



**THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No.1558 of 2018

1. Delhi Police through DCP,
Special Cell, New Delhi.

2. Lalit Mohan Negi,
Adult, Occ: Service,
Asst Commissioner of Police,
Add: Office of Special Cell,
Lodhi Colony, New Delhi.

3. Hridaya Bhushan,
Adult , Occ: Service
Asst Commissioner of Police,
Add: Office of Special Cell,
Lodhi Colony, New Delhi.

... Petitioners.

Versus

1. State of Maharashtra

... Respondent No.1/
Orig Complainant.

2. Sayyad Zabiuddin Sayyad Zakiuddin,
Adult, Occ: Not known,
Presently lodged at Arthur Road
Prison, Byculla, Mumbai,
Maharashtra.

... Respondent No.2/
Orig Accused.

**With
Criminal Writ Petition No.2456 of 2018**

Ministry of External Affairs,
Through, Its Secretary, Having
its Branch office at Videsh Bhavan
Bandra Kurla Complex,
Plot No.C-45, G Block, Bandra (E)
Mumbai-400 051.

... Petitioner.

Versus

1. State of Maharashtra
2. Sayyad Zabiuddin Sayyed Zakiuddin
Adult, Occ: Not known
presently lodged at Arthur Road Prison
Byculla, Mumbai, Maharashtra.

... Respondents.

**With
Criminal Writ Petition No.2457 of 2018**

Ministry of Civil Aviation,
Through, its Director, Having
its office at Rajiv Gandhi
Bhavan, New Delhi.

... Petitioner.

Versus

1. State of Maharashtra
2. Sayyed Zabiuddin Sayyad Zakiuddin
Adult Adult, Occ: Not known,

Presently lodged at Arthur Road
Prison, Byculla, Mumbai,
Maharashtra.

... Respondents.

Mr Tushar Mehta, Solicitor General of India (through VC), a/w. Mr Anil Singh, Additional Solicitor General, Mr Aditya Thakkar, Mr DP Singh, Mr Aayush Kedia, Mr Aadarsh Vyas, Mr Krishnakant Deshmukh, Mr Rama Gupta, Mr Rajdatt Nagre, Mr Bhuvan Kapur and Mr Aman Mehta, for the Petitioners in all petitions.

Mr BB Kulkarni, APP, for Respondent No.1/State.

Dr Yug Chaudhary, a/w. Mr Gaurav Bhawnani, Mr Anush Shetty and Ms Mayanka SR, i/b. Khan Abdul Wahab, for Respondent No.2 in all petitions.

Coram: R.N. Laddha, J.

Reserved on: 17 October 2025.

Pronounced on: 3 November 2025.

Order :

The present writ petitions have been instituted to challenge the impugned order passed below Exhibit Nos.284 to 288 by the learned Additional Sessions Judge, Mumbai, in Sessions Case No.198 of 2013, whereby the Petitioners have been directed to produce certain documents in exercise of

powers under Section 91 of the Code of Criminal Procedure, 1973 (CrPC). Since all these petitions involve common questions of law as well as fact, they are being disposed of by this common order with the consent of learned Counsel appearing for the respective parties.

2. Mr Tushar Mehta, learned Solicitor General appearing on behalf of the Petitioners, contended that Respondent No.2 is a key conspirator in the 26/11 Mumbai terrorist attacks, having actively participated in their planning and execution alongside Lashkar-e-Taiba operatives. He provided strategic input, trained attackers, and maintained operational oversight via VoIP from Karachi. Consequently, he faces trial under a wide array of penal statutes, including the IPC, UAPA, Arms and Explosives Act, and others. During the trial, Respondent No.2 filed multiple applications under Section 91 of CrPC, seeking the production of documents unrelated to the substantive charges, including passports, flight manifests, and immigration records. These were allowed by the trial Court without hearing the Petitioners, thereby violating principles of natural justice.

3. It is submitted that the scope of Section 21 of the National Investigation Agency Act, 2008 (NIA Act), unequivocally

excludes the maintainability of appeals before the High Court against interlocutory orders passed by the Special Court, whether on questions of fact or law. The sole exception to this statutory bar is carved out under Sub-Section (4) of Section 21, which permits an appeal against an order granting or refusing bail. In accordance with the legislative framework of Section 21, no appellate remedy is envisaged in respect of interlocutory orders other than those pertaining to bail. The learned Solicitor General has further contended that orders passed under Section 91 of CrPC, directing the production of documents, are interlocutory in nature and, therefore, fall outside the purview of revision under Section 397(2) CrPC. In view of the statutory embargo under Section 21 of the NIA Act, the Petitioners, being aggrieved by the impugned interlocutory order, have invoked the jurisdiction of this Court under Article 227 of the Constitution of India. It is submitted that the supervisory jurisdiction conferred upon the High Court under Article 227 is plenary in nature and cannot be curtailed or fettered by any statutory enactment. Accordingly, the objection raised by Respondent No.2, suggesting that the present writ petitions ought to be placed before the Division Bench, is misconceived and untenable in law.

4. The learned Solicitor General has further submitted that the impugned order, not being one that either grants or refuses bail, does not fall within the ambit of Section 21(4) of the NIA Act. Moreover, the determination of whether an order is interlocutory or final must be made from the standpoint of the party seeking redress. Where a non-party is summoned and directed to produce documents, such an order may have adverse consequences upon such person, thereby rendering it amenable to challenge under Article 227. It is further submitted that the Constitutional powers vested in this Court under Article 227 are not subject to statutory limitations and remain exercisable in cases involving manifest injustice or procedural irregularity.

5. The learned Solicitor General submitted that Respondent No.2 did not, at any stage during remand or judicial custody, raise any objection to the legality of his arrest. His present attempt to do so, at a belated stage, is procedurally untenable and devoid of relevance to the adjudication of the present trial. It is further contended that the documents sought by Respondent No.2 pertain solely to procedural aspects surrounding the arrest and do not bear upon the merits of the case. The production of such documents would serve no

legitimate purpose and would instead facilitate a roving and fishing inquiry, thereby impeding the expeditious conduct of trial and defeating the ends of justice. The invocation of Section 91 CrPC for such purposes, it is argued, is impermissible. The said provision confers a guided and circumscribed power upon the Court, which must be exercised with judicial scrutiny and in furtherance of relevance and necessity. The learned trial Court, it is submitted, failed to apply such scrutiny in entertaining the application for production of documents that are neither germane nor indispensable to the determination of the accused's culpability. Respondent No.2 seeks documents pertaining to the manner and place of his arrest and the process by which he was brought within the jurisdiction of the Court. The learned Solicitor General submitted that such details are wholly immaterial to the core issue of guilt or innocence in respect of the offences alleged. Section 91 CrPC must be construed in its entirety and cannot be invoked to pursue collateral procedural inquiries that do not advance the adjudicatory process. Without prejudice to the above, it is further submitted that even assuming, *arguendo*, that procedural irregularities occurred in the course of arrest, such irregularities do not vitiate the trial proceedings. Accordingly,

any alleged pre-trial irregularities, particularly those concerning the manner in which the accused was brought before the Court, do not impinge upon the legitimacy or validity of the trial. The learned Solicitor General further submitted that the documents sought by Respondent No.2 are neither 'necessary' nor 'desirable' for the just determination of the trial proceedings. Their production would not serve the interest of justice and would instead derail the proceedings by introducing extraneous procedural contentions unrelated to the substantive adjudication of guilt.

6. The learned Solicitor General further submitted that public interest may justify the non-disclosure of the information, particularly in situations involving national security. The matters of national security are not within the purview of judicial review, and the executive is best positioned to determine what constitutes national security, and that judicial review should respect this discretion. It is a settled principle across the world that national security, or protecting witnesses, may justify withholding certain information from an accused in certain situations.

7. The learned Solicitor General also submitted that the

learned trial Court erred in appreciating the scope and limitations of Section 91 CrPC. While the language of the provision is admittedly broad, its application is circumscribed by the statutory requirement that the production of documents must be deemed necessary or desirable for the purposes of the trial or other proceedings under the Code. It is contended that the invocation of Section 91 must be guided by a statutory threshold, and that indiscriminate reliance on the provision, absent such necessity or desirability, is impermissible.

8. The learned Solicitor General, advancing submissions in the context of the present proceedings, contended that Respondent No.2 was produced before the jurisdictional Court pursuant to an order issued under Section 267 of CrPC, while he remained in lawful custody under the jurisdiction of Courts in Delhi. In support of this contention, the learned Solicitor General placed reliance upon the following documents: (i) A production warrant dated 25 June 2012 issued by the Court of Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai; (ii) A communication dated 26 June 2012 addressed by the Senior Inspector of Police, Unit I, Detection Crime Branch, CID, Mumbai, to the Superintendent of Tihar Jail, Delhi; (iii) A requisition letter dated 25 June 2012 issued

by the said Magistrate to the Chief Metropolitan Magistrate, 30th Court, Tis Hazari, Delhi; and (iv) An application filed by the Senior Inspector of Police, Unit I, Detection Crime Branch, CID, Mumbai, before the Chief Metropolitan Magistrate, 30th Court, Tis Hazari, Delhi. It was thus submitted that the assertion of Respondent No.2 regarding his alleged transfer from a foreign jurisdiction bears no relevance to the adjudication of the present matter, inasmuch as his production was effected solely through the judicial process delineated above. Consequently, the learned Solicitor General urged that the documents sought by the accused are neither necessary nor germane to the determination of the present case.

9. The learned Solicitor General further contended that Respondent No.2 did not raise any contemporaneous objection or grievance before the learned Magistrate during the successive remand proceedings, nor did he object upon being produced before the Court at Mumbai. It is submitted that once an accused, i.e., Respondent No.2, is placed under lawful custody and afforded adequate opportunity to avail of legal remedies and defend himself, the situs of arrest ceases to hold any legal relevance. Furthermore, the impugned order directing the production of documents is extraneous to the subject

matter of the present trial, constitutes a roving and speculative inquiry, and unjustifiably prolongs the trial.

10. It is submitted that Section 91 of the CrPC does not confer an unqualified or absolute right upon any party to compel the production of documents. Rather, the said provision vests discretionary authority in the Court to direct such production only upon satisfaction that the document or item is necessary or desirable for the purpose of any inquiry, trial, or other proceeding. In the present matter, the documents sought by Respondent No.2 pertain solely to the circumstances surrounding his arrest and subsequent presentation before the jurisdictional Courts in Mumbai. It is submitted that Respondent No.2 is presently before the learned trial Court and is facing prosecution for offences of a grave and serious nature. The location and manner of his arrest are wholly extraneous to the core issues under adjudication and bear no material relevance to the determination of guilt or innocence in the present proceedings. It is further submitted that admissibility and production of evidence must be governed by the principle of relevancy, as enshrined under the Indian Evidence Act. In the instant case, the controversy does not pertain to the place or mode of arrest, but rather to the

substantive charges framed against Respondent No.2. Accordingly, the documents sought are neither necessary nor desirable for the adjudication of the present trial and ought not to be directed for production under Section 91 CrPC.

11. The learned Solicitor General further submitted that even assuming, without admitting, the veracity of the contentions advanced by Respondent No.2, such assertions would not vitiate the legality or legitimacy of the ongoing trial proceedings. It is contended that, at best, the allegations raised by Respondent No.2 amount to an irregularity in the process of arrest and detention, and the subsequent production of the accused before the competent judicial forum to face trial for grave offences involving terrorism. Such alleged pre-trial procedural irregularities, it is submitted, are inconsequential to the adjudication of guilt and do not impinge upon the merits of the prosecution's case. The learned Solicitor General further submitted that even if the documents in question were to establish some procedural lapse in the manner of arrest, the same would not affect the findings of the trial Court, nor would it result in a miscarriage of justice. The jurisprudence governing non-disclosure of documents, it is submitted, is anchored in the principle of balancing competing interests, the

public interest in the effective prosecution of serious offences and the private interest of the accused in accessing procedural safeguards.

12. The learned Solicitor General relied on (i) Smt Parmeshwari Devi vs The State and Anr., (1977) 1 SCC 169; (ii) Sethuraman vs Rajamanickam, (2009) 5 SCC 153; (iii) State of A.P. vs Mohd. Hussain, (2014) 1 SCC 258; (iv) Om Prakash Sharma vs CBI, Delhi, (2000) 5 SCC 679; (v) Sukhmohinder Singh Sandhu vs CBI, 2010 SCC OnLine Del 2481; (vi) Suresh Kalmadi vs CBI, 2015 SCC OnLine Del 9639; (vii) Alagesan & Ors vs State, 2008 SCC OnLine Mad 183; (viii) State of Orissa vs Debendra Nath Padhi, (2005) 1 SCC 568; (ix) Bashir Hussain Peshimam vs Gulam Mohomed Ismail Peshimam & Ors, AIR 1966 Bom 253; (x) Hari Charan vs The State, AIR 1955 P&H 17; (xi) HH The Nizam of Hyderabad vs AM Jacob, (1891) ILR 19 CAL 52; (xii) Re P (Placement Orders. Parental Consent, (2008) EWCA CIV 535; (xiii) Pradeep S Wodeyar vs State of Karnataka, (2021) 19 SCC 62; (xiv) State of Punjab vs Balbir Singh, (1994) 3 SCC 299; (xv) Santa Singh vs State of Punjab, (1976) 4 SCC 190; (xvi) Hemant Vyankatesh Agwan vs The State of Maharashtra, 1989 SCC OnLine Bom 279; (xvii) Hanif, Banomiya Shikalkar vs The State of Maharashtra, 1980

SCC OnLine Bom 287; (xviii) Mukund Lal vs UOI & Anr, 1989 Supp (1) SCC 622; (xix) Ex-Army's Protection Services Pvt Ltd vs Union of India & Ors, (2014) 5 SCC 409; (xx) Raj Kumar Singh vs State of Bihar & Ors, (1986) 4 SCC 407; (xxi) Union of India vs Rajasthan High Court & Ors, (2017) 2 SCC 599, in support of his contentions.

13. Mr BB Kulkarni, learned Additional Public Prosecutor representing Respondent No.1/ State, endorsed the arguments advanced by the learned Solicitor General and submitted that the impugned order is legally unsustainable, being vitiated by patent infirmities warranting its reversal. He contended that the applications preferred under Section 91 of the CrPC have been filed not in furtherance of genuine discovery or production of documents, but rather as a dilatory tactic aimed at stalling the progress of the trial. It was argued that such procedural manoeuvres are devoid of *bona fides* and constitute an abuse of the process of law.

14. On the other hand, Dr Yug Chaudhary, learned Counsel appearing on behalf of Respondent No.2, referring to the provisions of the NIA Act, submitted that Respondent No.2 is, inter alia, being tried for offences punishable under Sections

121, 121A, and 122 of the IPC, as well as under the provisions of the Unlawful Activities (Prevention) Act, 1967. These offences are expressly included in the Schedule appended to the NIA Act and are, therefore, triable exclusively by the Special Courts constituted under Section 11 thereof.

15. It is further contended that Section 21 of the NIA Act unequivocally stipulates that any appeal against a judgment, sentence, or order passed by a Special Court shall lie only before the High Court and shall be heard by a Division Bench thereof. In view of the same, the learned Counsel submitted that even though the instant proceedings are styled as writ petitions rather than statutory appeals under Section 21, they emanate from an order passed by the Special Court in a case involving offences under the UAPA. Consequently, such proceedings ought, in principle and in conformity with the legislative scheme, to be heard by a Division Bench and not by a Single Judge of this Court.

16. Drawing attention to the impugned order passed by the Special Court, the learned Counsel contended that any challenge arising from a trial concerning offences under the UAPA must necessarily be heard by a Division Bench in keeping

with the statutory framework. It was further submitted that if the accused themselves had preferred an appeal, the same would have lain before a Division Bench. Therefore, it would be manifestly incongruous and legally untenable that a petition impugning the same order, albeit preferred by third parties lacking locus to appeal, be adjudicated by a Single Judge.

17. The learned Counsel further submitted that in the aftermath of the unfortunate terrorist attacks in Mumbai in November 2008, twelve separate First Information Reports (FIRs) were registered across various police stations in Mumbai between November and December 2008. The said investigations were subsequently consolidated and transferred to the DCB CID, Mumbai, and renumbered as CR No. 182 of 2008. It is submitted that on 27 November 2008, accused Mohd. Ajmal Mohd. Amir Kasab was apprehended, and on 6 February 2009, Faheem Ansari and Sabauddin Ahmed were taken into custody by the Mumbai Police from Rampur, Uttar Pradesh, where they were facing trial in another criminal matter. By a judgment and order dated 6 May 2010, accused Kasab was convicted and sentenced to death, whereas accused Faheem Ansari and Sabauddin Ahmed were acquitted of all charges. The conviction and sentence of Kasab were affirmed

by this Court on 21 February 2011. Subsequently, on 21 November 2011, the Special Cell of the Delhi Police registered CR No.54 of 2011, concerning an alleged conspiracy to commit terrorist acts in Delhi. On 21 June 2012, it was alleged by the prosecution that PW 65, ACP Manishi Chandra, acting on secret information, arrested Respondent No. 2 outside IGI Airport, New Delhi, purportedly recovering from him a Pakistani passport and two Pakistani identity cards.

18. The learned Counsel categorically denied this version of events, asserting that Respondent No.2 had been residing in Saudi Arabia, where he was detained by local authorities and subsequently handed over to Indian officials pursuant to a prior arrangement between the Governments of India and Saudi Arabia. It is submitted that officers of the Delhi Police had travelled to Saudi Arabia with an emergency travel document dated 9 June 2012 bearing No. Y-0094591, issued in the name of Respondent No.2. It is further contended that on 20 June 2012, Respondent No.2 was escorted from Dammam Airport, Saudi Arabia, and brought to New Delhi by Jet Airways Flight No.9W 0563, which arrived in the early hours of 21 June 2012. This account, it is submitted, is corroborated by multiple newspaper reports published contemporaneously in June 2012,

indicating that Respondent No.2 had been deported from Saudi Arabia at the instance of the Government of India and handed over to the Delhi Police upon arrival.

19. Accordingly, it is contended that the prosecution's claim of arrest outside IGI Airport is demonstrably false. Respondent No.2 was thereafter shown to have been arrested in the present case on 21 July 2012. By a letter dated 25 July 2012, PW 55, Assistant Passport Officer, confirmed that a travel document bearing No.Y-0094591, dated 9 June 2012, had been issued to Respondent No.2, valid until 8 August 2012. This official correspondence, which forms part of the charge sheet, substantiates Respondent No.2's defence.

20. It is further submitted that despite such evidence, PW 65, in his statement recorded on 27 July 2012, falsely claimed to have arrested Respondent No.2 at IGI Airport and recovered Pakistani documents from his possession. Subsequently, on 12 August 2012, a purported confessional statement under Section 164 of CrPC was recorded, wherein Respondent No.2 allegedly admitted to obtaining a forged Pakistani passport. Respondent No.2 has since retracted this statement, asserting that it was obtained under coercion and fabricated. The charge sheet in

CR No.182 of 2008 was filed on 17 October 2012, and on 4 May 2013, Respondent No.2 formally retracted the alleged confession, reaffirming that he had been detained by Saudi authorities since January 2011 and subsequently handed over to Indian officials at Dammam in June 2012.

21. It is further submitted that, in order to substantiate his defence, Respondent No.2 filed five applications (Exhibits 284 to 288) under Section 91 of the CrPC on 27 November 2017, seeking the production of material documents essential for the just determination of the case. These included: (i) the passports of the officers of the Delhi Police who had travelled to Saudi Arabia; (ii) the passenger manifest of Jet Airways Flight No. 9W 0563 from Dammam to New Delhi dated 20 June 2012; (iii) the emergency travel document issued to Respondent No. 2 by the Ministry of External Affairs; and (iv) the relevant immigration records.

22. It is asserted that these documents were indispensable to demonstrate that Respondent No. 2 had been officially repatriated from Saudi Arabia under lawful custody, rather than apprehended at IGI Airport as falsely alleged. Despite specific directions from the Sessions Court, the prosecution delayed its

reply for more than two months, compelling Respondent No.2 to file another application (Exhibit 431) on 31 January 2018. The prosecution eventually filed its reply on 5 February 2018, disclaiming possession of the documents but raising no objection to their production.

23. The learned Counsel further drew attention to the testimony of PW 55, who confirmed the issuance of the travel document (Exhibit 477), thereby corroborating Respondent No.2's version. PW 62 and PW 68 similarly admitted during cross-examination that Respondent No.2 had been brought from Saudi Arabia to Delhi by Indian police authorities. PW 65, however, reiterated his false claim of arrest at IGI Airport when re-examined on 9 March 2018. In light of the contradictions in the prosecution's evidence, the Sessions Court, by the impugned order, allowed the applications under Section 91 CrPC and directed the production of the relevant documents, holding them necessary for a fair and just adjudication. It is further submitted that upon the receipt of records from Jet Airways on 2 April 2018, it was conclusively established that Respondent No.2 had indeed travelled to India on the said flight, occupying Seat No.33D, accompanied by officers of the Delhi Police seated in Seats Nos.33A, 33B, and 33C. These

documents, it is argued, irrefutably falsify the prosecution's theory and expose the mendacity of PW 65's version.

24. The learned Counsel further submitted that the present writ petitions were originally premised on the assertion that the Ministry of Civil Aviation and the Ministry of External Affairs had claimed privilege over certain documents that were directed to be produced by the impugned order. However, during the course of the present proceedings, the learned Solicitor General made no submissions in relation to the alleged claim of privilege, nor has any affidavit invoking privilege been filed on behalf of the Petitioners before this Court. Although the petitions had initially indicated that certain documents would be submitted in a sealed cover, no such sealed cover has, in fact, been tendered. When the issue of privilege was raised by Respondent No.2, the learned Solicitor General expressly stated that the Petitioners were not pressing the claim of privilege. Accordingly, it is submitted that the issue of privilege does not survive for adjudication, and no arguments are being advanced on that aspect at this stage.

25. Additionally, the learned Counsel relied on (i) *Kamal Ahmed Mohammed Vakil & Ors vs State of Maharashtra*, 2013

CrLJ 858; (ii) Shoma Kanti Sen vs State of Maharashtra & Anr, (2024) 6 SCC 591; (iii) Sevantilal Karsondas Modi vs The State of Maharashtra & Anr, (1979) 2 SCC 58; (iv) Areeb Ejaz Majeed vs National Investigation Agency & Anr, Cri Appeal No.173 of 2019 Bom HC dated 27 March 2019; (v) Aghnoo Nagesia vs State of Bihar, (1966) 1 SCR 134; (vi) SP Gupta vs Union of India & Anr, 1981 (Supp) SCC 87; (vii) Sudha Bhardwaj vs National Investigation Agency & Anr, Cri BA No.2024 of 2021 Bom HC, dated 11 June 2021; (viii) Jaffar Sathiq vs State, 2021 SCC OnLine Mad 2593; (ix) Surendra P Gadling vs State of Maharashtra, 2021 SCC OnLine Bom 1726; (x) Bikramjit Singh vs State of Punjab, (2020) 10 SCC 616, in support of his contentions.

26. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the material placed on record, including the affidavits-in-reply and the written notes of arguments.

27. Since Respondent No.2 has raised a preliminary objection challenging the jurisdiction of this Court to entertain the present writ petitions, it is apposite to reproduce Section 21 of the NIA Act, which reads as follows:

“21. Appeals.—

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

28. A plain, literal and purposive interpretation of Section 21 of the NIA Act makes it clear that under Section 21(1) of the NIA Act, interlocutory orders of a Special Court are not appealable to the High Court. However, Sub-Section (4) of Section 21 carves out a specific exception for orders granting or refusing bail, recognising their impact on the accused's liberty. Thus, while all other interlocutory orders are barred from appeal to ensure expeditious trial under Section 19, bail-related orders alone remain appealable.

29. In *Mohd. Hussain (supra)*, the Hon'ble Supreme Court held that, as per the scheme of Section 21 of the NIA Act, no appeal is provided against any interlocutory orders passed by the Special Court, except for orders either granting or refusing bail as per Section 21(4). The relevant paragraph reads as follows:

“17. There is no difficulty in accepting the submission on behalf of the appellant that an order granting or refusing bail is an interlocutory order. The point however to be noted is that as provided under Section 21(4) of the NIA Act, the appeal against such an order lies to the High Court only, and to no other court as laid down in Section 21(3). Thus it is only the interlocutory orders granting or refusing bail which are made appealable, and no other interlocutory orders,

which is made clear in Section 21(1), which lays down that an appeal shall lie to the High Court from any judgment, sentence or order, not being an interlocutory order of a Special Court. Thus other interlocutory orders are not appealable at all. This is because as provided under Section 19 of the Act, the trial is to proceed on day-to-day basis. It is to be conducted expeditiously. Therefore, no appeal is provided against any of the interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under Section 21(4). This is because those orders are concerning the liberty of the accused, and therefore although other interlocutory orders are not appealable, an appeal is provided against the order granting or refusing the bail. Section 21(4), thus carves out an exception to the exclusion of interlocutory orders, which are not appealable under Section 21(1). The order granting or refusing the bail is therefore very much an order against which an appeal is permitted under Section 21(1) of the Act.”

30. Furthermore, in *Naresh Ramniklal Gaur vs Union of India*, 2021 SCC OnLine Bom 5031, this Court observed as follows:

“12. In so far as the maintainability of the Writ Petition is concerned, it may be stated that, the order impugned, though said to be “relatable” to bail, as argued by Mr. Singh, however, in terms of provisions of sub-section (4) of Section 21, it is not an order of a Special Court, either ‘granting’

or ‘refusing’ bail. The sub-section (4) envisage two kind of orders; one ‘granting’ and another ‘refusing’ bail. It does not specify third kind of order i.e. ‘orders concerning or relating to bail’ (emphasis supplied). Herein, the impugned order, not being order granting or refusing the bail, obviously it would not fall under sub-section (4) of Section 21 of the N.I.A. Act. That for these reasons, contention of the respondents that, Writ Petition was not maintainable, is rejected.”

31. In *Sethuraman (supra)*, the Hon’ble Supreme Court was seized of the question as to whether an order passed under Section 91 of the CrPC directing the production of documents and an order passed on an application under Section 311 of the CrPC would qualify as interlocutory in nature. The Apex Court categorically held that such orders are interlocutory. This legal position is evident upon reading paragraph 5 of the judgment, which, when read in its entirety, leaves no room for doubt regarding the interlocutory character of an order passed under Section 91 CrPC. Paragraph 5 reads as follows:

“5. Secondly, what was not realised was that the orders passed by the trial court refusing to call the documents and rejecting the application under Section 311 CrPC, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) CrPC. The trial court, in its common order, had clearly mentioned that the cheque was admittedly

signed by the respondent-accused and the only defence that was raised, was that his signed cheques were lost and that the appellant complainant had falsely used one such cheque. The trial court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders i.e. one on the application under Section 91 CrPC for production of documents and other on the application under Section 311 CrPC for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

32. From the above, it is evident that the impugned order does not fall within the ambit of appellate jurisdiction contemplated under Section 21 of the NIA Act. In the absence of a statutory remedy of appeal, the Petitioners are justified in invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, the objection raised on behalf of Respondent No.2, seeking a reference of the matters to a Division Bench, is devoid of merit and liable to be rejected. The said objection is predicated on a misconceived interpretation of the scope of appellate jurisdiction under the

NIA Act and fails to account for the procedural posture of the Petitioners. Additionally, the Petitioners, not being arraigned as parties to the pending trial, do not possess the requisite locus standi to prefer an appeal under Section 21, notwithstanding the fact that the impugned order adversely affects their legal interests. The statutory framework does not envisage an appellate remedy in such circumstances. Moreover, the impugned order has been passed without affording the Petitioners an opportunity of hearing, thereby occasioning a grave infraction of the principles of natural justice. The denial of *audi alteram partem* vitiates the decision-making process and renders the impugned order susceptible to judicial scrutiny under the supervisory jurisdiction of this Court.

33. Adverting to the merits of the matter, the following chronology of events is of material relevance and bears directly upon the issues arising for adjudication in the present proceedings. The said sequence has also been delineated in the reply affidavits filed on behalf of Respondent No.2/ accused, who is facing trial in connection with the offences emanating from the heinous and unprecedented terrorist attacks perpetrated in Mumbai on 26 November 2008, which resulted in extensive loss of lives and posed a grave threat to national

security. During the period of November-December 2008, twelve distinct FIRs came to be registered at various police stations across Mumbai. The investigations pertaining thereto were subsequently consolidated and entrusted to the DCB CID, Mumbai, and were renumbered as CR No.182 of 2008. On 27 November 2008, the principal accused, Mohd Ajmal Mohd Amir Kasab, was apprehended. Thereafter, on 22 November 2011, CR No.54 of 2011 was registered by the Special Cell of Delhi Police in relation to an alleged conspiracy to commit terrorist acts in Delhi. According to the prosecution, on 21 June 2012, PW 65 ACP Manishi Chandra, acting upon specific intelligence inputs, laid a trap and apprehended Respondent No.2 in the vicinity of the IGI Airport, New Delhi, in connection with the aforementioned CR No.54 of 2011. It is further alleged that a Pakistani passport and two Pakistani national identity cards were recovered from his possession. Respondent No.2, however, disputes the prosecution's version and asserts that he was, at the relevant time, residing in Saudi Arabia, where he was taken into custody and detained. It is his case that, pursuant to a prior arrangement between the authorities of the Government of India and Saudi Arabia, officials of the Delhi Police, who are arrayed as Petitioners

herein, arrived in Saudi Arabia with an emergency travel document dated 9 June 2012 bearing No.Y-0094591, issued in the name of Respondent No.2, to facilitate his deportation to India. In furtherance thereof, on 20 June 2012, Respondent No.2 was escorted to Dammam Airport and was thereafter transported to New Delhi aboard Jet Airways flight No.9W0563, which arrived in the early hours of 21 June 2012. Subsequently, on 21 July 2012, Respondent No.2 was formally arrested and remanded to custody in connection with the present case.

34. From this sequence of events, it is clear that so far as the present offence, viz., the offence pertaining to the terror attack which took place on 26 November 2008, is concerned, Respondent No.2 was given over in custody to Mumbai Police by Delhi Police. There is no dispute about the fact that Respondent No.2 was handed over by Delhi Police to the investigating officer of the present offence.

35. The allegations and assertions made by Respondent No.2 before the trial Court pertain exclusively to CR No.54 of 2011, which is being investigated and prosecuted by the Special Cell, Delhi Police. This CR concerns an alleged conspiracy involving

the proscribed terrorist organisations Jaish-e-Mohammad and Lashkar-e-Taiba in collusion with Respondent No.2, as categorically stated by the learned Solicitor General of India appearing on behalf of the Petitioners. This fact is also an admitted fact emerging from the reply filed by Respondent No.2. It is, thus, clear that the assertions made by Respondent No.2 about his alleged wrongful confinement on 21 June 2012 have nothing to do with the trial of the present offence which is being conducted in Sessions Case No.198 of 2013. Once it is admitted that the arrest of Respondent No.2 is lawful, so far as the present sessions trial is concerned, the trial Court ought not to have invested time in passing an absolutely unsustainable order which is nothing but a fishing and roving inquiry at the behest of the accused/ Respondent No.2.

36. An additional dimension arises in the context of the present proceedings. Upon arrest of an individual, it is the statutory duty of the arresting authority to ensure production of the accused before the jurisdictional Magistrate within twenty-four hours of arrest, as mandated under Section 57 of the CrPC. In adherence to this mandatory requirement, the Special Cell of Delhi Police, upon effecting the arrest of Respondent No.2, duly produced him before the Chief

Metropolitan Magistrate, Tis Hazari Courts, Delhi, in connection with CR No.54 of 2011.

37. It is pertinent to note that Respondent No.2 remained entirely silent with respect to the assertions now relied upon for the first time, which culminated in the passing of the impugned order. There was not even a semblance of such averments in any prior proceedings. The learned Solicitor General has placed on record the proceedings dated 21 June 2012, and the order of the competent Magistrate of the same date, which unequivocally demonstrates that Respondent No.2, despite being produced before the said Magistrate within twenty-four hours of arrest, did not make any contemporaneous statement or assertion in relation to the present claims.

38. The investigating agency, in connection with CR No.54 of 2011, once again produced Respondent No.2 before the Court of the Chief Metropolitan Magistrate, Tis Hazari Court, Delhi, on 5 July 2012, seeking extension of his police custody for the purpose of investigation. Pursuant to the said production, the learned Magistrate, being the competent authority, was pleased to grant fifteen days' further police custody remand vide order dated 5 July 2012. A certified copy of the aforesaid remand

order, as placed on record by the learned Solicitor General of India, and the existence and contents of which are not disputed by the learned Counsel for Respondent No.2, clearly demonstrate that at the time of the said proceedings, Respondent No.2 did not raise any objection or grievance on the grounds now subsequently urged before this Court.

39. It is further evident from the record that even though the Mumbai Police had also sought the custody of Respondent No.2 in connection with the present offence, no such issue or contention, as now being advanced, was ever raised by Respondent No.2 at that relevant stage. Respondent No.2 was thereafter duly transferred into the lawful custody of the Anti-Terrorist Squad (ATS), Mumbai. The copy of the said order is also on record and its veracity is not disputed by the learned Counsel for Respondent No.2. Even when Respondent No.2 was produced before the competent Court in Mumbai, he did not assert that he had been brought from any location other than the place of arrest, namely, near Delhi Airport.

40. Based on the facts outlined above, the following conclusions are irrefutable: (i) In the present matter, the Mumbai Police secured custody of Respondent No.2 pursuant

to an order passed by the competent Court at Delhi on 20 July 2012; (ii) At no stage during his production before the Chief Metropolitan Magistrate, whether immediately upon his arrest on 21 June 2012 or during the subsequent remand proceedings, did Respondent No.2 ever contend that he had been brought from a different location or that his arrest had not occurred outside the Delhi Airport; (iii) Even when produced before the Magistrate in Mumbai, no such statements or claims were advanced; (iv) Respondent No.2 is unquestionably an accused in the criminal proceedings and is alleged to have actively conspired in the commission of an offence of such grave nature that it has profoundly impacted the sovereignty and integrity of the nation.

41. This consideration may carry limited weight before this Court, as Respondent No.2 is liable to be dealt with strictly in accordance with the law. However, once the accused has been placed in judicial custody and is facing trial with full opportunity to defend himself, the place of his arrest, particularly when raised in the midst of the trial for the first time, loses any significant relevance to the proceedings. The location at which Respondent No.2 was apprehended is wholly immaterial to the exercise of his right to defend himself in the

present proceedings. The learned trial Court has completely misdirected itself by invoking Section 91 of the CrPC to compel the production of documents from third parties in this context. Section 91 CrPC does not confer upon an accused, nor empower the Court, to initiate a speculative or exploratory inquiry into the place of arrest, particularly when such inquiry bears no rational nexus to the adjudication of the matter. The statutory requirement under Section 91 is that the document or thing sought must be “necessary or desirable for the purpose of any inquiry, trial or other proceedings under the Code”, which is conspicuously absent in the present factual matrix.

42. In the present matters, this Court has not discussed in too much detail its reasoning for the above conclusion, mainly because the Court is satisfied that the information sought by Respondent No.2 and directed to be produced pursuant to the impugned order is neither necessary nor desirable for the resolution of the issues in this case. The said request appears to be a belated and tactical manoeuvre by an accused/Respondent No.2 facing serious criminal charges, lacking any substantive justification.

43. This Court, based on the aforesaid, finds it difficult to

concur with or uphold the reasoning adopted by the learned trial Court in passing the impugned direction under Section 91 CrPC, requiring the Petitioners to produce the documents.

44. Accordingly, the present writ petitions stand allowed, and the impugned order passed below Exhibit Nos.284 to 288 in Sessions Case No.198 of 2013, by the Additional Sessions Judge, Mumbai, is hereby quashed and set aside.

45. Before concluding, it must be noted that the trial has remained stayed since 2018 due to the impugned order. In serious offences, a timely trial is essential to ensure justice and accountability.

[R. N. Laddha, J.]