Neutral Citation No. 2023:PHHC:070778-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-5-2023 (O&M)
Date of Decision: May 16, 2023

Manjeet Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Mitul Singh Rana, Advocate for the appellant.

Mr. Mohit Kapoor, Additional AG, Punjab.

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HARINDER SINGH SIDHU, J.

By filing this appeal, Manjeet Singh, has challenged the order dated 29.11.2022 passed by Additional Sessions Judge, Jalandhar, whereby, his application for grant of default bail under Section 167(2) Cr.P.C. was dismissed.

2. FIR No.76 dated 15.06.2022 under Sections 124-A, 153-A, 153-B read with Section 120-B IPC and Section 13 of the Unlawful Activities (Prevention) Act, 1967 (amended, 2012) {*for short 'UA(P) Act'}* and Section 3 of Prevention of Defacement of Property Act, 1985 *{for short 'PDPA, 1985'}*, Police Station Division No.3, Jalandhar was registered against some unknown persons for writing *'Khalistan Zindabad'* with black paint on the wall outside the office of one Gulshan Sharma. The appellant, who had been lodged in District Jail Karnal in some other case, was brought from the Jail on production warrant and arrested on 12.07.2022

in the instant case. Vide rapat No.28 dated 28.07.2022 offence under Section 124-A IPC was deleted and offences under Section 13 of the UA(P) Act and Section 3 of PDPA, 1985, were added. The statutory period of 90 days for the presentation of challan was to end on 10.10.2022 as no application for extension of time period was moved. The Police presented challan against the appellant on 08.10.2022 under Sections 153-A, 153-B, 120-B IPC, Section 13 of the UA(P) Act and Section 3 of the PDPA 1985, without obtaining any sanction from the competent authorities under Section 45 of the UA(P) Act and Section 196 CrPC.

3. The case of the appellant was that the police report submitted under Section 173(2) Cr.P.C. without obtaining sanction of the competent authority could not be said to be a complete report. Hence he was entitled to grant of default bail under Section 167(2) Cr.P.C. This contention was rejected by the Ld. Court by holding that a police report containing the particulars as mentioned in Section 173(2) of the Cr. P.C. was a complete report and the absence of sanction would not render it incomplete. The appellant was held not entitled to be released on default bail.

4. Sh. Mitul Singh Rana Ld. Counsel for the appellant has raised the following contentions.

i. As per Section 45 of the UA(P) Act no Court can take cognizance of offences under the Act without sanction of the competent authority. As cognizance is prohibited the absence of sanction would lead to delay in trial.

ii. Filing of challan without sanction is akin to filing of a challan under the NDPS Act without the report of the Forensic Science Laboratory. A police report not accompanied by the FSL report has been held to be an incomplete report entitling the accused to default bail. Same is the position here. He relied on a decision of this Court in *Ajit Singh alias Jeeta and another Vs. State of Punjab* (Crl. Revision No. 4659 of 2015, decided on 30.11.2018).

iii. As per the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (for short "the Rules") a specific time frame is prescribed for recommendation and grant of sanction. The period prescribed therein is mandatory. If the sanction is not granted within the period prescribed the accused would be entitled to be released on bail.

iv. Section 167 Cr.P.C. regulates the remand during the period of investigation. An outer time limit for remand is provided therein. There is no power with the Magistrate to grant remand beyond that period. After submission of report under Section 173(2) Cr.P.C. the power of remand is exercisable either under Section 209 Cr. P. C.(in cases where the case is to be committed to the Court of Session) or Section 309 Cr.P.C.

v. The power of remand under Section 309(2) Cr. P.C. is available to the Court only after it takes cognizance of the offence or after commencement of trial. If taking of cognizance is prohibited in the absence of sanction, then the remand cannot be granted under

Section 309 (2) Cr. P.C. Hence, the remand of the appellant since the time the charge sheet has been filed without obtaining sanction is illegal. The appellant is entitled to be released on bail.

5. Mr. Mohit Kapoor, Ld. Additional A. G. on the other hand defended the order denying default bail to the appellant. He argued that sanction is not a step in investigation. Sanction is not to be granted by the Investigating Agency. Grant of sanction is only a pre-requisite for taking cognizance and proceeding with the trial. A challan filed after completion of investigation is complete and the accused is not entitled to be released on default in the absence of sanction if the challan is filed within the stipulated time. He relied on ***Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77*** .

6. On the arguments advanced by the Ld. Counsel the following questions arise for consideration:

(i) Whether police report filed without sanction is incomplete and thereby entitles the accused to default bail under Section 167(2) Cr.P.C. on the ground that challan was not filed within the time prescribed?

(ii) Whether the time line prescribed in the Rules for grant of sanction is mandatory? If so what are the consequences of non-adherence with the same?

(iii) Whether remand under Section 167(2) can be granted only till completion of investigation and not after the filing of the challan?

(iv) Whether remand under Section 309(2) Cr.P.C. can be granted only

after taking cognizance and not before that ? Consequently in case of offences under the UA(P) Act as the Court cannot take cognizance in the absence of sanction, it also cannot remand the accused till it has taken cognizance after receipt of sanction?

7. The first question need not detain us much.

8. This question was considered by the Hon'ble Supreme Court in ***Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77.***

9. In that case the petitioner was an accused in respect of offences punishable under Sections 120-B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34 of the Indian Penal Code, 1860 and also under Sections 13(1)(*c*), 13(1)(*d*) and 13(2) of the Prevention of Corruption Act, 1988 (“the PC Act”).

10. The charge-sheet as also the supplementary charge-sheet were filed within 90 days from the date of the petitioner’s arrest and remand to police custody. Despite charge-sheet having been filed, no cognizance had been taken on the basis thereof on account of failure of the prosecution to obtain sanction to prosecute the accused under the provisions of the PC Act,. The learned Magistrate, however, continued to pass remand orders, without apparently having proceeded to the stage contemplated under Section 309 CrPC. The question before the Supreme Court was does such failure amount to non-compliance with the provisions of Section 167(2) CrPC.

11. It was argued on behalf of the petitioner that since the statutory period of 90 days, envisaged under Section 167(2) CrPC had lapsed, the

petitioner could not have been remanded to custody by the learned Special Judge, who was yet to take cognizance for want of sanction. It was contended that the petitioner was, therefore, entitled to be released on bail, since the orders of remand passed by the learned Magistrate after a period of 90 days were without jurisdiction.

12. It was argued that Section 209 CrPC, did not apply as there were no committal proceeding as the allegations related to the provisions of the PC Act. Section 309 CrPC would be applicable only after cognizance of the offence had been taken or upon the commencement of the trial before the Special Court. In the absence of cognizance being taken by the Special Court, it could not be said that the trial had commenced and, therefore, further detention of the petitioner was wholly illegal and not authorised in law and he was, therefore, entitled to be released on bail.

13. The Court negatived these contentions by observing as under:

> ***"17.*** *In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not*

completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in ***Natabar Parida*** *case and in* ***Sanjay Dutt*** *case were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.*

18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that

once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.

19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) CrPC. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. In that view of the matter, the special

leave petition deserves to be and is hereby dismissed."

14. It was held that the grant of sanction was not contemplated under Section 167(2) Cr.P.C. Sanction was an enabling provision to prosecute, which was totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. Accordingly, it was held that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(*a*)(*ii*) CrPC.

15. Mr. Rana has relied on decision of this Court in Ajit Singh and another Vs. State of Punjab (Supra). In that case the question was whether in a case under the NDPS Act the presentation of a report under Section 173(2) Cr. P.C. without the report of chemical examiner/ FSL amounts to incomplete challan and the accused is entitled to bail under Section 167(2) Cr. P. C.

16. He relied on the following observations of the Court:

> *"What would also necessarily flow from this, would be a prima facie opinion by the Court of the commission of an offence which under the NDPS Act would revolve around establishing the possession of contraband, its nature, content and extent.*
>
> *The only way that it can be done is to establish the nature of contraband on the basis of the Chemical Examiner's report and for this reason, the Chemical Examiner's report assumes an immense significance for the trial Court, to formulate an opinion as the very cognizance of an offence*

would depend on it. Non-inclusion of the Chemical Examiner's opinion in the report under Section 173 Cr.P.C. would expose the accused to unfounded dangers imperiling and endangering his liberty since the provisions of the NDPS Act in its applicability to a trial and conclusion are stringent in consequence.

For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C. without which it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an appliation is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extention of time to the satisfaction of the Court.

We emphasize on the stringent aspect of the NDPS Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liability of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential, integral and inherent part of the investigation under the NDPS Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act."

17. Examining the issue in the context of the provisions of the NDPS Act it was concluded that the Chemical Examiner's report is an

essential, integral and inherent part of the investigation under the NDPS Act laying the foundation of the culpability of the accused without which the Court would not be able to form an opinion about the involvement of the accused in the offence under the Act and consequently take cognizance. Hence, if challan is filed by the Police without the report of the Chemical Examiner it would be an incomplete challan entitling the accused the benefit of default bail under Section 167(2) Cr. P. C.

18. Mr. Rana has argued that while under the NDPS Act in the absence of the report of the FSL the Court would not be able to form an opinion about the involvement of the accused in the offence under the Act and consequently take cognizance, in the case under the UA(P) Act the statute bars taking of cognizance in the absence of sanction. Similar consequence of grant of default bail should ensue when a police report not accompanied with the sanction is filed in a case under the UA(P) Act.

19. We are unable to agree with this contention especially in the light of the decision of the Supreme Cout referred to above that sanction is not a stage in investigation but is wholly separate from investigation. In view of the decision of the Supreme Court it is not possible to hold that sanction is a stage of investigation and a challan not accompanied by sanction is an incomplete challan.

Question (ii) : Whether the time prescribed for grant of sanction in the 2008 Rules is mandatory? If so the consequences of not adhereing to this time ?

20. Section 45 of the UA(P) Act reads as under:

"Section 45. Cognizance of offences

45. Cognizance of offences.—[(1)] No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and [if] 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.]

21. As per Section 45(1) of the UA(P) Act previous sanction is pre-requisite for taking cognizance of an offence under the Act. The sanction required is of the Central or State government as specified in Section 45(1) (i) and (ii) of the Act.

22. As per Section 45(2) the sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed. It is specified that sanction shall be granted 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.

23. In exercise of the powers under sub-section (2) of Section 45 read with clause (f) of sub-section (2) of Section 52 of the Act, the Central Government has framed "The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008.

Rules 3 and 4 of the said Rules are reproduced below:

> *"(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 recommendation 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 recommendation of the Authority."*

24. As per Rule 3, the Authority shall under sub-section (2) of Section 45 of the Act, make its report containing the recommendation 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.

25. Mr. Rana has argued that the time limit prescribed under the Rules is mandatory and if the time limit is breached, there have to be consequences. The minimum that is required is that if the sanction is not received within the time the accused ought to be released on bail. To keep the accused in custody without the grant of sanction for prosecution by the Government which is to be granted after an independent appraisal of the material gathered against the accused by the investigating agency, would be not justified.

26. Mr. Rana has referred to the decision of the Kerala High Court in **Roopesh Versus State of Kerala and others : 2022(2) ILR (Kerala)** .

27. In that case, the Court after extensively considering the issue, concluded that the time for grant of sanction as prescribed under the Rules has to be construed as mandatory.

> *"9. S.45(1)(ii) of the UA(P)A prohibits, unequivocally, any Court from taking cognizance of offences under Chapters IV & VI without previous sanction of the appropriate Government. Ss. 20 & 38 of the UA(P)A charged against the petitioner herein, fall under Chapter IV & Chapter VI respectively. Sub-section (2) of S.45 requires the sanction for prosecution, from the appropriate Government, under sub-section (1), within such time as prescribed, after considering the report of such Authority appointed by the appropriate Government. The Authority so appointed is also required to make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as prescribed by the Central Government. The Rules of 2008 is brought out specifically to prescribe the time as mandated under sub-section (2) of S.45. The Rules of 2008, but for the short title and definition clauses have only two Rules; Rule 3 & 4. Rule 3 prescribes the time for making the report containing the recommendations, by the Authority to the appropriate Government. Rule 4 prescribes the time limit for issuance of sanction of prosecution, by the appropriate Government. Both these rules prescribe seven working*

days as the time within which the recommendation is to be made and the sanction has to be issued; commencing respectively from the receipt of evidence gathered by the investigating and the receipt of recommendation of the Authority. Admittedly, in the present case, both the recommendation of the Authority and the sanction of the State Government were after the prescribed seven days.

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11. The word 'shall' in the context of the UA(P)A & the Rules of 2008, cannot be said to be merely directory. Sub-Section (2) of S.45 specifically speaks of the recommendation of the authority and the sanction by the appropriate Government 'shall' (sic) be within such time as prescribed. The prescription made by the Government is available in the Rules of 2008, which subordinate legislation was brought out only to prescribe the time limit, for both the Authority and the appropriate Government, respectively to make the recommendation and issue the sanction as provided under S.45. It has been held by the Honourable Supreme Court in RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424 :

> *33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ...*

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.

13. UA(P)A, 1967, as it was originally enacted did not concern itself with terrorist activities. In the wake of the rise in terrorist and disruptive activities, TADA of 1985 was promulgated and then the TADA of 1987, to deal with matters connected therewith or incidental thereto. The TADA of 1987 was repealed by Act 30 of 2001, after which POTA, 2002 was brought into force. POTA stood repealed in the year 2004. Amendments were brought in the UA(P)A by Act 29 of 2004, including in the Preamble the words 'and for dealing in terrorist activities' and resultant amendments to the text too. By Act 35 of 2008, amendments were again brought in the UA(P)A; when sub- section (2) of S.45 was incorporated. The TADA by S.20A(1) required any information about the commission of an offence under that Act to be recorded by the Police only with prior approval of the District Superintendent of Police. By sub-section (2), cognizance could be taken by a Court only after previous sanction of the I.G. of Police or the Commissioner of Police. POTA by S.50 prohibited any Court from taking cognizance of an offence under that Act without the previous sanction of the Central Government or the State Government. It is very clear that the legislators learned from the experience and worked on the information, about the actual working of the enactments, which brought drastic consequences to those accused of the offence of a terrorist or disruptive act. The sanction required by the

TADA from the higher echelons of Police was found to be insufficient to curb the evil of misuse and hence, by POTA the requirement was upgraded to one from the Government itself. After repeal of the POTA, the UA(P)A, strengthened with the amendments in 2004, continued with S.45, which prohibited cognizance by any Court; of offences under Chapter III, without a sanction from the Central Government or the authorised officer and under Chapters IV & VI without the sanction of either the State Government or the Central Government, as appropriately required. It was by Act 35 of 2008 that sub-section (2) was incorporated in the UA(P)A.

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, 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 defect is in the sanction issued, which cannot be saved under S.460(e). As for S.465, we shall deal with it, a little later.

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22. As we already noticed, UA(P)A was in force from the year 1967 with the requirement of a sanction by the appropriate Government without any stipulation of time. The enactments which sought to prevent terrorist activities brought out subsequently also had the same requirement of a consent without any stipulation of time. From the wealth of experience gleaned over more than half a century, when such enactments were in force; the Parliament consciously in the year 2008 brought in a provision

where the requirement was not only a sanction form the appropriate Government but a prior recommendation from an Authority constituted under the Act, which had to be perused by the appropriate Government before sanctioning a prosecution. As has been noticed in the various precedents the provisions under the UA(P)A have an added rigour. The investigating agency is given a wider latitude in so far as the time frame for completing the investigation which in turn makes it more rigorous for the accused, which is made further harsh by the restrictions in granting bail as found in sub- sections (5) & (6) of S.43-D, the presumption under S.43- E and the overriding effect to the enactment as conferred under S.48. This is the context in which S.45 (2) has been incorporated, with provision, for an Authority to be constituted for an independent review of the evidence gathered, whose recommendation also has to be considered before the sanction is granted. There is also provided a time frame for the recommendation of the Authority to be made and the sanction of the Government issued; hitherto not included in identical penal statutes. The time frame, as we noticed is unique and it brings in consequences hitherto unavailable and the viability of a second proceedings would be on a very sticky wicket; especially when it could enable the investigating agency to move the Authority and the Government repeatedly if an earlier attempt is unsuccessful. We hasten to add that we are only thinking aloud and that contention would have to be left for another day, another proceeding, to be answered; as we are not now on that aspect and we would resist the temptation to make an obiter.

23. We are of the opinion that the provision for sanction is mandatory and the stipulation of time also is mandatory and sacrosanct. We have noticed the legislative history of the enactments and the provision for sanction incorporated thereunder, to take cognizance of charges based on activities labelled and defined as unlawful, terrorist and disruptive. It has to be found that the sanction under the UA(P)A granted after six months from the date of receipt of recommendation of the authority is not a valid sanction. It also has to be stated that the sanction orders merely speak of the Government, after careful examination of the records of investigation in detail, being fully satisfied of the accused having committed an offence punishable under Ss.20 and 38 of the UA(P)A. The sanction order merely referred to the records of investigation in the respective crimes, the letter of the State Police Chief and the

recommendation of the authority constituted under S.45 of the UA(P)A.

24. It is to be emphasized that S.45(2) of the UA(P)A makes it mandatory for the Authority to make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as prescribed, to the appropriate Government. This does not absolve the appropriate Government from applying its mind since otherwise there was no requirement for a further sanction from the appropriate Government. We have seen from the precedents that sanction for prosecution is a solemn and sacrosanct act which requires the sanctioning authority to look at the facts and arrive at the satisfaction, of requirement of a prosecution. It was held in Anirudh Singhji Karan Singhji Jadeja [supra] that despite the letter of the DSP being exhaustive, the Government ought to have verified that the allegations as stated by the DSP were borne out from the records. In the case of UA(P)A despite the independent review made by the Authority constituted under S.45, the Government has to arrive at a satisfaction without merely adopting the recommendation of the Authority. The Government, it is to be emphasized, has no obligation to act in accordance with the recommendation of the Authority. The sanction is of the Government and not the Authority and the recommendation of the Authority only aids or assists the Government in arriving at the satisfaction. In the present case there is no such application of mind discernible, but for the reference to the recommendation of the Authority and the laconic statement of the Government, that details have been verified, on which satisfaction is recorded as to the offence having been committed by the accused, for which prosecution has to be initiated. We find the sanction order of the UA(P)A to be not brought out in time, as statutorily mandated and bereft of any application of mind; both vitiating the cognizance taken by the Special Court."

28. We respectfully concur with the view of the Kerala High Court in that the time frame for grant of sanction prescribed in the Rules is mandatory.

29. However, we express no opinion on the question that if cognizance is taken on a sanction order granted after the prescribed period

the same would be vitiated. That situation is not before us and there is no occasion to consider this.

30. It needs to be noted that SLP was filed against that decision but it was withdrawn. The question of law was left open.

31. The question, 'whether the time prescribed for grant of sanction is mandatory', was also considered by the Supreme Court in ***Vijay Rajmohan v. CBI, (2023) 1 SCC 329.***

32. The question had arisen in the context of the Prevention of Corruption Act. The Court held that the time prescribed was mandatory. The Court also went into the question of the consequences of the time limit being breached. The relevant discussion is as under :

> ***"Re Issue No. 2: Whether criminal proceedings could be quashed for the delay in issuance of the sanction order:***
> *The public policy behind providing immunity from prosecution without the sanction of the State is to insulate the public servant against harassment and malicious prosecution. It is for this very reason that good faith clauses are incorporated in statutes extending protection to officers exercising statutory duties in good faith. This protection is only to ensure that a public servant serves the State with courage, confidence, and conviction. It is apt to recall the speech of the then Home Minister, Shri Sardar Vallabhbhai Patel, during the Constituent Assembly Debates, also referred to by H.M. Seervai in his commentary on the Constitution while dealing with the Services under the State : (CAD Vol. 10, p. 51)*
>
> > *"… Today, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them 'If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary.' I will never be displeased over a frank expression of opinion."*
>
> *22. Statutory provisions requiring sanction before prosecution either under Section 197 CrPC or under Section 97 of the PC Act also intend to serve the very same purpose of protecting a public servant. These protections are not available to other*

citizens because of the inherent vulnerabilities of a public servant and the need to protect them. However, the said protection is neither a shield against dereliction of duty nor an absolute immunity against corrupt practices. The limited immunity or bar is only subject to a sanction by the appointing authority.

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 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. In Mahendra Lal Das v. State of Bihar and Ramanand Chaudhary v. State of Bihar this Court found it expedient to quash the criminal proceedings due to the abnormal delay in granting a sanction for prosecution.

24. Noticing that there is no legislation prescribing the period within which a decision for sanction is to be taken, this Court, in Vineet Narain, sought to fill the gap by setting a normative prescription of three months for grant of sanction. (SCC p. 270, para 58)

> *"58. I.(15) Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."*

25. Legislative reforms for expeditious grant of sanction for prosecution started with the enactment of the CVC Act, whereunder Parliament has expressly empowered CVC under Section 8(1)(f) of the CVC Act to review the progress of applications for sanction.

26. While exercising the powers under Section 8(1)(f), CVC has been issuing guidelines and instructions to various departments for expeditious disposal of requests for sanction. Despite these legislative changes and administrative guidelines, delay in granting sanctions continued. In Subramanian Swamy case, this Court suggested that Parliament may consider prescribing clear time-limits for the grant of sanction and to provide for a deemed sanction by the end of the period if no decision is taken. (SCC p. 103, para 81)

> *"81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the rule of law wherein "due process of law" has been read into by*

introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:

(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit."

(emphasis supplied)

27. Yet another legislative development took place in 2018 when Parliament, by way of an amendment to the PC Act, inserted the following provisos to Section 19 of the PC Act:

*"**19. Previous sanction necessary for prosecution**.—(1) No court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—*

(a) in the case of....

(b) in the case of....

(c) in the case of....

***

Provided further that....

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such

period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary."

(emphasis supplied)

28. The new proviso to Section 19 mandating that the competent authority shall endeavour to convey the decision on the proposal for sanction within a period of three months can only be read and understood as a compelling statutory obligation. We are not inclined to accept the submission of the learned ASG that this proviso is only directory in nature. In the first place, the consistent effort made by all branches of the State, the judiciary, the legislative, and the executive, to ensure early decision-making by the competent authority cannot be watered down by lexical interpretation of the expression endeavour in the proviso.

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. 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. Viewed in this context, the duty to take an early decision inheres in the power vested in the appointing authority to grant or not to grant sanction. In fact, the Statement of Objects and Reasons for the 2018 Amendment of Section 19 clearly explain the purpose as under:

> *"2. (i) … Further, in the light of a recent judgment of the Supreme Court, the question of amending Section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in Section 19 of the Act."*
>
> *(emphasis supplied)*

30. The intention of Parliament is evident from a combined reading of the first proviso to Section 19, which uses the expression "endeavour" with the subsequent provisions. The third proviso mandates that the extended period can be granted only for one month after reasons are recorded in

> *writing. There is no further extension. The fourth proviso, which empowers the Central Government to prescribe necessary guidelines for ensuring the mandate, may also be noted in this regard. It can thus be concluded that Parliament intended that the process of grant of sanction must be completed within four months, which includes the extended period of one month."*

33. The Supreme Court in ***Vijay Rajmohan*** also dealt with in detail about the consequences of delay in grant of sanction. The Court ruled out the two extreme opposite consequences namely quashing of the criminal proceedings and deemed sanction on the expiry of the aforesaid period as being prejudicial to public interest and the interest of the accused. It was concluded that the non-compliance with the mandatory period cannot automatically lead to quashing of the criminal proceedings because of the predominant public interest involved in the prosecution of a public servant for corruption. 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. The Court then dwelt with in detail on the principles of accountability of authorities vested with public power and held that upon expiry of the three months and the additional one-month period (prescribed under the Prevention of Corruption Act) the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the writ court concerned. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears.

> *"31. If it is mandatory for the sanctioning authority to decide in a time-bound manner, the consequence of non-compliance with the mandatory period must be examined.*

This is a critical question having no easy answer. In Subramanian Swamy, this Court suggested that Parliament may consider providing deemed sanction if a decision is not taken within the prescribed period. The appellant herein contends the very opposite that the criminal proceedings must be quashed if the decision is not taken within the prescribed period.

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. 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.

33. It is in between these competing interests that the Court must maintain the delicate balance. While arriving at this balance, the Court must keep in mind the duty cast on the competent authority to grant sanction within the stipulated period of time. There must be a consequence of dereliction of duty to giving sanction within the time specified. The way forward is to make the appointing authority accountable for the delay in the grant of sanction.

34. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.

xxx xxx xxx

38. In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the writ court concerned. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the non-grant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, CVC shall

> *enquire into the matter in the exercise of its powers under Sections 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act.*
>
> *39. The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be accountable for the delay and be subject to judicial review and administrative action by CVC under Section 8(1)(f) of the CVC Act."*

34. In the present case, neither has the appellant sought the quashing of the criminal proceedings on the ground of non-grant/ delay in grant of sanction nor has the State urged for grant of deemed sanction. Not only that no such consequence has been specified in the Act or the Rules.

35. But what has been urged by Mr. Rana is that the appellant cannot be kept in custody indefinitely without judicial appraisal of the material presented against him as the cognizance by the Court is barred without grant of sanction. He has urged that the liberty of a citizen is sacrosanct and the citizen cannot be deprived of the same for the failure of the authorities to discharge the mandate of law to decide the issue of sanction within the period prescribed. He stressed the very least that can be done in such a situation is that if sanction is not accorded, then on the expiry of the period prescribed under the Rules for grant of sanction, the accused should be released on bail. If after receipt of sanction the Court decides to proceed it may pass necessary orders under the provisions of 437(5) or 439(2) of the Cr. P. C.

36. We are inclined to agree with this contention.

37. The provisions of the UA(P) Act are stringent. Keeping that in

mind, a specific time limit for grant of sanction has been specified. It would be a travesty of justice if the accused is kept in custody for long periods after conclusion of investigation, just to await sanction so that cognizance may be taken. As no consequence for the delay in grant of sanction has been stipulated in the UA(P) Act or Rules, in our view it would be appropriate that in such a case the accused is released on interim bail to surrender once the sanction is received.

38. Accordingly, it is held that on conclusion of investigation and filing of challan, if no decision on sanction is taken and communicated within the period as specified in the 2008 Rules, the accused ought to be released on interim bail. At the time of grant of interim bail the accused would give an undertaking that as and when sanction is granted he would surrender before the Court. Upon his surrender it would be open to the accused to avail of his remedies including to apply for bail.

39. In the present case, the charge sheet against the appellant was presented in the Court on 08.10.2022. On 06.10.2022 an application for grant of sanction to prosecute the appellant was moved. No decision thereon has been taken. The period prescribed under the Rules has long since expired.

40. Accordingly, it is directed that the appellant be released on interim bail. He would file an under taking that he would surrender back if the sanction is granted.

41. In view of the aforesaid, there is no occasion for us to go into the other questions.

42. Appeal is disposed of accordingly.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 16, 2023
gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No