2026 INSC 1021

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._______________OF 2026
(ARISING OUT OF SPECIAL LEAVE PETITION (CRIMINAL) NO. 12932 OF 2024)

THE STATE OF MAHARASHTRA & ANR. ...APPELLANT(S)

VERSUS

MOMIN MOIUDDIN GULAM HASAN @ MOIN MISTRI & ANR. ... RESPONDENT(S)

J U D G M E N T

SHREE CHANDRASHEKHAR, J.

Leave granted.

2. The State of Maharashtra through its Secretary, Home Department and the Anti-Terrorism Squad, Mumbai (in short, "ATS") through its Police Inspector have approached this Court against the judgment delivered on 15th July 2024 in Criminal Appeal No. 214 of 2023 titled *"Momin Moiuddin Gulam Hasan @ Moin Mistri & Anr. v. The State of Maharashtra & Anr."*[1]. Holding that the respondents are entitled to seek default bail, the High Court of Judicature at Bombay pronounced that the order dated 18th January 2023 in R.A. No. 946 of 2022 whereby the Special Judge

[1] Momin Moiuddin Gulam Hasan @ Moin Mistri & Anr. v. The State of Maharashtra & Anr. : (2024) BHC-AS 27906-DB

under MCOCA[2]/POTA[3]/TADA[4]/NIA[5], Greater Mumbai granted a further extension of fifteen days for filing the charge sheet in CR No. 19 of 2022, and the order dated 20th January 2023 rejecting the respondents' application for default bail filed in R.A. No. 946 of 2022 *vide* Exhibit 44, both were illegal. Consequently, the application dated 20th January 2023 *vide* Exhibit 44 filed on behalf of Momin Moiuddin Gulam Hasan @ Moin Mistri and Asif Aminul Hussain Khan Adhikari[6], the respondents herein, seeking default bail has been allowed, and they were directed to be released on certain terms and conditions.

3. Briefly stated, a First Information Report was registered on 21st September 2022 at the ATS Police Station in the district-Mumbai against (i) Shaikh Sadique Qureshi (ii) Mazhar Khan (iii) Momin Moiuddin Gulam Hasan @ Moin Mistri (iv) Mohd. Iqbal Ibrahim Khan (v) Asif Aminul Hussain Khan Adhikari and unknown persons. The accused persons are alleged to have committed the offence punishable under sections 120B, 121A and 153A of the Indian Penal Code, 1860 and section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (in short, "UAPA"). The respondents were arrested on 22nd September 2022 and remanded to police custody for five days till 26th September 2022. Their police custody was extended till 3rd October 2022 on second remand and further extended till 8th October 2022 on third remand sought by the investigating agency.

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[2] The Maharashtra Control of Organised Crime Act, 1999, Maharashtra Act No. 30 of 1999
[3] The Prevention of Terrorism Act, 2002, Act No. 15 of 2002
[4] The Terrorist and Disruptive Activities (Prevention) Act, 1987, Act No. 28 of 1987
[5] The National Investigation Agency Act, 2008, Act No. 34 of 2008
[6] Since deceased on 25.04.2026 during pendency of the proceedings before this Court.

The respondents were then remanded to judicial custody and on subsequent dates their custody was extended from time to time and lastly till 20th December 2022, when ninety days' period for filing the charge sheet was to expire. The Special Judge entertained Misc. Application No. 1710 of 2022 which was filed by the Public Prosecutor on 13th December 2022 for extension of time, and granted an extended period of thirty days from 20th December 2022 for filing the charge sheet. A second extension of time application *vide* Misc. Application No. 86 of 2023 seeking a further fifteen days for filing the charge sheet was moved by the Public Prosecutor on 12th January 2023. This application was allowed by the Special Judge by an order dated 18th January 2023. On the same day, the respondents filed an application before the Special Judge under section 167(2) of the Code of Criminal Procedure, which was dismissed as pre-mature because the extended period for filing the charge sheet was to expire on 19th January 2023. The respondents again moved before the Special Judge on 20th January 2023 by filing a second default bail application *vide* Exhibit 44, which was also dismissed by observing as under:

> "Perused application. It is the contention of the accused nos. 4 and 5 that on 22.09.2022 they were arrested by the police and therefore, 90 days have expired on 20.12.2022, inspite of that police did not file charge sheet. They further contended that the period for filing charge sheet got extended by the prosecution for 30 days and 15 days by order dated 17.12.2022 and 18.01.2023 respectively. Lastly, they submitted that prosecution failed to file charge sheet on or before 20.12.2022 and ingredients of sections of Unlawful Activities (Prevention) Act do not disclose from the remand application and therefore, they are entitled for default bail.
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> It is seen from the record that earlier the period for filing charge sheet was extended upto 19th January 2023 by way of order dtd. 17.12.2022 and then upto 2nd February 2023 by way of order dtd. 18.01.2023. In such circumstances, it is seen that prosecution has permitted to charge sheet on or before 2nd February 2023 and thus present application is premature and devoid of merit. Hence, application (Exh. 44) is rejected and disposed of accordingly."

4. Aggrieved by the order dated 18th January 2023 in Misc. Application No. 86 of 2023 whereby the investigating agency was granted fifteen days' further time to file the charge sheet, the respondents approached the High Court in Criminal Appeal No. 214 of 2023 on 13th February 2023. Later on, the order dated 20th January 2023 *vide* Exhibit 44 was also put to challenge through an amendment in the pending Criminal Appeal. In the meantime, a charge sheet came to be filed on 2nd February 2023 against the above-named accused persons under sections 120B, 121A, 153A, 201 and 116 of the Indian Penal Code and under section 13(1)(b) of the UAPA. The primary contention of the respondents was that no extension of time for filing the charge sheet can be given to the investigating agency on the ground that it needs time to obtain sanction for prosecution. They further contended that once they validly exercised their right under section 43D of the UAPA read with first proviso to sub-section (2) of section 167 of the Code of Criminal Procedure and offered to furnish bail then their right to seek default bail cannot be defeated by erroneous rejection of the bail application. The respondents cited the judgments in "*Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors. v. National Investigation Agency*"[7]; "*Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.*"[8]; "*Bikramjit Singh v. State of Punjab*"[9]; "*State of Maharashtra v. Surendra Pundlik Gadling & Ors.*"[10]; "*Darshan*

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[7] Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors. v. National Investigation Agency : (2023) 17 SCC 48
[8] Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. : (1994) 4 SCC 602
[9] Bikramjit Singh v. State of Punjab : (2020) 10 SCC 616
[10] State of Maharashtra v. Surendra Pundlik Gadling & Ors. : (2019) 5 SCC 178

Subhash Nandagawali v. State of Maharashtra"[11] and *"Sudha Bharadwaj v. National Investigation Agency & Anr."*[12] and contended that the second extension of time granted to the investigating agency was illegal and they were entitled to seek default bail. On the other hand, the Public Prosecutor referred to the decision in *"State of NCT of Delhi v. Raj Kumar @ Lovepreet @ Lovely"*[13] wherein the extension of time for filing the charge sheet on the ground of seeking sanction for prosecution and for obtaining the FSL Report was approved by this Court. The High Court formulated two questions, namely, (i) whether the extension of time granted by the trial Court for filing the charge sheet is legal and valid? and (ii) whether the accused persons are entitled to avail themselves of the indefeasible right of default bail if the order granting second extension of time for filing the charge sheet is held invalid? The High Court appointed an Amicus Curiae who apprised the Court that the decision in "*Raj Kumar @ Lovepreet @ Lovely"*[13] does not lay down a law that obtaining sanction under section 45 of the UAPA is a valid ground for extension of time for filing the charge sheet.

5. The Division Bench of the High Court referred in great length to the decisions in "*Uday Mohanlal Acharya v. State of Maharashtra"*[14], *"Bikramjit Singh"*[9], *"M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence"*[15] and *"Jigar @ Jimmy Pravinchandra Adatiya v. State*

[11] Darshan Subhash Nandagawali v. State of Maharashtra : (2023) SCC OnLine Bom 1162
[12] Sudha Bharadwaj v. National Investigation Agency & Anr. : (2021) SCC OnLine Bom 4568
[13] State of NCT of Delhi v. Raj Kumar @ Lovepreet @ Lovely : (2024) 2 SCC 632
[14] Uday Mohanlal Acharya v. State of Maharashtra : (2001) 5 SCC 453
[15] M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence : (2021) 2 SCC 485

of Gujarat"[16] and formed an opinion that the respondents were entitled to default bail which had accrued to them on failure of the investigating agency to file the charge sheet within the extended period of thirty days. The High Court brushed aside the objection taken by the Public Prosecutor that the respondents forfeited their right to default bail because the second order granting extension of time was not challenged by the respondents before filing of the charge sheet on 2nd February 2023. The High Court held that the said order granting extension of time to file the charge sheet having been held illegal shall not come in the way of the respondents and take away their indefeasible right to seek default bail. The High Court observed that an extension of time to complete the investigation cannot be granted on flimsy or invalid grounds because any extension of time on such grounds will defeat the right of the accused person to seek default bail and, in turn, would violate his right under Article 21 of the Constitution of India. The High Court held that the embargo under section 196 of the Code of Criminal Procedure and under section 45 of the UAPA is on taking cognizance and not for filing the charge sheet. The High Court further held that no extension of time for filing the charge sheet can be granted to the investigating agency on the ground that sanction under section 45 of the UAPA is pending. Observing thus, the High Court held that the order dated 18th January 2023 granting further extension of fifteen days to the investigating agency for filing the charge sheet was illegal and an indefeasible right to default bail had

[16] Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat : (2023) 6 SCC 484

accrued to the respondents on 19th January 2023. The High Court held as under:

> "22. Thus, the law provides an outer limit for completing the investigation. Thus, an extension of time can be asked only to complete the investigation. Sub-section 2 of Section 167 of CrPC provides for an outer limit of sixty days or ninety days as the case may be, for completing the investigation and there is no provision for an extension of the said period. However, under the special statutes, considering the seriousness and ramifications, exceptions are carved out. Thus, under special statutes enabling provision for extension of time to complete investigation is provided only because of the lengthy investigations.
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> 23. In the present case, the enabling provision for extension of time to complete the investigation is Section 43-D of the UAPA, which provides for an extension upto a maximum period of 180 days to complete the investigation, provided the Court is satisfied with the report of the Public Prosecutor, indicating the progress of the investigation and the specific reasons for the detention of the accused. In the present case, the report of the Investigating Officer and the application of the Public Prosecutor seeking an extension of time, in terms state that the investigation is complete and ample evidence is available for filing the charge sheet. Thus, an extension of time is prayed, for filing the charge sheet not on the ground that the investigation is not completed but on the ground that the proposal for obtaining sanction from the appropriate government was pending and the sanction was not likely to be received before the expiry of the extended time. Thus, an extension of time is prayed only for obtaining sanction as, admittedly, the investigation was complete. Thus, once the investigation is complete, there is no question of granting an extension of time to file a charge sheet by exercising powers under Section 43-D of the UAPA, as there is no question of seeking an extension of time on the ground that the application for grant of sanction under Section 45 of UAPA is pending; the reason being, that sanction is required for taking cognizance and not for filing charge sheet.
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> 24. So far as obtaining sanction from the appropriate authority is concerned, the sanction is required for taking cognizance. In view of Section 196 of CrPC and Section 45 of the UAPA, the embargo is on taking cognizance and not on filing a charge sheet. Thus, for the appropriate authority to apply its mind for grant of sanction, the charge sheet is necessary. Without a charge sheet, the appropriate authority will not be able to apply its mind for the grant of sanction. The Hon'ble Supreme Court, in paragraph 19 of the decision in the case of Dinesh Dalmia, has held that "A charge sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not." Thus, in the present case, in view of the embargo on the court taking cognizance without sanction from the appropriate authority, a charge sheet is necessary for the appropriate authority to apply its mind for deciding the proposal for grant of sanction submitted by the prosecution. Thus, for filing a charge sheet, sanction is not required.
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> 25. As stated hereinabove in the present case, the report of the Investigating Officer and the application of the Public Prosecutor clearly records that the investigation is complete and ample evidence is available for filing the charge sheet; however, extension of time is prayed only on the ground of obtaining sanction from the appropriate authority. The power to grant an extension under Section 43-D can be exercised only when the investigation is not complete and time is required to be granted to complete the investigation. Hence, in our opinion, the impugned Order dated 18th January 2023 granting the extension of time to file the charge sheet is illegal and stands vitiated. As the order of extension was vitiated, the indefeasible

right to get default bail accrued on 19th January 2023, when the time for completing the investigation would come to an end." (emphasis supplied)

6. While holding as above, the High Court finally concluded as under:

"39. Hence, for the aforesaid reasons, we summarize our conclusions as under:

(i) An extension of time to complete the investigation can be granted only if a legal and valid ground is shown for not completing the investigation within the time specified by law. Granting an extension of time to complete the investigation on a flimsy or invalid ground will defeat the accused's right to seek default bail, and as such, would violate his right guaranteed to him under Article 21 of the Constitution of India.

(ii) Under Section 45 of the UAPA, sanction is required for taking cognizance. In view of Section 196 of CrPC and Section 45 of the UAPA, the embargo is on taking cognizance and not on filing a charge sheet. Thus, for the appropriate authority to apply its mind to grant sanction, a charge sheet is necessary, as without a charge sheet, the appropriate authority will not be able to apply its mind to the grant of sanction.

(iii) In the present case, the FSL report has been received. The report of the Investigating Officer and the application by the special PP stated that the investigation was complete and ample evidence was available against the appellants to file the charge sheet; however, a proposal for sanction under Section 45 of the UAPA, was awaited from the appropriate authority.

(iv) Thus, the reason accepted in the impugned order to grant an extension of time to file the charge sheet is only for awaiting sanction, which cannot be termed legal and valid.

(v) Thus, once the order granting extension is held illegal and stands vitiated, the appellants are entitled to default bail.

40. Thus, in the peculiar facts of the present case, once the order granting extension is held illegal and stands vitiated, the appellants are entitled to default bail."

7. The right to default bail is a facet of Article 21 of the Constitution of India, which declares the right to life and personal liberty a Fundamental Right under Part III of the Constitution. In "*Bikramjit Singh*"[9] this Court, speaking through Nariman J., held as under:

"36. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the criminal court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.

> 37. …The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled."

8. Much before that, the position in law was declared in "*Aslam Babalal Desai v. State of Maharashtra*"[17] and "*Hitendra Vishnu Thakur*"[8] and reaffirmed in "*Sanjay Dutt v. State through C.B.I., Bombay*"[18] wherein the Constitution Bench of this Court held as under:

> "53. As a result of the above discussion, our answers to the three questions of law referred for our decision are as under:
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> (1) ….
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> (2)(a) ….
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> (2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur [(1994) 4 SCC 602 : 1994 SCC (Crl) 1087 : JT (1994) 4 SC 255] is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

9. The concept of default bail is a novel idea of the lawmakers in India. There is no provision for default bail in the Common law countries or any other country like the one envisaged under first proviso to sub-section (2) of section 167 of the Code of Criminal Procedure, 1973. In the United Kingdom, the Prosecution of Offences (Custody Time Limits) Regulations, 1987 regulate the time limits for custody and trial in England and Wales.

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[17] Aslam Babalal Desai v. State of Maharashtra : (1992) 4 SCC 272

[18] Sanjay Dutt v. State through C.B.I., Bombay : (1994) 5 SCC 410

These regulations made provisions with effect from 1st April 1987 as to the maximum period during which a person accused of any indictable offence except treason in the Counties of Avon, Kent, Somerset and West Midlands may be kept in custody while awaiting trial or committal for trial. The regulations provide time limits in the Magistrates' Courts and limit the maximum period between ninety eight days in the County of West Midlands and seventy days in case of proceedings instituted elsewhere during which a person accused of an indictable offence other than treason may be kept in the custody of a Magistrate's Court. The maximum period of custody in the Crown Court has been provided to be one hundred and twelve days. An application for extension or further extension of a custody time limit may be moved under section 22(3) of the Prosecution of Offences Act, 1985 upon a notice in writing to the accused person or his representative and to the appropriate Officer of the Crown Court of such intention. On expiry of the custody time limit in the Crown Court, the prosecution may give a notice in writing not less than 5 days before the expiry of the time limit whether or not it intends to ask the Crown Court to impose conditions on the grant of bail. On the expiry of the custody time limit, the Crown Court shall grant bail to an accused who is in custody pending trial in accordance with the Bail Act, 1975. In the United States, the prisoner has a right to speedy trial under the speedy trial clause of Sixth Amendment to the Constitution of United States. The Speedy Trial Act, 1974 provides time limits, exclusions, sanctions, effective dates, etc. under "Chapter 208-Speedy Trial". Under section 3161, it is provided that the trial of a defendant charged in an information or indictment with the commission of an offence shall commence within seventy days from the filing date (and making public) of an information or indictment where a plea of not guilty is entered by the defendant. Section 3162 puts an embargo on the continuance of a trial beyond the time limit and provides that if a defendant is not brought to trial within the time limit required by section 3161(c) or extended by section 3161(h), the information or indictment shall be dismissed on a motion of the defendant.

10. The General Code of Criminal Procedure which was enacted in Germany in 1877 provides under section 121, in its present form, that any remand detention exceeding six months shall be executed only upon showing of a particular difficulty or unusual extent of the investigation or some other important reason or if the case file is submitted to the Higher Regional Court prior to the expiry of time limit, pending that Court's decision. In Canada, the Criminal Code [R.S.C. (Revised Statutes of Canada), 1985, c. C-46] contains a provision under section 525 for making of an application by the person having the custody of an accused person to apply to a judge to fix a date for a hearing to determine whether or not the accused person should be released from custody, if the trial has not commenced within ninety days. However, if the judge is not satisfied that the continued detention of the accused person in custody is justified, he shall make an order for release of the accused person. The Bail Act, 2000 governs the rules as to granting bail in New Zealand. Under section 7, a

defendant charged with an offence not bailable as of right is required to be released by a Court on reasonable terms and conditions subject to exceptions contained thereunder, unless the Court is satisfied that there is just cause for continued detention of the accused person. Just to indicate, the provisions for bail and speedy trial in other countries are also conceptually different from the bail jurisprudence in India.

11. The concept of default bail gained legislative approval in India in the second half of 20th Century. The provisions under section 167 of the Code of Criminal Procedure, 1898 were different in their scope, ambit and content, and did not deal with the malady of protracted investigation in a criminal case. Section 167 which was spread over four sub-sections in the old Code gave rise to certain dubious practices of filing a preliminary or incomplete police report in the Court. With the passage of time, the provisions under the old Code were found inadequate to deal with the emerging problems in the criminal justice system and large-scale changes were suggested in the old Code. The Law Commission of India in its Fourteenth[19] and Forty-first[20] Reports suggested that it is desirable that some limit is placed on the power of police to obtain remand of the accused person while the investigation is still going on. It was recommended that the maximum period under section 167 to complete the investigation should be sixty days in whole and the accused should not be remanded for a term exceeding fifteen days at a time. Eventually, the Code of Criminal

[19] Law Commission of India, 1958, 14th Report. Vol. 2. Pages 758-760. paras. 53 to 56.
[20] Law Commission of India, 1969, 41st Report. Vol. 1. Pages 76-77. para. 14.19.

Procedure Bill, 1970 was introduced in the Rajya Sabha which referred the Bill to the Joint Committee of the Houses. The Report submitted by the Joint Committee took note of the hardship and misery of the under-trial prisoners and their families when the investigation is not completed quickly by the police and the under-trials are kept in detention on remand for very long periods. It suggested that when an accused remains in custody for ninety days during the investigation he shall be entitled to be released on bail, whether the offence is bailable or not, if the investigation is not complete by the ninetieth day of custody.

12. When the Code of Criminal Procedure, 1973 was enacted, it retained the major portions of section 167 of the old Code with certain changes. The new Code initially provided that the Magistrate can authorise detention of the accused person beyond the period of fifteen days but not for a period exceeding sixty days, provided he is satisfied that adequate grounds exist for doing so. Since then, a few changes are made to section 167 and one of the amendments made therein is that the period of sixty days has been extended to ninety days in respect of an offence punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years, and sixty days in relation to any other offence. The relevant portions of section 167 as it stands today are reproduced hereinbelow:

> "**167. Procedure when investigation cannot be completed in twenty-four hours. –** (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in

the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that -

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii)sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;[21]

(b) no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;[22]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.[23]

Explanation II - If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.[24]

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[21] Subs. by Act 45 of 1978, sec. 13(a), for paragraph (a) (w.e.f. 18-12-1978)

[22] Subs. by Act 5 of 2009, sec. 14(a)(i), for clause (b) (w.e.f. 31-12-2009). Prior to substitution it read as: "(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;"

[23] Original Explanation numbered as Explanation II thereof and Explanation I inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).

[24] Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (ii), for Explanation II. Prior to its substitution, Explanation II read as under :- [Explanation II. - If any question arises whether an accused persons was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention

Provided further that in case of woman under eighteen years of is, the detention shall be authorised to be in the custody of a remand home or recognized social institution.[25]"

13. In the subsequent years, the provision for default bail produced some undesired results for the investigating agencies which were probing serious crimes relating to national security, terrorist activities, economic stability of the country etc. and a need was felt to provide more time for completing the investigation in specified cases where the offence is punishable with death or imprisonment for life or imprisonment for a term of not less than 10 years. A series of amendments were, therefore, carried out in special Statutes especially those relating to national interest and security of the country. The special Statutes such as MCOCA[2], TADA[4], POTA[3], GUJCTOC[26], and NDPS[27] provide an extended period of time for filing the charge sheet. These Statutes make provisions for extension of time beyond the period of ninety days and up to one hundred and eighty days or one year in NDPS and TADA cases for filing the charge sheet. By the Act No. 35 of 2008, the provisions of the Code of Criminal Procedure, 1973 under section 167 are made applicable in its modified form to the UAPA cases to the effect that the period of ninety days for completion of the investigation has been extended up to one hundred and eighty days. Section 43D of the UAPA incorporates the provisions of section 167 of the Code of Criminal Procedure, 1973 in its modified form

[25] Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (b)
[26] The Gujarat Control of Terrorism and Organised Crime Act, 2015, Gujarat Act No. 24 of 2019
[27] The Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985

in the following manner:

"43D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.".

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

> Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.
>
> (6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.
>
> (7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

14. First proviso to section 167(2) of the Code of Criminal Procedure, 1973 read with section 43D of the UAPA create an indefeasible right in an accused person to seek an order for his release on bail and the Court is obliged under law to enlarge him on bail, if the investigating agency fails to complete the investigation within the maximum period prescribed or the extended period and the accused person moves an application for his release and is ready to furnish bail. The right to default bail, as the expression conveys a meaning, accrues to the accused person as a result of a default on the part of the investigating agency to file the charge sheet within the statutory time limit. The legislature has provided an extended period of further ninety days to the investigating agency to file the charge sheet in the UAPA cases. Besides the complex nature of investigation involved in the UAPA cases, the idea behind providing the extended period for filing the charge sheet seems to be influenced by grave consequences of unlawful activities on national interest. Naturally a statutory provision for extension of time under section 43D of the UAPA cannot be denied in a mechanical manner. It is necessary that the Court keeps in mind the

very purpose behind a statutory provision and balances the individual's freedom with the right of investigating agency to carry on investigation.

15. The UAPA is the primary legislation to deal with cross-border terrorist activities. In "*Arup Bhuyan v. State of Assam & Anr.*"[28] this Court held that the main objective of the UAPA is to make powers available to the Government for dealing with the activities against integrity and sovereignty of India. It makes provisions for more effective prevention of certain unlawful activities of individuals and the association of individuals. The Preamble to the UAPA was amended in the year 2008 to include combating terrorist activities as one of its objectives. This was done in furtherance of Resolution 1373 (2001) and other similar Resolutions adopted by the Security Council of United Nations requiring all the States to take measures to combat international terrorism. The scope and ambit of the provisions under the UAPA are so wide that they apply to (a) citizens of India outside India (b) persons in the service of the Government, wherever they may be and (c) persons on ships and aircraft registered in India, wherever they may be. It also applies to any person who commits an offence beyond India, which is punishable under this Act. Such persons are dealt with according to the provisions of the UAPA in the same manner as if such act was committed in India. The UAPA also provides for freezing of the assets and other economic resources of the terrorist organisations and to prevent the entry into or the transit through the territory of India and to prevent the direct or indirect supply, sale or transfer of arms and

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[28] Arup Bhuyan v. State of Assam & Anr. : (2023) 8 SCC 745

ammunition to the individuals or entities which are enlisted in the Schedule.

16. The UAPA has certain special features which are also necessary to keep in mind, while dealing with any matter arising thereunder. It provides under section 47 that any proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate shall not be called in question in any civil Court in any suit or application or by way of appeal or revision. It is further provided that any civil Court or other Authority shall not grant injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. The provisions of the UAPA are given overriding effect under section 48 in respect of any provision inconsistent with any enactment other than this Act or any instrument having the effect by virtue of any enactment other than this Act. In the trial under the UAPA, the rights of a prisoner which are otherwise available to him under the general laws are restricted to a certain extent. Section 46 makes the evidence collected through the interception of wire from electronic or oral communication admissible in the trial against the accused person notwithstanding anything contained in the Indian Evidence Act, 1872 or any other law for the time being in force subject to furnishing of an order of the competent Authority for interception at least 10 days before the trial, hearing or proceeding.

17. The respondents are charged under sections 120B, 121A, 153A, 201 and 116 of the Indian Penal Code, 1860 and section 13(1)(b) of the

UAPA. They are said to have waged war against the country. They are also charged under section 13 of the UAPA which provides that any individual or the association of individuals shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine if he *(a)* takes part in or commits, *(b)* advocates, abets, advises or incites the commission of any unlawful activity. Sub-section (2) of section 13 provides that whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both. The definition of unlawful activity in clause (o) of sub-section (1) under section 2 is also framed in such a manner to cover any intended unlawful activity, as well. It provides that any action taken by an individual or association shall amount to unlawful activity if the offending action (i) is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession, or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India or (iii) which causes or is intended to cause disaffection against India.

18. The prosecution story is that the members of the Popular Front of India, including the respondents, were planning to carry out anti-national

activities, spreading propaganda in the Muslim community, and creating hatred against the Hindu populace among the youth of the Muslim community. It is alleged that a group of people intend to overthrow the Government of India and disrupt Indian sovereignty by taking foreign aid for establishing an Islamic State in India. During the investigation, 15 mobile handsets, 8 laptops, 2 pen drives, 2 tablets, 2 hard disks etc. were seized and sent for forensic examination and a report thereof was awaited, when an application for first extension of time was moved. It is stated that PDF data was found in the mobile phone of Mazhar Mansoor Khan alias Majhar Aleem Mansoor Ahmad Khan captioned as "India-2047-Towards Rule of Islam in India". There were provocative photographs and other materials detected on the Facebook account of the respondent No. 2. The investigating agency recovered a compact disk which contained six audio clips of mobile conversations, details of which were also given in the first application seeking extension of time.

19. In the aforesaid background, the Special Judge at Greater Mumbai allowed the first extension application and thirty days' further time with effect from 20th December 2022 was granted to the investigating agency to file the charge sheet. In the order dated 17th December 2022 the Special Judge has recorded that there were two material grounds for seeking extension of time, viz. (i) for retrieving electronic evidence through the FSL and (ii) to obtain sanction from the appropriate Authority. The respondents do not deny this position, but contend that the Special Judge expressly rejected the plea of obtaining sanction from the appropriate Government

as a ground to seek extension of time for filing the charge sheet and, thereafter, the second extension of time granted by the Special Judge was illegal. According to the respondents, the expression "on that ground only" used by the Special Judge in the order dated 17^{th} December 2022 clearly indicates that the first extension was granted only for retrieving the electronic data and the other ground, namely, sanction for prosecution projected by the prosecution was not accepted as a valid ground for granting extension of time.

20. To understand the real import of the order, let us see what the Special Judge has said in the order dated 17^{th} December 2022 which is reproduced below:

> "6. Perused application, special report filed by Id. SPP, say and arguments of respective parties. Already ample opportunity is received by the ATS, Mumbai. Now, as per this application, only two grounds are seen to be material. First, to retrieve large amount of electronic evidence from FSL and secondly, to obtain sanction from the appropriate authority. So far as retrieving of electronic data is concerned, it is with the FSL and it is alleged against the accused that they have deleted most of the electronic data from the gadgets to avoid the clutches of law. Admittedly, to retrieve the large amount of data as per letter of FSL dtd.24.11.2022 it would take some time. It is also seen that the said deleted data is necessary to the investigating officer for investigation. But, the time should be definite. *On that ground only* the investigating agency is entitled for extension of time to file charge sheet and in such circumstances, it would be proper to grant 30 days time further for filing charge sheet against the accused.
>
> Hence, I pass the following order.-
>
> **ORDER**
>
> (1) Criminal Misc. Application No.1710 of 2022 is partly allowed.
> (2) The period 30 days for filing of charge sheet against these accused is extended from the date of expiration of earlier period of 90 days i.e. 20.12.2022.
> (3) Criminal Misc. Application No.1710 of 2022 stands disposed off accordingly."
>
> (emphasis supplied)

21. A plain reading of the order dated 17^{th} December 2022 conveys that the Special Judge was in agreement with the prosecution that there is at least one more good reason for extension of time, more particularly,

on the ground of obtaining sanction from the appropriate Government. It is really not correct to say that the only ground that found favour with the Special Judge to grant thirty days' further time for filing the charge sheet was for retrieving data from the Forensic Laboratory. In some parts of India, the orders and judgments in the subordinate Courts are largely in English. Many times, it is the use of a particular word or a particular style of writing of a judge which has attracted criticism and consumed large hours of judicial time of the higher Courts. It is also well known that the judges have their own style of writing. They have their own understanding of the use of words and grammar in English. A situation like the present one stems from the flexibility of English language which is complex at times. The real problem is that a certain word in English is capable of conveying different meanings in different context. Doug Larson, an American columnist and editor, made an interesting comment about the English language: *'if the English language made any sense, a catastrophe would be an apostrophe with fur'*. James D. Nicoll, a science fiction reviewer, posted a quote on English language in a Usenet Discussion Forum which over time attracted diverse internet response on how a word in English is capable of conveying different and interesting meanings. Simply put, a practical approach is, therefore, needed to understand a judgment.

22. The language employed in a document is not always a perfect way of expression. All that is required to be seen is whether the order in question is justified, proper and valid in law, given the background of facts

pleaded by the parties. The order dated 17th December 2022 passed by the Special Judge has to be read in the background of facts of the case. It is also necessary to keep in mind the reasons put forth by the prosecution to seek extension of time for filing the charge sheet beyond ninety days. The expression "only" used by the Special Judge in the order dated 17th December 2022 does not bear the true meaning. We are of the opinion that the Special Judge in the order dated 17th December 2022 intended to convey that the time for retrieval of data is itself a sufficient ground to grant an extension of time for filing the charge sheet, though sanction for prosecution is also a material ground. The decision in "*Raj Kumar @ Lovepreet @ Lovely*"[13] supports the view taken by the Special Judge in this order. However, the High Court erroneously held that this decision is based on its specific facts where the FSL Report was not received and Arms Act and UAPA sanctions were awaited. The discussion in "*Raj Kumar @ Lovepreet @ Lovely*"[13] provides an invaluable insight how the High Court has gone wrong in the present case, and is reproduced below:

> "7. The provisions of Section 43-D(2)(*b*) were considered by this Court in *State of Maharashtra* v. *Surendra Pundlik Gadling* [*State of Maharashtra* v. *Surendra Pundlik Gadling*, (2019) 5 SCC 178 : (2019) 2 SCC (Cri) 472] . In the said case, the FSL report was awaited and it also required the detention of the accused wherein financial details of the respondent were still being ascertained in view of the huge conspiracy spreading over a number of cities were being investigated. The High Court failed to take into consideration the above judgment of 2019 relating to UAPA. It had relied upon a judgment of 1994 relating to provisions of TADA.
>
> 8. The High Court also committed an error in recording a finding that sanction had already been received prior to the date of making the application for extension in November 2020. The recording of the said fact is not correct. The Public Prosecutor in the application had clearly mentioned that the sanction under Section 45(1) of UAPA had been obtained from the Government of India, Ministry of Home Affairs and was attached with the case file. However, the sanction under Section 45(2) of UAPA was awaited from GNCT Delhi and that the sanction under Section 39 of the Arms Act was to be obtained after the results from the FSL was received.
>
> 9. We are, therefore, of the view that the reason mentioned in the impugned order [*Raj Kumar* v. *State (NCT of Delhi)*, 2021 SCC OnLine Del 5790] that the application

had been filed for extension without any valid basis as the sanction had already been granted, was not correct.

10. The High Court also fell in error in not taking into consideration the reasons given under Section 43-D(2)(*b*) were clearly made out and explained in the extension letter dated 7-11-2020 giving the details of the progress of the investigation as also the reasons for detaining the respondent. The Public Prosecutor had mentioned in the request that major investigation of the case had been completed and the draft charge-sheet had been prepared. However, for want of remaining sanctions and FSL report some more time was required for completing the investigation.

11. Insofar as the reasons for detention are concerned, it was mentioned that during the course of investigation one Mr Gurtej Singh had been arrested who had links with Pakistan-based terrorists and had been planning to go to Pakistan for weapons training along with his associate Respondent 2 Rajkumar alias Lovely and others.

12. The High Court also failed to consider that after completing the investigation, police report under Section 173(2)CrPC had already been submitted prior to 30-11-2020 which was the last date of the extended period.

13. One more aspect to be considered is the nature of offence which involved terrorist activities having not only pan India impact but also impact on other enemy States. The matter should not have been taken so lightly.

14. Accordingly, the appeal is allowed. The impugned order [*Raj Kumar* v. *State (NCT of Delhi)*, 2021 SCC OnLine Del 5790] passed by the High Court is set aside. Respondent 2 be taken into custody forthwith, if not already in custody."

23. On 12th January 2023, a second application for extension of time was moved by the Public Prosecutor which came to be allowed on 18th January 2023 and fifteen days' further time was granted to file the charge sheet. The prosecution pleaded that voice samples of the witnesses, namely, Moinuddin, Mohammad Yasin Abdul Syed, Abdul Arif Sikandar Basha and Fardin Jameel Packer were taken and have been sent for verification to the Forensic Laboratory at Kalina, Mumbai but a report thereof was not received. It is stated that the bank account statements of the arrested accused persons have been obtained and were being verified. This is also the stand of the investigating agency that more evidence was required to be collected because four cases of similar nature have been registered in the State. The prosecution pleaded that bank accounts of the accused persons who received foreign donations were being verified and two new offences under sections 121 and 116 of the Indian Penal Code

were also added in the report with due information to the Court. It is also stated in the second extension application that the data analysis was in progress and that was likely to take some time. In the aforesaid circumstances, it was the specific ground pleaded by the prosecution for a second extension of time that sufficient time was required for analysing and collating the available information, witness statements, bank statements, electronic evidence, etc. The relevant portions of the second extension application, which has triggered a controversy in the case, are reproduced below:

> "There is enough evidence to file a charge sheet against the accused in the sample crime and the Hujur Court is requested to get another 15 days extension for filing the charge sheet in the sample crime."

24. Taking a leaf from a statement made by the prosecution in the second extension application that *"there is enough evidence to file a charge sheet against the accused"*, the High Court concluded in paragraph No. 23 of the impugned judgment that the investigation in the case was complete. It further held that an extension of time to file the charge sheet on the ground of obtaining the sanction order is impermissible in law.

25. The Courts have a duty to interpret the language used in the document to assign a true meaning of the expression used thereunder, if the plain literal meaning of the expression does not depict the correct position. A sentence in an order or a judgment cannot be lifted out of its context and interpreted in a manner that defeats the logic behind the decision by the Court. A document has to be read as a whole and not in piecemeal. Some stray statement made in the application seeking

extension of time to file the charge sheet cannot be stretched too far. We note that this is not a statement made by the prosecution that the investigation is complete and filing of the charge sheet is withheld awaiting sanction for prosecution by the appropriate Government. A statement made by the prosecution that there is sufficient material for filing the charge sheet cannot be interpreted by the Court as if the investigation in the case was complete. Such a statement made on behalf of the prosecution cannot be used against it to curtail the power of the ATS to complete the investigation or carry out further investigation. The High Court committed a serious error in construing a solitary statement made in the second extension application to hold that the investigation was complete.

26. Section 45 of the UAPA provides that no Court shall take cognizance of any offence under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf. It further provides that the previous sanction of the Central Government or, as the case may be, the State Government, is mandatory for taking cognizance of any offence under Chapters IV and VI. In respect of an offence committed against the Government of a foreign country, the previous sanction of the Central Government must be taken before the Court takes cognizance of the offence. Sub-section (2) provides that the Central Government or, as the case may be, the State Government is required to consider the recommendation made by the Authority appointed by the Central Government or the State Government

to make an independent review of the evidence gathered in the course of investigation. Section 45 of the UAPA provides as under:

> "**45. Cognizance of offences.**- (1) No Court shall take cognizance of any offence-
>
> (i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;
>
> (ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.
>
> (2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

27. There is no doubt and the legal position is very clear that the requirement of producing sanction for prosecution comes at the stage of cognizance and a charge sheet can be forwarded to the Court without a sanction order from the appropriate Government. "*Judgebir Singh @Jasbir Singh Samra @Jasbir*"[7] and *"Suresh Kumar Bhikamchand Jain v. State of Maharashtra and Anr."*[29] re-affirmed this legal position.

28. In "*Judgebir Singh alias Jasbir Singh Samra alias Jasbir*"[7] the issue was whether a charge sheet filed without sanction for prosecution is incomplete and the accused person becomes entitled to bail under first proviso to section 167 (2) of the Code of Criminal Procedure, on expiry of the statutory period for completion of the investigation. This Court held that no right to default bail accrues to the accused person, if the investigation is concluded within the prescribed period and a final report

[29] Suresh Kumar Bhikamchand Jain v. State of Maharashtra and Anr. : (2013) 3 SCC 77

is filed within the stipulated time. This Court further held that the process of obtaining sanction is a separate process and any delay in obtaining sanction for prosecution shall not invalidate the final report. This Court held as under:

> "45. We find no merit in the principal argument canvassed on behalf of the appellants that a charge sheet filed without sanction is an incomplete charge sheet which could be termed as not in consonance with sub-section (5) of Section 173 CrPC. It was conceded by the learned counsel appearing for the appellants that the charge sheet was filed well within the statutory time period i.e. 180 days, however, the court concerned could not have taken cognizance of such charge sheet in the absence of the orders of sanction not being a part of such charge sheet. Whether the sanction is required or not under a statute, is a question that has to be considered at the time of taking cognizance of the offence and not during inquiry or investigation. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that cognizance is taken of the offence and not of the offender. It cannot be said that obtaining sanction from the competent authorities or the authorities concerned is part of investigation. Sanction is required only to enable the court to take cognizance of the offence. The court may take cognizance of the offence after the sanction order was produced before the court, but the moment, the final report is filed along with the documents that may be relied on by the prosecution, then the investigation will be deemed to have been completed. Taking cognizance is entirely different from completing the investigation. To complete the investigation and file a final report is a duty of the investigating agency, but taking cognizance of the offence is the power of the court. The court in a given case, may not take cognizance of the offence for a particular period of time even after filing of the final report. In such circumstance, the accused concerned cannot claim their indefeasible right under Section 167(2) CrPC for being released on default bail. What is contemplated under Section 167(2) CrPC is that the Magistrate or Designated Court (as the case may be) has no powers to order detention of the accused beyond the period of 180 days or 90 days or 60 days as the case may be. If the investigation is concluded within the prescribed period, no right accrues to the accused concerned to be released on bail under the proviso to Section 167(2) CrPC.
>
> 46. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the court. Section 173 CrPC does not speak about the sanction order at all. Section 167 CrPC also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order."

29. In "*Suresh Kumar Bhikamchand Jain*"[29] this Court held that the investigation ends with filing of the charge sheet and whether cognizance is taken or not is not material as far as section 167 of the Code of Criminal Procedure is concerned. This Court held as under:

> "17. From the above dates, it would be evident that both the charge sheet as also the supplementary charge sheet were filed within 90 days from the date of the Petitioner's arrest and remand to police custody. It is true that cognizance was not taken by the Special Court on account of failure of the prosecution to obtain sanction to prosecute the accused under the provisions of the PC Act, but does such failure amount to non-compliance of the provisions of Section 167(2) Cr.P.C. is the question with which we are confronted. In our view, grant of sanction is nowhere contemplated under Section 167 Cr.P.C. What the said Section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the Legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge sheet having been filed, the Court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida's case (supra) and in Sanjay Dutt's case (supra) were instances where the charge sheet was not filed within the period stipulated in Section 167(2) Cr.P.C. and an application having been made for grant of bail prior to the filing of charge sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge sheet, but once the charge sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.
>
> 18. None of the said cases detract from the position that once a charge sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 Cr.P.C. is concerned. The right which may have accrued to the Petitioner, had charge sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 Cr.P.C., it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 Cr.P.C. The scheme of the Cr.P.C. is such that once the investigation stage is completed, the Court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) Cr.P.C., the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file

the charge sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said Court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 Cr.P.C. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court."

30. However, the decisions in "*Judgebir Singh @ Jasbir Singh Samra @ Jasbir*"[7] and "*Suresh Kumar Bhikamchand Jain*"[29] do not deal with the question involved in the present case. The question that falls for consideration in this case is whether the High Court can curtail power of the police to investigate a crime and declare that the investigation in a particular case was complete.

31. The investigation of a crime is the exclusive domain of the police. It is not the jurisdiction of the Court to decide when the investigation in a case should stop. It must be left to the discretion of the investigating agency to decide the course of investigation and to proceed in its own manner. The Court cannot curtail the statutory powers vested in the police except in an exceptional case on facts or where there is a statutory bar to carry investigation by the police. In "*The King Emperor v. Khawaja Nazir Ahmad*"[30] the Privy Council held that the Court cannot interfere with the statutory right of the police to investigate the circumstances of a cognizable crime. In "*State of Bihar & Anr. v. J.A.C. Saldanha & Ors.*"[31] this Court held that it is the bounden duty of the Executive through the police department to investigate the offence and bring the offender to book. "*J.A.C. Saldanha*"[31] declared in no uncertain terms that there is a clear-

[30] The King Emperor v. Khawaja Nazir Ahmad : (1944) SCC OnLine PC 29
[31] State of Bihar & Anr. v. J.A.C. Saldanha & Ors. : (1980) 1 SCC 554

cut and demarcated sphere of activity in the field of crime detection and crime punishment. The duty of the police to investigate the crime comes to an end when a report is submitted to the Court requesting the Court to take cognizance of the offence under section 190 of the Code of Criminal Procedure, 1973, subject to further investigation to be carried out under section 173(8).

32. A charge sheet is the final report of investigation by the investigating officer under section 173(2) of the Code of Criminal Procedure, 1973, which requires the investigating officer to submit a report in the prescribed form on completion of the investigation into a cognizable offence. A charge sheet is the gist of the prosecution's case. It gives a summary of the materials collected during the investigation by the investigating agency. It gives a brief narration of the allegations against the accused person and the manner in which the accused person is sought to be roped in based on the materials collected during the investigation. It is, therefore, necessary that the investigating agency submits a report to the Court after full and complete investigation. This is the case set up by the investigating agency that it needed further time for analysing the data retrieved through the Forensic Laboratory. The investigating agency sought time to analyse how the data retrieved from the mobile phones, computers and other electronic gadgets seized from the accused persons connect them with the terrorist activities intended to undermine the sovereignty and integrity of India. The investigating agency is also required to indicate in the charge sheet how the flow of money in the bank accounts

of the accused persons connects them with the terrorist activities. The analysis of data retrieved from the Forensic Laboratory is a part of the investigation and cannot be done after filing of the charge sheet.

33. The requirement of filing a complete charge sheet is not a mere formality. An order granting sanction for prosecution entirely depends on the materials collected in course of the investigation. This needs no reiteration that the sanctioning Authority may refuse sanction for prosecution if it thinks that the materials on record are not sufficient to forward the person accused of committing a crime to face trial. The prosecution has to establish and satisfy the sanctioning Authority by leading evidence and producing the entire relevant facts that this is a fit case for grant of sanction for prosecution. Anyways, the grant of sanction by the appropriate Government is not a mechanical exercise and the sanctioning Authority is required to apply his mind to the materials produced by the prosecution. Sub-section (2) to section 45 of the UAPA specifically requires that the sanction for prosecution shall be given only after considering the report of the Authority appointed by the Central Government/ State Government. It is, therefore, necessary that the prosecution must produce necessary and sufficient documents to persuade the sanctioning Authority to grant sanction for prosecution. At the cost of repetition, we may indicate that the prosecution specifically pleaded that it required some time to analyse the scientific data collected during investigation and for furnishing a complete report to the Government. While such facts were pleaded in the second application for

extension of time, it is not possible, rather imaginary, to think that the investigation in the case by the ATS was complete in all respects.

34. However, the High Court bestowed its consideration to an aspect which was not germane to deciding the legality of second extension of time granted to the prosecution for filing the charge sheet. The entire discussion on sanction for prosecution was off-route. The High Court took a detour bypassing the gist of the prosecution's case for extension of time to file the charge sheet. Unnecessary as indeed it was, the discussion whether extension of time can be granted to the prosecution for filing the charge sheet on the ground of obtaining sanction for prosecution from the appropriate Government, as if the investigation was complete and a charge sheet was ready to be filed in the Court. The decision of the High Court to interfere with the order dated 18th January 2023 granting second extension of time to the prosecution for filing the charge sheet is palpably wrong and liable to be set aside.

35. In the result, the impugned judgment dated 15th July 2024 passed in Criminal Appeal No. 214 of 2023 is set aside and the order dated 18th January 2023 passed by the Special Judge in R.A. No. 946 of 2022 is held legal and valid. Consequently, the application dated 20th January 2023 filed by the respondents *vide* Exhibit 44 stands dismissed. The respondent No. 1 shall surrender within 30 days and may pray for regular bail, if so advised.

36. This Criminal Appeal is allowed in the aforesaid terms. Accordingly, pending application(s), if any, also stand disposed of.

…………………………………………….., J.
(PRASHANT KUMAR MISHRA)

…………………………………………….., J.
(SHREE CHANDRASHEKHAR)

NEW DELHI;
SEPTEMBER 21, 2026.