

Paramjeet Singh Vs. the State

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Court : Delhi

Decided On : Sep-02-1996

Reported in : 1996IVAD(Delhi)588; 1997CriLJ522; 64(1996)DLT22; 1996(38)DRJ737

Judge : Arun Kumar and; K.S. Gupta, JJ.

Acts : [Constitution of India](#) - Articles 21, 226 and 227; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 9, 10, 10(3), 76, 194, 381, 400, 438 and 439; [Evidence Act, 1872](#) - Sections 10 and 114

Appeal No. : Crl. M(M) 1704 of 1996

Appellant : Paramjeet Singh

Respondent : The State

Advocate for Def. : S.K. Aggarwal, ; Jitender Sarin and ; L.R. Luthra, Advs

Advocate for Pet/Ap. : O.P. Saxena, Adv

Judgement :

Arun Kumar, J.

1. The circumstances giving rise to this reference are that a learned single Judge of this Court has passed an order dated 30th April, 1996 in Crl.M.(M) No. 954 of

1995 to the effect that henceforth all the bail applications filed under Sections 438 and 439 of the Code of Criminal Procedure (hereinafter referred to as the Code) should be dealt with by the Sessions Judge himself at the Tis Hazari Courts and by the respective Judges in charge at the Patiala House and the Karkardoma Courts. As a result of the said direction only the Sessions Judge, Delhi is hearing all the bail applications which are filed in the Sessions Court in the Tis Hazari Courts complex. Likewise the Judges in charge in the Patiala House Court complex and in the Karkardoma Court complex alone are hearings similar applications. This has naturally resulted in the bail applications getting piled up because only one Judge each has to hear and dispose of all the applications at the three Court complexes. The problem became more acute in the Tis Hazari Courts complex because there the number of bail applications filed is much more as compared to two other places due to the fact that it caters to a larger area having larger number of police stations within its jurisdiction. Situation came to this that the bail applications could not be taken up for hearing for days together because of a long list of such applications.

2. Section 439 of the Code deals with the powers of the High Court and the Court of Sessions regarding grant of bail. This provision confers concurrent power on the High Court and the Sessions Court to entertain bail applications. Similarly Section 438 of the Code which contains provisions regarding grant of anticipatory bail confers concurrent power on the High Court and the Court of Sessions in that behalf. Some of the applicants whose bail applications remained pending before the Sessions Judge for days together, approached this Court with prayer for grant of bail, highlighting the fact that the bail applications moved by them before the Sessions Judge had remained pending and had not come up even for hearing for days together.

3. In these petitions a grievance was made that the petitioners were being denied even the right to get a preliminary hearing before the Court. This was resulting in their continued incarceration. If they could get bail they could regain their personal liberty. The petitioners invoked Art. 21 of the [Constitution of India](#) and submitted that denial of right to even approach the Court with prayer for bail strikes at the very root of the concept of rule of law and is negation of the Constitutional

guarantee.

4. When one of such petition came up before another learned single Judge of this Court, he took the view that the Code does not contain any provision which confines the power to entertain bail applications under Sections 438 and 439 of the Code of the Sessions Judge alone. Taking note of the provisions of Section 10 of the Code the learned single Judge felt that the Sessions Judge has the power to entrust any urgent application to the Additional Sessions Judges. However, in view of the earlier decision of this Court in CrI.M.(M) 954 of 1995, referred to hereinbefore, the learned single Judge felt it appropriate to refer the matter to a larger Bench. This is how this reference is before us.

5. The precise question referred to the larger Bench by the learned single Judge is : Whether the Additional Sessions Judge can hear and decide bail applications even if the Sessions Judge is not absent but is incapable of acting due to rush of work or his being busy in administration work

6. We have heard Shri O. P. Saxena, advocate, the learned Counsel for the petitioner in CrI.M.(M) No. 1704 of 1996, Dr. Janak Raj Jai, the petitioner CrI.W. No. 502 of 1995 who filed an independent petition under Articles 226 and 227 of the Constitution to highlight the issue and Shri S. K. Aggarwal, advocate, Standing Counsel (CrI.) for the Govt. of National Capital Territory of Delhi.

7. Section 9 deals with the Court of Sessions. It provides :-

'(1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) xx xx xx (5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or

may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application. (6) xx xx xx

8. The entire city of Delhi is one Sessions division and, therefore, has only one Sessions Judge. However, the High Court has appointed several Addl. Sessions Judges who exercise judicial powers similar to those exercised by the Sessions Judge. This is clear from the provisions of Sections 194, 381 and 400 of the Code. In *Abdul Mannan v. State of West Bengal*, : AIR 1996 SC905, a recent decision of the Supreme Court, it has been held that Sessions Judge includes Additional Sessions Judge. He has all the powers and jurisdiction of the Sessions Judge.

9. This brings us to the main issue, i.e. the power of the Sessions Judge to assign bail applications to the Addl. Sessions Judges. The relevant provision contained in the Code in this behalf is sub-section (3) of Section 10 which is reproduced as under :-

'The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.'

10. Undoubtedly all bail applications are urgent applications and are covered within the meaning of words 'urgent application' in the above provision. The section empowers the Sessions Judge to make provision for disposal of urgent applications in the event of his absence or inability to act by the Addl. Sessions Judge etc. etc. The power can be exercised by the Sessions Judge in the event of 'absence or inability to act'. These are the key words. In fact there is no difficulty about the word 'absence'. The real question is about the meaning to be assigned to words 'inability to act'. What will fall for consideration in this connection is whether inability to act refers to only physical incapacity or it will include inability arising on account of other reasons also. In the old code the corresponding

provision was contained in Section 17(4). The words used were 'when he himself is unavoidably absent or incapable of acting'. With reference to the said provision the Punjab High Court held in *State v. Mohinder Singh* AIR 1964 P&H; 543:1964 (2) Cri LJ 728, that the word 'incapacity' does not necessarily refer to physical incapacity by way of illness or the like. After referring to the meaning of the word 'incapable' it was held that it does not necessarily imply that the person rendered incapable is suffering from physical incapacity. It would also cover the case where the incapacity is caused by other causes including the pressure of other work. It was also held that the relevant provisions of the code confer wide powers on the Sessions Judge to assign various types of cases to the Addl. Sessions Judges and the comprehensive nature of those powers goes to show that the Sessions Judge can in appropriate cases, assign an application for bail in a pending case to the Court of Addl. Sessions Judge. It was noted that in actual practice such a power has always been exercised by the Sessions Judges to relieve the congestion of work in their Courts and to ensure equitable distribution of work in the Court of Addl. Sessions Judges. In fact the learned single Judge who passed the order directing that the bail applications be dealt with by the Sessions Judge alone recognised this prevailing practice of the Sessions Judge assigning urgent bail applications to the Addl. Sessions Judges.

11. In Section 10(3) in the present Code (which is the provision corresponding to Section 17(4) of the old Code) in place of the word 'incapacity' the words 'inability to act' have been used. In common parlance the words 'incapacity' and 'inability' have generally been synonymously used. Collins English Language Dictionary, while giving meaning of the word 'inability', says if you refer to someone's. incapability to do something you are referring to the fact that he is unable to do it. Similarly, according to the New Lexicon Webster's Dictionary the word inability means the state or quality of being unable. This shows that the word inability is of wider amplitude compared to the word incapacity and has been purposely used in the new Code to replace the word incapacity contained in the old Code. Inability to do something can arise from various reasons not necessarily personal or physical incapacity.

12. We are fully in the agreement with the view expressed in *State v. Mohinder Singh* 1964 (2) Cri LJ 728 (supra), where with reference to the word incapacity as contained in the old Code it was held that the word could not be confined to refer to physical incapacity. Fortunately we are dealing with the word inability which is wider in scope. As a matter of fact for our present purposes the manner in which the word inability has been explained in WORDS AND PHRASES, PERMANENT EDITION, VOLUME 20 is most relevant -

'Inability is the state of being unable, physically, mentally or morally, want of ability; lack of power capacity or means; and, as used in reference to the power of a Deputy Commissioner during the absence or inability of the Commissioner to transact any ordinary duties of the Commissioner, is not confined to simple physical inability to examine the bill and sign the approval, but may depend on the necessities growing out of such pressure of other official business as renders it impossible for the Commissioner to attend to all the work of the office.'

13. It follows that sub-section (3) of Section 10 of the Code empowers the Sessions Judge to assign urgent applications to the Addl. Sessions Judges whenever he feels it is necessary to do so in the exigencies of work. Inability to act is to be decided by the Sessions Judge himself. It is he who knows the extent and nature of his work and how he has to do it within the time available with him. It is he who has to decide how much judicial work he is able to handle himself and how much urgent work he should make over to the Additional Session Judges keeping in view the interest of justice.

14. We cannot lose sight of the fact that the District and Sessions Judge in Delhi has to perform a whole lot of judicial as well as administrative functions. He heads a judiciary with a sanctioned strength of 105 officers in the Higher Judicial Service and 218 officers in the Delhi Judicial Service. Certain judicial work he has to handle because it is exclusively within his domain. It is -

'1. Probate/Letters of Administration under the provision of the Indian Succession Act.

2. Guardianship cases under the provisions of the Guardian & Wards Act for Indian as well as foreign families. The guardianship/adoption cases, particularly of the foreigners are to be decided within two months of the filing of the petition, as per the directions of the Hon'ble Supreme Court in Lakshmi Kant Pandey v. Union of India.
3. Grant of certificates under the provisions of the Hindu Adoption & Maintenance Act, 1956.
4. Cases under the Lunacy Act.
5. Wakf Board cases under the Wakf Act.
6. Cases under the Trust Act.
7. Disposal of transfer applications under the Civil Procedure Code and the Criminal Procedure Code.
8. Allocation of Civil & Criminal cases to different Courts.'

Some of the administrative functions to be discharged by him are :-

1. As a Head of Office of 304 Officers of Delhi Higher Judicial Service and Delhi Judicial Service, he deals with all the references pertaining to them relating to the Administration.
2. As a Head of Department of more than 2600 employees of Group 'C' and 'D', he deals with administrative matters.
3. The recruitment, posting, transfer and promotion of Group 'C' and 'D' employees.
4. Vigilance of Judicial Officers and staff.
5. Deals with sanctioned budget amounting to Rs. sixteen crore for the year 1996-97.
6. The Pension cases.

7. Allotment of Govt. accommodation and Court rooms of the Judicial Officers.
 8. The complaints of Judicial Officers.
 9. The work of Jail Inspection.
 10. The work of Judicial Officers' Confidential Reports.
 11. The assessment of work done by all the Judicial Officers.
 12. The purchase of stationary, typewriter/Photostat machines.
 13. The reference of Record Room and Copying Agencies.
 14. The references of Building.
 15. The work of casual leave of Judicial Officers and others.
 16. To convene meetings with Judicial Officers and other Departments for security measure and maintenance of building etc.
 17. To deal with other so many misc. work arising out of day-to-day affairs.'
15. The enormity of above work may require that the Sessions Judge should devise a system which advances the cause of speedy justice in the best possible manner. The use of the word 'inability to act' will cover the above exigencies and that is why for urgent applications he has been empowered under Section 10(3) of the Code to make provision by assigning such work to the Additional Sessions Judges to ensure that it is dealt with expeditiously.
16. A question arises when the statute specifically confers a power on the Sessions Judge should the High Court interfere with it or curtail it in any manner We are of the considered view that when a power is clearly vested by the statute in the Sessions Judge it should be left to be exercised by the Sessions Judge and we should not interfere with the same in any manner nor lay down any fetters on the exercise of such a power by the Sessions Judge. The legislature in its wisdom has conferred this power on the Sessions Judge. This is rightly so. The Sessions Judge is the man on the spot. He knows the nature and the extent of the entire

work before him. He also knows the urgency and the priority which each matter before him ought to be given. It is perfectly just, fair and correct that the Sessions Judge should decide about his ability or inability to handle particular type of urgent judicial work. A bare reading of sub-section (3) of Section 10 of the Code is sufficient to support this reasoning. According to the sub-section, the Sessions Judge may make provision in the event of his absence or inability, to act by an Addl. or Asstt. Sessions Judge etc. The discretion has been left with the Sessions Judge to make provision for disposal of urgent applications by Addl. Sessions Judge in the event of his absence or inability to act. When the discretion is left with the Sessions Judge, it is he who has to decide when he is unable to act, i.e., when he is unable to handle urgent applications personally and when there is need to entrust the disposal of urgent applications to the Addl. Sessions Judge. Inability to act as already noticed is a word of wide connotation and may include various reasons including rush of work on account of the office that the Sessions Judge holds.

17. It came up for consideration before the Andhra Pradesh High Court in *T. V. Sarma v. Adhuthuni Natakoteswararao*, , as to whether an Addl. Sessions Judge had jurisdiction to dispose of an application for bail except when he is validly entrusted with such jurisdiction by the Sessions Judge under the circumstances mentioned in Section 10(3) of the Code. In this case all the accused person were on bail before they were taken into custody in pursuance of the committal order. They preferred urgent applications for bail before the Sessions Judge. On each application, the learned Sessions Judge passed an order giving notice to the P.P. and making over the case to Addl. Sessions Judge for disposal. The applications were sent to the Addl. Sessions Judge who passed orders granting bail to the accused persons. It was argued before the High Court that in the absence of specific orders of the Sessions Judge under Section 10(3) of the Code, the Addl. Sessions Judge would have no jurisdiction to deal with the matter and, therefore, the orders of bail were without jurisdiction. Similar argument was raised that no order for making over a case to Addl. Sessions Judge could be passed by the Sessions Judge unless the Sessions Judge was actually absent from the Court or was physically unable to dispose of the application. It was noted that admittedly the Sessions Judge was not absent from the Court. The only question remained to

be considered was 'inability to act' of the Sessions Judge. The decision of the Punjab High Court in *State v. Mohinder Singh* 1964 (2) Cri LJ 728 (supra) was considered with approval along with various dictionary meanings of the word 'inability' and 'incapacity'. It was observed that 'inability' is used as a term of wider amplitude, meaning not only physical disability or incapacity but in other kind of want of ability to do a particular act whatever may be the reason for the lack of ability. By substituting the word 'incapacity' existing in the old Code by the word 'inability' in the new Code, the legislature wanted to make the matter absolutely clear and beyond controversy. It was held that a Sessions Judge can assign urgent applications for disposal to an Addl. Sessions Judge not only when he is physically incapable of acting but also when he is otherwise unable to act due to pressure of other work. The Court further dealt with the question is to whether specific orders under Section 10, sub-section (3) of the Code are required from the Sessions Judge in each case and whether reasons are required to be given about the inability of the Sessions Judge. On both aspects it was held that it was not necessary to pass specific orders in each case nor it was mandatory to mention the reasons for inability to act. Support was drawn from Illustration (e) to Section 114 of the Indian Evidence Act according to which it may be presumed that judicial and official acts have been regularly performed.

18. A Division Bench of the Madhya Pradesh High Court has held in *Sesh Narain Bajpai v. State of Madhya Pradesh* that issuance of a general order by the Sessions Judge would be permissible in such a situation. One of the reasons for taking such a view was the expeditious disposal of the urgent bail applications as permitted by Section 10 of the Code. It was felt that the time consumed in the making of an application in each case and its disposal in terms of Section 10(3) by the Sessions Judge and then making over each bail application for disposal to the Addl. Sessions Judge may itself cause delay in disposal of the bail application and thus defeat the very purpose for which the provision is made in sub-section (3). The underlying idea being that urgent applications should be disposed of quickly and without any delay. It was held that 'working method by the Sessions Judge to achieve the purpose must be upheld'. If the Sessions Judge feels that he may not be able to take up the urgent applications immediately for disposal because of that work load, he may well issue general orders requiring such applications to be dealt

with by the Addl. Sessions Judge.

19. In *State of Madhya Pradesh v. Chandrahas Devangan*, it was again confirmed that the Sessions Judge enjoys the powers of assigning any urgent application for disposal by an Addl. Sessions Judge in the event of his absence or inability to act, under Section 10(3) of the Code.

20. Before a Full Bench of the Rajasthan High Court, the problem arose in a different manner although the point for consideration was the same, i.e., power of the Sessions Judge under Section 10(3) of the Code to entrust urgent bail applications to Addl. Sessions Judges. In Delhi as already noticed the entire city is one Sessions division and there is only one Sessions Judge. thereforee, Delhi enjoys a special status in the present context. In the other States under the Union each State has several districts, i.e., several Sessions divisions. Each division is headed by a Sessions Judge. However, each division itself has several small towns and villages within its jurisdiction. The Addl. Sessions Judges are made in charge of the smaller segments within the Sessions division. If it was insisted that only the Sessions Judge can entertain the bail applications, it would become necessary for the villagers and persons in small towns to travel all the way to the place where the Sessions Court is located to seek bail. The problem would become further complicated if for trial the cases are made over to the Addl. Sessions Judges in pursuance of Section 194 of the Code. An accused would have to engage a counsel for the Addl. Sessions Judges Court for the trial of his case and another counsel for the bail application to be moved before the Sessions Judge wherever he may be having his office. Thus not only the accused will have to travel a long distance to approach the Sessions Judge, he will have to incur additional expenses of engaging a counsel for that Court. All these problems were considered by the Full Bench of the Rajasthan High Court in *K. N. Sharma v. State of Rajasthan* 1988 Raj LW 197. On the basis of Section 10(3) of the Code it was held that the Sessions Judge has the power to entrust urgent bail applications to the Addl. Sessions Judges on account of his absence or inability to act. In exercise of powers under Article 227 of the [Constitution of India](#) directions were issued that all Addl. Sessions Judges in Rajasthan would entertain, hear, consider, adjudicate and decide bail applications, under Sections 438 and 439, Criminal Procedure

Code arising out of the cases in their territorial areas/jurisdiction. The Court felt that it was its constitutional and legal duty to give such directions. The following observations are worth noting :-

'Obviously, as the situation exists both geographically and statistically Sessions Judges are unable and there is inability to act in those cases where the Courts of Addl. Sessions Judges are located or are functioning. The reasons, apart from heavy work load, long distances and other factors can also be enumerated as making justice expensive and delayed by compelling them to go to the Sessions Judges where they can get it considered by Addl. Sessions Judges. If the object is to bring justice to the doors of the litigants, it is not to be a laudable pleasant slogan, but it is to be turned into reality. Thus, it is our duty to interpret the law in such a harmonious manner so as to make this object achievable.'

21. We agree with the submissions of the learned Counsel appearing before us that liberal interpretation which advances the cause of justice should be given to the statutory provision. It is of utmost importance that it should be ensured that the legal system operates so as to promote justice. Article 21 of the Constitution guarantees 'No person shall be deprived of his life or personal liberty except according to procedure established by law'. This guarantee has received a liberal construction by the Courts in order to ensure justice and fair play to all. Speedy disposal of cases or speedy trial of cases has been recognised as a part of Article 21 of the Constitution. If somebody who has been deprived of his personal liberty and is not even able to approach the appropriate Court with a prayer for bail for days together, it will be negation of Article 21 of the Constitution.

22. The importance of the fact that every person whose liberty is curtailed is brought before Court at the earliest is recognised in Section 76 of the Code itself according to which a person who is detained must be produced before a Magistrate within 24 hours. This ethos has to be continued for purposes of the right to approach the appropriate Court for bail. If it is insisted that only the Sessions Judge must bear all the bail applications, besides the fact that there is no warrant in law for such a strict view. It results in grave injustice to the detenus. The Sessions Judge with his multifarious functions will normally not be able to handle

the entire bail work within his Sessions division single handedly. This will naturally result in bail applications getting piled up before the Sessions Judge and not being taken up for hearing for days together. Denial of opportunity to approach the Court for bail at the earliest strikes at the very root of the concept of rule of law which we profess to have. In *Triveni v. State of Gujarat*, : 1990 CriLJ1810 , the Supreme Court observed that Article 21 'demands that any procedure which takes away the life and liberty of the person must be reasonable, just and fair. This procedural fairness is required to be observed at every stage and till the last breath of the life'.

23. In *Sher Singh v. State of Punjab*, : [1983]2SCR582 , it was observed (at p. 808 of Cri LJ) :

'The horizons of Article 21 are ever widening and the final word on its conspectus shall never have been said. So long as life lasts, so long shall it be the duty and endeavor of this Court to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation. therefore, Article 21 is as much relevant at the stage of execution of the death sentence as it is in the interregnum between the imposition of that sentence and its execution. The essence of the matter is that all procedure, no matter what the stage, must be fair, just and reasonable.'

24. On the basis of above discussion, we conclude that Section 10, sub-section (3) of the Code of Criminal Procedure empowers the Sessions Judge to make provision for disposal of urgent applications by the Addl. Sessions Judge in the event of his or absence or inability to act. The said statutory provision vests the power with the Sessions Judge in this behalf and it is he who has to decide his inability to act. If he feels that he is unable to act in deciding the urgent applications which include bail applications moved before him he has the power to make provision for such applications being dealt with and disposed of by the Addl. Sessions Judges. We reiterate that the words 'inability to act' has a very wide connotation and includes inability arising on account of various reasons such as rush of work - judicial as well as administrative work. Inability is not confined to physical disability or incapacity.

25. In fact the learned single Judge while passing the directions that only the Sessions Judge should hear and dispose of bail applications recognised the power of the Sessions Judge to entrust urgent bail applications to Addl. Sessions Judge as per sub-section (3) of Section 10 of the Code. It is because of this that the learned single Judge permitted the respective Judges in charge of the Patiala House and Karkardoma Courts to handle the work of dealing with bail applications. It is also on this basis that the Sessions Judge was permitted to assign this work to Additional Sessions Judges in exceptional circumstances for a day or so. As already noticed, the entire city of Delhi is one Sessions division in terms of Section 7 of the Code. thereforee, Delhi has only one Sessions Judge. It is for the convenience of the litigant public that Court complexes have been established at the Patiala House, New Delhi and Karkardoma, Delhi and senior Addl. Sessions Judges have been made in charge of the respective Court complexes. Without recourse to sub-section (3) of Section 10 it is not even possible to permit the Judges in charge of the Patiala House Courts and the Karkardoma Courts to deal with the bail applications.

26. In Crl.M(M) 954 of 1995, reliance has been placed on sub-section (5) of Section 9 of the Code for the view that it requires all urgent applications including the applications under Sections 438 and 439 of the Code to be dealt with by the Sessions Judge himself. We are unable to find anything in sub-section (5) of Section 9 to support this view. Similarly we find nothing in Sections 438 and 439 of the Code to support such a view. Sub-section (5) of Section 9 is really not attracted in the present context. It deals with a case where the office of the Sessions Judge is vacant. In that event, the High Court is authorised to make arrangement for disposal of urgent applications pending in the Sessions Court through Additional or Asstt. Sessions Judges. We are presently concerned with the situation where the office of Sessions Judge is not vacant. The Sessions Judge is functioning. The question has, arisen in the context of the Sessions Judge being in office.

27. Before concluding, we may note that following considerations had weighed with the learned single Judge in directing that only the Sessions Judge should bear the bail applications -

1. To avoid conflicting orders.

2. To ensure speedy disposal of trial cases by the Addl. Sessions Judges.

28. So far as the question of avoiding conflicting orders is concerned, we have to accept the fact that all the Judges concerned are equally qualified and are competent to discharge their functions as Addl. Sessions Judges. In view of the large amount of pendency of work it is physically impossible that only one Judge could deal with a particular type of work. We notice that in the High Court normally there are at least two Judges who are dealing with the bail applications filed in the High Court under Sections 438 and 439 of the Code. We have also to give due recognition to the fact that there are differences in human nature, perception of facts and philosophy of law. thereforee, uniformity in absolute terms can never be achieved.

29. The question of speedy trial of the Sessions cases is concerned, there can be no doubt that efforts have to be made to ensure speedy disposal of the Sessions trial cases. The Sessions Judge as head of the judiciary within his Sessions division/District is primarily the person concerned who must ensure this. It is the Sessions Judge who has to work out how best he can achieve speedy trial and disposal of crises. We must have faith in the Sessions Judge in this behalf.

30. Distribution of urgent bail work to some of the Addl. Sessions Judges does not necessarily mean that the concerned Addl. Sessions Judges must spend lot of their time in handling that work. This apprehension is doubled-edged. If it is felt that the Addl. Sessions Judges have to spend lot of their time in disposal of the bail matters, it means the bail matters take lot of time. It follows from this that before the Sessions Judge also they would take lot of time. This itself creates a ground that for the view that how the Sessions Judge alone can handle the entire bail work. thereforee, some suitable arrangement which is best for the speedy disposal of cases must be devised and for that the Sessions Judge is the best person.

31. The real question is about the power of the Sessions Judge to make provision for urgent applications in the event of his inability to act. Once we recognise that

he has the power, the rest follows. Whether the power is to be exercised in exceptional cases and that too for a day or so or it can be exercised in the exigencies of his day to day functioning is to be left to the Sessions Judge. We feel that we cannot and we should not curtail this power of the Sessions Judge. We have held that the Sessions Judge has the power under Section 10, sub-section (3) of the Code of Criminal Procedure to make provision regarding urgent applications in case of his absence or inability to act to be handled by the Addl. Sessions Judges. The Sessions Judge is entitled to decide when he is required to exercise that power and how it should be exercised. As per the statute it is the Sessions Judge who has to decide about his inability to act, and we cannot usurp or fetter this power of the Sessions Judge. The reference is answered accordingly.

32. It follows from the above discussion that the view expressed in Crl.Misc.(M) No. 954 of 1995 vide order dated 30th April, 1996 is not correct and the directions contained in the said order are not warranted.

33. Order accordingly.