

- a (a) not take undue advantage of liberty or misuse liberty;
 (b) not act in a manner injurious to the interest of the prosecution;
 (c) surrender his passport, if any, to the lower court within a week;
 (d) not leave the territory of India without prior permission of the Sessions Judge concerned;
- b (e) mark presence in the concerned police station once in a calendar month.

- c (f) furnish the present address of residence along with the proof to the Investigating Officer concerned and also to the trial court at the time of execution of the bond and shall indicate change of residential address if any to the trial court/ investigator, as the case may be.

7. The competent authority will release the applicants only if he is not required in connection with any other offence for the time being.

- d 7.1 If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to take appropriate action in the matter.

7.2 Bail bond to be executed before the lower court having jurisdiction to try the case.

- e 7.3 It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law.

7.4 At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicants on bail.

- f 8. Rule made absolute to the aforesaid extent. Direct service is permitted.

Result:- Bail granted.

**ABC 2019 (III) 113 GUJ
 ACQUITTAL & BAIL CASES
 HIGH COURT OF GUJARAT
 (Sonia Gokani, J.)**

R/Special Criminal Application No. 3004 of 2018

Decided on 12 June, 2019

- h **MANGILAL GANGARAM MALI** - Applicant(s).

Versus

STATE OF GUJARAT & ORS. - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 167 – Indian Penal Code, 1860 – Sections 406, 420, 467, 468,

471 and 114— *Rejection of custodial investigation by the Court below – Appeal against – Official period of first 15 days over— the only custody that can be contemplated is judicial custody— Appeal dismissed. (Para 8.21)* ^a

(B) *Code of Criminal Procedure, 1973 – Section 57 vis-à-vis S 167 – Section 167 is supplementary to Section 57 of the Code. (Para 8)*

(C) *Code of Criminal Procedure, 1973 – Section 167 (1)— Scope – Detention in police custody – Held, if an accused is detained in police custody, the maximum period is only fifteen days – either pursuant to a single order or more than one – on the whole such custody cannot be beyond fifteen days – the further remand to facilitate the investigation can only be by detention of the accused in judicial custody. (Para 8)* ^b ^c

(D) *Interpretation of Statute – Code of Criminal Procedure, 1973 – Section 167 (2)— Detention in police custody – Held, the custody initially should not exceed fifteen days in the whole – The custody can be police custody or judicial custody, as the magistrate thinks fit – The words "such custody" & "for a term not exceeding fifteen days in the whole" are very significant. (Para 8.1)* ^d

(E) *Code of Criminal Procedure, 1973 – Section 167 – Detention in police custody – Period of fifteen days – counting of – Held, the period of fifteen days starts running as soon as the accused is produced before the Magistrate concerned. (Para 8.1)* ^e

(F) *Interpretation of Statute – Code of Criminal Procedure, 1973 – Section 167 (2)— Detention in police custody – Words "otherwise than in the custody of the police beyond the period of fifteen days" – interpretation of – Held, the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days. (Para 8.2)* ^f

(G) *Code of Criminal Procedure, 1973 – Section 167— Computation of period of remand – Held, total period of detention should not exceed ninety days in cases, where the investigation relates to serious offences mentioned therein – & sixty days in other cases. (Para 8.3)* ^g

(H) *Code of Criminal Procedure, 1973 – Section 167 vis-à-vis S 439 – Expiry of period of detention prescribed u/s 167, CrPC – Held, if by that time cognizance is not taken on the expiry of the said periods the accused shall be released on bail. (Para 8.3)* ^h

(I) *Code of Criminal Procedure, 1973 – Section 167— Computation of period of remand – total period of 90 days or 60*

a *days can begin to run from the date of order of remand – Therefore the first period of detention should be computed from the date of order or remand. (Para 8.3)*

b (J) *Code of Criminal Procedure, 1973 – Section 167 (2A)– Scope – If, an arrested person is produced before an Executive Magistrate for remand, then – the said Magistrate may authorise the detention of the accused for the period not exceeding seven days in aggregate – period of remand by the Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e. aggregate periods of ninety days or sixty days – After seven days, Executive Magistrate should either release the accused or*
c *transmit him to the nearest Judicial Magistrate – together with the entries in the diary before the expiry of seven days. (Para 8.3)*

d (K) *Code of Criminal Procedure, 1973 – Section 167 (2A)– Ambit – Detention by Executive Magistrate – The Section also lays down that the Judicial Magistrate who is competent to make further orders of detention – for the purposes of computing the period of detention has to take into consideration the period of detention ordered passed by the Executive Magistrate. (Para 8.3)*

e (L) *Code of Criminal Procedure, 1973 – Section 167 & Sub-section (2A)– Combined reading – Judicial Magistrate can order detention in custody u/s 167 (2) – for the rest of the period of first fifteen days – after deducting the period of detention ordered by the Executive Magistrate. (Para 8.3)*

f (M) *Code of Criminal Procedure, 1973 – Section 309– Scope – the section comes into operation after taking cognizance & not during the period of investigation – the remand under this provision can only be to judicial custody. (Para 8.3)*

g (N) *Code of Criminal Procedure, 1973 – Section 167 – Detention in police custody – a person arrested in an offence – detaining in respect of another offence in the same case, which comes to light after the expiry of the period of first fifteen days of arrest – does not authorise the police to ask for police custody for a further period, after the expiry of the first fifteen days. (Para 8.4)*
h

(O) *Code of Criminal Procedure, 1973 – Section 167 – Detention in police custody – Limitation of not Authorising police to ask for further custody beyond prescribed 15 days – Scope – Held, this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. (Para 8.4)*

(P) Code of Criminal Procedure, 1973 – Section 167 – Detention in police custody – Authorising police to ask for further custody beyond prescribed 15 days in case of different occurrence – In such a situation the accused must be formally arrested in connection with the other case & then obtain the order of the magistrate for detention in police custody. (Para 8.4) a

(Q) Criminal trial – Code of Criminal Procedure, 1973 – Section 309 – Remand – Evidence of complainant – consideration by the Court – Held, the original complainant would have no say in the matter of remand– since, that is essentially between the IO & the trial Court concerned. (Para 8.10) b

Facts:- It was alleged that the original accused Nos. 1 and 2, in connivance with each other, have managed to sell the land belonging to the petitioner and two other partners to original accused No.3, on the basis of the bogus, forged and fabricated power-of-attorney by executing the same with the fake signature and thumb impression of the complainant. c

It was also alleged that the PI of the concerned police station did not register the FIR and instead gave an opinion that no case is made out to register the FIR, as the dispute between the parties is essentially of civil nature. The petitioner, therefore, approached the High Court, the hon'ble Court directed the PI to collect the original power-of-attorney and to obtain the specimen signatures of the accused and sent the same to the FSL for obtaining the opinion of the hand-writing expert. It was the grievance on the part of the petitioner that despite the order of the Court, no implementation had been done. It was in this background, the petitioner is before the hon'ble High Court, challenging the order of rejection of remand. The application was rejected. d

Law of relief:- *After custody of first 15 days the detention of the accused can only be judicial custody.* e

Held:- Considering the law on the subject, the decision in the case of '**CENTRAL BUREAU OF INVESTIGATION, SPECIAL INVESTIGATION CELL-I Vs. ANUPAM J. KULKARNI**', (1992) 3 SCC 141, requires to be considered, at the outset, where, the Apex Court held that Section 167 is supplementary to Section 57 of the Code. According to it, the investigation should be completed, in the first instance, within 24 hours. If not, the arrested person should be f

a brought by the police before a magistrate as provided under Section 167 of the Code. The law does not authorize a police officer to detain an arrestee for more than 24 hours, exclusive of the time necessary for the journey from the place of arrest to the magistrate court. Sub-section (1) of Section 167 of the Code covers all these procedures and also lays down that the police officer, while forwarding the accused to

b the nearest magistrate should also transmit a copy of the entries in the diary relating to the case. The entries in the diary are meant to afford to the magistrate, the necessary information upon which he can take the decision, whether the accused should be detained in the custody further or not. It may be noted that even at that stage, the Magistrate

c can release him on bail, if, an application is made and if, he is satisfied that there are no grounds to remand him to custody. But, if, he is satisfied that further remand is necessary then he should act as provided under Section 167 of the Code. Where an accused is placed

d in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature

e having provided for an accused being placed under Section 173 of the Code in police custody under orders of remand for effective investigation of cases has, at the same time, taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any

f circumstances, irrespective of the gravity of the offence or the serious nature of the case. These observations make it clear that if an accused is detained in police custody, the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one and when such orders are for lesser

g number of days, but, on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody. (Para-8)

h It is at this stage that Sub-section (2) comes into operation, which is very much relevant for our purpose. It provides that the Magistrate, to whom the accused person is thus forwarded, 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 he deems fit for a term not exceeding fifteen days in the whole. If such magistrate has no jurisdiction to try the case or commit it for trial and

if he considers further detention unnecessary, he may order the accused to be forwarded to a magistrate having such jurisdiction. Thus, the section is clear in its terms. The magistrate under this Section can authorize the detention of the accused in such custody as he thinks fit, but, it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody, as the magistrate thinks fit. The words "*such custody*" and "for a term not exceeding fifteen days in the whole" are very significant. It is also well-settled that the period of fifteen days starts running as soon as the accused is produced before the Magistrate concerned. (Para-8.1)

Having regard to the words "in such custody as such Magistrate thinks fit a term not exceeding fifteen days in the whole" occurring in Sub-section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in '*STATE (DELHI ADMINISTRATION) VS DHARAM PAL AND OTHERS*', 1981, 1980 Cri. LJ 1394. Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary of fifteen days. To this extent the view taken in Dharam Pal's case (Supra) is correct. (Para-8.2)

So far as the computation of period of remand is concerned, the Apex Court observed and held that the proviso to Section 167 of the Code clearly lays down that the total period of detention should not exceed ninety days in cases, where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time cognizance is not taken on the expiry of the said periods the accused shall be released on bail as mentioned therein. Thus, the total period of 90 days or 60 days can begin to run from the date of order of remand. Therefore the first period of detention

a should be computed from the date of order or remand. Sub-Section (2A) of Section 167 of the Code has been introduced for pragmatic reasons that, if, an arrested person is produced before an Executive Magistrate for remand, then, the said Magistrate may authorise the detention of the accused for the period not exceeding seven days in aggregate. It further provides that the period of remand by the

b Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e. aggregate periods of ninety days or sixty days. Since the Executive Magistrate is empowered to order detention only for seven days in such custody as he thinks fit, he should therefore either release the accused or transmit him to the

c nearest Judicial Magistrate together with the entries in the diary before the expiry of seven days. The Section also lays down that the Judicial Magistrate who is competent to make further orders of detention, for the purposes of computing the period of detention has

d to take into consideration the period of detention ordered passed by the Executive Magistrate. Therefore on a combined reading of Section 167 and Sub-Section (2A) thereof, it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under Section 167 (2) of the Code for the

e rest of the period of first fifteen days, after deducting the period of detention ordered by the Executive Magistrate. The detention thereafter could only be in judicial custody. Likewise, the remand under Section 309 of the Code can be only to judicial custody in terms

f mentioned, therein. In short, Section 309 of the Code comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody. (Para-8.3)

g So far as the question, whether, a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his

h arrest, it is held that in one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If, during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for

police custody for a further period, after the expiry of the first fifteen days. However, this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. Since, that would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with the other case and then obtain the order of the magistrate for detention in police custody. The Apex Court further held and observed as under: (Para-8.4)

Taking, firstly, the decision of this Court in Criminal Revision Application No. 45 of 1997, the Court has been categorical that the original complainant would have no say in the matter of remand, since, that is essentially between the IO and the trial Court concerned. (Para-8.10)

Admittedly, in the instant case, the arrest of the accused-respondents have been made on 02.04.2018, which is nearly before one and a half year from today. There appears to be no order by the trial Court, at any stage, nor of the revisional Court recording any concession of the accused or recording stay. The official period of first 15 days being over, the only custody that can be contemplated, in the case on hand, is judicial custody. (Para-8.21)

Counsel:- For Applicant(s): Mr. BB Naik, Mr. Viral M Pandya, Advs.

For Respondent(S): Ms. Trusha K Patel, Pranay V Shah, Advs.

Cases Referred:-

1. Lalita Kumari V. State Of Uttar Pradesh And Others, (2014) 2 Scc 1, (Para2.2)
2. Gopalbhai Chaturbhai Amin Vs. State Of Gujarat, 2005 (4) Glr 3103, (Para-5.1)
3. State And Another Vs. N.M.T. Joy Immaculate, (2004) 5 Scc 729, (Para-5.1)
4. Kantibhai Deosibhai Patel Vs. State Of Gujarat, 2016 (1) Glr 139, (Para-5.1)
5. Central Bureau Of Investigation, Specialinvestigation Cell-I Vs. Anupam J. Kulkarni, (1992) 3 Scc 141, (Para-8)
6. State (Delhi Administration) Vs Dharam Pal And Others, 1981, 1980 Cri. Lj 1394, (Para-8.2)
7. S. Harsimran Singh V. State Of Punjab, 1984 CrL. L.J. 253, (Para-8.4)
8. State Of West Bengal Vs. The Committee For Protection Of Democratic Rights, Air 2010 Sc 1476, (Para-8.5)
9. Asha Ranjan Vs. State Of Bihar, (2017) 4 Scc 397, (Para-8.6)
10. J. Jayalalithaa & Ors V. State Of Karnataka & Ors, Scc Pp. 414-15, (Para-8.6)

11. *Triveniben V. State Of Gujarat, (Para-8.6),*
- a 12. *Abdul Rehman Antulay V. R.S. Nayak, (Para-8.6)*
13. *Raj Deo Sharma (2) V. State Of Bihar, (Para-8.6)*
14. *Dwarka Prasad Agarwal V. B.D. Agarwal, (Para-8.6)*
15. *K. Anbazhagan V. Supt. Of Police, (Para-8.6)*
16. *Zahira Habibullah Sheikh (5) V. State Of Gujarat, (Para-8.6)*
- b 17. *Noor Aga V. State Of Punjab, (Para-8.6)*
18. *Amarinder Singh V. Parkash Singh Badal, (Para-8.6)*
19. *Mohd. Hussain V. State (Govt. Of Nct Of Delhi), (Para-8.6)*
20. *Sudevanand V. State, (Para-8.6)*
- c 21. *Rattiram V. State Of M.P., (Para-8.6)*
22. *Natasha Singh V. Cbi, (Para-8.6)*
23. *Maneka Sanjay Gandhi & Another V. Rani Jethmalani, (Scc P. 169, Para 2), (Para-8.6)*
24. *Mangal Singh V. Kishan Singh, Scc P. 307, Para 14, (Para-8.6)*
25. *Manu Sharma V. State (Nct Of Delhi), (Para-8.6)*
- d 26. *Mohd. Hussain @ Julfikar Ali V. The State (Govt. Of Nct) Delhi, Scc Pp.425-26, Para 37, (Para-8.6)*
27. *Zahira Habibulla H. Sheikh V. State Of Gujarat, (Para-8.6)*
28. *Bablu Kumar And Ors. V. State Of Bihar And Anr., (Para-8.6)*
29. *State Of Haryana V. Ram Mehar And Ors., (Para-8.6)*
- e 30. *Dinu Bogha Solanki Vs. State Of Gujarat, (2018) 11 Scc 129, (Para-8.7)*

ORDER

f **SONIA GOKANI, J.:** -1. The petitioner, herein, is the original complainant, who has preferred the present petition under Article 226 of the Constitution of India read with Section 482 of the Code, challenging the legality, validity and propriety of the order dated 03.04.2018, passed by the learned Addl. Chief Metropolitan Magistrate, Court No. 18, Ahmedabad, in connection with the FIR being I-C.R. No. 210/2017, registered with Krushnanagar Police Station, Ahmedabad, under Sections 406, 420, 467, 468, 471 and 114 of the Indian Penal Code, 1860, whereby, it rejected the application preferred by the IO for custodial remand of original accused Nos. 1 and 2, respondent Nos. 3 and 4, herein.

g
h 2. It is alleged by the original complainant- petitioner, herein, that the original accused Nos. 1 and 2, in connivance with each other, have managed to sell the land belonging to the petitioner and two other partners to original accused No.3, who happens to be the relative of the original accused Nos. 1 and 2 on the basis of the bogus, forged and fabricated power-of-attorney by executing the same with the fake

signature and thumb impression of his. This conspiracy is alleged to have been hatched to grab the land being bearing Survey No. 212/1/2, admeasuring 0-23-27 sq.mts., situated at Mauje: Saijpur Bogha, Asarva, Ahmedabad (in short, 'the said land'), which has present market value to the tune of Rs.5/- to Rs.6/- crore. a

2.1 It is the case of the petitioner that he being one of the co-owners of the said land, in the year 2016, when he checked the status of the said land online, he found that the same has been illegally transferred in the name of one Shri Ashok Mali, i.e. the original accused No.3, and therefore, he filed the aforesaid complaint. b

2.2 He has, in detail, given the history as to how the police was not ready to lodge the FIR and he needed to approach this Court by way of Special Criminal Application No. 8912/2016, praying for registration of the FIR, as provided in the case of '*LALITA KUMARI V. STATE OF UTTAR PRADESH AND OTHERS*', (2014) 2 SCC 1. This was disposed off, by this Court (Coram: Mr. J.B. Pardiwala, J.) vide order dated 22.11.2016. Despite the aforesaid order, the PI of the concerned police station did not register the FIR and instead gave an opinion that no case is made out to register the FIR, as the dispute between the parties is essentially of civil nature. The petitioner, therefore, approached this Court, once again, by way of Special Criminal Application No. 1722 of 2017, where, the Court directed the PI of the Krushnanagar Police Station to collect the original power-of-attorney and to obtain the specimen signatures of the accused and sent the same to the FSL for obtaining the opinion of the hand-writing expert. c d e f

2.2 It is the grievance on the part of the petitioner that despite the order of the Court, no implementation has been done so far of the same. He, therefore, needed to approach this Court for the third time by way of Criminal Misc. Application No. 14634/2017 in Special Criminal Application No. 1722/2017, where, the Court on 27.07.2017 observed that it was not satisfied with the affidavit filed by the IO concerned and the Dy. Commissioner of Police, Zone-4, Ahmedabad, was directed to look into the matter and to comply with the order of this Court passed in Special Criminal Application No. 1722/2017. Dy. Commissioner of Police, Zone-4, Ahmedabad, then, directed the PI, Krushnanagar Police Station to register the FIR. However, the original power-of- attorney used in the land scam has not been recovered, yet, and the writ application is pending, till date. g h

a 2.3 It is the case of the petitioner that the criminal conspiracy has been revealed, and therefore, Section 120-B of the IPC has already been added by the IO. It is a matter of record that both the original accused Nos. 1 and 2, who were not granted anticipatory bail, initially. Later on, they preferred Special Criminal Application Nos. 7361/2017 and 7640 of 2017 for quashment of the aforesaid FIR. However, both b the applications were disposed off, by this Court. Subsequently, both the original accused Nos. 1 and 2 were granted regular bail, the challenge to which also has been made by the original complainant-petitioner before this Court, seeking cancellation of bail.

c 3. It is in this background, the petitioner is before this Court, challenging the order of rejection of remand dated 03.04.2018, with the following prayers:

"11. ...

d (A) **YOUR LORDSHIP** may be pleased to admit and allow this petition;

e (B) **YOUR LORDSHIP** may be pleased to quash and set aside the impugned order dated 03/04/2018 passed by the Ld. Addl. Chief Metropolitan Magistrate, Court No. 18, Ahmedabad, and further may be pleased to send the respondent Nos. 3 and 4 to police custody for the fair and effective investigation;

f (C) **YOUR LORDSHIP** may be pleased to suspend and cancel the common order of the Ld. City Civil and Sessions Court, Ahmedabad, dated 10/4/2018 passed in Criminal Misc. Application No. 2250/18 and Criminal Misc. Application No. 2251/18 enlarging the accused No. 1-Gangaram Hemtaji Mali Respondent No.3 and Accused No. 2 - Kamlesh Gangaram g Mali Respondent No.4 till the disposal of the present application in the interest of the justice;

(D) ..."

h 4. According to the petitioner, the impugned order is a non-speaking and illegal order, and therefore, the learned Presiding Officer has failed to apply his mind, while passing the same and the same deserves to be set aside. Both the original accused Nos. 1 and 2 are supposed to have the original power-of-attorney and yet, they have chosen not to produce the same during the course of investigation. The Courts below have ignored the fact that from the

very beginning, it has been alleged that both accused Nos. 1 and 2 are have played the key role and they are also the conspirators, who have forged the power-of-attorney to grab the land, which has market value of Rs.5/- to Rs.6/- crore for a paltry sum of consideration. The IO will have no clue without the custodial interrogation of the original accused Nos. 1 and 2. a

4.1 He also strongly objected to the observations made by the learned Presiding Officer that the accused had visited the police station several times and SDS test also has been conducted in their case. It is urged that original power-of- attorney is must to be obtained to reach to the truth of the matter. b c

5. This Court has heard the learned Sr. Advocate, Mr. B.B. Naik, with learned Advocate, Mr. Pandya, for the petitioner, who has urged that the entire basis of the case of the prosecution is forged power-of-attorney, which had been directed to be obtained from the accused by the Court. However, till date, the same is alluding the investigating agency. It is also his grievance that the IO has not done, what he needed to do in obtaining the original power- of-attorney and the Presiding Officer also seems to be oblivious of the said fact. He, further, urged that the remand of the accused is rejected, which is likely to affect the case of the prosecution very seriously, as no headway could be made in absence of such an important document. d e

5.1 He has sought to rely on the decisions of this Court in '*GOPALBHAI CHATURBHAI AMIN VS. STATE OF GUJARAT*', 2005 (4) GLR 3103, and of the Apex Court in '*State and another Vs. N.M.T. Joy Immaculate*', (2004) 5 SCC 729. He also relied on various other decisions, more particularly, the decision of this Court in '*KANTIBHAI DEVSIBHAI PATEL VS. STATE OF GUJARAT*', 2016 (1) GLR 139, to bring home his point. f

6. Learned APP appearing for the respondent- State has supported the case of the petitioner and has urged to set aside the impugned order. g

7. Learned Advocate, Ms. Trusha Patel, appearing for original accused Nos. 1 and 2, respondent Nos. 3 and 4, herein, has strongly urged that the order passed by the learned Magistrate as well as that of the learned City Sessions Judge in Criminal Revision Application No. 93/2018 may not be interfered with. According to her, as far as the inherent powers of this Court under Section 482 of the Code of the Criminal Procedure, 1973, are concerned, the statutory remedy is h

- a available to the petitioner under Section 397 of the Code. The petitioner had preferred revision application before the Sessions Court, instead of approaching this Court directly under Article 226 of the Constitution of India. She, further, urged that the challenge is made to the order dated 03.04.2018, passed by the learned Addl. Chief Metropolitan Magistrate in connection with the FIR being I-C.R. No. 210/2017, registered with Krushnanagar Police Station.
- b

- 7.1 According to her, as per the version of original accused Nos. 1 and 2, the land in question was purchased in the year 2008 from one Shri Bhagwati Prasad Dave by the original complainant and his partners, namely Shri Prakashraj Jain and Shri Sunny Prakashraj Jain. The stamp duty was paid to the tune of Rs.74,051/- and the consideration to the tune of Rs.4/- lakh and all the three persons had equal share in the said property. The sale deed was registered on 23.07.2008 vide No. 6681/2008 and the same was kept with Shri Prakashraj Jain. It is, further, their case that prior to 2007, respondent No.3 decided to purchase the said land from its original owner, certain people were residing, thereon. Therefore, the original owner, Shri Bhagwati Prasad Dave, executed a power-of-attorney in favour of accused No.1 to get those houses vacated on 24.08.2007. Sitting tenants instituted HRP Civil Suit Nos. 2493 to 2495/2007 against the original owners and original accused No.1 handled the entire dispute for and on behalf of the original land owner. Since, original accused No.1 was handling the entire dispute for and on behalf of the original owner, he was spending the huge amounts after the litigations, he, therefore, thought it fit to get the sale deed executed in favour of one Shri Prakashraj Jain, who was a person of confidence of original accused No.1. Accordingly, the land in question was purchased jointly in the names of Shri Prakashraj Jain, his son Shri Sunny Jain and in the name of the original complainant vide registered sale deed bearing No. 6681 on 23.07.2008. After once the consideration was paid and the sale deed was executed, the names of all the three purchasers were mutated in the revenue record. Since, it was the original accused No.1, who had spent huge amounts to the tenants to get the matter settled and since, he wanted to develop the said land developed, in the year 2013, he got executed a power-of-attorney in favour of one Shri Kamlesh Gangram Mali through new purchasers, namely Shri Prakashraj Jain, Shri Sunny Jain and the present petitioner-original complainant, who is a man of confident of Shri Prakashraj Jain. An affidavit was also filed by all the three, which was produced before the Sub-Registrar, which contained
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the signatures of all the three persons, which stated that said Shri Kamlesh Gangaram Mali shall be acting as their power-of-attorney holder and executed a sale deed, pursuant to filing of such an affidavit. This was done on a stamp paper of Rs.100/-, which was also notarized and purchased by the original complainant. A mutation entry of the same also has been made vide No. 9690 in the revenue record, which came to be certified on 19.02.2015. The original complainant, then, preferred Civil Suit No. 1494/2016 before the City Civil Court, Ahmedabad, against said Shri Ashok Mali, Shri Kamlesh Mali along with Shri Prakashraj Jain and his son, Shri Sunny Jain, seeking cancellation of Sale Deed bearing No. 2396, Dated: 23.12.2004, which is allegedly executed on the basis of the power-of-attorney dated 14.02.2013, which is pending, till date. Thereafter, remaining silent for about three years, the original complainant filed the aforesaid FIR. It is their say that original power- of-attorney could be with Shri Prakashraj Jain only, since, the original complainant-petitioner, herein, is merely a pawn in the hands of Shri Prakashraj Jain. All other details of disputes and transactions between the parties also have been narrated to urge that no remand can be granted.

7.2 She also raised the fundamental question that after so many months, when there is no specific order passed by the Court concerned, whether such an order of remand would be permissible? According to her, most of the decisions sought to be relied on by the petitioner will not support his case, so far as the aspect of remand is concerned.

8. Considering the law on the subject, the decision in the case of '*CENTRAL BUREAU OF INVESTIGATION, SPECIAL INVESTIGATION CELL-I Vs. ANUPAM J. KULKARNI*', (1992) 3 SCC 141, requires to be considered, at the outset, where, the Apex Court held that Section 167 is supplementary to Section 57 of the Code. According to it, the investigation should be completed, in the first instance, within 24 hours. If not, the arrested person should be brought by the police before a magistrate as provided under Section 167 of the Code. The law does not authorize a police officer to detain an arrestee for more than 24 hours, exclusive of the time necessary for the journey from the place of arrest to the magistrate court. Sub-section (1) of Section 167 of the Code covers all these procedures and also lays down that the police officer, while forwarding the accused to the nearest magistrate should also transmit a copy of the entries in the diary relating to the case. The entries in the diary are meant to afford to the magistrate, the necessary information upon which he can take

a the decision, whether the accused should be detained in the custody further or not. It may be noted that even at that stage, the Magistrate can release him on bail, if, an application is made and if, he is satisfied that there are no grounds to remand him to custody. But, if, he is satisfied that further remand is necessary then he should act as provided under Section 167 of the Code. Where an accused is placed

b in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature

c having provided for an accused being placed under Section 173 of the Code in police custody under orders of remand for effective investigation of cases has, at the same time, taken care to see that the interests of the accused are not jeopardised by his being placed under

d police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case. These observations make it clear that if an accused is detained in police custody, the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one and when such orders are for lesser

e number of days, but, on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody.

f 8.1 It is at this stage that Sub-section (2) comes into operation, which is very much relevant for our purpose. It provides that the Magistrate, to whom the accused person is thus forwarded, 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 he deems fit for a term not exceeding fifteen days in the whole. If such

g magistrate has no jurisdiction to try the case or commit it for trial and if he considers further detention unnecessary, he may order the accused to be forwarded to a magistrate having such jurisdiction. Thus, the section is clear in its terms. The magistrate under this

h Section can authorize the detention of the accused in such custody as he thinks fit, but, it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody, as the magistrate thinks fit. The words "*such custody*" and "for a term not exceeding fifteen days in the whole" are very significant. It is also well

-settled that the period of fifteen days starts running as soon as the accused is produced before the Magistrate concerned.

8.2 Having regard to the words "in such custody as such Magistrate thinks fit a term not exceeding fifteen days in the whole" occurring in Sub-section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in '*STATE (DELHI ADMINISTRATION) VS DHARAM PAL AND OTHERS*', 1981, 1980 Cri. LJ 1394. Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary of fifteen days. To this extent the view taken in Dharam Pal's case (Supra) is correct.

8.3 So far as the computation of period of remand is concerned, the Apex Court observed and held that the proviso to Section 167 of the Code clearly lays down that the total period of detention should not exceed ninety days in cases, where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time cognizance is not taken on the expiry of the said periods the accused shall be released on bail as mentioned therein. Thus, the total period of 90 days or 60 days can begin to run from the date of order of remand. Therefore the first period of detention should be computed from the date of order or remand. Sub-Section (2A) of Section 167 of the Code has been introduced for pragmatic reasons that, if, an arrested person is produced before an Executive Magistrate for remand, then, the said Magistrate may authorise the detention of the accused for the period not exceeding seven days in aggregate. It further provides that the period of remand by the Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e. aggregate periods of ninety days or sixty days. Since the Executive

- a Magistrate is empowered to order detention only for seven days in such custody as he thinks fit, he should therefore either release the accused or transmit him to the nearest Judicial Magistrate together with the entries in the diary before the expiry of seven days. The Section also lays down that the Judicial Magistrate who is competent to make further orders of detention, for the purposes of computing
- b the period of detention has to take into consideration the period of detention ordered passed by the Executive Magistrate. Therefore on a combined reading of Section 167 and Sub-Section (2A) thereof, it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in
- c such custody namely police custody or judicial custody under Section 167 (2) of the Code for the rest of the period of first fifteen days, after deducting the period of detention ordered by the Executive Magistrate. The detention thereafter could only be in judicial custody.
- d Likewise, the remand under Section 309 of the Code can be only to judicial custody in terms mentioned, therein. In short, Section 309 of the Code comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody.
- e 8.4 So far as the question, whether, a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his
- f arrest, it is held that in one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If, during the
- g investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period, after the expiry of the first fifteen days. However, this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed.
- h Since, that would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with the other case and then obtain

the order of the magistrate for detention in police custody. The Apex Court further held and observed as under:

11. A question may then arise whether a person arrested in respect of 176 an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his arrest. The learned Additional Solicitor General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences. We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted than the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be as different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the magistrate for detention in police custody. The learned Additional Solicitor General however strongly relied on some of the observations made by

a Hardy, J. in Mehar Chand's case extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences. We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences 177 including the so-called serious offences discovered at a later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transaction give rise to two different cases and the exercise of power under Section 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In *S. Harsimran Singh v. State of Punjab, 1984 CrL. L.J. 253* a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to single case or is attracted to a series of different cases requiring investigation against the same accused and held thus: "We see no inflexible bar against a person in custody with regard to investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under S.167(2) of the Code for investigation another offence. Therefore, a rearrest or second arrest in a different case is not necessarily beyond the ken of law".

This view of the Division Bench of the Punjab & Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it

explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.

12. As the points considered above have an important bearing in discharge of the day-to-day magisterial powers contemplated under Section 167(2), we think it appropriate to sum up briefly our conclusions as under :

13. "Whenever any person is arrested under Section 57 Cr.P.C. he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen day in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is

a produced before the Executive Magistrate he is empowered to
authorise the detention in such custody either police or
judicial only for a week, in the same manner namely by one or
more orders but after one week he should transmit him to the
nearest Judicial Magistrate along with the records. When the
b arrested accused is so transmitted the Judicial Magistrate, for
the remaining period, that is to say excluding one week or the
number of days of detention ordered by the Executive
Magistrate, may authorise further detention within that period
of first fifteen days to such custody either police or judicial.
c After the expiry of the first period of fifteen days the further
remand during the period of investigation can only be in
judicial custody. There cannot be any detention in the police
custody after the expiry of first fifteen days even in a case
d where some more offences either serious or otherwise
committed by him in the same transaction come to light at
a later stage. But this bar does not apply if the same arrested
accused is involved in a different case arising out of a different
transaction. Even if he is in judicial custody in connection with
the investigation of the earlier case he can formally be arrested
e regarding his involvement in the different case and associate
him with the investigation of that other case and the
Magistrate can act as provided under Section 167(2) and the
proviso and can remand him to such custody as mentioned
therein during the first period of fifteen days and thereafter in
f accordance with the proviso as discussed above. If the
investigation is not completed within the period of ninety
days or sixty days then the accused has to be released on bail
as provided under the proviso to Section 167(2). The period of
g ninety days or sixty days has to be computed from the date of
detention as per the orders of the Magistrate and not from the
date of arrest by the police. Consequently the first period of
fifteen days mentioned in Section 167(2) has to be computed
h from the date of such detention and after the expiry of the
period of first fifteen days it should be only judicial custody.

8.5 In '*STATE OF WEST BENGAL VS. THE COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS*', AIR 2010 SC 1476, the Apex Court held and observed that in a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. The Constitution is a living and organic document. It cannot

remain static and must grow with the nation. The Constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity. a

8.6 In the case of '*ASHA RANJAN VS. STATE OF BIHAR*', (2017) 4 SCC 397, the apex Court was considering the case, where, one of the accused, who was an influential person being twice an MLA and four times MP, who is alleged to have threatened the witnesses of eliminating them and who has already been declared history-sheeter Type-A (who is beyond reform). The Apex Court was considering the question of transfer of prison of an under-trial prisoner, where, the Court was examining the concept of fair trial and while so doing, it summarized the objectives and principles of a fair trial to held that it is in its ambit requires fairness to the accused, the victim and the collective at large. No one can claim absolute predominance over the other, for once absolute predominance is recognised, it will have the effect potentiality to bring in an anarchical disorder in the conducting of trial, defying established legal norms. The Apex Court, further, opined that the whole thing would be dependent on the fact situation; established norms and recognised principles and eventual appreciation of the factual scenario in entirety. There may be cases which may command compartmentalisation, but, it cannot be stated to be an inflexible rule. It, further, observed and held that each and every irregularity cannot be imported to the arena of fair trial. There may be situations, where, injustice to the victim may play a pivotal role. The centripodal purpose is to see that injustice is avoided, when the trial is conducted. Simultaneously, the concept of fair trial cannot be allowed to such an extent so that the systemic order of conducting a trial in accordance with the Code or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of the Code cannot be thrown to the winds. In such a situation, as has been laid down in many authorities, the courts have significantly an eminent role. It, further, held and observed thus: b
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"39. In *J. Jayalalithaa & Ors v. State of Karnataka & Ors.*[8], the Court held that fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. It h

a has been further observed that any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general and, therefore, in all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the "majesty of the law"

b and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

c 40. The Court further laid down that: (J.Jayalalithaa case, SCC pp. 414-15, Para 29)

d "29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seen to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right, but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution."

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41. Elevating the right of fair trial, the Court observed (J. Jayalalithaa case, SCC pp. 415, Para 30):-

g "30. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by the rule of law. Denial of fair trial is crucifixion of human rights. [Vide *Triveniben v. State of Gujarat*[9], *Abdul Rehman Antulay v. R.S. Nayak*[10], *Raj Deo Sharma (2) v. State of Bihar*[11], *Dwarka Prasad Agarwal v. B.D. Agarwal*[12], *K. Anbazhagan v. Supt. of Police*[13], *Zahira Habibullah Sheikh (5) v. State of Gujarat* [14], *Noor Aga v. State of Punjab*[15], *Amarinder Singh v. Parkash Singh Badal*[16], *Mohd. Hussain v. State (Govt. of*

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NCT of Delhi[17], *Sudevanand v. State*[18], *Rattiram v. State of M.P.*[19] and *Natasha Singh v. CBI*[20].]"

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34. In this regard, we may sit in the time machine and refer to a three- Judge Bench judgment in *Maneka Sanjay Gandhi & another v. Rani Jethmalani*[21], wherein it has been observed that : (*SCC p. 169, para 2*)

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"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment is necessitous, if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case."

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The Court observed that accused cannot dictate where the case against him should be tried and, in a case, it the duty of the Court to weigh the circumstances.

43. In *Rattiram* (supra), speaking on fair trial, the Court opined that (*SCC p 534, para 39*):-

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"39. ... Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism."

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In the said case, it has further been held that (*Rattiram* case, *SCC pp. 541-42, paras 60-61 & 64*):-

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"60. While delineating on the facets of speedy trial, it cannot be regarded as an exclusive right of the accused. The right of a victim has been given recognition in *Mangal Singh v. Kishan Singh*[22] wherein it has been observed thus: (*SCC p. 307, para 14*)

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"14. ... Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not

cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence."

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61. It is worth noting that the Constitution Bench in Iqbal Singh Marwah v. Meenakshi Marwah[23] though in a different context, had also observed that delay in the prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.

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64. Be it noted, one cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal jurisprudence, the testimony of the victim is given paramount importance. Sometimes it is perceived that it is the duty of the court to see that the victim's right is protected. A direction for retrial is to put the clock back and it would be a travesty of justice to so direct if the trial really has not been unfair and there has been no miscarriage of justice or failure of justice." (Emphasis in original)

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44. Be it noted, the Court in the said case had noted that there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out the adjective law, would only be sound and fury signifying nothing."

45. In *Manu Sharma v. State (NCT of Delhi)* [24], the Court, emphasizing on the concept of fair trial, observed thus: (SCC pp. 79-80, para 197)-

"197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."

46. A three-Judge Bench in *Mohd. Hussain @ Julfikar Ali v. The State (Govt. of NCT) Delhi*[25] approvingly reproduced para 33 of the earlier judgment in *Zahira Habibulla H. Sheikh v. State of Gujarat*[26] (known as "Best Bakery" case) which is to the following effect: (Mohd. Hussain Case, SCC pp.425-26, para 37)-

"37. ...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." (Zahira Habibulla Case, SCC p.183)"

47. In *Zahira Habibulla H. Sheikh* (supra) (Mohd. Hussain case, SCC p.426, para 38), it has been held:-

"38. ...38 A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or

a innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

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d 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.

e 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. (Zahira Habibulla case, SCC p. 187, paras- 38-40) "

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h 48. In *Mohd. Hussain @ Julfikar Ali* (supra) the three-Judge Bench has drawn a distinction between the speedy trial and fair trial by opining that there is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis- �-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of

crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. a
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49. We have referred to the said authority in Mohd. Hussain case as the three-Judge Bench has categorically stated that interests of the society at large cannot be disregarded or totally ostracized while applying the test of fair trial. c

50. In *Bablu Kumar and Ors. v. State of Bihar and Anr.* [27] the Court observed that it is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a mock trial. The Court further ruled that a criminal trial is a serious concern of society and every member of the collective has an inherent interest in such a trial and, therefore, the court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The said observations were made keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the court. d
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51. Recently, in *State of Haryana v. Ram Mehar and Ors.*[28], after analyzing the earlier judgments, the Court ruled (SCC p. 778, para 24) that the concept of the fair trial is neither in the realm of abstraction or a vague idea. It is a concrete phenomenon; it is not rigid and there cannot be any straitjacket formula for applying the same. The Court observed that it cannot be attributed or clothed with any kind of rigidity or flexibility in its application. It is because fair trial in its ambit requires fairness to the accused, the victim and the collective at large. The Court ruled that neither the accused nor the prosecution nor the victim which is a part of the society can claim absolute predominance over the other, for once absolute g
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a predominance is recognised, it will have the effect potentiality to bring in an anarchical disorder in the conducting of trial defying established legal norm. The Court opined that whole thing would be dependent on the fact situation; established norms and recognised principles and eventual appreciation of the factual scenario in entirety. There may be cases which may command compartmentalisation but it cannot be stated to be an inflexible rule. Each and every irregularity cannot be imported to the arena of fair trial. There may be situations where injustice to the victim may play a pivotal role. The centripodal purpose is to see that injustice is avoided when the trial is conducted.

b Simultaneously the concept of fair trial cannot be allowed to such an extent so that the systemic order of conducting a trial in accordance with CrPC or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of the Code cannot be thrown to the winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role. A plea of fair trial cannot be acquiesced to create an organic disorder in the system. It cannot be acceded to manure a fertile mind to usher in the nemesis of the concept of trial as such. The Court further observed that there should not be any inference that the fair trial should not be kept on its own pedestal as it ought to remain but as far as its applicability is concerned, the party invoking it has to establish with the support of established principles. The process of the court cannot be abused in the name of fair trial at the drop of a hat, as that would lead to miscarriage of justice.

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g 52. On a studied analysis of the concept of fair trial as a facet of Article 21, it is noticeable that in its ambit and sweep it covers interest of the accused, prosecution and the victim. The victim, may be a singular person, who has suffered, but the injury suffered by singular is likely to affect the community interest. Therefore, the collective under certain circumstances and in certain cases, assume the position of the victim. They may not be entitled to compensation as conceived under section 357A of the CrPC but their anxiety and concern of the crime and desire to prevent such occurrences and that the perpetrator, if guilty, should be punished, is a facet of Rule of Law. And that has to be accepted and ultimately protected.

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53. It is settled in law that the right under Article 21 is not absolute. It can be curtailed in accordance with law. The curtailment of the right is permissible by following due procedure which can withstand the test of reasonableness. Submission that if the accused is transferred from jail in Siwan to any other jail outside the State of Bihar, his right to fair trial would be smothered and there will be an inscription of an obituary of fair trial and refutation of the said proponent, that the accused neither has monopoly over the process nor does he has any exclusively absolute right, requires a balanced resolution. The opposite arguments are both predicated on the precept of fair trial and the said scale would decide this controversy. The interest of the victim is relevant and has to be taken into consideration. The contention that if the accused is not shifted out of Siwan Jail, the pending trials would result in complete farce, for no witness would be in a position to depose against him and they, in total haplessness, shall be bound to succumb to the feeling of accentuated fear that is created by his unseen tentacles, is not an artifice and cannot be ignored. In such a situation, this Court should balance the rights between the accused and the victims and thereafter weigh on the scale of fair trial whether shifting is necessary or not. It would be travesty if we ignore the assertion that if the respondent No. 3 is not shifted from Siwan Jail and the trial is held at Siwan, justice, which is necessitous to be done in accordance with law, will suffer an unprecedented set back and the petitioners would remain in a constant state of fear that shall melt their bones. This would imply balancing of rights.

8.7 In '*DINU BOGHA SOLANKI VS. STATE OF GUJARAT*', (2018) 11 SCC 129, it was a case of challenge to the order of the High Court for retrial / de novo trial, while exercising the writ-jurisdiction, where, the Apex Court held that normally such a retrial has to be ordered by the Appellate Court while dealing with the validity and correctness of the judgment of the trial court as this power is expressly conferred upon the Appellate Court by Section 386 of the Code However, in exceptional circumstances, such a power can be exercised by the High Court under 226 or by the Apex Court under Article 32 of the Constitution of India to do complete justice and to inhibit travesty of justice. It also emphasized on the concept of fair

a trial to held that for achieving the fair trial, which is the solemn function of the Court, role of witnesses assumes great significance. Since, the witnesses are truthful are the 'eyes and ears' of the Court.

b 8.8 In Criminal Revision Application No. 45 of 1997, this Court (Coram: Mr. N.N. Mathur, J.) was considering the case, where the petitioners were granted anticipatory bail by the High Court in Criminal Revision Application No.242/97 on 15.01.1997 and while so doing, the Court also had granted liberty to the police to apply for remand, if required. Consequently, remand was granted by the learned Magistrate at the instance of the police, which was challenged c by the petitioners before this Court, where, this Court held that in the matter of remand, the complainant has no say and it is the matter between the investigating agency and the Court. The Court, therefore, did not find any justification in the remand granted by the learned Magistrate.

d 8.9 Much emphasis is laid by the learned Advocate, Ms. Patel, appearing for the petitioner on the above decision to urge that, in the instant case, therefore, the original complainant could not have challenged the order of the learned Magistrate, rejecting the application of police for remand.

e 8.10 Taking, firstly, the decision of this Court in Criminal Revision Application No. 45 of 1997, the Court has been categorical that the original complainant would have no say in the matter of remand, since, that is essentially between the IO and the trial Court concerned.

f 8.11 In the instant case, when the request was made for remand by the IO, it came to be rejected. The revision preferred against the same also had been rejected by the Court of the learned City Sessions Judge, and thereby, the Revisional Court also has chosen not to interfere with the order of the trial Court. g

h 8.12 The petitioner, therefore, has approached this Court, which has been strongly resisted by the other side on the ground that the statutory remedy is available to the petitioner under Section 397 of the Code has been exhausted and it is not for the complainant to pursue the plea of remand in absence of prosecution insisting for the same.

8.13 In reply to a specific query raised by this Court, the learned APP has answered that neither any challenge has been made by the State nor is it contemplating any challenge, so far as the orders passed by the trial Court so also the revisions Court and rejection of

remand to the police custody is concerned. Undoubtedly, the basis of the case of the prosecution is forgery of POA, and therefore, the original POA will be a must to procure. However, the IO concerned has not been able to procure the original POA from any of the accused. No substantial progress is possible in the investigation without this vital document. a

8.14 According to the complainant, the accused side is not revealing the document, whereas, according to the accused, two of the partners of the original complainant, namely Shri Prakashraj Jain and Shri Sunny Jain, are hands in gloves with the man, who is their confident and at their behest, he has initiated the prosecution. One of them has the original POA and deliberately, they are not producing the same. This is just to harass the complainant that the entire plot is made. b c

8.15 Ordinarily, POA would be with the person, who purchases the property, as in future, he would be requiring it the most. The buyer appeared before this Court, seeking anticipatory bail and so far as the issue of his remand has not arisen before any Court and at the appropriate time, the IO may be in a position to procure the same, since, the original POA for establishing forgery etc. shall be necessary. d

8.16 The question, therefore, as to whether, in case of the present respondent Nos. 3 and 4, the order of rejection of remand passed by the trial Court and confirmed by the revisional Court, whether would need to be interfered with and directions are required to be issued to the IO to take them into police custody for the purpose of procuring the vital document, i.e. the original POA. e f

8.17 The decision in '**CBI, SPECIAL INVESTIGATION CELL- I Vs. ANUPAM J. KULKARNI**' (Supra), would need to be referred to as this stage, wherein, in the paragraphs referred to herein above, on interpretation of Section 167 of the Code, the Apex Court has held that having regard to the words, "in any such custody as he deems fit for a term not exceeding fifteen days in the whole". The Apex Court, further, held that "Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary of fifteen days. To this extent the view taken in Dharam Pal's case is correct." The Apex Court, further, made it clear that for computing the period of remand, g h

a by holding that, the proviso to Section 167(2) of the Code clearly lays down that the total period of detention should not exceed 90 days. In case, where, the investigation relates to serious offences and 60 days in other cases and if, by that time the cognizance is not taken, on the expiry of the said period, the accused shall be released on bail.

b 8.19 It is, thus, clear that on a combined reading of Section 167 (2) and (2A) of the Code, when the accused is forwarded to Judicial Magistrate, he can direct the detention in such custody, namely police custody or judicial custody, under Section 167 (2) of the Code for rest of the first 15 days, the detention, thereafter, could only be in judicial
c custody.

d 8.20 This Court also needs to make a note of the fact that many-a-times, after once, the order of remand is rejected by the trial Court and thereafter, by the revisional Court, the challenge is made by the IO or by the private parties. Sometimes, the investigating agency approaches this
e Court, challenging the rejection of order of remand, it is not to be circumscribed by the ratio laid down in the case of '*CBI, SPECIALINVESTIGATION CELL-I Vs. ANUPAM J. KULKARNI*' (Supra) since, while, making the challenge before the higher forum, the Courts below ordinarily regard the admission on the part of the accused not to
question the aspect of first 15 days of custody and accordingly, the stay continues to operate in favour of the person concerned.

f 8.21 Admittedly, in the instant case, the arrest of the accused-respondents have been made on 02.04.2018, which is nearly before one and a half year from today. There appears to be no order by the trial Court, at any stage, nor of the revisional Court recording any concession of the accused or recording stay. The official period of first 15 days being over, the only custody that can be contemplated, in the case on hand, is judicial custody.
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h 8.22 Both the accused-respondents having been enlarged on regular bail by the competent Court, after their applications for anticipatory bail had been rejected by the trial Court, in that view of the matter, there is a legal fetter to accede to the request of remand or the police custody of the complainant. This Court notices that while enlarging the accused-respondents on regular bail, the Court has directed them to cooperate with the investigating agency. The IO, even after the filing of the charge- sheet, if, deems it appropriate to further investigate in wake of the new material or the new facts and circumstances of the case, which is the prerogative enjoyed by the IO,

and therefore, the IO shall be at liberty to call the respondents-accused as many times, as he considers it appropriate to get their assistance in the investigation. However, that would not mean that their custody can be handed over to police for procuring the POA in its original form. The complainant, even otherwise, has a limited role to play and assuming being the complainant and the victim, can move the criminal machinery, in the opinion of this Court, no case is made out to interfere. Moreover, the respondents admittedly on regular basis attended the police station at the behest of the IO and also have undergone the required tests and have ensured the best of the cooperation in future.

9. Resultantly, this application fails and is **REJECTED**. Rule is discharged.

Result:- Applications rejected.