of the 1955 Act.

(Paras 20 and 21)

Navkiran Singh, Advocate for the Petitioner.

G. S. Gill, DAG for State of Punjab

Yashpal, AAG for State of Haryana.

Rajbir Sehrawat, Advocate for Superintendent, Tihar Jail, New Delhi.

JUDGMENT

V.M. Jain. J.

(1) This order shall dispose of the above-mentioned two petitions, as common questions of law are involved in both the cases.

(2) Criminal Misc. 27680-M of 2000 has been filed by accused-petitioner, Charanjit Singh, alleging therein that since his arrest in the month of August, 1999, he is detained in Ward No. 3, Jail No. 3, Tihar Central Jail, New Delhi. It has been alleged that as at present, he is in custody in the below mentioned 5 cases :—

(i) FIR 177/1999 registered u/ss 25,54/59 Arms Act, 4/5 Explosive Substances Act, relating to Police Station Mallanwala, District Ferozpur, pending in the Court of Sessions Judge, Ferozepur.

(ii) FIR 349/1998 registered u/ss 4/5 Explosive Substances Act, 25/54/59 Arms Act and Section 18 of the NDPS Act, relating to Police Station Sadar, Jalandhar, pending investigation.

(iii) FIR 398/1999 registered u/ss 25/54/59 Arms Act relating to PS Sadar, Jalandhar, which is pending in the Court of JMIC, Jalandhar.

(iv) FIR 258/1999 registered u/ss 25/54/59 Arms Act relating to Police Station Alipur, Delhi, pending in the Court of Shri Raghubir Singh, Additional Sessions Judge, Teeshazari Courts, New Delhi.

(v) FIR 680/1999 registered u/ss 379/411 relating to Police Station Paschhim Vihar, New Delhi, pending in a competentt Court at Teeshazari, New Delhi."

(3) It has further been alleged that out of the above-mentioned 5 cases, 3 cases are pending in the various Courts in Punjab, whereas the remaining 2 cases are pending in New Delhi Courts. It has been alleged that so far as the cases pending in the New Delhi Courts are concerned, the accused-petitioner is facing regular trial, whereas out of 3 cases pending against him in the various Courts in the State of Punuab, he is being produced only in the Court of Sessions Judge, Ferozepur, in the case mentioned at Sr No. 1 above, but in the other 2 cases, pending against him in the Courts at Jalandhar, the accused-petitioner is not being produced in those courts, even though the Police

has already submitted the challan. It has been alleged that inspite of the production warrants being received in Tihar Jail, New Delhi, in this regard, the petitioner is not being produced in those Courts at Jalandhar. It has been alleged that it is incumbent upon the Police as well as the jail authorities to ensure that the accused is produced in the Court for facing trial on each and every date of hearing, as required under Section 267, Cr. PC. It has further been alleged that Article 21 of the Constitution of India enshrines every citizen a right to life and liberty, which includes fundamental right of speedy trial. It has been alleged that since the accused-petitioner is not being produced in the Courts at Jalandhar, the trial of the accused-petitioner, in those cases, is being delayed. It was accordingly prayed that directions be given to the respondents to ensure that the petitioner is produced in the various Courts at Jalandhar and Ferozepur (in the State of Pujab) pending against him, on each and every date of hearing.

(4) In Criminal Misc 27700-M of 2000, it has been alleged by the accused-petitioners, namely Balbir Singh son of Kalyan Singh, Gurdeep Singh, son of Kirpal Singh and Balbir Singh son of Lal Singh, that the petitioners, namely, Balbir Singh, Gurdeep Singh and the other Balbir Singh, are facing trial in the following 2 cases, which are common to all three of them :—

"(i) FIR 1068 of 1996, registered u/ss 302/307, IPC, 3/4/5 Explosive Substances Act, relating to PS Sirinivaspuri, New Delhi, pending in the Court of Shri P.K. Bhasin, Addl. Sessions Judge, New Delhi, in which there are in all 59 witnesses and only 36 have been examined so far.

(ii) Case FIR 559/1996, registered u/ss 302/307, IPC, 3/4/5 Explosive Act, relating to Police Station, GRP, Ambala Cantt, in which all the three accused were taken on remand, but thereafter no proceedings have been placed before the Court of Special Judge of Railways, Ambala."

(5) It has further been alleged that besides that, accused-petitioner, Balbir Singh, son of Lal Singh, was also an accued in the following 2 cases :—

(i) Case FIR 56 of 1997 registered under Section 302/307, IPC. and Sections 3/4/5, Explosive Substances Act.

(ii) FIR 27 of 1997 registered under Sections 302/307, IPC, and Sections 3/4/5, Explosive Substances Act.

(6) It has been alleged that in both these cases, the production warrants were issued and were served in Tihar Jail, New Delhi, but the accused-petitioner, Balbir Singh, son of Lal Singh, was never produced in the Courts in respect of these two cases. It has been alleged that it is incumbent upon the Police as well as the jail authorities to ensure that the petitioners are produced in the various Courts for facing trial, on each and every date of hearing. Reference has been made to the provisions of Section 267, Cr. PC, and Article 21 of the Constitution of India. It was accordingly prayed that necessary directions may be given that the petitioners, in the various cases pending against them at Pathankot, in the State of Punjab, and at Ambala, in the State of Haryana, are produced in those Courts, on each and every date of hearing.

(7) In reply to Criminal Misc 27680-M of 2000, it has been alleged by Shri Jaspal Singh, SHO, Police Station, Mallanwala, District Ferozpur, that the accused-petitioner, Charanjit Singh, was arrested in case bearing FIR 177 dated 4th November, 1999 under section 25 of the Arms Act and under Sections 4/5 of the Explosives Act in Police Station, Mallanwala, and that 'presently, the accused-petitioner, Charanjit Singh, has been detained in Tihar, Jail, New Delhi, and that the said case is pending in the Court of Shri GK Dhir, Additional Sessions Judge, Ferozepur, and in this case, the accused-petitioner is being produced regularly in the said Court, by the Delhi Police.

(8) In the written reply filed by Shri OP Mishra, Superintendent, Central Jail No. 3, Tihar, New Delhi, it has been alleged that presentatly the accused-petitioner, Charanjit Singh, is facing trail in one case at Delhi (he has since been acquitted in the other case) and that he is also an accuesd in 4 cases in the State of Punjab. Details of the Delhi case, in which he is facing trial and the details of the Delhi case, in which he has been acquited, have been given in the written reply. Details have also been given with regard to the various cases (4 in number), in which the accused-petitioner, Charanjit Singh, is facing trial in the various Courts at Jalandhar

and Ferozepur. It has been alleged that he is not being produced in the 2 cases, in which he is facing trial at Jalandhar and one case, in which he is facing trial at Ferozepur, and that he is being produced only in one case, in which he is facing trial in the Court of Shri GK Dhir, Additional Sessions Judge Ferozepur.

(9) In reply to Criminal Misc 27700-M of 2000, it has been alleged by Shri Ajaib Singh, DSP (D), Gurdaspur, that accused-petitioner No. 3 Balbir Singh son of Lal Singh, along with some other persons, was accused in FIR 27 of 1997 under Sections 302/307/427, IPC and under Section 4/5, Explosives Act, and he was also an accused along with others in FIR 56 of 1997 under Sections 302/307/427, IPC and under Section 3/4/5, Explosives Act, which were registered in Police Station, Division No. 1, Pathankot. It has also been alleged that the production warrants were issued by the Court at Pathankot for producing the accused-petitioner, Balbir Singh, son of Lal Singh, but the Court at Delhi (Tees hazari) did not allow the production of said Balbir Singh, son of Lal Singh and the warrants were returned un-executed. It has been alleged that the Chief Metropolitan Magistrate, Delhi, had returned the production warrants un-executed, vide order dated 24th March, 2000.

(10) In the written reply filed by Inspector Bagicha Singh, SHO, GRPS, Ambala Cantt, it has been alleged that all the 3 accused-peitioners, were involved in a case bearing FIR 559 of 1996 under Sections 302/307, IPC and under Sections 3/4/5, of the Explosives Act. It has been alleged that the said case is pending in the Court of Special Railway Magistrate, Ambala Cantt. It has been alleged that the warrants for production of these accused, who are lodged in Tihar Central Jail, Delhi, were issued by the Court for various dates, but the accused-petitioners were not produced in the Court. It has been alleged that this was inspite of the fact that at the asking of the jail officials, the production warrants were routed through the Chief Metropolitan Magistrate, Delhi. A copy of the communication received from the Tihar Jail authorities, is attached as Annexure R1, according to which the jail authorities had informed the Special Railway Magistrate, Ambala Cantt that the accused-petitioners, namely Balbir Singh, son of Kalyan Singh and Gurdeep Singh son of Kirpal Singh,

could not be produced in Court at Ambala, because they were facing trial in a case of Police Station, SN Puri at Delhi and as such, the jail authorities were unable to produce the accused in the Court of Special Railway Magistrate, under Section 269, Cr.PC.

(11) I have heard learned counsel for the parties and gone through the record carefully.

(12) It was submitted before me by the learned counsel for the Superintendent of Tihar Jail, Delhi, that under section 269 of the Code of Criminal Procedure, the officer-in-charge of the prison is required to abstain from carrying out the order of the Court, under Section 267 Cr. P.C., where the Court, in the course of any inquiry, trial or other proceedings, had made an order requiring the officer-in-charge of the prison to produce the person who was already confined or detained in a prison. It was submitted that exercising the powers under Section 269 Cr. P.C., the Superintendent, Tihar Jail, Delhi, being officer in charge of the prison, had not sent the accused to the various Courts in Punjab and Haryana, as those accused were in custody, pending trial in the Courts at Delhi.

(13) On the other hand, the learned counsel for the accused-petitioner submitted before me that the Superintendent, Tihar Jail, Delhi, could not refuse to send the accused lodged in Tihar Jail, Delhi to face trial before the Courts in Punjab and Haryana merely on the ground that those accused were also facing trial in the Courts at Delhi. It was submitted that this would be violative of the provisions of Article 21 of the Constitution of India and also violative of the principles of speedy trial. It was submitted that for the last about five years various cases pending against the accused in the Courts in Punjab and Haryana could not proceed because the accused were not produced before those Courts by the Tihar Jail authorities and in this manner, the trial of those cases was delayed.

(14) Sections 267, 268, 269 and 270 of the Code of Criminal Procedure read as under :—

> "267. Power to require attendance of prisoners.—(1) Whenever, in the course of an inquiry, trial, or other

proceeding under this Code, it appears to a Criminal Court-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer-in-charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

268. Power of State Government to exclude certain persons from operation of Section 267-(1) The State Government may, at any time, having regard to the matters specified in sub-section (2) by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may by confined or detained, and thereupon, so long as the order remains in force, no order made under Section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-section (1), the State Governemnt shall have regard to the following matters, namely :—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison ;

(b) the likelihood of the disturbance or public order if the person or class of persons is allowed to be removed from the prison ;

(c) the public interest, generally.

269. Officer in charge of prison to abstain from carrying out order in certain contingencies-Where the person in respect of whom an order is made under Section 267—

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trail or pending a preliminary investigation ; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained ; or

(d) is a person to whom an order made by the State Government under Section 268 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining :

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distant from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

270. Prisoner to be brought to Court in custody- Subject to the provisions of Section 269. the officer in charge of

the made under sub-section (1) of Section 267 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present, there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained."

(15) Sections 3, 4, 5 and 6 of the Prisoners (Attendance in Courts) Act, 1955 (Centre Act No. 32 of 1955) (as amended by Punjab Act No. 25 of 1964), read as under :—

"3. Power of Courts to required appearance of prisoners to give attendance or answer a charge—

(1) Any Civil Court or Criminal Court may, if it thinks that the evidence of any person confined in any prison is material in any matter pending before it, make an order in the form set forth in the First Schedule, directed to the officer in charge of the prison.

Provided that no civil court shall make an order under this sub-section in respect of a person confined in a prison situated outside the State on which the Court is held.

(2) Any Criminal Court may, if a charge of an offence against a person confined in any prison is made or pending before it, make an order in the form set forth in the Second Schedule, directed to the officer in charge of the prison

(3) No order made under this section by a civil Court which is subordinate to a district judge shall have effect unless it is counter-signed by the District Judge; and no order made this section by a Criminal Court which is inferior to the Court of a magistrate of the first class shall have effect unless it is

countersigned by the district magistrate to whom that court is subordinate or within the local limits of whose jurisdiction that court is situate.

(4) For the purposes of sub-section (3) ,a Court of small causes outside a presidency town or the city of Hyderabad shall be deemed to be subordinate to the district judge within the local limit of whose jurisdiction such court is situate.

NOTE : Court of a Magistrate of the First Class
Court of a Judicial Magistrate of the First Class
Countersigned by the District Magistrate.
Countersigned by the Chief Judicial Magistrate.

4. Power of State Government to exempt certain persons from operation of section 3.—(1) The State Government may, having regard to the matters specified in sub- section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined, and thereupon so long as any such order remains in force, the provisions of section 3 shall not apply to such person or class of persons.

(2) Before making an order under sub-section (1), the state Government shall have regard to the following matters, namely—

(a) the nature of the offence for which or the grounds on which the confinement has been orderd in respect of the person or class of persons;

(b) the likelyhood of the disturbance of public order if the person or class of person is allowed to be removed from the prison;

(c) the public interest, generally.

5. Prisoners to be brought up.— Upon delivery of any order made under section 3 to the officer in charge of the prison in which the person named therein is confined, that

officer shall cause him to be taken to the Court in which his âttendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the court until he has been examined or until the judge or presiding officer of the court authorises him to be taken back to the prison in which he was confined.

6. Officer in charge of prison when to abstain from carrying out order.—Where the person in respect of whom an order is made under section 3—

(a) is, in accordance with the rules made in this behalf, declared to be unfit to be removed from the prison where he is confined by reason of sicknesss or other infirmity; or

(b) is under committal for trial ; or

(c) is under remand pending trial or pending a preliminary investigation ; or

(d) is in custody for a period which would expire before the expiration of the time requireid for removing him under this Act and for taking him back to the prison in which he is confined;

the officer in charge of the prison shall abstain from carrying out the order and shall send to the court from which the order had been issued a statement of reasons for so abstaining :

Provided that such officer as aforesaid shall not so abstain where—

(i) the order has been made by a criminal court ; and

(ii) the person named in the order is confined under committal for trial or under remand pending trial or pending a preliminary investigation and is not declared in accordance with the rules made in this behalf to be unfit to be removed from the prison where he is confined by reason of sickness or other infirmity ; and

(iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined."

(16) The following is the statement of objects and reasons of the Prisoners (Attendance in Courts) Act, 1955 :—

" The Bill seeks to simplify the procedure for securing the attendance of prisoners in courts by repealing Part IX of the Prisoners Act and re-enacts its provisions with suitable modifications as a separate law while extending at the same time the provisions of this law to the whole of India except Jammu and Kashmir ---------."

(17) Thus, it would be clear that the Prisoners (Attendance in Courts) Act, 1955, is a Special Central Act, with regard to the attendance of the prisoners in various Courts. Various provisions of the Prisoners (Attendance in Courts. Act, 1955 came up for consideration before the Hon'ble Supreme Court, in the case reported as *Kanu vs. District Magistrate, Darjeeling and others (1).* In the reported case the question before the Hon'ble Suprem Court was as to whether the detention of the petitioner in the Central Jail, Vizakhapatnam, is illegal. One of the grounds for challenging the legality of the said detention was that by reason of Section 6 of the Prisoners (Attendance in Courts) Act, 1955, the officer in charge of the District Jail, Darjeeling (where the petitioner was previously confined) was bound to abstain from complying with the warrant for production issued by the Special Magistrate, Vizakhapatnam and was not entitled to send the petitioner to the Court of the Special Magistrate, Vizakhapatnam in compliance with such warrant of production. It was held by the Hon'ble Supreme Court that this ground was wholly without substance and it over-looks proviso to Section 6 of the said Act. It was held that the warrant for production in the reported case was under Section 3(2) of the said Act, as the petitioner was admittedly required to be produced before the Special Magistrate, Vizakhapatnam, for answering the charges against him. After considering the various

(1) AIR 1974 SC 510

provisions of the above said Act, the Hon'ble Suprem Court held as under :—

> "Now there can be no dispute that the petitioner in respect of whom the warrant for production was issued by the Special Magistrate, Vizakhapatnam, under Section 3, sub-section (2) was under remand pending preliminary investigation in the two Phansidewa P.S. cases, and therefore, under the main provision in Section 6, the officer in charge of the District Jail, Darjeeling was bound to abstain from complying with the warrant for production, unless of course, the proviso was application. The proviso lays down three conditions for its applicability. The two conditions set out in clauses (i) and (ii) were admittedly satisfied. The only question could be about the condition in clause (iii), but that condition has obviously no application in case of an order of production under sub-section (2) of Section 3. Clause (iii) posits an order of production for giving evidence made under sub-section (1) of Section 3. It is only where such an order of production is made that the condition in clause (iii) can apply. It can have no application where an order is made by a criminal court under sub-section (2) of Section 3 requiring production for answering a charge. In such a case, the condition in clause (iii) would be wholly inappropriate and would not have to be satisfied. The fulfilment of the conditions set out in clauses (i) and (ii) would in that case be sufficient to attract the applicability of the Proviso. Here the warrant for production was admittedly issued under sub-section (2) of Section 3 and therefore the only requirement for bringing the Proviso into operation was the fulfilment of the conditions set out in clauses (i) and (ii). These two conditions were clearly satisfied and the Proviso was accordingly attracted and it took the case out of the main provision in Section 6. The officer in charge of the District Jail, Darjeeling was, therefore, bound to send the petitioner to the Court of the Special Magistrate, Vizakhapatnam, in compliance with the warrant for production and he acted according to law in doing so. The production of the petitioner

before the Special Judge Vizakhapatnam, could not, therefore, be said to be illegal and his subsequent detention in the Central Jail, Vizakhapatnam, pursuant to the orders made by the Special Judge, Vizakhapatnam pending trial must be held to be valid. This Court pointed out in AIR 1971 SC 2197 that a writ of habeas corpus canot be granted "where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal". The present case is clearly covered by these observations and the petitioner is not entitled to a writ of habeas corpus to free him from detention."

(18) From a perusal of the above, it would be clear that the Hon'ble Supreme Court has held that where the petitioner was under remand in District Jail, Darjeeling, pending preliminary investigation and where the warrant for production was issued by the Special Magistrate, Vizakhapatnam, the officer in charge of the District Jail, Darjeeling, was bound to send the petitioner to the Court of the Special Magistrate, Vizakhapatnam, in compliance with the warrant for production issued by that Court. It was further held that the production of the petitioner before the Special Judge, Vizakhapatnam, could not, therefore, be said to be illegal and his subsequent detention in Central Jail, Vizakhapatnam, pending trail before the Special Judge Vizakhapatnam, must be held to be valid.

(19) In the present case, the accused are facing trial in the Courts at Delhi and are confined in Tihar Jail, Delhi. These accused are also facing trial in various Courts in Punjab and Haryana. However, these accused are not being sent by the Superintendent, Tihar Jail, Delhi, to appear in the Courts in Punjab and Haryana. This has resulted in the delay in the disposal of the various cases pending against these accused in the various Courts in Punjab and Haryana. There does not appear to be any justification for not producing these accused in the Courts in Punjab and Haryana merely because some cases are pending against these accused in the Courts at Delhi. Of course, if there is a clash in dates, the same can be taken care of. However, the Superintendent, Tihar Jail, Delhi, cannot refuse to produce these accused in the various Courts in Punjab and Haryana before whom these accused are also facing trial

in the Courts at Delhi. This would be just contrary to the principle of speedy trial embodied under Article 21 of the Constitution of India, in view of the law laid down by their Lordships of Supreme Court in the cases reported as *"Common Cause A Registered Society vs. Union of India", (2) "Common cause A Registered Society vs. Union of India" (3) "Rajdeo Sharma vs State of Bihar" (4) "Rajdeo Sharma vs State of Bihar" (5),* and various other authorities of the Hon'ble Supreme Court, emphasising the need for speedy trial especially in respect of the under trials, who are in custody.

(20) Even if there is some difference in the language of Section 269 Cr. P.C. and Section 6 of the Prisoners (Attendance in Courts) Act, 1955, in my opinion, this would not authorise the Superintendent, Tihar Jail, Delhi, not to comly with the directions given by the various Courts in Punjab and Haryana (or Chandigarh), while issuing production warrants for producing various accused in the various Courts in Punjab, Haryana and Chandigarh to face trial, even though those accused were also facing trial in the various Courts at Delhi and were lodged in Tihar Jail, Delhi. As referred to above, the Prisoners (Attendance in Courts) Act, 1955, is a Special Central Act, which was enacted only for this purpose. It fully applies to the present case. Section 269 of the Code of Criminal Procedure thus, would not authorise the officer in charge of the prison (Tihar Jail, Delhi), not to produce the various accused in the various Courts in Punjab, Haryana and Chandigarh, in pursuance of the production warrants, merely on the ground that those accused were already facing trial in the Courts at Delhi. The provisions of the Prisoners (Attendance in Courts) Act, 1955 and Section 269 of the Code of Criminal Procedure, in this regard, have to be construed harmoniously, especially in view of the law laid down by their Lordships of the Supreme Court, in the case reported as AIR 1974 SC 510 (supra).

(21) For the reasons recorded above, it is held that the Superintendent, Tihar Jail, Delhi, would not be competent to refuse to produce various accused in various Courts in Punjab, Haryana and Chandigarh (in pursuance of the production warrants issued by the

(2) AIR 1996 SC 1619
(3) AIR 1997 SC 1539
(4) AIR 1998 SC 3281
(5) AIR 1999 SC 3524

various Courts), merely on the ground that these accused were also facing trial in the various Courts at Delhi. However, if there is a clash in dates, the Superintendent, Tihar Jail, Delhi, would be well within his rights to refuse the production of these accused in the various Courts outside Delhi. Similarly, the Superintendent, Tihar Jail, Delhi, would also be entitled to refuse to produce these accused, in the various Courts in Punjab, Haryana and Chandigarh, on account of their sickness etc., as mentioned in Section 269(a) of the Code of Criminal Procedure, and Section 6(a) of the Prisoners (Attendance in Courts) Act, 1955, and also in view of the provisions of Section 268 Cr. P.C. and Section 4 of the Prisoners (Attendance in Courts) Act, 1955. It is further held that after these accused are produced in the various Courts in Punjab, Haryana and Chandigarh, on the dates for which these accused were summened through prodction warrants, each of these accused would be brought back to Delhi and lodged in Tihar Jail, Delhi, to enable these accused to appear in the Court at Delhi, in the cases pending against them.

(22) For the reasons recorded above, these petitions are allowed and the Superintendent, Tihar Jail, Delhi, is directed to send the petitioners, in custody, to the various Courts in Punjab and Haryana, in pursuance of the production warrants received from these Courts, so that these accused-petitioners may also face trial in the cases pending against them, in these Courts.

R.N.R.

Before M.L. Singhal, J

DHARAMPAL—*Petitioner*

versus

STATE OF PUNJAB & ANOTHER—*Respondents*

Crl. M. No. 31315-M OF 2001

11th January, 2002

Code of Criminal Procedure, 1973—S. 439(2)—Sessions Judge granting anticipatory bail to an accused who failed to secure bail before the High Court & the Supreme Court—Sessions Judge himself also declining bail twice—Granting of bail to a proclaimed offender