PETITIONER:
SHAHEEN WELFARE ASSOCIATION

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 27/02/1996

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
AHMADI A.M. (CJ)

CITATION:
1996 SCC (2) 616 JT 1996 (2) 719
1996 SCALE (2)481

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs.Sujata V.Manohar,J.

This is a public interest litigation in which the petitioner has prayed for certain reliefs to undertrial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA'). The petitioner has asked, inter alia, for a direction that the respondents should file a list of detentes lodged in jails in different States under TADA and has asked for a direction for the release of TADA detentes against whom proper evidence is not with the prosecution and where proper procedure prescribed under law is not followed.

Under orders passed from time to time in this petition the States of Gujarat, Rajasthan and Maharashtra as well as the Central Government have filed affidavits giving information relating to the number of cases under TADA pending in different Designated Courts in various States of the country. We have also been furnished with the Statewise numbers of Designated Courts constituted under TADA. In the affidavit filed on behalf of the Union of India by Shri A.K.Shrivastava, Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi, a statement is annexed showing live cases under TADA and the number of Designated Courts in different States and Union Territories. The statement is as follows:

Sr.No.	Name of the State/UT	No. of live cases under TADA	No. of Designated Courts
(1)	(2)	(3)	(4)
1.	Andhra Pradesh	1937	61
2.	Arunachal Pradesh	15	11
3.	Assam	2908	1
4.	Bihar	4	35
5.	Gujarat	72	18

6.	Haryana	348	8
7.	Himachal Pradesh	5	3
8.	Jammu & Kashmir	5041	4
9.	Karnataka	25	19
10.	Kerala	--	1
11.	Manipur	603	4
12.	Madhya Pradesh	76	10
13.	Maharashtra	244	8
14.	Meghalaya	8	1
15.	Punjab	2248	18
16.	Rajasthan	77	1
17	Tamil Nadu	26	5
18.	Uttar Pradesh	39	15
19.	West Bengal	1	18
20.	Chandigarh Admn.	9	2
21.	Delhi	759	4
22.	Goa	1	1
	Total:-	14446	248

Thus, for example, in the State of Assam the number of live cases are 2908. There is only one Designated Court to try all these cases. In Jammu & Kashmir, there are only four Designated Courts for trial of 5041 cases. In Rajasthan there is only one Designated Court for the trial of 77 cases while in Delhi there are four Designated Courts for the trial of 759 pending cases. The number of Designated Courts is also somewhat deceptive in the sense that in some States the existing Sessions Courts are also designated as courts under TADA, with the result that these courts do not deal exclusively with the trial of TADA cases. They also deal with other criminal cases. Therefore, the entire time of such courts is not available for the trial of TADA cases. It is quite clear that in many States there is no prospect of a speedy trial of pending TADA cases. A statement which is annexed to an earlier affidavit filed on filed on behalf of the Union of the Union of India by Shri R.S.Tanwar, Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi, shows that in respect of 14446 cases under investigation and pending trial in the various States of the country, the detentions involved are 42488, out which the number of persons actually arrested and under detention is 59983. Those released on bail are 30357, and those absconding and yet to be arrested are 6044. This is after taking into account the cases which were revided by the State Review Committees, and were either withdrawn or where charges under the provisions of TADA were dropped. The total number of cases so reviewed comes to 9203 and the number of persons discharged from TADA provisions are 7968.

The National Human Rights Commission has also furnished a statement showing the position of TADA detentes in jail as on 30.6.1995. While the Statewise figures given by it do no tally with the figures given by the Union of India, the total number of undertrials in jail according to the National Human Rights Commission is 6000, (after taking into account its corrections for Assam, Punjab and Rajasthan) which is close to the figure of 5998 given by the Union of India.

It is in this context that we have to consider what relief can be granted to detentes under TADA. In the case of Kartar Singh v. State of Punjab (1994 (3) SCC 569) this Court while considering the validity of Section 20(8) of TADA, has observed that while liberty of a citizen must be zealously safeguarded by the courts, nonetheless the courts while dispensing justice in cases like the one under TADA

Act, should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution. It also observed that the invocation of the provisions of TADA in cases, the facts of which do not war f ant its invocation, is nothing but sheer misuse and abuse of the Act by the police.

Looking to the nature of the crime and the paramount interests of the society this Court held that the conditions imposed under Section 20(8) for the release of TADA undertrials on bail did not violate Articles 14 and 21 of the Constitution. It, however, gave directions for the constitution of Review/Screening committees in each State and at the Center to ensure that the provisions of TADA were correctly invoked in the cases pending before the Designated Courts. The purpose of constituting such committees was to ensure a higher level of scrutiny regarding applicability of the provisions of TADA to the case in point. The need for such committees is amply borne out by the results which have been annexed in the affidavits filed on behalf of the Union of India before us relating to the number of cases so reviewed by the Review Committees where it has been found that the provisions of TADA ought not to have been applied. We are, however, sorry to note that not a single case filed by C.B.I. has been so reviewed although the Review Committee, it is said, has examined all the cases. A more independent and objective scrutiny of these cases by a Committee headed by a retired judge is obviously necessary.

Inspite of such review, from the figures which we have cited above, it is clear that there is very little prospect of a speedy trial of cases under TADA in some of the States because of the absence of an adequate number of Designated Courts even in cases where a chargesheet has been filed and the cases are ready for trial. We are conscious of the fact that even the trial of ordinary criminal cases does take some time because of the courts being overloaded with work and the concept of a speedy trial in the case of TADA cases must be viewed in the context of pendency in relation to criminal trials also. But when the release of undertrials on bail is severely restricted as in the case of TADA by virtue of the provisions of Section 20(8) of TADA, it becomes necessary that the trial does proceed and conclude within a reasonable time. Where this is not practical, release on bail which can be taken to be embedded in the right of a speedy trial may, in some cases, be necessary to meet the requirements of Article 21.

It was on this basis that in the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors. (1994 (6) SCC 731), this Court considered similar provisions restricting the grant of bail under Narcotic Drugs and Psychotropic Substances Act, 1985 and directed release of undertrials on bail in certain situations and subject to the terms and conditions set out there. The Court while doing so observed, (p.748): "..... we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum

punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters."

It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any Prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary.

The petition thus poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and punished. In fact the protection to innocent civilians is dependent on such speedily trial and punishment. The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.

Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.

These competing claims can be reconciled by taking a pragmatic approach.

The proper course is to identify from the nature of the role played by each accused person the real hardcore terrorists or criminals from others who do not belong to that category; and apply the bail provisions strictly in so far as the former class is conceived and liberally in respect of the latter class. This will release the pressure on the courts in the matter of priority for trial. Once the total number of prisoners in jail shrinks, those belonging to the former class and, therefore, kept in jail can be tried on a priority basis. That would help ensure that the evidence against them does not fade away on account of delay. Delay may otherwise harm the prosecution case and the harsh bail provisions may prove counter-productive. A pragmatic approach alone can save the situation for, otherwise, one may find that many of the undertrials may be found to have completed the maximum punishment provided by law by being in jail without a trial. Even in cases where a

large number of persons are tied up with the aid of Sections 120B or 147, I.P.C., the role of each person can certainly be evaluated for the purpose of bail and those whose role is not so serious or menacing can be more liberally considered. With inadequate number of courts, the only pragmatic way is to reduce the prison population of TADA detentes and then deal with hardcore undertrials on priority basis before the evidence fades away or is lost. Such an approach will take care of both the competing interests. This is the approach which we recommend to courts dealing with TADA cases so that the real culprits are promptly tried and punished.

For the purpose of grant of bail to TADA detentes, we divide the undertrials into three classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general arid to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting Sections 3 and A, but by virtue of Sections 120B or 147, I.P.C., and; (d) those undertrials who were found possessing Incriminating articles in notified areas and are booked under Section 5 of TADA.

Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealth with by the same yardstick. Different approaches would be justified on the basis of the gravity or the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt within. in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in sail for three years and two years respectively. Those falling in group (b) when released on bail may be released on bail of not less than Rs.50,000/- with one surety for like amount and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs.30 000/- with one surety for like amount subject to the following terms:

(1) the accused shall report to the c police station once a week;

(2) the accused shall remain within the area of jurisdiction of the Designated Court pending trial and shall not leave the area without the permission of the Designated Court;

(3) the accused shall deposit his passport, if any with the Designated Court. If he does not hold a passport he shall file an affidavit to that effect before the Designated Court. The Designated Court may ascertain the correct position from the passport authorities if it deems it

necessary;
(4) The Designated Court will be at liberty to cancel the bail if any of these conditions is violated or a case for cancellation of bail is otherwise made out.
(5) Before granting bail a notice shall be given The public prosecutor and an opportunity shall be given to him to oppose the application or such release. The Designated Court may refuse bail in-very special circumstances for reasons to be recorded in writing.

These conditions may be relaxed in cases of those under groups (c) and (d) and, for special reasons to be recorded, in the case of group (b) prisoners. Also these directions may not be applied by the Designated Court in exceptionally grave cases such as the Bombay Bomb Blast Case where a lengthy trial is inevitable looking to the number of accused, the number of witnesses and the nature of charges unless the court feels that the trial is being unduly delayed. However, even in such cases it is essential that the Review Committee examines the case against each accused bearing the above directions in mind, to ensure that TADA provisions are not unnecessarily invoked.

The above directions are a one-time measure meant only to alleviate the current situation.

When stringent provisions have been prescribed under an Act such as TADA for grant of bail and a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to ok persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods. It is unfortunate that none of the States to whom notices have been issued by us nor the Union of India, have come forward to state that they would set up an adequate number of Designated Courts in each State so that cases pertaining to TADA can be speedily disposed of. This has necessitated the above order as a one-time measure.

With the above directions, the writ petition is disposed of.