HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE TWENTY NINETH DAY OF MARCH

TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO: 45762 OF 2018

Between:

1. Ahamed Riswan S/o A.T.Maideen, Aged 20 years, Occ. Student, R/o 81, Sait colony
   2nd street, Egmore, Chennai- 600 008

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh Rep by its Principal secretary Home Department Amaravati, Andhrapradesh.
2. The Superintendent of Police YSR Distict, Kadapa Andhra Pradesh.
3. The Station House Officer B Kodur PS Kadapa District.
4. The Station House Officer Nandalur, P.S. Kadapa District.
5. The Station House Officer Porumamila P.S Kadapa District.
6. The Station House Officer Mydukur P.S. Kadapa District.

...RESPONDENTS

Counsel for the Petitioner(s): B VIJAYSEN REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL (AP)

The Court made the following: ORDER

THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)

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TWO THOUSAND AND NINETEEN

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AND
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

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6. The Station House Officer, Mydukur P.S. Kadapa District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Habeas Corpus or any other direction in the nature of Writ directing the 1st respondent to produce the detenu namely A T Maideen and set him at liberty as his continued incarceration is not authorized by law and is unconstitutional and thus render justice.

Counsel for the Petitioner:SRI. B. VIJAYSEN REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following: ORDER

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HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.45762 of 2018

ORDER: (per Hon'ble the Acting Chief Justice C.Praveen Kumar)

The Present Writ Petition came to be filed seeking issuance of writ of Habeas Corpus, directing the respondents to produce A.T.Maideen (hereinafter called "detenue) before this Court and set him at liberty as his continued incarceration is not authorized by law.

2. The contents of the affidavit, filed in support of the Writ Petition by the son of the alleged detenue, are as under:-

a) The detenue, who is a resident of Chennai, was arrested by the 6th respondent/Station House Officer, Mydukur Police Station, Kadapa District on 24.08.2017 in Crime No.452 of 2017 registered for the offences punishable under Sections 147, 148, 379, 307, 353, 332, 120(B), 417, 468, 471, 109 read with Section 149 I.P.C. and Section 20(1)(c)(ii)(iii)(iv)(vi)(x) of A.P. Forest (Amendment) Act, 1967, Section 20(d),(i),(a),(b),(ii),(a),(b) of A.P. Forest (Amendment) Act, 2016, Rule 3 of A.P. Sandal Wood & Red Sanders Wood Transit Rules, 1969, Section 29(2)(b) of A.P. Forest (Amendment) Act, 2016 and Section 3 of PDPP Act, 1984. Later he was granted bail on 05.03.2018 vide Crl.M.P.No.645 of 2018. It is stated that the detenue was remanded to custody in two other cases i.e., Cr.No.432 of 2015 of Mydukur Police Station and Cr.No.32 of 2016 of Railway Kodur Police Station. When the detenue was a remand prisoner, the District Magistrate,

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Kadapa District passed an order of detention in CI/170/M/2018 dated 19.03.2018 under Act 1 of 1986 . But the said order was set-aside by the Hon'ble High Court on 17.07.2018 vide W.P.No.14693 of 2018. Subsequent to the quashing of the detention order, the detenue furnished sureties as he became entitled to set at liberty in Cr.No.452 of 2017. It is stated that the detenue also applied for bail in the remaining two crimes i.e., Cr.Nos.432 of 2015 and 32 of 2016 and got bail vide Crl.M.P.No.2262 of 2018 and Crl.MP.No.1290 of 2018 respectively. The detenue is said to have been in custody though it is alleged that no arrest was shown in any other case. While so, the detenue was shown as an accused in number of cases in Kadapa District but without showing arrest was produced before the respective Magistrate Courts under PT warrants. Questioning the said act, the petitioner filed a Writ of Habeas Corpus before the erstwhile common High Court vide W.P.No.29887 of 2018 which was disposed on 27.09.2018 giving liberty to question such orders in appropriate proceedings.

b) Pursuant to the said order, the detenue filed a petition to recall PT warrant vide Crl.M.P.No.4418 of 2018 and the same was dismissed by the learned Magistrate, stating that it is not maintainable as he became "functus officio" and has no power to recall the PT warrant already issued. It is stated that when the accused is produced pursuant to a PT warrant, the learned Magistrate remanded him to judicial custody, which act was done despite a written objection, stating that he has no such right or there is no formal arrest in the crime. After getting bail in crime No.96 of 2017, the respondent again applied for PT warrant stating that he was in remand in Cr.No.168 of 2017. Despite written objection, the learned Magistrate ordered production of the

detenue under PT warrant in a new case i.e., Cr.No.149 of 2017 stating that he is under judicial custody in Cr.No.168 of 2017.

c) The contents of the petition affidavit further show that the police appeared to have registered about 60 crimes against the detenue along with several persons as accused and there are about 50 to 100 accused in each case. It is also stated that the detenue was shown as an accused without attributing any specific role except making vague allegations stating that he is a kingpin or at his instigation red sanders trees were cut. Hence, the petitioner contends that if the police are allowed to adopt this tactics, the detenue will not be in a position to come out of the Jail.

3. It is urged that the PT warrant under Section 267 is not and cannot be a source to detain a person to judicial custody. It is urged that the order of learned Magistrate in remanding on P.T. warrant is without jurisdiction and clear abuse of Article 21 of the Constitution. Further, it is pleaded that the Magistrate has the power to remand a person only when he exercises the power under Section 167 of the Code of Criminal Procedure. It is further stated that the Jail authorities cannot keep an accused in custody unless there is a judicial order of remand either under Section 167 or 306 Cr.P.C. As the detention is merely on the basis of PT warrant under Section 267 Cr.P.C., order remanding the accused is ex-facie without jurisdiction and as such the detenue has no other option except to approach this Court under Article 226 of the Constitution of India.

4. From the above, it is clear that the main ground urged by the learned counsel for the petitioner is that as per Section 267 Cr.P.C., the detenue must be in judicial custody under a valid order of remand and that no remand

order can be passed invoking Section 267 Cr.P.C. It is pleaded that after 05.03.2018, the date on which detenue was granted bail, the detenue cannot be considered to be in a valid judicial custody under an order of remand. It is urged that without their being an arrest, remand orders cannot be passed and there cannot be order of remand, when the production is on a PT warrant. Neither the procedure for arrest as required under Section 41(ii), 31-B(b), 41D, 50, 50-A, 60-A is followed nor judicial mind was applied. The learned counsel relied upon a judgment of the Constitutional Bench of the Apex Court in State of Punjab v. Ajaib Singh to show that arrest without a warrant issued by a court, in which, a greater protection was called for ensuring immediate application of judicial mind to the legal authority of the person making the arrest and the regularity of procedure adopted by him. In view of the above, he submits that the argument of the respondent that the petitioner has to challenge the order of remand under the provisions of Cr.P.C. has no legs to stand.

5. The sixth respondent filed his counter denying the allegations made in the writ affidavit stating that a warrant issued under Section 267 Cr.P.C., though does not authorize detention of a person in prison, but it can be invoked to produce a person confined or detained in a prison before a criminal court for answering the charge. As such, it is submitted that the understanding of the petitioner that the alleged detenue was detained merely on the basis of PT warrant under Section 267 Cr.P.C., is not correct and ill founded. It is further submitted that in pursuance of the PT warrants issued, the Jail Authorities produced the alleged detenue before the Court and having heard the parties, the court passed an order under Section 167

Cr.P.C. authorizing the Superintendent, Central Prison, Kadapa to detain the alleged detenue in custody and the same is being extended from time to time. Hence, it is submitted that as the order passed under Section 167 Cr.P.C., is a judicial order and unless and until the said judicial order is set-aside by a competent court, the custody cannot be termed as illegal. It is also stated that since the detenue is involved in number of crimes, in different police stations of YSR Kadapa District, petitions for issuance of PT warrants were required to be filed and if all the police stations file applications for issuance of PT warrants on a given date, it would be impossible to produce the alleged detenue before various courts at various places on a particular date and eventuality the orders of the court could not be complied with. It is further stated that since the alleged detenue has committed offences and is in judicial custody, the police are left with no other option except filing applications for PT warrants and the said action cannot be termed as illegal or contrary to law. If the alleged detenue is not produced between the period specified in the PT warrant, then it ceases to operate. On the other hand, if the alleged detenue is produced before the efflux period and the court passes an order under Section 167 Cr.P.C. then the issue of co-terminus with the end of detention, would not arise. Hence, prays to dismiss the Writ Petition.

6. Before proceeding further, it would be appropriate to know the legislative history of Section 267 Cr.P.C., since the main plank of argument is that the detenue has been illegally and unlawfully detained, thereby warranting issuance of *habeas corpus*, more so, when there is no remand under Section 167 Cr.P.C.

7. The Law Commission in its 40th and 41st report recommended that Section 491 be omitted and more comprehensive provisions be incorporated under the new Code. The reason for suggesting the change appears to be that Section 491(1) corresponds to writ of *habeas corpus*. Since Article 226 of the Constitution of India confers wide and comprehensive powers for the High Courts of the States to issue to any person, or authority, including, in appropriate cases, any Government, directions, orders or writs, including writs in the nature of writ of *habeas corpus* for any purpose. In view of this provision, clauses (a) and (b) of Section 491(1) became practically superfluous. Further, the Law Commission recommended the provisions of clauses (c), (d) and (e) relating to production of prisoners in Court for various purposes should be omitted and more detailed provisions securing the attendance of prisoners in criminal courts on the lines of those contained in the Prisoners (Attendance in Courts) Act, 1955 should be included in this chapter. It is on the lines of these recommendations made by the Law Commission, that Chapter 22 containing Section 267 was brought on record. The objects and reasons for this amendment clearly point out the mind of the legislature, which is to secure the attendance of the prisoner in Court and not to be a help in aid to investigating agency, nor the legislature intended that these provisions be invoked in order to facilitate the investigating agency to call a prisoner through court from another jail in order to make formal arrest or to interrogate in investigation. The heading of the chapter itself shows that the attendance of persons confined or detained in person in Court. Therefore, the Court can exercise the power under Section 267 Cr.P.C. only for the purpose of asking to answer the charge in an inquiry or trial or in the proceeding pending before him, or for giving evidence as witness in the

Court, but cannot require his attendance to answer the charge in the investigation.

8. Prior to introduction of Sections 267 to 269 Cr.P.C., the law that governed the transfer of the prisoner from one court to another court was the Prisoners (Attendance in Courts) Act, 1955. The provisions contained in the said Act viz., Sections 3, 4, 5 and 6 are re-drafted in Sections 267, 268 and 269 of the present code, but in a more comprehensive manner. If one looks at Section 3 of the Act, 1955, the transfer of prisoner was provided for when any civil or criminal Court thinks that the evidence of any person confined in any prison, is material in any matter pending before it. The provisions of the said Act takes into consideration the presence of the prisoner when his evidence is found to be material in any matter pending before the Court, or when a charge of an offence against the said person is made or pending before it. Only two types of situations were contemplated for seeking appearance of a person through P.T. warrant i.e., for 'inquiry' or 'trial'. But, in the new provision, words, 'other proceedings' were incorporated, which is not found in the earlier enactment. Definitely the scope of securing the presence of a prisoner by issuance of P.T. warrant has been wide, meaning thereby, that he can be secured not only for 'inquiry' or 'trial', but also for 'other proceedings' under the Code. If really the intention of the legislature was to restrict the meaning of the words 'other proceedings' only for 'inquiry' or 'trial', definitely there was no necessity for them to incorporate the words 'other proceedings'. It is also to be noted that one another phrase came to be incorporated in Section 267(1)(a) i.e., 'for the purpose of any proceedings against him'. As held by the Apex Court in ***C.B.I. v. Anupam,***

J. Kulkarni[1], 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 further the ends of justice, should be preferred.

9. In our view, the words used in Section 267, 'other proceedings under this Code'; 'for the purpose of any proceedings against him' and 'for the purpose of such proceeding', makes it very clear that the words used therein cannot be given a restricted meaning to fall in line with the preceding words 'inquiry' and 'trial'. The scope and ambit of the words 'other proceedings' require to be given wider meaning. As observed earlier, if the intention of the legislature was to restrict its meaning to the words, 'inquiry' or 'trial', definitely there was no need to use the words 'other proceedings' or 'any proceedings' etc., as referred under Section 267(1)(a) and in the proviso. Hence, we hold that, Section 267 Cr.P.C. can be invoked to all the proceedings which fall within the meaning of the word 'investigation', as defined under Section 2(h) of the code.

10. The next important phrases on which much stress has been laid relates to the terms 'arrest' and 'custody'. Section 46 of the Code deals with how arrest is to be made; that in making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action. Provided that where woman has to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer

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[1] AIR 1992 SC 1768

shall not touch the person of the woman for making her arrest. A reading of the provision would make it clear that the term 'arrest' denotes confinement of the body of the person either by physical act or by words or action.

11. In a given case, if accused is already in judicial custody in connection with one crime and when the Investigation Officer wants to effect his arrest in some other crime, the Apex Court in ***C.B.I. v. Anupam, J. Kulkarni's case*** (supra) observed that he can effect formal arrest of the accused in prison, but he cannot take him into custody without taking prior approval of the concerned court, as his detention has already been authorized by a concerned Magistrate in connection with some other case. It is not permissible for the Police Officer to remove the person from that place by effecting his arrest. Hence, the apex court in the judgment referred to above used the words 'formal arrest'. When once such "formal arrest" is effected in prison, it would not be possible for the police officer to produce him before the nearest Magistrate within 24 hours for the purpose of further remand, since he cannot be removed or moved out from the jail. In such a situation, the only method by which he can seek production of the accused before the concerned Magistrate for the purpose of remand is to invoke the provision under Section 267 Cr.P.C. It is to be noted here that P.T. warrant can be issued by that Magistrate within whose jurisdiction the crime is registered and in which the production is sought, but not by any other Magistrate. It is also to be noted that production on P.T. warrant is sought from the prison through the Superintendent of Jail and not through any other mode.

12. The question which would then fall for consideration, is, whether by effecting such formal arrest, the accused would be in the custody of the police, who executed the formal arrest. Though the words 'arrest' and 'custody' looks synonymous, a Full Bench of Madras High Court in ***Roshan Beevi v. Joint Secretary, Government of T.N***[2] held that 'custody' and 'arrest' are not synonymous terms. The Full Bench held that though custody may amount to arrest in certain circumstances, but not in all circumstances. The findings given in the said judgment came to be tested before the Apex Court in the case of ***Directorate of Enforcement v. Deepak Mahajan and another***[3]. While confirming the stand taken by the Full Bench in ***Roshan Beevi's case***, the Apex Court held as under :

> "Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not *vice versa* and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi."

13. From a reading of the judgment of the Apex Court it is clear that in every arrest there is custody, but not *vice versa*.

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[2] 1983 MLW (crl) 289 Mad
[3] (1994) 3 SCC 440

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14. The next question would be under what circumstances can a person be remanded to custody; Is it necessary that a remand of the accused can only be by the court after the arrest, or is there any other circumstance by which the Court can remand an accused under Section 167 Cr.P.C.

15. The issue came up for consideration before the Apex Court in ***Niranjan Singh v. Prabhakar Rajaram Kharote***[4]. Justice V.R.Krishna Iyer speaking for the Bench observed as under :

> "He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its directions."

16. From the judgment of **Niranjan Singh's case** (supra) it is very clear that an accused can be in custody not only when the Police arrests him, but also when remanded on his surrender before the court and submitting to its jurisdiction. Therefore, as observed by the Apex Court in ***Anupam, J. Kulkarni's case*** (supra) arrest shall never be a pre-condition for remand, and that one need not be arrested and produced before the Court, for the purpose of remand and to the judicial custody of the Court. He can be stated to be in judicial custody when remanded on his surrender before the Court and submits to its jurisdiction. However, his physical control or at least physical presence, coupled with submission to the jurisdiction and orders of Court, is a *sine qua non*. Be it on the production by the investigating agency, or on his own before the court. If the Court is of the opinion that he has committed cognizable offence and that his remand is warranted, it can direct him to be remanded to judicial custody under Section 167 Cr.P.C., though

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[4] {(1980) 2 SCC 559}

not arrested by any investigating agency. That being the position, the argument of the learned counsel for the petitioner that arrest is a pre-condition for remand may not be correct. But however, the power of remand is to be exercised under Section 167 Cr.P.C. only and not under Section 267 Cr.P.C. As held by us earlier, remand of an accused under Section 267 Cr.P.C. itself may not be correct, but remanding an accused by an order of court is a pre-requisite for the purpose of making an application for seeking bail.

17. It is well established that a remand of an accused on production before the court can only be under the provisions of section 167 Cr.P.C., but non-mentioning the provision of law while ordering remand of the accused by itself shall not make a remand, an illegal one. If a specific provision is made while remanding the accused, which is contrary to the provision of Cr.P.C., then definitely one can point out the mistake in passing the order. The counsel for the petitioner placed on record a copy of the recall petition, in an application objecting for remand. A perusal of the order passed in Criminal M.P. No.4418 of 2018 in crime No.96 of 2017 would clearly show that the petitioner/accused was ordered to be detained in judicial custody by invoking the power under Section 167(2) Cr.P.C. No material is placed before the Court to show that a remand order came to be passed under Section 267 Cr.P.C. or that a remand has been ordered automatically on production under Section 267 Cr.P.C. The wording in Section 267 Cr.P.C. relates to securing attendance of prisoners in the course of 'inquiry' or 'trial' or 'other proceedings under the code', if it appears to the criminal court that a person confined or detained in prison should be brought before the court.

The stress is on the words confined or detained in prison, meaning thereby that a P.T. warrant can be issued to a prisoner, who is confined or detained in prison, meaning thereby, the confinement or detention in prison should be a lawful one, only then, warrant issued under Section 267 Cr.P.C. can be executed. Section 267 Cr.P.C., as observed earlier, only speaks about the production of the accused before the Court. It does not anywhere contemplate remand of the accused under the said provision. It is also to be noted here that Sections 267 to 270 Cr.P.C. contemplate production of the prisoner before the Court by the Officer in-charge of the prison. It is also evident that at times, the investigating agency in one case may not be aware about the production of the prisoner before another court, in another crime, where arrest is effected till then.

18. In the instant case, the grievance of the petitioner is that the petitioner is involved in number of cases and that his remand is sought by the police on P.T. warrant without effecting his arrest and that the accused is being remanded on P.T. warrant, contrary to provisions of Section 267 Cr.P.C.

19. A Division Bench of the Madras High Court in ***State by Inspector of Police v. K.N.Nehru & Ors.*** (Crl.O.P.(MD) No.13683 of 2011, dated 3-11-2011) while dealing with an identical situation observed as under :

> "In a case where the police officer deems it necessary to arrest when the accused is already in judicial custody in connection with a different case, in our considered opinion, there are two modes available for him to adopt. The first one is that, instead of effecting formal arrest, he can very well make an application before the Jurisdictional Magistrate seeking a P.T. warrant for the production of the accused from prison. If the conditions required under 267 of the Code of Criminal procedure, are satisfied, the Magistrate shall issue a P.T. Warrant for the production of the accused in Court. When the accused is so produced before the Court, in pursuance of the P.T. Warrant, the

police officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) of the Code of Criminal Procedure. At that time, the Magistrate shall consider the request of the police, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused."

20. Though the learned counsel for the petitioner relied upon various judgments of the Apex Court, more particularly, the judgment of Division Bench in ***K.S.Muthuramalingam v. State, rep. by the Inspector of Police***[5], the said judgment does not apply to the facts in issue. It was a case where the issue was whether pendency of a P.T. warrant can curtail the liberty of an individual and keep him in custody till the date on which his production is sought for. Dealing with such a situation, the Division Bench of Madras High Court held that mere pendency of P.T. warrant is not enough to keep a person in prison, particularly beyond date of expiry of sentence or beyond expiry of remand. It is further held that the pendency of P.T. warrant, cannot be equated with remand, nor construed to authorize detention of a person beyond the period for which he was remanded or committed to undergo imprisonment. Similar view was taken by a Division Bench of the Karnataka High Court in ***Gaurav Geol v. State of Karnataka***[6]. It was a case where the prison authorities detained the prisoner in crime No.10 of 2015 subsequent to the passing of the release order dated 19.6.2015, on which date the detenue was to be released by the prison authorities. Citing the reason of body warrant being issued by the learned Judicial First Class Magistrate Court in C.C. No.309 of 2009 and 63 of 2009, the prison authorities detained the detenue. It was held that pendency of body

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[5] 2010 SCC Online Mad 3648

[6] (2015) 6 Kant LJ 154 (DB)

warrant/production warrant cannot be equated to order of remand and the same cannot be construed to be an authorization for detaining a prisoner beyond the period of detention. Since no order or authorization of the detention was passed after 19.6.2015 by which time he was released, the Court while releasing him on bail directed the petitioner therein to appear before the Court.

21. All the other cases relied upon viz., ***Hussainara Khatoon & Ors. v. Home Secretary*** [7] and ***Bhim Singh v. State of J.&K. & Ors.***[8] dealt with issuance of *habeas corpus* due to illegal detention and payment of compensation. Similarly, the counsel for the petitioner also relied upon judgment in ***Anupam, J. Kulkarni's case*** (supra) which in fact was also relied upon by the counsel for the respondent to show that the remand of the accused does not amount to illegal detention. The two judgments of the Madras High Court, though not binding on us, has been pressed into service as a persuasive value to show that since the accused has been released on bail in the crimes in which his arrest is shown and that remanding of the accused pursuant to the proceedings under Section 267 Cr.P.C. is illegal and incorrect.

22. At this stage, it may be appropriate to refer to the judgment of the learned single judge of the High Court in ***Tupakula Appa Rao v. State of A.P.***[9] It was also a case where the accused was arrested in connection with one crime and is sought on P.T. warrant to judicial remand, without showing his arrest in other crimes purposefully or negligently or otherwise. In such

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[7] AIR 1979 SC 1369
[8] AIR 1986 SC 494
[9] 2002(1) ALD (Crl.) 67 (AP)

circumstances, the Court dealt with the issue as to whether his custody in one crime be deemed to be custody in other crime and held that the fall out of the interpretation giving benefit of detention during investigation, enquiry and trial in one case, in the other case, may also demand the investigating agency not to arrest the accused for commission of the second offence pending conclusion of the trial and passing of sentence in the first case. Therefore, the Court held that benefit of Section 428 of the Code cannot be extended to second case as it amounts to double benefit in the descending view.

23. In the instant case though the petitioner was released on bail in crimes registered against him, the reason for he being kept in prison is not reflected in the material placed on record. On the other hand, the application filed before the lower court seeking recall of P.T. warrant show that to the knowledge of the petitioner he has not been arrested in any other crime and there was no remand under Section 167 Cr.P.C., meaning thereby that the petitioner was not aware or was not able to give a clear picture as to whether his arrest has been shown in any other crime. On the other hand, the counter filed before this court by the Inspector of Police, Mydukur shows that the orders came to be executed only while the prisoner is in judicial remand and remand orders came to be passed under Section 167 Cr.P.C. Since the prisoner was in remand as on the date of passing of the order by the concerned court, the jail authorities produced the alleged prisoner before the court on the respective dates and having heard the matter, passed an order under Section 167 Cr.P.C. remanding him to judicial custody, which is being extended from time to time as required under Section 167 Cr.P.C. Unless

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that judicial order is set aside by the competent court, it is pleaded that the custody cannot be termed as legal.

24. As seen from the record, the petitioner is involved in number of crimes relating to theft and illegal transportation of red sander logs cut in Simhachalam forest. Though he was detained under preventive detention laws, his detention order was set aside on technical ground. Fact remains that he is shown as an accused in number of crimes in different police stations of the State. Steps are being taken for his production in almost all the police stations through P.T. warrant before the concerned courts. It is also to be noted here that if P.T. warrants are issued by different courts for production of the alleged detenue before the respective courts, then it would be practically impossible for the police to produce the prisoner before various courts at various places on a particular date and eventually the order of the High Court could not be complied with. Therefore, the argument of the learned counsel for the petitioner that the police are intentionally filing applications under Section 267 Cr.P.C. as and when he obtained bail is ill-founded.

25. Things would have been different had all the cases been registered in one Police Station. But, in the case on hand, it is to be noted that out of 12 cases in which he was produced on P.T. warrant, the petitioner was granted bail in 10 cases and in two cases bail applications are pending as of now and he is said to have obtained anticipatory bail in three other cases. In the remaining cases, the respective Police are taking steps for filing petitions for issuance of P.T. warrants. The allegation that he was not shown as an accused in all cases and that he is being shown as an accused, as and when

he secures his bail, is denied by the State. Since the alleged detenue is in judicial custody in crime No.452 of 2017, the police stations in whose jurisdictions the crimes came to be registered have filed petitions under Section 267 Cr.P.C. before the concerned court for issuance of P.T. warrant and on production, remand orders came to be passed. At this stage it would be useful to refer to paragraphs 21 and 22 of the writ petition wherein the relief which is sought for is extracted. A reading of two paragraphs show that even the petitioner is not aware as to whether the remand was under Section 267 Cr.P.C. On a premise, that the remand was under Section 267 Cr.P.C., he sought for issuance of *habeas corpus* holding that remand is illegal. No order is placed on record evidencing the remand under Section 267 Cr.P.C. The docket orders which are placed on record in cases where the petitioner has obtained bail, show that the accused was produced on execution of P.T. warrant and then thereafter he was remanded to judicial custody. As observed by us earlier since Cr.P.C. provides of remand only under Section 167 Cr.P.C., it is to be taken that the remand ordered by the Court is under Section 167 Cr.P.C., since the order does not anywhere specifically say that the accused was remanded to judicial custody under Section 267 Cr.P.C.

26. It is also to be noted here that earlier, the petitioner filed W.P.No.29887 of 2018 questioning his detention without remand, as illegal, which was dismissed on 27.9.2018, holding that when the prisoner is detained pursuant to the judicial order passed by the Magistrate, one cannot term such detention, as illegal, as there is distinction between illegal custody and custody made in pursuance of the judicial orders. Unless judicial orders

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are set aside, the petitioner cannot be released holding his detention as illegal and improper. Therefore, viewed from any angle, we hold that issuance of writ of *habeas corpus* would not arise when remands are made pursuant to a judicial order. If the petitioner is aggrieved by his remand pursuant to an order of Magistrate, his remedy lies elsewhere. Even otherwise, it is to be noted that since the warrant came to be executed while the detenue was in custody or detained or confined in prison and since the prisoner himself is unaware as to whether he was remanded in any other crime by then, it cannot be said that execution of warrant is illegal.

27. Accordingly, the Writ Petition is dismissed. No order as to costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

Sd/-I.NAGALAKSHMI
ASSISTANT REGISTRAR

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SECTION OFFICER

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(For His Lordships Kind Perusal)

One Fair Copy to the Hon'ble Sri. Justice M. SATYANARAYANA MURTHY
(For His Lordships Kind Perusal)

To

1. The Principal secretary Home Department, State of Andhra Pradesh, Amaravati, Andhra Pradesh.
2. The Superintendent of Police, YSR District, Kadapa Andhra Pradesh.
3. The Station House Officer, B Kodur PS Kadapa District.
4. The Station House Officer, Nandalur, P.S. Kadapa District.
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HIGH COURT

DATED:29/03/2019

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ORDER

WP.No.45762 of 2018

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Dismissing the WP

Without costs.

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