2024 INSC 718

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO……2024
(Arising out of SLP(Crl.) No.4866 of 2023)

FULESHWAR GOPE ... APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

2. Impugned in this appeal by special leave is a judgment of the High Court of Jharkhand at Ranchi dated 21st March, 2023 in W.P.(Crl.) No.443 of 2022, whereby the learned Division Bench refused to quash –

(a) Suo motu letter No.F.No.11011/51/2017/IS-IV dated 16th January, 2018 in respect of the investigation of Bero P.S. Case No.67/2016 dated 10th

November, 2016;

(b) Sanction letter No.11011/51/2017/NIA dated 22nd July, 2020 granting sanction qua prosecution of the present appellant as accused No.17 in R.C.-02/2018/NIA/DLI; and

(c) Cognizance order dated 25th July, 2020 u/s 120B of the Indian Penal Code r/w Section 17, 18, 21 & 22 of U.A. (P) Act, 1967, u/S 17(i) & (ii) of CLA Act, 1908 and charges framed on 16th March, 2021 pending trial before the Court of learned Special Judge, NIA, Ranchi;

It is to be noted that initially quashing was also sought in respect of sanction *vide* letter No.06/Avi-01/21/2017-2637 dated 12th May, 2017 granted by the Principal Secretary, Department of Home, Prisons & Disaster Management, Ranchi. However, paragraph 4 of the impugned judgment records that this specific prayer was not pressed before it.

BACKGROUND FACTS

3. The facts necessary for the disposal of the present appeal, shorn of unnecessary detail are :-

3.1 It is alleged that the appellant, Fuleshwar Gope[1] is an associate of the People's Liberation Front of India[2] and is acquainted with the facts that Dinesh Gope @ Kuldeep Yadav @ Banku (A-6) is a terrorist and the chief of PLFI who collects money through extortion. He is further said to have

[1] Hereinafter referred to as A-17
[2] Abbreviated as 'PLFI'

criminally conspired and formed an unlawful association with members of PLFI, namely, Dinesh Gope, Sumant Kumar @ Pawan Kumar (A-7) and Hira Devi @ Anita Devi (A-14).

3.2 On the direction of A-6, it is alleged that the appellant formed a company M/s. Shiv Shakti Samridhi Infra Pvt. Ltd. (A-20) along with A-14 which was more in the nature of a partnership. This company's bank account was used to directly/indirectly collect funds from legitimate or illegitimate sources for the use of activities of PLFI on the directions of A-6.

3.3 On 10th November, 2016, FIR No.67 of 2016 at Bero, Jharkhand was registered against six persons under Section 212, 213/34, 414 of the Indian Penal Code, 1860 and Sections 13, 17, 40 of the Unlawful Activities (Prevention) Act, 1967[3] and Section 17 of the Criminal Law Amendment Act, 1908 on the allegation that Rs.25.83 lakhs of demonetized currency was brought to the concerned branch of the State Bank of India by A-6.

3.4 On 9th January, 2017, chargesheet No.01/2017 was filed and the learned Judicial Magistrate 1st Class took cognizance thereof. On 18th March, 2017, Deputy Commissioner, Ranchi sought sanction to prosecute which was granted by the Principal Secretary, Department of Home, Prisons & Disaster Management. However, subsequently, the Ministry of Home Affairs[4], Government of India issued a transfer order in respect thereto on

[3] Abbreviated as 'UAPA'
[4] Abbreviated as 'MHA'

16th January, 2018 and as such the FIR was re-registered as a case under the National Investigation Agency[5]. MHA further initiated *suo-motu* sanction on 16th October, 2019 against twelve accused persons, A-1 to A-12.

3.5 On 21st October, 2019, a supplementary chargesheet was filed by NIA wherein the Appellant was named as a witness for the Prosecution, as PW-65. On 5th November, 2019, Special Judge NIA took cognizance of the same.

3.6 The Appellant was subsequently arrested on 13th July, 2020. On 22nd July, 2020, *suo-motu* sanction was issued against an additional seven persons (A-13 to A-20), the Appellant is A-17. A second Supplementary Chargesheet was filed the next day i.e. 23rd July, 2020 under Sections 17, 18, 21, and 22C of the UAPA.

3.7 On 14th November, 2022, the Appellant filed a Writ Petition before the High Court seeking for quashing of the Sanction Order dated 22nd July, 2020, taking of the cognizance of the second Supplementary Chargesheet *vide* an order 25th July, 2020 and framing of charges by order dated 16th March, 2021.

3.8 It is in this backdrop, that the judgment impugned was passed.

IMPUGNED JUDGMENT

4. Before the High Court it was contended primarily that Sections 6(2) & (3)

[5] Abbreviated as "NIA"

of the National Investigation Agency Act, 2008[6] were not complied with and thereby the statutory timelines mentioned therein were completely ignored. Further, it was argued that Sections 45(1) & (2) of the UAPA were not adhered to.

5. The High Court framed the following issues for its consideration:

> "8. …
> (i) Whether the Central Government has got *suo-moto* power to handover the investigation to the N.I.A. once the investigation has been completed by the District Police.
>
> (ii) Whether the Order of Sanction dated 22.07.2020 issued by the Under Secretary to the Government of India in exercise of power conferred under Section 45(2) of U.A.(P) Act, 1967 suffers from any illegality.
>
> (iii) Whether the order taking cognizance against the petitioner under Section 120B I.P.C read with Sections 17, 18, 21 & 22C of U.A.(P) Act, 1967 and Section 17(i) & (ii) of C.L.A Act, 1908 suffers from any infirmity."

5.1 The Court in deciding the first issue placed reliance on ***Pradeep Ram*** v. ***State of Jharkhand & Anr***.[7], and more particularly paragraph 49 thereof, to hold that there is no lack of jurisdiction on the part of NIA to carry out further investigation and submit the supplementary report(s).

5.2 The second issue concerned the legality and propriety of sanction which was challenged on the ground that Rule 3 of the Unlawful Activities (Prevention) (Recommendation & Sanction of Prosecution) Rules, 2008[8] was not followed. The Court referred to the contents of the sanction order

[6] Hereinafter 'NIA, 2008'
[7] (2019) 17 SCC 326
[8] Hereinafter '2008 Rules'

dated 22nd July, 2020, impugned before it, and then concluded that the timeline stipulated in Rule 3 referred to supra, has been strictly adhered to.

5.3 The third issue is as to whether the cognizance order is afflicted by non-application of mind. The Court considered the judgment in ***Bhushan Kumar & Anr.*** v. ***State (NCT of Delhi)***[9] and ***State of Gujarat*** v. ***Afroz Mohammed Hasanfatta***[10] to examine the power of the Magistrate at the stage of issuing process or summons. It was finally concluded that the approach of the learned Special Judge in dealing with the material placed before them by way of case diary, statements of various prosecution witnesses, other documents and material objects, requires no interference.

6. Aggrieved by the above findings of the High Court, the appellant is before this Court.

ARGUMENTS ADVANCED

7. We have heard Mr. Balaji Srinivasan, learned Advocate-on-Record for the appellant and Mr. Vikramjit Banerjee, learned Additional Solicitor General of India and Ms. Swarupama Chaturvedi, learned Senior Counsel for the Union of India.

8. In assailing the impugned judgment, the appellants have advanced the following contentions.

8.1 Section 45 of UAPA read with Rules 3 and 4 of the 2008 Rules

[9] (2012) 5 SCC 424
[10] (2019) 20 SCC 539

provided for a detailed procedure with respect to grant of sanction along with a timeline within which the same is to be granted. The impugned sanction is not in consonance with the statutory mandate as the same was issued 2 years and 11 months after the incident and 2 years and 6 months after the letter dated 12th May, 2017.

8.2 Clause (2) of Section 45 of the UAPA was violated as the requirement of 'independent review' while according sanction was not complied with. It is contended that the sanction order was passed mechanically without supplying any reasons or application of mind. The orders are stereotypical and standard. It is submitted that Section 45 requires independent scrutiny and application of mind at each stage – by requisitioning authority; by an independent agency and then by the sanctioning authority. Since, in the present facts the same was not complied with, sanction orders are liable to be quashed.

8.3 Validity of sanction is a question that can be raised at any stage of proceedings. There are instances of this Court setting aside convictions after completion of trial and even quashing entire proceedings upon the filing of bail application, before trial on the ground of invalidity of sanction. In furtherance of this submission, various judgments have been referred to. ***Ashraf Khan*** v. ***State of Gujarat***[11]; ***State of Gujarat*** v. ***Anwar Osman***

[11] (2012) 11 SCC 606

Sumbhaniya[12]; ***Anirudhsinhji Karansinhji Jadeja*** v. ***State of Gujarat***[13]**;** ***Rambhai Nathabhai Gadhvi*** v. ***State of Gujarat***[14]; ***Seeni Nainar Mohammed*** v. ***State***[15]; and ***Jamiruddin Ansari*** v. ***CBI***[16]**.**

8.4 Both the requisitioning and sanctioning authorities have not considered that *mens rea* is absent which, as is well established, is a requisite to constitute a criminal offence unless explicitly excluded. Reference is made to ***Peoples' Union for Civil Liberties*** v. ***Union of India***[17] and ***Sanjay Dutt*** v. ***State through CBI***[18]. In referring to latter judgment, reliance is placed on the holding that if a reasonable interpretation exists which permits the avoidance of penalty, Courts are bound to take that approach.

8.5 The appellant was not made an accused in the first module, i.e., FIR No.67/2016 nor in the second module (initiated by an alleged hawala transaction which took place on 22nd May 2018) and sanction in respect thereof was granted by the Central Government on 16th October, 2019. He was, in fact, made an accused in an independent transaction involving A-20 regarding which the sanction order (impugned herein) was issued on 22nd July, 2020.

8.6 The proviso to Section 22A exempts a person who is not in charge of and responsible for the affairs of the company, from prosecution. The

[12] (2019) 18 SCC 524
[13] (1995) 5 SCC 302
[14] (1997) 7 SCC 744
[15] (2017) 13 SCC 685
[16] (2009) 6 SCC 316
[17] (2004) 9 SCC 580
[18] (1994) 5 SCC 410

appellant contends that he has wrongly been roped into the proceedings even when he is a Munshi working as a daily wager. He is illiterate and does not understand business transactions. A-6 took undue advantage of his situation, once A-7 and A-14 stole his identity.

8.7 No particular role has been ascribed to the appellant. This case by the NIA has been thrust upon him given, (a) he is a director in the company which is A-20; (b) the said company allegedly received funds that were to be used by PLFI; (c) he hails from the same locality and is a distant acquaintance of Dinesh Gope who is the leader of the PLFI.

9. The stand of the respondent - Union of India, as can be understood from the materials on record and the written submissions, is that -

9.1 The sanction order that has led to the present proceedings has been granted after following due process. The NIA recommended prosecution of the accused persons including the present appellant vide its letter dated 14th July, 2020. The Central Government, in accordance with Section 45(2) of the UAPA referred the investigation report to the authority by letter dated 15th July, 2020, comprising two members for the purpose of independent review. The authority by its letter dated 16th July, 2020 forwarded its report to the Ministry within the stipulated time period under Rule 3 of 2008 Rules. In other words, there is no violation of the Rules.

9.2 The impugned sanction order has been passed considering all the relevant materials on record, including the recommendation of the authority

constituted under Section 45(2) of the UAPA. The authority consisted of a retired High Court Judge and the retired Law Secretary.

9.3 Independent review took place at all relevant stages pursuant to which Central Government accorded sanction. Merely because the sanction was granted within one day of the recommendation, it cannot be said that there was non-application of mind.

9.4 Second and Third Module as explained in the supplementary chargesheets are not independent and separate transactions from that initiated in the FIR, but rather, are a part of the same continuing transaction undertaken by the accused persons to channel the Proceeds of Terrorism. The NIA on being entrusted with the investigation, had investigated the same and submitted the two supplementary chargesheets.

9.5 The appellant is an active member of a terrorist gang and a close associate of Dinesh Gope (A-6) and was involved in collecting and channelizing funds by forming companies. A-20 of which the Appellant/A-17 was a director, served as a front to launder proceeds of terrorism. The claim of the appellant that A-7 & A-14 stole his identity is unsustainable and quashing cannot be placed on such a vague plea.

9.6 The trial is at a very advanced stage, and as such, no discretion be exercised in quashing the criminal proceedings.

10. At the outset, we clarify that despite the last of the submissions made by the learned Additional Solicitor General, the Appellant invited findings on his

submissions. Hence, we proceed to decide the issue on merits.

QUESTIONS FOR CONSIDERATION BEFORE THIS COURT

11. Having considered the factual matrix and the submissions advanced by the learned counsel for the parties the following questions arise for our consideration:-

> (i) Whether the Validity of the Sanction Order can be challenged at any stage?
>
> (ii) Whether a violation of Section 45(2) of the UAPA r/w Rules 3 & 4, if any, vitiates the proceedings? In other words, whether violation of - (a) statutory timelines and (b) the requirement of independent review which includes application of mind, are necessary aspects of procedure without which, any transaction under the UAPA shall be compromised to a point that its sanctity is rendered questionable?
>
> (iii) Whether in the present facts, the argument of the appellant that the transactions in connection with which he has been brought to the book were actually independent of the ones in which Dinesh Gope (A-6) and other members were arrayed as accused, has any merit?
>
> (iv) Whether, in the facts, the statutory exemption under Section 22 A of the UAPA applies to the appellant who claims to be unaware of the affairs of the company?

CONSIDERATION

(a) UAPA : An Introduction

12. The preamble of the Act reads as under:-

> "An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations [,and for dealing with terrorist activities,] and for matters connected therewith."

13. A Bench of Three Judges of this Court (*of which both of us were members*)

considered the objective of the Act in the following terms in ***Arup Bhuyan*** v. ***State of Assam***[19]:-

> **"85.** The main objective of the UAPA is to make powers available for dealing with activities directed against the integrity and sovereignty of India. It is also required to be noted that pursuant to the recommendation of the Committee on National Integration and Regionalisation appointed by the National Integration Council Act on whose recommendation the Constitution (Sixteenth Amendment) Act, 1963 was enacted, UAPA has been enacted. It appears that the National Integration Council appointed a Committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of sovereignty and integrity of India and thereafter the UAPA has been enacted. Therefore, the UAPA has been enacted to make powers available for dealing with the activities directed against integrity and sovereignty of India.
>
> **86.** Now let us consider the Preamble to the UAPA, 1967. As per Preamble, the UAPA has been enacted to provide for the more effective *prevention* of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. Therefore the aim and object of enactment of the UAPA is also to provide for more effective prevention of certain unlawful activities. That is why and to achieve the said object and purpose of effective prevention of certain unlawful activities Parliament in its wisdom has provided that where an association is declared unlawful by a notification issued under Section 3, a person, who is and continues to be a member of such association shall be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine. Therefore, Parliament in its wisdom had thought it fit that once an association is declared unlawful after following due procedure as required under Section 3 and subject to the approval by the Tribunal still a person continues to be a member of such association is liable to be punished/penalised."
>
> (Emphasis supplied)

(b) Relevant Statutory Provisions

14. At this juncture, we may refer to the applicable statute and rules.

14.1 The requisite clauses of Section 2 (definitions clause of the Act) are

[19] (2023) 8 SCC 745

as under:-

> "**2. Definitions.**-(1) In this Act, unless the context otherwise requires,-
>
> … … …
>
> (e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette;
>
> … … …
>
> (ec) "person" includes— (i) an individual, (ii) a company, (iii) a firm, (iv) an organisation or an association of persons or a body of individuals, whether incorporated or not, (v) every artificial juridical person, not falling within any of the preceding sub-clauses, and (vi) any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses;] (f) "prescribed" means prescribed by rules made under this Act;
>
> … … …
>
> (g) "proceeds of terrorism" means,— (i) all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found; or
>
> (ii) any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organisation. Explanation.—For the purposes of this Act, it is hereby declared that the expression "proceeds of terrorism" includes any property intended to be used for terrorism;"

14.2 Section 45 of the Act is extracted below for ready reference.

> "**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 Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where 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."
>
> (Emphasis supplied)

14.3 Rules 3 & 4 of the 2008 Rules read as follows:-

> "**3. Time limit for making a recommendation by the Authority**. – The Authority shall, under sub-section (2) of Section 45 of the Act, make its report containing the recommendations to the Central Government [or, as the case may be, the State Government] within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.
>
> **4. Time limit for sanction of prosecution.**-The Central Government [or, as the case may be, the State Government] shall, under sub-section (2) of Section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority."
>
> (Emphasis supplied)

ISSUE No. 1- Challenge to validity of sanction – at what stage?

15. Now, we proceed to examine the first question before this Court. In order to do so it is essential to extract the relevant portion of the sanction order:-

> "5. And whereas, the Central Government in terms of the provisions of Section 45(2) of the Unlawful Activities (Prevention) Act, 1967 (as amended) and the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 referred the above mentioned Investigation Report vide this Ministry's letter of even no. dated 15th July, 2020 to the Authority comprising of two members namely Justice Dr. Satish Chandra (Retired) and Dr TK Vishwanathan, Law Secretary (Retired), constituted vide this Ministry's order No. 11034/1/2009/IS-IV dated 03.07.2015 for making an independent review of the evidence gathered in the course of investigation (term of the Authority extended till 31.07.2021 vide this Ministry's order dated 12.06.2020);
>
> 6. And whereas, the Authority vide letter dated 16th July, 2020

> forwarded its report to this Ministry within the time limit as prescribed in rule Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 and, after being satisfied with the material available on record and facts and circumstances therein, recommended for sanction for prosecution against the above mentioned accused persons/entities under the relevant sections of law including the Unlawful Activities (Prevention) Act, 1967;
>
> 7. And now, therefore, the Central Government, after carefully examining the material placed on record and the recommendations of the Authority, is satisfied that a prima facie case is made out against the accused persons/entities under the relevant sections of law and hereby accords sanction for prosecution under section 45(1) of the Unlawful Activities (Prevention) Act, 1967…"
>
> BY ORDER AND IN THE NAME OF
> THE PRESIDENT OF INDIA
> Sd/-
> (Dharmendar Kumar)
> Under Secretary to the Government of India"
>
> (Emphasis supplied)

16. The question of validity of sanction being challenged, and at what stage it may be permissible, has engaged this Court on few previous occasions, *albeit* in context of different statutes. It shall be useful to refer to them.

16.1 In ***Central Bureau of Investigation*** v. ***Ashok Kumar Aggarwal***[20] this Court noted the importance of the process of grant of sanction. It has been termed "*not an acrimonious exercise but a solemn and sacrosanct act*" in the context of the Prevention of Corruption Act, 1988[21]. The Court summarised the essentials for validity of prosecution as under:-

> **"16.** In view of the above, the legal propositions can be summarised as under:
>
> **16.1.** The prosecution must send the *entire* relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all

[20] (2014) 14 SCC 295
[21] Hereinafter, 'PC Act'

> other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.
>
> **16.2.** The authority *itself* has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.
>
> **16.3.** The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.
>
> **16.4.** The order of sanction *should make it evident* that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.
>
> **16.5.** In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."
>
> (Emphasis supplied)

16.2 In ***Parkash Singh Badal*** v. ***State of Punjab***[22], this Court held that an authority, which is the sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is to be done at the stage of framing of charge. What the law requires is that materials must be placed before the sanctioning authority so as to enable the application of mind in arriving at a decision.

16.3 In ***Dinesh Kumar*** v. ***Airport Authority of India***[23]**,** Lodha, J. (as he then was) observed:

> "**10.** In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material

[22] (2007) 1 SCC 1
[23] (2012) 1 SCC 532

> before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind—a category carved out by this Court in *Parkash Singh Badal* [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] , the challenge to which can always be raised in the course of trial."

16.4 In ***Central Bureau of Investigation & Ors.*** v. ***Pramila Virendra Kumar Agarwal***[24], while referring to ***Dinesh Kumar*** (supra), this Court reiterated the distinction between absence of sanction and the alleged invalidity of sanction on account of non-application of mind. It was held that absence as in issue can be raised at the threshold, however, invalidity, as in issue can only be raised at trial.

16.5 A Bench of three learned Judges in ***P.K. Pradhan*** v. ***State of Sikkim***[25] discussed the application of Section 197 of the Code of Criminal Procedure, 1973[26]. Having referred to a host of precedents, it was concluded that:

> "15. …It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

[24] (2020) 17 SCC 664
[25] (2001) 6 SCC 704
[26] Hereinafter 'CrPC'

(Emphasis supplied)

16.6 In recent past, this court, in ***State of Karnataka*** v. ***S. Subbegowda***[27], while addressing the question of sanction and its validity in the context of PC Act underscored that challenge to sanction should be brought at the earliest stage possible and held that:

> "**10.** … It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial. Such issue of course, could be raised before the Court in appeal, revision or confirmation, however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law."

(Emphasis supplied)

17. The afore-cited authorities point to only one conclusion which is that sanction, though should be challenged at the earliest possible opportunity, it can be challenged at a later stage as well. These judgments, although not specifically in the context of laws such as UAPA, posit a generally acceptable rule that a right available to the accused, which may provide an opportunity to establish innocence, should not be foreclosed by operation of law, unless specifically

[27] 2023 SCC OnLine SC 911

provided within the statutory text. At the same time, challenging validity of sanction cannot and should not be a weapon to slow down or stall otherwise valid prosecution. Other legislations such as the CrPC provide mechanisms for the sanction and subsequent actions to be saved from being invalidated due to any irregularity etc. Section 465 CrPC provides for the possibility that a sanction granted under Section 197 CrPC can be saved by its operation. Similarly, a sanction under the PC Act, if found that there was any error, omission or irregularity would not be vitiated unless the same has resulted in failure of justice.

18. The UAPA does not provide for any such saving of the sanction. This implies that, in the wisdom of the legislature, the inbuilt mechanism of the Act of having two authorities apply their mind to the grant of a sanction, is sufficient. This emphasizes the role and sanctity of the operation to be carried out by both these authorities. In order to challenge the grant of sanction as invalid, the grounds that can be urged are that (1) all the relevant material was not placed before the authority; (2) the authority has not applied its mind to the said material; and (3) insufficiency of material. This list is only illustrative and not exhaustive. The common thread that runs through the three grounds of challenge above is that the party putting forward this challenge has to lead evidence to such effect. That, needless to say, can only be done before the Trial Court. In that view of the matter, we have no hesitation in holding that while we recognise the treasured right of an accused to avail all remedies available to him under law, in ordinary circumstances challenge to sanction under UAPA should be raised at the earliest

possible opportunity so as to enable the Trial Court to determine the question, for its competence to proceed further and the basis on which any other proceeding on the appellate side would depend on the answer to this question. [See: ***S. Subbegowda*** (supra)]

In the attending facts and circumstances of the present case, keeping in view the submission made at the bar that the trial is underway and numerous witnesses (113 out of 125) already stand examined, we refrain from returning any finding on the challenge to the validity of the sanction *qua* the present appellant and leave it to be raised before the Trial Judge, who shall, if such a question is raised decide, it promptly.

ISSUE No.2 :

19. The next issue that we must consider is whether the timelines in accordance with Section 45(2) of the UAPA r/w Rules 3 & 4 of the 2008 Rules and the requirement of independent review are necessary aspects of procedure, non-adherence of which would vitiate proceedings. As already reproduced above, the rules provide a seven day period within which the concerned authority is to make its recommendation on the basis of materials gathered by the investigating officer and a further seven days period for the government to grant sanction for prosecution, having considered the report of the authority.

20. The ins and outs of the Appellant's contention is that the said timelines were not followed and, in fact, the first sanction was granted more than a year after the recommendation was moved. This contention ties into another

submission that there was no independent review on the part of both recommending authority and central government, as the sanction was merely granted within a day each.

Timelines, whether directory or mandatory?

21. Let us now consider one of the primary arguments of the appellants, i.e., non-following of the statutory timelines.

22. Timelines, generally speaking, as part of statutory framework are extremely essential to an effective, efficient and focused machinery of criminal investigation, prosecution and trial. It cannot be gainsaid that all stakeholders to the smooth functioning of these procedures of law must do their part in realising such timelines. They are the essential aspects of right to speedy trial, which is enshrined under Article 21 of the Constitution of India.

23. The appellant's objections regarding timelines is two-fold. One, that there is a large gap between the first sanction and his own arrest, given that he is allegedly part of the same continuing transaction according to the respondent union, and two, that since the authority despite having been granted a seven day period to consider the materials gathered by the investigating officers and make their recommendation, did so within barely a day, and that to in a manner which could be termed mechanical, thereby afflicting the recommendations from the vice of non-application of mind.

24. The first objection appears to us, to be superficial at best. In order to understand this objection some important dates must be referred to:

S. No.	Details	Date
1.	First Information Report (F.I.R.)	10th November 2016
2.	Chargesheet (It is noted that investigation continues against A-6)	9th January 2017
3.	Sanction against A-6	16th October 2019
4.	First Supplementary Chargesheet (A-6 is named herein; A-17 is brought in as a prosecution witness; Investigation continues still further)	21st October 2019
5.	Arrest of A-17	13th July 2020
6.	Sanction against A-17	22nd July 2020
7.	Second Supplementary Chargesheet (A-17 is named herein)	23rd July 2020

The gap between the first action against A-6 and the arrest of the appellant is a result of continuing investigation, as evidenced by the fact that the appellant was made an accused in the second supplementary chargesheet, arising out of the same FIR under which A-6 was initially named an accused. Since the investigation continued, the gap cannot be termed fatal so as to render the arrest of the appellant as unlawful or illegal. It is also to be noted that in the first supplementary chargesheet the appellant was initially a witness for the prosecution and with further investigation was made an accused thereafter.

25. In order to consider the merits of the second objection, 'application of mind' as a concept must be understood. It is trite in law that application of mind must form part of any judicial, quasi-judicial or administrative order. To demonstrate the same, consideration of material placed before such authority must be reflected. At the same time, it being a cerebral exercise, it is not within reason to set out any formula to explain what application of mind may actually mean or

look like. It is to be ascertained in the facts and circumstances of each case.

26. In the context of penal laws, authorities tasked with evaluating material prior to granting of sanction for prosecution, or the act of granting sanction itself must apply their mind to each and every facet of the material placed before it to arrive at the conclusion particularly so because the effect of the task at hand is immense. The grant/non-grant of sanction is what sets in motion the machinery of strict laws such as UAPA or the Terrorist and Disruptive Activities (Prevention) Act, 1987[28]. Given the severity of these laws and the nature of activities with which they are associated, the effect that they have on the person accused thereunder is not only within the realm of law but also drastically effects social and personal life. It is only after the authority having been handed this task, is of the considered view that sanction can be granted, should it be so done.

27. The procedures *qua* sanctions provided in such legislations are meant to be followed strictly, to the letter more so to the spirit. Even the slightest of variation from the written word may render the proceedings arising therefrom to be cast in doubt. The general principle, when the provision is couched negatively has been noticed by this court in ***Rangku Dutta*** v**. *State of Assam***[29] in the following terms:

> "**18.** It is obvious that Section 20-A(1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression "No" after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to *G.P. Singh's Principles of Statutory Interpretation*, 12th Edn., at pp. 404-05, the learned author has stated:
>
> "… As stated by Crawford: 'Prohibitive or negative

[28] Hereinafter referred as 'TADA'
[29] (2011) 6 SCC 358

> words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience.' As observed by Subbarao, J.: 'Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.' Section 80 and Section 87-B of the Code of Civil Procedure, 1908; Section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; Section 213 of the Succession Act, 1925; Section 5-A of the Prevention of Corruption Act, 1947; Section 7 of the Stamp Act, 1899; Section 108 of the Companies Act, 1956; Section 20(1) of the Prevention of Food Adulteration Act, 1954; Section 55 of the Wild Life (Protection) Act, 1972; the proviso to Section 33(2)(*b*) of the Industrial Disputes Act, 1947 (as amended in 1956); Section 10-A of the Medical Council Act, 1956 (as amended in 1993), and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory."

> We are in respectful agreement with the aforesaid statement of law made by the learned author."

For instance, under the TADA, it has been held that if the sanctioning authority as mentioned under Section 20-A is not the one who granted sanction and instead it was a higher authority, even then the said sanction would be illegal. Reference in this regard may be made to ***Hussein Ghadially*** v. ***State of Gujarat***[30] and ***State of Rajasthan*** v. ***Mohinuddin Jamal Alvi***[31].

28. Now turning to the procedure for sanction provided under the UAPA, we find that a Court is enjoined from taking cognizance without previous sanction either by the Central Government or the State Government, as applicable, and such sanction shall only be given after the report of the authority appointed by the Central Government or the State Government, as the case may be, has been

[30] (2014) 8 SCC 425
[31] (2016) 12 SCC 608

considered. This authority is to make an independent review of the evidence gathered and make a recommendation to the government within a time bound manner.

28.1 What flows from the above description of Section 45 is that if any Court takes cognizance without prior sanction of the Government, Centre or State, the same shall be in contravention of the Act and therefore bad in law. This sanction is not a function of the Government alone and it can only be granted after an independent body, *albeit* appointed by the Government, makes an independent review of the evidence.

28.2 The fact that sanction has been granted is not in dispute. What is disputed by the appellant is in which the manner the same has been granted. According to the case put up by him, the authority's recommendation, and immediately thereafter the Government's grant of sanction is evidence of non-application of mind and stereotypical or 'cyclostyle' orders.

28.3 Although we have taken note of the facts leading up the present appeal, for immediate reference we may recall here that the NIA vide its letter dated 14th July 2020 recommended prosecution for further seven persons (A-13 to A-20); the Ministry vide letter dated 15th July 2020 forwarded the investigation report to the authority; the authority, the next day, i.e., 16th July 2020, recommended sanction for prosecution against the seven persons.

28.4 Rules 3 & 4 of the 2008 Rules, reproduced *supra*, grant the authority

as also the Government a week's time each to recommend and then grant sanction. On the face of it, the present grant of sanction is within the stipulated time. However, as is submitted by the appellant, is the fact that the recommendation, consideration and grant of sanction took place within three days enough to vitiate the prosecution to its entirety?

28.5 One week's time, given to both the authorities is to enable them to independently evaluate, first the materials placed on record then recommend the grant of sanction; and second, to evaluate the material and the recommendation so made above, to finally ink the order of sanction. If the time so granted is thoroughly under-utilised or if either of the two authorities overshoot the time, as stipulated in the rules, what is the fate of the sanction which was underway? We find there to be divergent views taken on this issue by the High Courts. It is a recognised principle of law that the law should apply equally to all persons which then implies that there should be uniformity, despite various jurisdictions being at play, in how the law is applied. The Law Commission of India in its 136th Report recognised that "the want of uniformity" is "an evil". The problem has been recognised stating thus :-

> "1.2 **Want of uniformity an evil.-** It is needless to point out that want of uniformity in law not only impairs the quality or the substantive or procedural law but also causes serious inconvenience to citizens in general. Those whose business is to advise persons who consult them on questions of law, find it difficult to give such advice with confidence where the decisions are conflicting. Those who are entrusted with the functions of adjudicating on questions of law must spend considerable time in between two or more possible views on a

> subject which falls to be considered before them, In this process, there is bound to result considerable waste of time and energy. That apart, it is not a satisfactory situation that on a given topic, the rule of law prevailing in one part of the country should be different from the rule prevailing in another part of the country when the disparity arises from conflicting judicial interpretations."

28.5.1 The High Court of Judicature at Bombay (Nagpur Bench), in Criminal Appeal Nos.136 & 137 of 2017 titled as ***Mahesh Kariman Tirki*** v. ***State of Maharashtra***' on remand from this Court (by order dated 19th April 2023 passed in SLP (Crl.)Nos.11072-11073/2022 for decision on merits as also validity of sanction), regarding timelines mentioned in the 2008 Rules, held as under:

> "153. Though the word "shall" no doubt connotes the sense of urgency, but the consequence of non-compliance in strict sense which flows from the wordings in the rule, has not been spelt out under the statute. Neither at an initial stage of the prosecution nor even before us the defence has projected any prejudice from strict non-compliance of time frame.
>
> 154. The very purport of the provision is to convey that the process has to be complied with and completed in an expeditious manner. Particularly, we have taken into account the contingency which may occur, if the word "shall" in the context is held mandatory. In that case, even if a single days delay would stifle the prosecution intending to curb the act of terrorism. Certainly, the legislative intent behind incorporating the term "shall" is not to stifle the prosecution on such insignificant technicality, but conveys that the process ought to be completed in an expeditious manner. We are unable to persuade ourselves to accept the contention that the term "shall" is to be strictly treated as a mandatory provision and failure to comply with the timeline strictly vitiates the process. Therefore, we respectfully defer with the view taken by the Kerala High Court in the case of Roopesh (supra) in that regard.
>
> 155. We are of the view that and accordingly hold that to achieve legislative intent the dual mandate is to be complied with in its true spirit. Though a minuscule delay would not thwart the legislative intent, but delay if writ large from the record, which is unexplained, would certainly have its own

adverse impact on the process of sanction."

The import of the above extract is that the timelines mentioned in Rules 3 and 4 of the 2008 Rules, despite having the word 'shall' in them, are to be taken as directory for, if the timeline is interpreted strictly, it may thwart the purpose of the legislation which is to curb unlawful activities of a specified nature.

We notice that an appeal from the judgement extracted above, is pending before this Court. In the course of the present judgement, we make no comments on the merits thereof and clarify, that the above extract is only for the purpose of determining the question of law, in respect of the timelines mentioned in the 2008 Rules, being either mandatory or directory in nature.

28.5.2 The Jharkhand High Court, recently, in ***Binod Kumar Ganjhu @Vinod Kumar Ganjhu @Binod Ganjhu*** v. ***Union of India***[32] made similar observations and held that the timelines in the 2008 Rules are directory. It was observed-

> "23. The decision in "Roopesh" is not a binding precedent and we do not find ourselves bound by the considerations of judicial comity and propriety. We are unable to record our agreement to the observations made by the Kerala High Court in "Roopesh" that the time-line provided under Rules 3 and 4 of the Sanction Rules is mandatory. It is indeed not an issue for debate that the expression "shall" would not always convey mandatory compliance of the provision in law. In our opinion, the Sanction Rules lay down a time-line which is in the nature of a guideline keeping in mind personal liberty of a person but such time-line cannot be held to be mandatory and, that too, in

[32] W.P(Crl) 308 of 2022

> cases where serious allegations of commission of offence under UAP Act have been made and found prima-facie true by the NIA.
>
> 24. Long back, it has been held by the Hon'ble Supreme Court that the only principle which governs the criminal justice system is miscarriage of justice. This rule has its origin in the rules of principles of natural justice and that is why time and again the Hon'ble Supreme Court has laid stress on fair trial. Even on conclusion of the trial, the judgment rendered by a competent Court was not held illegal where a charge was not framed by the Court [refer, "Begu v. King-Emperor" ILR (1925) 6 Lah 226]. In this context, we may also refer to the provisions under sections 468 to 473 of the Code of Criminal Procedure which provide period of limitation for taking cognizance and exclusion as well as extension of period of limitation in certain cases. The scheme of the Code of Criminal Procedure thus indicates that it is not every irregularity which vitiates the trial and except in very exceptional kind of cases the Court would not step into and hold the judgment rendered illegal. The fundamental right of an accused is of fair trial in which he has sufficient opportunity to defend himself by cross-examining the prosecution witnesses to bring out falsity in the prosecution case. But beyond this, an accused has only a statutory right to establish that the procedure as prescribed under the law has not been followed and such non-adherence to the procedure prescribed has deprived him a fair opportunity to defend himself which occasioned in miscarriage of justice. As noticed above, the Court has taken cognizance of the offence under the UAP Act and charge has also been framed for committing such offence. In our considered opinion, the Sanction Rules would have no application in the cases of this nature because a criminal prosecution cannot be frustrated on mere technicalities."

Though the Special Leave Petition against this Order was dismissed, however, it was clarified that the question of sanction under Section 45 of the UAPA was not considered.

28.5.3 Taking a diametrically opposite view, the Kerala High Court in ***Roopesh*** v. ***State of Kerala***[33], held that the timeline stipulated cannot

[33] 2022 SCC OnLine Ker 1372

be taken to be directory, keeping in view the Legislature's express inclusion of the same, departing from the practice adopted in other similarly placed laws such as TADA or Prevention of Terrorism Act, 2002[34], it held as under:

> **"12.** The word 'shall' used in the Rules of 2008 has a well defined texture as available from the identical 'shall' employed in the text of sub-section (1) & (2) of S.45 of the UA(P)A; and the power conferred on the Central Government by S.52 to make rules for carrying out the provisions of the Act. The Rules of 2008 prescribed the time of seven days; as spoken of in the enactment. The Act itself is enacted, to prevent unlawful activities of individuals and associations as also dealing with terrorist activities, which terms are specifically defined under the enactment itself. The colour is perceivable from the context in which the enactment is saved from the challenge of having infringed the fundamental rights guaranteed under the Constitution, only on the ground of a reasonable restriction; which has to be construed very strictly. The Parliament, in bringing out the enactment and the Government, in promulgating the Rules had the prior experience of the TADA and POTA as also S.196 Cr.P.C; none of which had a time frame for issuance of sanction. UA(P)A as it was originally enacted, in its Statements of Objects and Reasons, declared it to be in the interest of the sovereignty and integrity of India, intended to bring in reasonable restrictions to (i) freedom of speech and expression, (ii) right to assemble peaceably and without arms; and (iii) right to form associations or unions. The original enactment by S.17 required a sanction from the Central Government or the authorised officer to initiate prosecution.
>
> …
>
> **14.** The Parliament, in 2008, while enacting Amending Act 35 of 2008 had consciously incorporated the provision requiring a recommendation from an Authority and retained the requirement of sanction from the appropriate Government, as provided in sub-section (1). It was by sub-section (2) that an Authority was contemplated, to make recommendations after reviewing the evidence gathered and a specific time was permitted to be prescribed by rules. The Central Government having brought out the Rules of 2008 specifying the time, within which the recommendation and sanction has to be made, the time is sacrosanct and according to us, mandatory. It cannot at all be held that the stipulation of time is directory,

[34] 'POTA' for short.

> nor can it be waived as a mere irregularity under S.460 (e) or under S.465 Cr.P.C. S.460 saves any erroneous proceeding, *inter-alia* of taking cognizance; if done in good faith. When sanction is statutorily mandated for taking cognizance and if cognizance is taken without a sanction or on the strength of an invalid one, it cannot be said to be an erroneous proceeding taken in good faith and the act of taking cognizance itself would stand vitiated."

The State of Kerala, being aggrieved by the final conclusion that the sanction was bad in law, carried in appeal to this Court. The Special Leave Petition bearing number SLP (Crl.) Nos.6981-6983 of 2022, was dismissed as withdrawn with the question of law left open.

28.5.4 A similar view was taken by the High Court of Punjab and Haryana in ***Manjeet Singh*** v. ***State of Punjab***[35]. Although decided in the context of bail, it was held that if no decision is taken, in keeping with the timelines of the Rules 2008, the accused would be entitled to interim bail. It concurred with the view expressed by the Kerala High Court in ***Roopesh*** (supra).

29. This Court has considered the issue of time-bound sanction. While dealing with sanctions under the PC Act, it was observed by Pamidighantam Sri Narsimha J. speaking for this Court, in ***Vijay Rajmohan*** v. ***Central Bureau of Investigation (Anti-Corruption Branch)***[36] as under:

> "**23.** Grant of sanction being an exercise of executive power, it is subject to the standard principles of judicial review such as application of independent mind; only by the competent authority, without bias, after consideration of relevant material and by

[35] CRA-D-5 of 2023
[36] (2023) 1 SCC 329

eschewing irrelevant considerations. As the power to grant sanction for prosecution has legal consequences, it must naturally be exercised within a reasonable period. This principle is anyway inbuilt in our legal structure, and our constitutional courts review the legality and proprietary of delayed exercise of power quite frequently…

…

29. The sanctioning authority must bear in mind that public confidence in the maintenance of the rule of law, which is fundamental in the administration of justice, is at stake here. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny, thereby vitiating the process of determination of the allegations against the corrupt official *Subramanian Swamy* [*Subramanian Swamy* v. *Manmohan Singh*, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] . Delays in prosecuting the corrupt breeds a culture of impunity and leads to systemic resignation to the existence of corruption in public life. Such inaction is fraught with the risk of making future generations getting accustomed to corruption as a way of life. …

…

32. In the first place, non-compliance with a mandatory period cannot and should not automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of *public interest* having a direct bearing on the rule of law [*Subramanian Swamy* v. *Manmohan Singh*, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666. *Per A.K. Ganguly, J.* : (SCC p. 102, paras 76-77)"*76.* The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of the rule of law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecutions and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. …*77.* By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right."]. This is also a non-sequitur. It must also be kept in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically quashed. At the same time, a decision to grant *deemed sanction* may cause prejudice to the rights of the accused as there would also be non-application of mind in such cases."

(Emphasis supplied)

30. The observations in ***Vijay Rajmohan*** (supra) regarding the power of sanction being open to the standard principle of judicial review; the same being inbuilt in our legal structure; public confidence being at stake if a rule of law is violated, are principles that in our considered view it will apply equally to sanctions under UAPA. In context of the PC Act, it has been held that non-compliance of a mandatory period cannot *ipso facto* lead to quashing of criminal proceedings. This is where a difference emerges between the PC Act and the UAPA. The implication, social as well as legal of both these acts diverges, in as much as the latter entails far graver consequences. [See: ***State of T.N***. v. ***Sivarasan***[37]***; Rambhai Nathabhai Gadhvi*** (supra); and ***Ashrafkhan*** (Supra)] The UAPA provides for a detailed procedure which is to be followed in granting of sanction and undoubtedly, the same must be followed in absolute letter and spirit.

Construction of 2008 Rules

31. It is well understood that penal statutes are statutes to be interpreted strictly. This canon of construction has been reiterated time and again. It is apposite here to refer to certain authorities in this context.

31.1 Maxwell in The Interpretation of Statutes (11th Edn.) has observed:

> "The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the cannons of interpretation failed to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the

[37] (1997) 1 SCC 682

> mischief aimed at our, if the language permits, to be held to fall within its remedial influence"

Observations in the twelfth edition, in this context, are also educative:

> "The strict construction of penal statutes seems to manifest itself in four ways : In the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

31.2 In ***Standard Chartered Bank*** v. ***Directorate of Enforcement***[38], a Constitution Bench while discussing the interpretation of penal statutes, held as under:

> "**36.** The rule of interpretation requiring strict construction of penal statutes does not warrant a narrow and pedantic construction of a provision so as to leave loopholes for the offender to escape (see *Murlidhar Meghraj Loya* v. *State of Maharashtra* [(1976) 3 SCC 684 : 1976 SCC (Cri) 493]). A penal statute has to also be so construed as to avoid a lacuna and to suppress mischief and to advance a remedy in the light of the rule in *Heydon's case* [(1584) 3 Co Rep 7a : 76 ER 637] . A common-sense approach for solving a question of applicability of a penal statute is not ruled out by the rule of strict construction. (See *State of A.P.* v. *Bathu Prakasa Rao* [(1976) 3 SCC 301 : 1976 SCC (Cri) 395] and also *G.P. Singh on Principles of Statutory Interpretation*, 9th Edn., 2004, Chapter 11, Synopsis 3 at pp. 754 to 756.)"

31.3 In ***State of Jharkhand*** v. ***Ambay Cements***[39], a Bench of three judges, while dealing with an issue relating to Bihar Industrial Promotion Policy, 1995, discussed the construction of penal statutes. The Court observed that:

> "**26.** Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and

[38] (2005) 4 SCC 530
[39] (2005) 1 SCC 368

> not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."

31.4 The course of action to be adopted by Courts, in view of language used in the statutes has been noticed by this Court in ***Manjit Singh*** v. ***CBI***[40], wherein it has been observed, referring to certain other authorities, that when the language of a provision is unambiguous it would not be open to Courts to adopt a hypothetical approach, leading to a different conclusion on the ground that such different conclusion would be more in sync with the objective of the statute.

31.5 In ***Priya Indoria*** v. ***State of Karnataka***[41], the position of law was stated as under:

> "84. Maxwell in his treatise on *Interpretation of Statutes* (10 Edn.), p. 284 states that "the tendency of modern decisions on the whole is to narrow materially the difference between strict and beneficial construction". It follows that criminal statutes such as the CrPC are interpreted with rational regard to the aim and intention of the legislature. What has to be borne in the judicial mind is that the interpretation of all statutes should be favourable to personal liberty subject to fair and effective administration of criminal justice."
>
> (Emphasis supplied)

32. Rules flowing from statutory power, have the effect of a statute. Section 52 of the UAPA grants power to the Central Government to make Rules for the purpose of carrying out the provisions of the Act. Specifically, Section 52 (2)(ee)

[40] (2011) 11 SCC 578
[41] (2024) 4 SCC 749

deals with the present situation, i.e., enables the Government to prescribe the time for recommendation and grant of sanction under Section 45. The 2008 Rules are unequivocal in both, using the word 'shall' as also providing a specific time period for both activities, i.e., making recommendation and granting sanction. In the views of the High Courts discussed above, two have taken the view that the timelines are directory, while the other two hold them to be mandatory. In the former view, the word 'shall' is interpreted as 'may'. At this juncture, it would be apposite to refer to certain pronouncements. Prior to going into that question, we may also refer to the well-established principles *qua* criminal statutes.

32.1 In ***Montreal Street Railway Company*** v. ***Normandin***[42], the Judicial Committee of the Privy Council considered the question of whether a certain provision in a statute imposing a duty on a public body or authority was mandatory or directory. The Court observed that:

> "…The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

32.2 A Bench of five learned Judges in ***State of U.P.*** v. ***Manbodhan Lal***

[42] LR (1917) AC 170

Srivastava[43], while construing Article 320 of the Constitution of India, interpretated the words 'shall' and 'may' as under:

> "11. …Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from *Crawford on Statutory Construction* — Article 261 at p. 516, is pertinent:
>
> > "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other…."

32.3 In ***State of U.P.*** v. ***Babu Ram Upadhya***[44], a Constitution Bench considered the interpretation of the word 'shall' as mandatory and observed as under:

> "29. The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation

[43] 1957 SCC OnLine SC 4
[44] 1960 SCC OnLine SC 5

> will be defeated or furthered."

32.4 In ***Bachahan Devi* v. *Nagar Nigam, Gorakhpur***[45]**,** this Court considered at length this rule of interpretation. It was observed:

> "21. The ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent; and the use of the words "may" and "shall" is not decisive of its discretion or mandates. The use of the words "may" and "shall" may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."

Although in this case the Court was concerned with a land dispute, the observation in respect of the use of the words 'may' and 'shall' are general principles of statutory construction and are therefore relevant to the present discussion.

32.5 In ***Vijay Dhanuka*** v. ***Najima Mamtaj***[46], this Court interpreted the words 'may' and 'shall' in the context of CrPC as under:

> "12. …The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

[45] (2008) 12 SCC 372
[46] (2014) 14 SCC 638

32.6 Crawford's Statutory Construction (1989 reprint)[47], notes as follows in regard to 'mandatory' and 'directory' words:

> "Ordinarily the words 'shall' and 'must' are mandatory, and the work 'may' is directory, although they are often used inter-changeably in legislation. This use without regard to their literal meaning generally makes it necessary for the courts to resort to construction in order to discover the real intention of the legislature. Nevertheless, it will always be presumed by the court that the legislature intended to use the words in their usual and natural meaning. If such a meaning, however, leads to absurdity, or great inconvenience, or for some other reason is clearly contrary to the obvious intention of the legislature, then words which ordinarily are mandatory in their nature will be construed as directory, or vice versa. In other words, if the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words 'shall' and 'must' to be directory, they should be given that meaning. Similarly, under the same circumstances, the word 'may' should be given a mandatory meaning, and especially where the statute concerns the rights and interests of the public, or where third persons have a claim *de jure* that a power shall be exercised, or whenever something is directed to be done for the sake of justice or the public good, or is necessary to sustain the statute's constitutionality.
>
> Yet the construction of mandatory words as directory and directory words as mandatory should not be lightly adopted. The opposite meaning should be unequivocally evidenced before it is accepted as the true meaning; otherwise, there is considerable danger that the legislative intent will be wholly or partially defeated."

(Emphasis supplied)

33. In matters of strict construction, when a timeline is provided, along with the use of the word 'shall' and particularly when the same is in the context of a law such as the UAPA, it cannot be considered a mere technicality or formality. It demonstrates clear intention on the part of the Legislature. A compulsion has been imposed, and for compliance with that compulsion, a timeline has been

[47] Cited in Union of India v. A.K. Pandey, (2009) 10 SCC 552

provided. While the legislation is aimed at curbing unlawful activities and practices detrimental to national security and accordingly, provides the authorities of the Government ample power to undertake and complete all procedures and processes permissible under law to that end, at the same time the interest of accused persons must also be safeguarded and protected. It is expected of the Executive, in furtherance of the ideal of protection of national security, that it would work with speed and dispatch. The concern expressed by the Bombay High Court is that a strict interpretation of the timeline may defeat the objective of the legislation. While on first blush, such a statement is attractive, we cannot lose sight of the fact that the time granted is only for consideration of the material collected by way of an independent review and then making a recommendation whereafter the sanctioning authority may then consider the materials as well as recommendation to finally, grant or deny the sanction. It is not for the purpose of the investigation itself, which understandably can be a time-consuming process, given the multiple variables involved. There have to be certain limitations within which administrative authorities of the Government can exercise their powers. Without such limitations, power will enter the realm of the unbridled, which needless to state is, antithetical to a democratic society. Timelines in such cases, serve as essential aspects of checks and balances and of course, are unquestionably important. If the view of the Bombay and Jharkhand High Courts is allowed to stand it would be tantamount to the Judicial Wing supplanting its view in place of the legislature which is impermissible in view of the doctrine of

separation of powers. We find support for our view in the Constitution Bench decision in ***A.R. Antulay*** v. ***Ramdas Sriniwas Nayak***[48], wherein D.A. Desai, J., held as under:

> "18. It is a well-established cannon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience; nor does any cannon of construction permit the court to read the section in such manner as to render it to some extent otiose."

[See also: ***Union of India*** v. ***Deoki Nandan Aggarwal***[49]; ***Institute of Chartered Accountants of India*** v. ***Price Waterhouse***[50]***; and ***Shiv Shakti Coop. Housing Society*** v. ***Swaraj Developers***[51]]

The legislative intent is clear. Rules made by virtue of statutory powers prescribe both a mandate and a time limit. The same has to be followed. Here itself we may clarify that the conclusion arrived at by us in respect of the strict adherence to the timeline mentioned in Rules 3 & 4 of the 2008, Rules shall not affect any decision of the authorities where the same may or may not have been followed as on date of this judgment. For ample clarity, it is stated that the observations made in this judgment shall apply prospectively.

Independent Review

34. The bone of contention in this regard is that since both the recommending and the granting authorities took merely a day each in performing their respective

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[48] (1984) 2 SCC 500
[49] 1992 Supp (1) SCC 323
[50] (1997) 6 SCC 312
*dissenting opinion of Saghir Ahmad, J.
[51] (2003) 6 SCC 659

functions, the requirement of an independent review which is to be undertaken by both authorities has been left unfulfilled thereby vitiating the sanction in question.

35. The meaning of the word independent, as is well understood, is that the act, or as in this case, evaluation is made in a way which is lone standing or which does not rely on any other factor, such as previous consideration or evaluation by another authority, to arrive at its conclusion.

35.1 The Cambridge dictionary defines the word independent to mean: –

> "not influenced or controlled in any way by other people, events, or things"

35.2 The Merriam Webster dictionary defines the word independent as:-

> **"**1: not dependent: such as
> **a** (1): not subject to control by others ; (2): not affiliated with a larger controlling unit
> **b** (1): not requiring or relying on something else : not contingent; (2): not looking to others for one's opinions or for guidance in conduct; (3): not bound by or committed to a political party
> **c** (1): not requiring or relying on others (as for care or livelihood); (2): being enough to free one from the necessity of working for a living
> d: showing a desire for freedom"

35.3 The Black's Law Dictionary defines:

> "INDEPENDENT. Not dependent; not subject to control, restriction, modification, or limitation from a given outside source."

Independence, which is the state of being independent would also be instructive in our understanding.

> "INDEPENDENCE. The state or condition of being free from dependence, subjection, or control. A state of perfect irresponsibility. Political independence is the attribute of a nation or state which is entirely autonomous, and not subject to the government, control, or dictation of any exterior power."

36. Review, as a concept is to be understood for it is the coming together of

these two aspects which will form our understanding of the term 'independent review'.

36.1 The Cambridge dictionary defines the word review as:

> "to think or talk about something again, in order to make changes to it or to make a decision about it"

36.2 The Merriam Webster dictionary defines the word review to mean as:

> " …2: to examine or study again *especially* **:** to reexamine judicially
> …
> 4 a: to go over or examine critically or deliberately; b: to give a critical evaluation of"

36.3 The Burton's Legal Thesaurus[52] lists the following words as being similar to 'review' – analyse; comment upon; contemplari; criticize; critique; investigate; mull over; notice; critically; reconsider; reexamine; scrutinize; study and weigh.

37. The import of the term independent review as can be understood from the above is a re-examination, scrutiny or critique of something which is not dependent or subject to control by any other factor or authority. In the present facts, independent review would mean a contemplation or study of the material gathered by the investigating officer to conclude as to whether or not a sanction to proceed under the provisions of the UAPA ought to be granted. Similarly, at the next stage, the sanctioning authority is to mull over and critically notice both the materials gathered as also the conclusion drawn by the recommending

[52] Third Edition; Page 473

authority, in its act of granting sanction.

38. The legislative intent in bringing about the aspect of independent review, by way of an amendment brought into effect from 31st December 2008, within Section 45 of the UAPA is required to be noticed.

39. The Minister for Home Affairs in moving the draft Bills before the Council of States, highlighted the intent behind such introduction as herein below reproduced:

> "Finally, Sir, we have incorporated a very salutary provision. To the best of our knowledge-I don't know, I may be corrected by the Law Minister or the Law Secretary later - it is the first time we are introducing this. In a prosecution under the UAPA, now, it is the executive Government which registers the case through a police officer. It is the executive Government which investigates the case through an investigating agency, namely, the police department. It is the executive Govt. which sanctions u/s. 45. Therefore, there is a fear that a vindictive or a wrong executive Govt. could register a case, investigate and sanction prosecution. There is a fear. May be, it is not a fear that is entirely justified but you cannot say that it is entirely unjustified. So what are we doing? The executive Govt. can register the case because no one else can register a case. The executive Govt., through its agency, can investigate the case. But, before sanction is granted under 45(1) we are interposing an independent authority which will review the entire evidence, gathered in the investigation, and then make a recommendation whether this is a fit case of prosecution. So, here, we are bringing a filter, a buffer, an independent authority who has to review the entire evidence that is gathered and, then, make a recommendation to the State Govt. or the Central Govt. as the case may be, a fit case for sanction. I think, this is a very salutary safeguard. All sections of the House should welcome it. This is a biggest buffer against arbitrariness which many Members spoke about. Sir, these are the features in the Bill."

In the statement extracted above, the idea, purpose and intent behind bringing in an independent authority to scrutinize the material gathered by the investigating agency prior to the government being able to issue or deny a sanction, has been clearly laid out. It was so done to have checks over the power

of the executive in this regard.

40. What flows from the above is that independence of this authority is *sine qua non*, without which it would have lost its entire purpose. The question, now to be considered is as to how it may be determined that a particular process shone with independence or was the same compromised by the clouds of influence, which may compromise its character.

40.1 In ***C.S. Krishnamurthy*** v. ***State of Karnataka***[53], the Court speaking in the context of a sanction order under PC Act held:

> **"9.** Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order…"

This was also referred to in ***State of M.P.*** v. ***Harishankar Bhagwan Prasad Tripathi***[54]***.***

40.2 In ***State of Maharashtra*** v. ***Mahesh G. Jain***[55], after considering a host of authorities, including some that have been cited before in the present case, the following factors were culled out:

> "**14.1.** It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
>
> **14.2.** The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

[53] (2005) 4 SCC 81
[54] (2010) 8 SCC 655
[55] (2013) 8 SCC 119

> **14.3.** The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.
> **14.4.** Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
>
> **14.5.** The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.
>
> **14.6.** If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.
>
> **14.7.** The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

In the very same judgment, it was observed that "grant of sanction is a sacrosanct and sacred act" whose aim is to protect a public servant against vexatious litigation. However, when the order of sanction is (a) by a competent authority and (b) after due application of mind, it cannot be dealt with lightly or, in other words, summarily discarded.

40.3 Recently, in ***Judgebir Singh*** v. ***National Investigation Agency***[56], while examining the application of Rules 3 & 4 of 2008 Rules, this court observed:

> "50. …We place emphasis on the expression "within 7 working days of the receipt of the evidence gathered by the investigating officer under the CrPC". This evidence which Rule 3 of the Rules, 2008 contemplates is the final report i.e., filed by the investigating agency under Section 173 of the CrPC. How can one expect the authority under sub section (2) of Section 45 to make its report containing the recommendations without looking into the

[56] 2023 SCC OnLine SC 543

> chargesheet thoroughly containing the evidence gathered by the investigating officer. On the contrary, ***Rule 3 of the Rules, 2008 makes it explicitly clear that the authority under sub section (2) of Section 45 of the UAPA is obliged in law to apply its mind thoroughly to the evidence gathered by the investigating officer and thereafter, prepare its report containing the recommendations to the Central Government or the State government for the grant of sanction. The grant of sanction is not an idle formality. The grant of sanction should reflect proper application of mind***.
>
> (Emphasis in original)
> **(Emphasis supplied)**

40.4 In ***State of Punjab v. Mohd. Iqbal Bhatti***[57]**,** the position of law was stated thus:

> **"7.** Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the superior courts cannot direct the sanctioning authority either to grant sanction or not to do so…"

40.5 In ***State (NCT of Delhi)*** v. ***Navjot Sandhu***[58], this Court considered in *extenso* the provisions and scheme of the TADA in connection with the '2001 Parliament Attack'. For the present judgment certain observations made in regard to sanctions are relevant. They are summarised as follows:-

40.5.1 What is to be considered is whether the material which formed the *raison d'être* of the allegations was actually placed before the

[57] (2009) 17 SCC 92
[58] (2005) 11 SCC 600

authority.

40.5.2 A reiteration of the contents of the FIR or draft chargesheet does not constitute consideration or application of mind. It has to be something further than that.

40.5.3 The order of sanction or recommendation or grant of sanction, both should on their face indicate consideration of all relevant material.

40.5.4 The standard to be applied in 'judging' sanction orders is not the same as that applied to orders of quasi-judicial bodies for it is a purely an administrative function.

40.6 The observations of this Court in ***State of Bihar v. P.P. Sharma***[59]**,** are instructive. Relevant extract is as under:

> "27. The sanction under Section 197 CrPC is not an empty formality. It is essential that the provisions therein are to be observed with complete strictness. The object of obtaining sanction is that the authority concerned should be able to consider for itself the material before the Investigating Officer, before it comes to the conclusion that the prosecution in the circumstances be sanctioned or forbidden. To comply with the provisions of Section 197 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction. Section 197 does not require the sanction to be in any particular form. If the facts constituting the offence charged are not shown on the face of the sanction, it is open to the prosecution, if challenged, to prove before the court that those facts were placed before the sanctioning authority. It should be clear from the form of the sanction that the sanctioning authority considered the relevant material placed before it and after a consideration of all the circumstances of the case it sanctioned the prosecution."
>
> (Emphasis supplied)

[59] 1992 Supp (1) SCC 222

41. Having given our attention to the position of law as above, let us now turn to the instant facts. Simply put, the objection of the appellant arises from the short amount of time taken in recommending and granting sanction, against him which he claims to be sign of non-application of mind and lack of independent review. We are unable to accept such a contention. There is nothing on record to show that relevant material was not placed before the authorities. There is no question, as there rightly cannot be, on the competence of either of the authorities. Therefore, solely on the ground that the time taken was comparatively short or even that other orders were similarly worded cannot call the credibility of the sanction into question. As has been noted in ***Superintendent of Police (CBI)*** v. ***Deepak Chowdhary***[60], the authorities are required only to reach a *prima facie* satisfaction that the relevant facts, as gathered in the investigation would constitute the offence or not. In ***Mahesh G. Jain*** (supra) it has been held that the prosecution is to prove that a valid sanction has been granted. This needless to state, can only be done by adducing evidence at trial, where the defence in challenge thereto, will necessarily have to be given an opportunity to question the same and put forward its case that the two essential requirements detailed above, have not been met. Furthermore, in ***Mohd. Iqbal M. Shaikh*** v. ***State of Maharashtra***[61], a case under the TADA, this Court was faced with a similar situation, the sanction wherein was granted by the competent authority, i.e., the Commissioner of Police, Greater Bombay on the same day that he received the

[60] (1995) 6 SCC 225
[61] (1998) 4 SCC 494

papers in that regard. The contention of non-application of mind was not accepted by the Court observing that so long as the sanction was by a competent authority and after applying its mind to all materials and the same being reflected in the order, the sanction would hold to be valid. It was further held that when an order does not so indicate, the prosecution is entitled to adduce evidence aliunde of the person who granted the sanction and that would be sufficient compliance. The Court would then, look into such evidence to arrive at a conclusion as to whether application of mind was present or absent. In conclusion, we hold that independent review as well as application of mind are questions to be determined by way of evidence and as such should be raised at the stage of trial, so as to ensure that there is no undue delay in the proceedings reaching their logical and lawful conclusion on these grounds. As a result of the conclusion drawn by this Court on the first issue, it is also to be said that if the sanction is taken exception to, on the above grounds, it has to be raised at the earliest instance and not belatedly, however, law does not preclude the same from being challenged at a later stage. It is to be noted that the scheme of the UAPA does not house a provision such as Section 19 of the PC Act[62] which protects proceedings having

[62] **19. Previous sanction necessary for prosecution.—**
…
(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

been initiated on the basis of sanctions which come to be questioned at a later point in time and, therefore, Courts ought to be careful in entertaining belated challenges. If it is raised belatedly, however, the Court seized of the matter, must consider the reasons for the delay prior to delving into the merits of such objections. This we may say so for the reason that belated challenges on these grounds cannot be allowed to act as roadblocks in trial or cannot be used as weapons in shirking away from convictions arising out of otherwise validly conducted prosecutions and trials.

An order passed by an administrative authority is not to be tested by way of judicial review on the same anvil as a judicial or quasi-judicial order. While it is imperative for the latter to record reasons for arriving at a particular decision, for the former it is sufficient to show that the authority passing such order applied its mind to the relevant facts and materials [See: ***P.P. Sharma*** (supra); ***Navjot Sandhu*** (supra) and ***Mahesh G. Jain*** (supra)] That being the accepted position we find no infirmity in the order granting sanction against A-17. It is not incumbent upon such authority to record detailed reasons to support its conclusion and, as such, the orders challenged herein, cannot be faulted with on that ground.

ISSUE No.3 – Misjoinder of Charges and Violation of CrPC

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—
(a) error includes competency of the authority to grant sanction;
(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

42. The appellant contends that two disjointed transactions have been taken together, to make him an accused and a member of the larger conspiracy. The respondent-Union on the other hand argues that all the transactions (First Module, Second Module, as also the one for which the Appellant was made an accused) are inter-connected and flow from the first sanction. Further, it has been alleged by the appellants that there is a gross misuse of powers by the NIA and a violation of Sections 218-224 of CrPC.

43. Section 218 features in Chapter XVII of the CrPC titled 'The Charge' and more specifically Part B thereof, which is joinder of charges. In a sense, the appellant has alleged violation of an entire part of the chapter, which submission on the face of it is difficult to accept. It requires no reiteration that a person when alleging the contravention of a section or portion of statute, has to substantiate the same by demonstrating which aspect of the section stood not complied with and how such non-compliance has prejudicially affected him. In the present case, however, we are confronted with a sweeping statement of contravention of provisions of the CrPC with little to no explanation as to how that may be the case.

43.1 Section 218 provides, first, that there should be a separate charge for each distinct offence; and secondly, that there should be a separate trial for every such charge, except in the four cases mentioned in Sections 219, 220, 221 and 223.

43.2 Section 219 provides that the three charges of three offences of the

same kind committed within one year be tried together. The section contemplates a joint trial for three separate offences only when the offences are essentially of a simple kind and do not require the framing of a multitude of different charges.

43.3 Section 220 relates to the joinder of charges of offences committed by the same person. It applies to a case, when different offences form part of the same transaction, and are committed by the same person, then he may be charged with and tried at one trial for, every such offence.

43.4 Section 221 provides for cases where it is doubtful what offence has been committed. If a single act or series of acts is of such nature that it is doubtful which of several offences the facts, which can be proved will constitute, the charge can be framed for all offences or alternative charges can be framed. At the trial, if it is established that the accused has committed an offence, he may be convicted though he may not have been charged with the offence.

43.5 Section 222 applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence.

43.6 Section 223 provides for joinder of charges against more than one accused person in the same trial. It deals with the plurality of persons, who can be tried together, in other words, the joint trial of more than one person.

43.7 Section 224 deals with withdrawal of remaining charges on

conviction on one of several charges.

44. Sections 218 to 222 pertain to the joinder of charges against the same person in the same trial. Section 223 deals with plurality of persons, i.e., more than one accused in the same trial. We may notice a few decisions of this Court, to put the application of these provisions, in context.

44.1 In ***Balbir*** v. ***State of Haryana***[63], a Bench of three learned Judges observed as under:

> "11. …In both the aforesaid clauses the primary condition is that persons should have been accused either of the same offence or of different offences "committed in the course of the same transaction". The expression advisedly used is "in the course of the same transaction". That expression is not akin to saying "in respect of the same subject-matter". It is pertinent to point out that the same expression is employed in Section 220(1) of the Code also [corresponding to Section 235(1) of the old Code]. The meaning of the expression "in the course of the same transaction" used in Section 223 is not materially different from that expression used in Section 223(1) [sic 235(1)]. It is so understood by this Court in State of A.P. v. Cheemalapati Ganeswara Rao [AIR 1963 SC 1850 : (1964) 3 SCR 297] . The following observation in the said judgment is contextually quotable:
>
> > "The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression 'same transaction' alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes."
>
> 12. For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal

[63] (2000) 1 SCC 285

> and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction"."

44.2 In ***R. Dineshkumar*** v. ***State***[64], this Court considered the aspect of 'transaction' in the following terms:

> "…19.3. This Court after taking note of the fact that the clause "same transaction" is not defined under the CrPC opined that the meaning of the clause should depend upon the facts of each case. However, this Court indicated that where there is a proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it is possible to infer that they form part of the same transaction. This Court also cautioned that every one of the abovementioned elements need not co-exist for a transaction to be regarded as the "same transaction".
>
> 20. According to us, the principle enunciated in Ganeswara Rao case [AIR 1963 SC 1850 : (1963) 2 Cri LJ 671] is that where several persons are alleged to have committed several separate offences, which, however, are not wholly unconnected, then there may be a joint trial unless such joint trial is likely to cause either embarrassment or difficulty to the accused in defending themselves."

44.3 In ***Nasib Singh*** v. ***State of Punjab***[65], DY Chandrachud, J (as his Lordship then was) speaking for a three-judge Bench formulated the following principles in respect of joint or separate trials:

> "**51.1.** Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219-221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied.
>
> **51.2.** While applying the principles enunciated in Sections 218-223 on conducting joint and separate trials, the trial court should

[64] (2015) 7 SCC 497
[65] (2022) 2 SCC 89

> apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.
>
> **51.3.** The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The appellate court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix.
>
> **51.4.** Since the provisions which engraft an exception use the phrase "may" with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice.
>
> **51.5.** A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be."

The case of appellant, as is evident from the record, falls under the latter category, i.e., multiple persons in the same trial (appellant is A-17 out of a total of 20 accused persons). It has been held that joint or separate trial is a decision to be taken by the learned trial Judge at the beginning of the trial considering (a) the possibility of prejudice; and b) causing judicial delay, if any. Further, the language of Section 223 is directory in nature, signified by the use of word 'may'.

45. ***Naseeb Singh*** (supra) holds that a separate trial would not be contrary to law unless a miscarriage of justice can be demonstrated. Similarly, we are of the view that a joint trial, if held, after having considered the two factors given above, cannot be said to be *ipso facto* prejudicial to the parties.

46. It is alleged that Dinesh Gope (A-6), who is the Chief of PLFI, extorts money from various persons and that this company (A-20) of which the present appellant is a director, is used to legitimise the proceeds of such unlawful actions. The appellant, however, contends that there is no connection between the charges levied on A-6 and the transactions because of which he has been made an accused, whereas the Prosecution submits that both A-6 and A-17 are part of the same, continuing, ongoing transactions. Whether or not actually the case is a question to be decided on the basis of evidence adduced at trial, and not at this stage, by this Court. In ***State of U.P.*** v. ***Paras Nath Singh***[66], the Court observed as under:

> "8. …As the provision itself mandates that no finding, sanction or order by a court of competent jurisdiction becomes invalid unless it is so that a failure of justice has in fact been occasioned because of any error, omission or irregularity in the charge including in misjoinder of charge, obviously, the burden is on the accused to show that in fact a failure of justice has been occasioned."

Therefore, we leave it to the appellants to raise this issue before the Trial Judge, who shall, if such a question is raised, decide it promptly at the appropriate stage.

ISSUE No. 4 – Whether Section 22A applies to the Appellant?

47. Section 22A of the UAPA reads as under:

> "**22A. Offences by companies**.—
> (1) Where an offence under this Act has been committed by a company, every person (including promoters of the company) who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of

[66] (2009) 6 SCC 372

> the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person (including promoters) liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised reasonable care to prevent the commission of such offence.
>
> (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any promoter, director, manager, secretary or other officer of the company, such promoter, director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
>
> Explanation.—For the purposes of this section,— (a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm."

48. For Section 22A to apply :- (a) offence has to committed by a company; (b) all persons who at the time of the offence were in control of, or responsible for, the company's affairs shall be deemed guilty; (c) such person would be saved from guilt as under (b) if they can demonstrate that such act was (i) not in their knowledge; (ii) they had taken reasonable care to prevent such offence from taking place. The section further provides that if it can be proved that the offence committed by the company was (1) with consent; (2) in connivance of; (3) attributable to neglect on the part of any promoter, director, manager, secretary or any other officer of the company, then they shall be held guilty.

49. The case put forward by the appellant is that he, who is allegedly a director of A-20 is saved by the statutory language which provides that if a person could demonstrate and prove that the offence was committed without his knowledge, he

would be exempt from prosecution. This exemption is recognized in other statutes as well. We may take support of pronouncements of this Court with reference to Sections 138 and 141 of the Negotiable Instruments Act, 1881[67] since the latter is similarly worded and phrased.

> "**141. Offences by companies**.—
>
> (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
>
> Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.
>
> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
>
> Explanation.—For the purposes of this section, —
>
> (a) "company" means any body corporate and includes a firm or other association of individuals; and
>
> (b) "director", in relation to a firm, means a partner in the firm."

[67] 'NI Act' for short

49.1 In ***S.M.S. Pharmaceuticals Ltd.*** v. ***Neeta Bhalla***[68], a Bench of three Judges held that only a person who is in charge of the affairs of the company, i.e., a director, manager or secretary and alongside that was connected to the criminal act being committed, would be liable under this section. Relevant portion thereof reads thus:

> "10. …What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of "every person" the section would have said "every director, manager or secretary in a company is liable"…, etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action."

49.2 This is the settled position of law which has been subsequently being reiterated in numerous judgments of this Court. Illustratively, the recent

[68] (2005) 8 SCC 89

judgment in ***Susela Padmavathy Amma*** v. ***Bharti Airtel Ltd***.[69], referring to ***S.M.S. Pharmaceuticals*** (supra) acquitted the appellant therein of the offences under Section 138 NI Act. Gavai, J., speaking for the Bench held as under:

> "21. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-today functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence."

[See also: ***N. Rangachari*** v. ***BSNL***[70]; ***Central Bank of India*** v. ***Asian Global Ltd.***[71]; ***Gunmala Sales (P) Ltd.*** v. ***Anu Mehta***[72]; and ***Rajesh Viren Shah*** v. ***Redington India Ltd.***[73]]

50. Turning our attention to the facts of the present case once more, we find that in opposing the stand that he is a director, the appellant submits that he, in fact, is an uneducated person who is a munshi and whose identity has been stolen by A-7 & A-14. That being the case, this Court cannot, at this stage, decide

[69] 2024 SCC OnLine SC 311
[70] (2007) 5 SCC 108
[71] (2010) 11 SCC 203
[72] (2015) 1 SCC 103
[73] (2024) 4 SCC 305

whether Section 22A applies to the appellant or not. This is once again a matter for evidence.

CONCLUSION

51. Consequent to the discussion made herein above, the conclusions drawn by this Court in respect of the questions of law for our consideration, are as under:

51.1 The validity of sanction should be challenged at the earliest instance available, before the Trial Court. If such a challenge is raised at an appellate stage it would be for the person raising the challenge to justify the reasons for bringing the same at a belated stage. Such reasons would have to be considered independently so as to ensure that there is no misuse of the right of challenge with the aim to stall or delay proceedings.

51.2 The timelines mentioned in Rules 3 & 4 of the 2008 Rules are couched in mandatory language and, therefore, have to be strictly followed. This is keeping in view that UAPA being a penal legislation, strict construction must be accorded to it. Timelines imposed by way of statutory Rules are a way to keep a check on executive power which is a necessary position to protect the rights of accused persons. Independent review by both the authority recommending sanction and the authority granting sanction, are necessary aspects of compliance with Section 45 of the UAPA.

52. For the next two questions, which depend on analysis of facts for their

conclusions, their answers are as below :

52.1 Sections 218-222, CrPC, are not violated. In respect of Section 223, the position of law is the one taken in ***Paras Nath Singh*** (supra). Therefore, this Court prudently leaves it for the Trial Court to decide, if such an issue is raised before it.

52.2 Whether or not the exemption under Section 22A applies is a matter to be established by the way of evidence for the person claiming such exemption has to demonstrate that either he was not in charge of the affairs of the company which has allegedly committed the offence, or that he had made reasonable efforts to prevent the commission of the offence. This, once again, is a matter for the Trial Court to consider and not for this Court to decide at this stage, keeping in view that the trial is underway and proceeded substantially.

53. For the reasons afore-stated, the appeal lacks merit and, accordingly, is dismissed. Pending applications, if any, shall stand disposed of.

…….J.
(C.T. RAVIKUMAR)

……..J.
(SANJAY KAROL)

New Delhi;
September 23, 2024