



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 214 OF 2023

1. Momin Moiuddin Gulam Hasan
@Moin Mistri Acc No. 4, Occ-Service
Niyag Bangalpura Masjid, Bangalpura
Bhivandi, Dist:-Thane
Presently in Judicial custody in the
Taloja Central Prison,
Navi Mumbai, India.

2. Asif Aminul Hussain Khan Adhikari
Aged: 46 yeas, Acc No. 5, Occ-Service
Add:-Room No. G-1, Nobsera Co.Op.
Hsg So., Near Wit Centre Panvel,
Dist:- Raigadh Presently in Judicial
custody in the Taloja Central Prison
Navi Mumbai, India

...Appellants

Versus

1. The State of Maharashtra
2. The Anti Terrorism Squad, Mumbai

...Respondents

Mr. Hassnain Kazi a/w Ms. Shraddha Vahval, Mr. Zeeshan Kazi, Mr. Hafizuddin Kazi, Mr. Raeed Kazi, Mr. Saifan Shaikh and Mr. Athar Qureshi for the Appellants

Mr. Ashok P. Mundargi, Senior Advocate, Amicus Curiae
Mr. H. S. Venegavkar, PP a/w Mrs. P. P. Shinde APP for the State

**CORAM: REVATI MOHITE DERE &
GAURI GODSE JJ**

RESERVED ON: 2nd MAY 2024

PRONOUNCED ON: 15th JULY 2024

JUDGMENT: (PER: GAURI GODSE, J.)

1. Although the arguments were concluded and judgment was reserved on 13th December 2023, we listed the matter for further hearing on a praecipe moved by the learned Public Prosecutor as he wanted to address this Court on certain issues, including pointing out the latest decision of the Apex Court. Accordingly, we heard the learned counsels for the respective parties on 7th March 2024, 25th April 2024 and 2nd May 2024.

2. This appeal is preferred under Section 21 of the National Investigation Agency Act, 2008 (“NIA Act”) to challenge the order dated 18th January 2023 passed by learned Sessions Judge (MCOCA/POTA/TADA/NIA) and Additional Sessions Judge Greater Mumbai in NIA RA No. 946 of 2022 in Crime No. 19 of 2022, by which the court granted an extension of time of 15 days to file the chargesheet. By way of an amendment, the appellants have also challenged the order dated 20th January 2023, by which the learned Judge rejected the appellants’ application for grant of bail under

Section 167 (2) of the Code of Criminal Procedure, 1973 ('CrPC').

3. By an order dated 18th January 2023, the Trial Court granted an extension of 15 days to the prosecution to file the chargesheet on the ground that the prosecution was awaiting sanction from the appropriate Government.

4. For examining the grounds of challenge raised on behalf of the appellants, it is necessary to note the following dates as revealed from the roznama, applications filed by the parties and the orders passed below it:

◆ **21st September 2022**:- FIR was registered with the ATS for the offences punishable under Sections 120-B, 121-A, 153-A of the Indian Penal Code ("IPC") and Sections 13(1)(b) of the Unlawful Activities (Prevention) Act 1967 ("the UAPA").

◆ **22nd September 2022**: The appellants were arrested and produced before the Trial Court. By an order passed on the first remand application, the appellants were remanded to police custody

for five days, i.e., until 26th September 2022.

◆ 26th September 2022:- Appellants were produced before the Trial Court. An order was passed on the second remand application, and police custody was granted till 3rd October 2022 on the ground that the prosecution required time for examining the electronic devices.

◆ 3rd October 2022:- Appellants were produced before the Trial Court. An order was passed on the third remand application, and the police custody of the appellants was extended up to 8th October 2022, again on the ground that time was required for examining the electronic devices.

◆ 8th October 2022: The appellants were produced before the Trial Court and were granted judicial custody until 20th October 2022.

◆ 20th October 2022:- The appellants were produced before the Trial Court through video conferencing (“VC”). An application was filed for extension of the appellants’ judicial custody. The matter was

adjourned to **3rd November 2022** for the appearance of the accused through VC.

◆ **3rd November 2022**:- The appellants were not produced before the Trial Court through VC. Judicial custody was extended till **17th November 2022**.

◆ **17th November 2022**:- Appellants were produced before the Trial Court through VC. Judicial custody was accordingly extended till **1st December 2022**.

◆ **1st December 2022**:- Roznama does not reflect that the appellants were produced before the Trial Court either physically or through VC. However, it appears that the appellants' Judicial custody was extended till **14th December 2022**.

◆ **14th December 2022**:- Roznama does not reflect that the appellants were produced before the Trial Court either physically or through VC. However, it appears that the appellants' Judicial custody was extended till **20th December 2022**.

- ◆ **17th December 2022:-** Since the ninety days period for filing the chargesheet was to expire on **20th December 2022**, the prosecution filed a Criminal Misc. Application No. 1710 of 2022 and prayed for extension of time to file the chargesheet on two grounds, i.e. (i) to retrieve a large amount of electronic data from the FSL and (ii) to obtain sanction from the appropriate Government under Section 45 of the UAPA. The said application was allowed and an extension of 30 days was granted from 20th December 2022. Thus, the said extension was to expire on **19th January 2023**.

- ◆ **20th December 2022:-** Roznama records that Appellants were not produced through VC, however, their Judicial custody was extended till **3rd January 2023**.

- ◆ **3rd January 2023:-** Roznama records that the appellants **were produced** through VC and their Judicial custody was extended and the matter was adjourned to 19th January 2023 for appearance, as the case was already adjourned to **19th January 2023** vide Order dated 17th December 2022 by the learned Judge, below Misc. Application No.

1710 of 2022.

- ◆ **12th January 2023**:- Investigating Officer preferred Misc. Application No. 86 of 2023 for seeking further extension of 15 days to file the chargesheet. Learned PP also prepared an application dated 12th January 2023 recommending extension of 15 days for filing the chargesheet.
- ◆ **14th January 2023**:- Appellants were served with the application seeking an extension of time.
- ◆ **18th January 2023**:- Appellants filed an application for grant of default bail under Section 167 (2) of CrPC on the ground that the chargesheet was not filed within the extended time. On the same day, the prosecution filed its say, opposing the said application and contended that the time for completing the investigation would come to an end on **19th January 2023**; and hence, the application for default bail was premature. In view of the said objection, the learned advocate for the appellants prayed for withdrawal of the said application. Accordingly, the application was disposed of as withdrawn. However,

on the same day, the learned trial Judge allowed Misc. Application No. 86 of 2023 filed by the prosecution, and the time for filing the chargesheet was extended by 15 days from the date of expiration of the earlier period, i.e. from 19th January 2023.

◆ 19th January 2023:- The entry in the Roznama shows that the appellants were produced through VC and their Judicial custody was extended until 1st February 2023.

◆ 20th January 2023:- The appellants filed a second application at exhibit 44 praying for default bail under Section 167 (2) of CrPC. However, their application was rejected on the ground that the prosecution was already granted extension of time to file the chargesheet.

◆ 1st February 2023:- The entry in the Roznama shows that the appellants were not produced through VC and their Judicial custody was extended until 2nd February 2023.

◆ 2nd February 2023:- Chargesheet was filed, during the extended

period granted by the learned special judge vide order dated 18th January 2023. The last date to file the chargesheet was 3rd February 2023, however, the chargesheet was filed a day prior to the last date.

◆ 13th February 2023:- The appellants i.e. accused nos. 3 and 4 preferred the present appeal challenging the order dated 18th January 2023 granting extension of time to file the chargesheet. By way of amendment, they also challenged the order 20th January 2023, rejecting their application for default bail.

Submissions on behalf of appellants:

5. Learned counsel for the appellants submitted that the second application filed by the prosecution seeking extension of time on the ground that time was required to obtain for sanction from the appropriate government was not maintainable, more particularly when the first extension granted vide order dated 17th December 2022 was only on one ground, i.e. for retrieving a large amount of data as per a letter of FSL dated 24th November 2022, despite also seeking extension on the ground of time to obtain sanction. As per the special

report filed by the learned PP, the application for extension of time was filed on two grounds, i.e. firstly, to retrieve a large amount of electronic evidence from the FSL and secondly, to obtain sanction from the appropriate government. The learned Trial Judge, while granting extension by order dated 17th December 2022, has specifically recorded that it would take some time to retrieve a large amount of data as per the letter of the FSL dated 24th November 2022. A perusal of the order dated 17th December 2022 indicates that extension to file the chargesheet was granted only on the ground of time required to retrieve the large amount of data as per the letter of the FSL. Thus, impliedly, the second ground pleaded by the prosecution seeking time for obtaining sanction from the appropriate government was rejected by the Trial Judge. The second application filed by the prosecution for extension of time was again on the ground of time required for obtaining sanction from the appropriate government.

6. Learned counsel for appellants submitted that the order dated 17th December 2022 impliedly refusing to grant extension of time on

the ground of time required for obtaining sanction from the appropriate government was never challenged by the prosecution. Thus, the second application filed for extension of time to file the chargesheet on the same ground was not maintainable. Learned counsel for the appellants further submitted that it is a well-settled principle of law that the time required to obtain sanction from the appropriate authority is not a valid ground for extension of time to file the chargesheet, and as such the order dated 18th January 2023, granting extension of time for filing the chargesheet on the said ground is illegal. He, therefore, submitted that if this Court holds that the order granting extension of time only on the ground of time required for obtaining sanction is illegal, then the appellants will be entitled to invoke their indefeasible right to seek default bail under Section 167 (2) of CrPC as prayed in the application at exhibit 44 filed on 20th January 2023.

7. In support of his submissions, learned counsel for the appellants relied upon the decisions of the Hon'ble Supreme Court in the cases

of *Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors*¹, *Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others*², *Bikramjit Singh Vs. The State of Punjab*³ and *The State of Maharashtra Vs. Surendra Pundlik Gadling*⁴ and the decisions of this Court in the cases of *Darshan Nandagawali Vs. State of Maharashtra*⁵ and *Sudha Bharadwaj and Ors Vs. National Investigation Agency and Ors*⁶.

8. Learned counsel for the appellants has relied upon an affidavit dated 3rd October 2023 of the learned advocate for the appellants in the trial Court in support of the contentions raised on behalf of the appellants that the first application filed on 18th January 2023 seeking default bail was withdrawn, only because of the objection raised on behalf of the prosecution that the application was premature.

Submissions on behalf of the prosecution:

9. Learned PP supported the impugned orders by relying upon affidavits dated 15th June 2023 and 9th October 2023 filed on behalf of

1 2023 SCC Online SC 543
2 (1994) 4 Supreme Court Cases 602
3 (2020) 10 SCC 616
4 (2019) 5 SCC 178
5 2023 SCC Online Bom 1162
6 2021 SCC Online Bom 4568

the prosecution. He submitted that the first application seeking extension of time was allowed on both the grounds pleaded by the prosecution, i.e. the ground of retrieving a large amount of electronic evidence as per the FSL letter as well as the ground for obtaining sanction. The order dated 17th December 2022 records the reasons for extension of time on both grounds as pleaded on behalf of the prosecution. Learned PP submitted that in view of the same there is no substance in the ground raised on behalf of the appellants that the second application seeking extension of time to file the chargesheet on the ground of obtaining sanction from the appropriate government was not maintainable. The learned PP further submitted that the appellants withdrew their application on 18th January 2023, seeking default bail under Section 167 (2) of CrPC; hence, they are not entitled to invoke their right subsequently after the chargesheet is filed. As per the second extension granted by order dated 18th January 2023, the time to file the chargesheet was to expire on 3rd February 2023; however, the chargesheet was filed one day prior, i.e. on 2nd February 2023. Since the time to file the chargesheet was already

extended before the expiry of the period, no right accrued in favour of the appellants to seek default bail on 20th January 2023. Learned PP further submitted that even if this Court holds that the order granting the second extension on 18th January 2023 is illegal, the appellants would not be entitled to invoke their right under Section 167 (2) of CrPC in as much as the appellants had never challenged the order dated 18th January 2023 before filing of the chargesheet. The time to file the chargesheet was to expire on 3rd February 2023; whereas, the chargesheet was filed on 2nd February 2023; the appellants filed the present appeal on 13th February 2023, i.e. after the filing of the chargesheet. Thus, according to the learned PP under no circumstances are the appellants now entitled to invoke their right under Section 167 (2) of CrPC, in as much as, the chargesheet is already filed before the expiry of the time granted by order dated 18th January 2023 and much before the appellants filed the present appeal challenging the order dated 18th January 2023.

10. Learned PP in support of his submissions relied upon the decisions of the Hon'ble Supreme Court in the cases of **Sanjay Dutt**

Vs. State Through CBI, Bombay (II)⁷, *The State of Maharashtra Vs. Surendra Pundlik Gadling and Dashrath Rupsingh Rathod Vs. State of Maharashtra and another*⁸

11. During the further hearing learned PP relied upon the latest decision of the Apex Court in the case of *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely*⁹. He submitted that the Hon'ble Supreme Court has set aside an order granting default bail in a case concerning the offences punishable under Sections 13, 18, 20 of the UAPA, Sections 201, 120-B of IPC and Sections 25, 54, 59 of the Arms Act 1959. He submitted that the Hon'ble Supreme Court held that the High Court fell in error by not taking into consideration the reasons given under Section 43D(2)(b) of the UAPA that were clearly made out and explained in the letter of extension. It is also observed that the Public Prosecutor had also mentioned that major investigation of the case had been done and a draft chargesheet was ready, however, extension of time was required for the remaining sanctions and report

7 (1994) 5 Supreme Court Cases 410

8 (2014) 9 Supreme Court Cases 129

9 2024 SCC Online SC 6

of FSL for completing the investigation and that the matter should not have been taken lightly as the nature of the offence, which involved terrorist activities, had not only Pan India impact but also impact on other enemy states. Learned PP submitted that even in the present case, extension was sought on the grounds of examining and analyzing the FSL report and awaiting sanction under Section 45 of the UAPA. According to the learned PP, the present case is squarely covered by the said decision. Hence, he submitted that no fault could be found in the impugned orders and, as such, the appeal be dismissed.

Submissions made by the learned Amicus Curiae:

12. Considering the controversy involved in the present appeal, we appointed Mr. Ashok Mundargi, learned senior counsel, as Amicus Curiae. Mr. Mundargi submitted that it is a well-settled principle of law that so long as the chargesheet is not filed within the meaning of sub-section 2 of Section 173 of CrPC, the investigation remains pending. However, once the chargesheet is filed, the right of the accused to invoke his indefeasible right under Section 167 (2) of CrPC

gets extinguished. He submitted that the prosecution must apply for extension of time before the time to file the chargesheet expires, and if such period expires, the right under Section 167 (2) of CrPC accrues in favour of the accused. Learned senior counsel referred to paragraph 19 of the decision of the Hon'ble Supreme Court in the case of *Dinesh Dalmia Vs. C.B.I.*¹⁰ and submitted that the ideal period for completing the investigation and filing a chargesheet is 24 hours but in some cases, it is not practically possible to do so; hence, the legislature found it fit that a remand of the accused can be sought in the event investigation is not completed within 60 or 90 days, however, if the same is not completed within the stipulated time, the accused on expiry thereof would be entitled to apply for bail. Learned senior counsel also referred to the decisions of the Hon'ble Supreme Court in the cases of *M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence*¹¹, *Uday Mohanlal Acharya Vs. State of Maharashtra*¹² and *Sanjay Dutt*.

10 AIR 2008 SC 78

11 2020 0 Supreme(SC) 627

12 (2001) 5 SCC 453

13. Learned senior counsel relied upon the decision in the case of ***M. Ravindran*** and submitted that an accused is held to have availed of his indefeasible right the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. He submitted that on the expiry of the stipulated period, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in completion of the investigation within the period prescribed, and the accused is entitled to be released on bail if he is prepared to and furnishes bail as directed by the Magistrate.

14. Learned senior counsel thus submitted that the Hon'ble Supreme Court, in the decision of ***M. Ravindran***, arrived at a conclusion that the majority opinion in the ***Uday Acharya*** case is a correct interpretation of the decision rendered by the Constitution bench in the case of ***Sanjay Dutt***. He submitted that the Hon'ble Supreme Court has further held that the Constitution bench's decision in the case of ***Sanjay Dutt*** cannot be interpreted to mean that even where the accused has properly exercised his right under Section 167 (2) of

CrPC and communicated his willingness to furnish bail, he can be denied bail on account of delay in deciding his application or erroneous rejection of the same.

15. The learned senior counsel submitted that in the latest case of the *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely*, the reasons given by the prosecution for the extension of time was to complete the investigation and file the chargesheet, as the FSL report of the recovered arms was awaited, and, sanction under the Arms Act was to be obtained after the FSL report was received. It was also the prosecution's case that one of the sanctions under Section 45 of the UAPA was received, and another sanction was awaited. He submitted that the sanction under Section 39 of the Arms Act is a previous sanction for the institution of prosecution, however, sanction under Section 45 of the UAPA is for taking cognizance and not for the institution of prosecution or filing a chargesheet. He submitted that in the facts of that case, the Apex Court accepted the grounds pleaded by the prosecution for extension of time to complete the investigation, and one of the additional reasons pleaded by the prosecution was

awaiting one of the sanctions under the UAPA. He, thus, submitted that the observations in the case of *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely* may not be considered as an absolute proposition of law that in every case, even if the investigation is complete, time to obtain sanction under Section 45 of the UAPA is a valid ground to seek extension of time to file chargesheet. He submitted that in the present case, the appellants have not been prosecuted under the Arms Act, that the FSL report had been received, and the report of the Investigating Officer and the application by the Special PP stated that investigation was complete, and that a proposal for sanction was submitted to the appropriate government, and that the sanction was awaited. He submitted that analysis of the FSL report is no ground available in law to seek an extension of time to file a chargesheet. According to the learned senior counsel, in the present case, extension was sought only for obtaining sanction under the UAPA, and as such, the said reasons cannot be termed as legal and valid.

Analysis:

16. We have considered the submissions. The undisputed facts for examining the prayers of the appellants, i.e. for setting aside the impugned order dated 18th January 2023, by which the learned Special Judge extended the time of fifteen days for filing the chargesheet and to grant bail under section 167(2) of CrPC are as follows:

- a) Ninety days period for filing the chargesheet was to expire on 20th December 2022.
- b) On 17th December 2022 an extension of 30 days was granted from 20th December 2022. Thus, the extended period would come to an end on 19th January 2023.
- c) 18th January 2023: Appellants' application for availing bail under section 167(2) of CrPC was rejected as premature, and on the very same day, the time for filing the chargesheet was extended for 15 days from 19th January 2023, i.e., upto 3rd February 2023.
- d) 20th January 2023: The second application for availing bail

under Section 167(2) of CRPC was rejected as the time to file the chargesheet was already extended.

e) **2nd February 2023**: Chargesheet was filed.

f) **13th February 2023**: The present appeal was filed.

17. In view of the rival contentions, we are required to examine the following questions:

- a) Is the extension of time granted by the order dated 18th January 2023 for filing the chargesheet legal and valid?
- b) Whether, based on the application filed on 20th January 2023, the appellants are entitled to avail themselves the indefeasible right of default bail if the order dated 18th January 2023 granting extension to file chargesheet is held to be invalid ?

18. A perusal of the record reveals that the prosecution filed a Criminal Misc. Application No. 1710 of 2022 and sought extension of time to file chargesheet on two grounds, i.e. (i) to retrieve a large amount of electronic data from the FSL and (ii) to obtain sanction

from the appropriate Government under Section 45 of the UAPA. The order dated 17th December 2022 indicates that extension of 30 days was granted from 20th December 2022 only on the ground to retrieve a large amount of electronic data from the FSL. In paragraph 6 of the said order, the learned Judge has referred to both the grounds pleaded by the prosecution and further held that retrieving data would take some time and that the deleted data is necessary to the Investigating Officer for investigation. Thus, the investigation was not completed as the data was not recovered, therefore time was sought to complete the investigation. The learned Judge, however, further held that the time should be definite, and on that ground only, the investigating agency is entitled to an extension of time to file the chargesheet. Thus, with these observations, thirty days time was extended. Thus, a perusal of the reasons recorded by the learned Judge shows that extension of time was granted only to enable the Investigating Officer to complete the investigation after retrieving the electronic data. Therefore, it is very clear that time was extended only because the investigation was incomplete as electronic data was to be retrieved and not on the

ground that sanction was not received.

19. A perusal of the second application dated 12th January 2023 prepared by the Investigating Officer and the application dated 12th January 2023 of the public prosecutor indicates that (i) the electronic data is recovered and the pen drive/hard disc was received from the laboratory, (ii) ample evidence was available against the accused for filing the chargesheet, (iii) offences punishable under section 13(1)(b) of the UAPA and sections 120-B, 121-A, 153-A of Indian Penal Code are applied, (iv) hence, prior permission for filing chargesheet is required. It is further stated that the proposal for sanction was submitted before the government on 3rd January 2023 for prior permission; however, the permission had not yet been received and was not likely to be received before 19th January 2023 and hence, an extension of time to file the chargesheet was required.

20. By Order dated 18th January 2023, the learned Judge decided the aforesaid second application seeking extension of time to file the chargesheet. The learned Judge observed that by the earlier order

dated 17th December 2022, extension was granted on two grounds, i.e. for retrieving the large electronic data and for obtaining sanction from the appropriate authority. The learned Judge has further held that by the second application, extension is prayed for only on the ground of getting sanction. It is further observed that the proposal for sanction was submitted on 3rd January 2023, and hence, it would be proper to grant an extension. Thus, with these observations, the learned Judge granted extension of time of fifteen days to file the chargesheet, from the expiration of the earlier period. Thus, by order dated 18th January 2023, an extension of time to file the chargesheet was granted only on the ground of obtaining sanction from the appropriate government.

21. The law regarding completion of the investigation and submitting the report in the prescribed form ('chargesheet') is no longer *res integra*. In this regard, Mr Mundargi has pointed out the relevant paragraphs 19 and 24 of the decision of the Hon'ble Supreme Court in the case of *Dinesh Dalmia*, which reads as under:

“19. A charge-sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.

24. Concededly, the investigating agency is required to complete investigation within a reasonable time. The ideal period therefor would be 24 hours, but, in some cases, it may not be practically possible to do so. Parliament, therefore, thought it fit that remand of the accused can be sought for in the event investigation is not completed within 60 or 90 days, as the case may be. But, if the same is not done within the stipulated period, the same would not be detrimental to the accused and, thus, he, on the expiry thereof would be entitled to apply for bail, subject to fulfilling the conditions prescribed therefor.”

Emphasis Applied

22. Thus, the law provides an outer limit for completing the

investigation. Thus, an extension of time can be asked only to complete the investigation. Sub-section 2 of Section 167 of CrPC provides for an outer limit of sixty days or ninety days as the case may be, for completing the investigation and there is no provision for an extension of the said period. However, under the special statutes, considering the seriousness and ramifications, exceptions are carved out. Thus, under special statutes enabling provision for extension of time to complete investigation is provided only because of the lengthy investigations.

23. In the present case, the enabling provision for extension of time to complete the investigation is Section 43-D of the UAPA, which provides for an extension upto a maximum period of 180 days to complete the investigation, provided the Court is satisfied with the report of the Public Prosecutor, indicating the progress of the investigation and the specific reasons for the detention of the accused. In the present case, the report of the Investigating Officer and the application of the Public Prosecutor seeking an extension of time, in terms state that the investigation is complete and ample evidence is

available for filing the chargesheet. Thus, an extension of time is prayed, for filing the chargesheet not on the ground that the investigation is not completed but on the ground that the proposal for obtaining sanction from the appropriate government was pending and the sanction was not likely to be received before the expiry of the extended time. Thus, an extension of time is prayed only for obtaining sanction as, admittedly, the investigation was complete. Thus, once the investigation is complete, there is no question of granting an extension of time to file a chargesheet by exercising powers under Section 43-D of the UPAA, as there is no question of seeking an extension of time on the ground that the application for grant of sanction under Section 45 of UAPA is pending; the reason being, that sanction is required for taking cognizance and not for filing chargesheet.

24. So far as obtaining sanction from the appropriate authority is concerned, the sanction is required for taking cognizance. In view of Section 196 of CrPC and Section 45 of the UAPA, the embargo is on taking cognizance and not on filing a chargesheet. Thus, for the appropriate authority to apply its mind for grant of sanction, the

chargesheet is necessary. Without a chargesheet, the appropriate authority will not be able to apply its mind for the grant of sanction. The Hon'ble Supreme Court, in paragraph 19 of the decision in the case of *Dinesh Dalmia*, has held that “*A charge-sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not.*” Thus, in the present case, in view of the embargo on the court taking cognizance without sanction from the appropriate authority, a chargesheet is necessary for the appropriate authority to apply its mind for deciding the proposal for grant of sanction submitted by the prosecution. Thus, for filing a chargesheet, sanction is not required.

25. As stated hereinabove in the present case, the report of the Investigating Officer and the application of the Public Prosecutor clearly records that the investigation is complete and ample evidence is available for filing the chargesheet; however, extension of time is prayed only on the ground of obtaining sanction from the appropriate authority. The power to grant an extension under Section 43-D can be

exercised only when the investigation is not complete and time is required to be granted to complete the investigation. Hence, in our opinion, the impugned Order dated 18th January 2023 granting the extension of time to file the chargesheet is illegal and stands vitiated. As the order of extension was vitiated, the indefeasible right to get default bail accrued on 19th January 2023, when the time for completing the investigation would come to an end.

26. The law on entitlement to default bail is also no longer *res integra*. A three-Judge bench of the Hon'ble Supreme Court, in the decision of *Uday Acharya*, after considering all the earlier decisions, including the decisions in the case of *Hitendra Thakur* and *Sanjay Dutt*, has decided the issue as to when can an accused be said to have availed of his indefeasible right if the chargesheet is not filed within the stipulated time. The conclusions in the decision of *Uday Acharya* can be summarized as under:

- (i) The moment the accused files an application, he avails his indefeasible right.

- (ii) Once the accused files an application seeking default bail where the prosecution has not filed the chargesheet, the magistrate has no discretion left. The Court is only required to find out whether the specified period under the statute has elapsed, whether a chargesheet has been filed and whether the accused is ready to furnish bail.
- (iii) Even if the application is posted for hearing on a future date or the magistrate refuses the application erroneously and the accused moves to a higher court, then filing of chargesheet at that stage will not take away the indefeasible right of the accused.

27. Learned counsel for the appellants rightly relied upon the decision of a three-Judge bench of the Hon'ble Supreme Court in the case of ***Bikramjit Singh***. In the said case, the accused were arrested for the offences punishable under the UAPA, and, on completion of 90 days, they applied for default bail before the sub-divisional Judicial Magistrate on 21st February 2019. On 13th February 2019, the time

for filing the chargesheet was extended. On 25th February 2019, an application for default bail was dismissed on the ground that on 13th February 2019, time was extended upto 180 days. On 25th March 2019, the Sessions Court allowed the revision application on the ground that the magistrate had no jurisdiction and the order dated 13th February 2019 was set aside. On 26th March 2019, the chargesheet was filed before the special judge. On 8th April 2019, an application for default bail was filed, and on 11th April 2019, the Revision against the order dated 25th February 2019, i.e. rejection of default bail was dismissed. On 11th April 2019, the application for default bail filed on 8th April 2019 was also dismissed. Thereafter, the High Court dismissed the petition by holding that a joint interpretation of Section 167 (2) CrPC read with Section 42-D of UAPA, Sections 6, 13, and 22 of NIA would show that in case the investigation is being carried out by the State police, the magistrate will have the power under section 167(2) CrPC read with section 43(a) of UAPA to extend the period for investigation upto 180 days and then commit the case to the Sessions Court as per Section 209 of

CrPC; whereas in case the investigation is conducted by an agency under the NIA Act the power shall be exercised by the special court and the chargesheet will be presented before the special court. Thus, the High Court held that since the chargesheet was filed, the right to default bail was not available. The conclusions recorded by the Hon'ble Supreme Court in the decision of *Bikramjit Singh* can be summarized as under:

- (i) The right to default bail becomes complete as long as the application for default bail is made before the expiry of the 90 days period (such application need not even be in writing) before a chargesheet is filed.
- (ii) It is of no moment that the court in question either does not dispose of such an application before the chargesheet is filed or disposes of such application wrongly before such chargesheet is filed. So long as an application is made for default bail on expiry of the stipulated period before the time is further extended to the maximum period of 180 days, default bail being an

indefeasible right of an accused under the first proviso to Section 167 (2), kicks in and must be granted.

- (iii) The sole ground for dismissing the application was that the time of 90 days was already extended by the Magistrate on 13th February 2019. This order was correctly set aside by the special court on 25th March 2019, holding that under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time under the first proviso to Section 43-D(2)(b). The fact that the accused filed another application for default bail on 8th April 2019 would not mean that this application would wipe out the effect of the earlier application that was wrongly decided.
- (iv) Various Supreme Court decisions correctly hold that the right to default bail is not a mere statutory right under the first proviso to Section 167 (2) of CrPC, but, is part of the procedure established by law under Article 21 of the Constitution of India. Therefore, it is a fundamental right guaranteed to an accused

person to be released on bail once the conditions of the first proviso to Section 167 (2) are fulfilled.

28. Mr. Mundargi, learned senior counsel, has referred to the decision of a three-Judge bench of the Hon'ble Supreme Court in the case of *M Ravindran*. In the said case, the question under consideration was whether the right under Section 167(2) will extinguish on the subsequent complaint and whether the time of filing default bail or time of disposal of a bail application is to be considered for deciding the right of bail. The conclusions in the said decision after discussing the earlier decisions including the decision of another three-Judge bench of the Apex Court in the case of *Uday Acharya* can be summarized as under:

- (i) Irrespective of the seriousness of the offence and the reliability of the evidence available, filing additional complaints merely to circumvent the application for default bail is held to be an improper strategy.
- (ii) High Court wrongly entered into the merits of the matter.

- (iii) Once the accused files an application for default bail, he is deemed to have availed of his right. If the accused applies before the expiry of the stipulated period, the court must release him on bail forthwith after getting the necessary information from the public prosecutor. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.
- (iv) The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding the subsequent filing of the chargesheet or a report seeking an extension of time or filing of the chargesheet in the interregnum when the challenge to the rejection of the bail application is pending before a higher court.
- (v) Where the accused fails to apply for default bail when the right accrues to him and subsequently a chargesheet is filed, additional complaint or a report seeking an extension of time is preferred, the right to default bail would be extinguished.

29. In view of the facts of the present case, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of *Jigar Adatiya Vs State of Gujrat*¹³. The issue involved in the said case was decided in the context of the legal position that the indefeasible right to default bail under sub-section (2) of Section 167 is an integral part of the fundamental right to personal liberty under Article 21 of the Constitution of India. The conclusions recorded in the said decision can be summarized as under:

- (i) Clause (b) of sub-section (2) of Section 167 CrPC lays down that no magistrate shall authorize the detention of the accused in the custody of the police unless the accused is produced before him in person. The requirement to produce the accused either physically or through video linkage is a *sine qua non* for the exercise of the power to extend the judicial custody remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand. Production of the accused while granting the extension is not an empty formality.

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- (ii) The requirement of a report under the proviso added by subsection (2) of Section 20 of the 2015 Act to clause (b) of subsection (2) of Section 167 of CrPC is twofold; firstly, in the report of the public prosecutor, the progress of the investigation should be set out and, secondly, the report must disclose specific reasons for continuing the detention of the accused. Therefore, an extension of time is not an empty formality. The public prosecutor has to apply his mind before submitting the report for an extension of time. The prosecution has to make out a case in terms of both the aforesaid requirements, and the Court must apply its mind to the contents of the report before accepting the prayer for grant of extension.
- (iii) Orders extending the period of investigation were rendered illegal because the accused was not produced physically or through video linkage when the extension was granted.
- (iv) Applications for default bail were made before the chargesheet was filed. Thus, once the orders granting extension are held

illegal and stand vitiated, the accused are entitled to default bail.

30. We have already recorded our reasons for holding that the order dated **18th January 2023** granting an extension of time to file the chargesheet is illegal and stands vitiated. An earlier application at Exhibit 40 filed by the appellants on 18th January 2023 for default bail was disposed of as withdrawn by the learned Judge. It is pertinent to note that when the appellants filed the application at Exhibit 40 seeking default bail, the learned Judge passed an order ‘SPP to say’, pursuant to which the special PP gave his written objection therein, that the application was premature, as the period of extension would come to an end on 19th January 2023. Pursuant thereto, the advocate for the appellants withdrew the application, and as such, the learned Special Judge disposed of the said application on 18th January 2023 itself as withdrawn. However, on the very same day, i.e., **18th January 2023**, the learned Judge allowed Misc. Application No. 86 of 2023 filed by the prosecution, and the time for filing the chargesheet was extended by 15 days from the date of expiration of the earlier period, i.e. from **19th January 2023**. Thus, the time was extended upto 3rd

February 2023. The appellants, on **20th January 2023**, filed a second application for availing bail under section 167(2) of CrPC; however, the same was rejected as the time to file the chargesheet was already extended. Thereafter, on **2nd February 2023** chargesheet was filed.

31. It was argued by the learned PP that even if this Court holds that the order granting the second extension on 18th January 2023 is illegal, the appellants would not be entitled to invoke their right under Section 167 (2) of CrPC in as much as the appellants had never challenged the order dated 18th January 2023 before filing of the chargesheet. However, we do not find any merit in this argument for the reasons set out hereinabove. Once we hold that the order granting extension of time to file chargesheet is illegal and stands vitiated, filing of chargesheet within the illegally extended time will not take away the infeasible right of the appellants to seek default bail, having regard to the fact that the appellants had preferred an application seeking default bail under Section 167(2) of CrPC. The said application seeking default bail filed on 20th January 2023 was dismissed only on the ground that the time to file the chargesheet was

extended. Hence, once we hold that the said extension is illegal and stands vitiated, the appellants are entitled to default bail in view of the application filed by the appellants under Section 167(2) of CrPC on 20th January 2023.

32. In the recent decision in the case of *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely*, the Hon'ble Supreme Court set aside an order granting default bail in a case involving offences punishable under Sections 13, 18, 20 of the UAPA, Sections 201, 120-B of IPC and Sections 25,54, 59 of the Arms Act 1959. The Hon'ble Supreme Court held that the High Court fell in error by not taking into consideration the reasons given under Section 43D(2)(b) of the UAPA, which was clearly made out and explained in the letter of extension. It is observed that the Public Prosecutor had also mentioned that a major investigation of the case had been done and a draft chargesheet was ready; one of the sanctions under the UAP Act was received; however, an extension of time was required for the remaining sanction under the UAPA and obtaining sanction under the Arms Act, after the report of FSL of the arms recovered was received. The Hon'ble Supreme

Court has also held that the matter should not have been taken lightly as the nature of the offence, which involved terrorist activities, had not only Pan India impact but also impact on other enemy states.

33. Thus, in the case of the *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely*, the reasons given by the prosecution were for extension of time to complete the investigation was that the FSL report of the recovered arms and sanction under the Arms Act were awaited. The sanction under Section 39 of the Arms Act is a previous sanction for the institution of prosecution; however, the sanction under Section 45 of the UAPA is for taking cognizance and not for the institution of prosecution or filing a chargesheet. In paragraph 8 of the said decision, the Apex Court observed that the Public Prosecutor's application clearly mentioned that one of the sanctions under the UAPA was received and another was awaited, and the sanction under the Arms Act was to be obtained after the results from the FSL were received. Therefore, in paragraph 9, it is observed that the reason mentioned in the impugned order that the application had been filed for extension without any valid basis as the sanction had already been

granted was not correct. Thus, considering the facts of the said case, where the FSL report of the recovered arms was awaited, and sanction under the Arms Act was to be obtained after the FSL report was received, the Apex Court set aside the impugned Order of the High Court granting default bail. Thus, awaiting one of the sanctions under the UAPA was only an additional ground for seeking extension of time.

34. For correctly understanding the legal principles with reference to the observations of the Hon'ble Supreme Court, in the aforesaid decision in the case of *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely*, relied upon by the learned PP, it is necessary to refer to the principle of the ratio decidendi of a judgment. The Hon'ble Supreme Court in the decision of *Arasmeta Captive Power Co. (P) Ltd. Vs Lafarge India (P) Ltd.*¹⁴ held as under in paragraphs 38 and 39;

“38. At this stage, we may also profitably refer to another principle which is of assistance to understand and appreciate the ratio decidendi of a judgment. The

14 (2013) 15 SCC 414

judgments rendered by a court are not to be read as statutes. In Union of India v. Amrit Lal Manchanda [(2004) 3 SCC 75 : 2004 SCC (Cri) 662] it has been stated that : (SCC p. 83, para 15)

“15. ... Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. [The] observations must be read in the context in which they appear to have been stated. ... To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

39. In Som Mittal v. State of Karnataka [(2008) 3 SCC 574 : (2008) 2 SCC (Cri) 1 : (2008) 1 SCC (L&S) 910] it has been observed that : (SCC p. 581, para 9)

*“9. ... Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. **Some words used in a judgment should be read and understood contextually and are not intended to be taken literally.** Many a time a Judge uses a phrase or expression with the intention of emphasising a point or accentuating a principle or even by way of a*

flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation.”

emphasis applied

35. Thus, Mr Mundargi, the learned senior counsel, is right in submitting that the Apex Court accepted the grounds pleaded by the prosecution for an extension of time to complete the investigation, as the sanction under the Arms Act was to be obtained after the FSL report of the recovered arms was received, and awaiting one of the sanctions under the UAPA, was only an additional ground pleaded by the prosecution for extension of time. We, therefore, agree with the submissions made by Mr. Mundargi. Thus, according to us, the observations in the decision of *State of NCT of Delhi Vs Raj Kumar @ Lovepreet @ Lovely*, relied upon by the learned PP, are with reference to the facts of the said case and are clearly distinguishable from the facts in the present case.

36. During further hearing, it was argued by the learned PP that one of the grounds pleaded for extension of time also stated that time was

required as the analysis of the FSL report was being done. We do not find any substance in the said argument. As stated in the report of the Investigating Officer and the application of the Special PP, the FSL report was already received. It is the case of the prosecution that the investigation was complete, and ample evidence was available to file the chargesheet. Thus, the said ground i.e. that time was required to analyze the FSL report, was unwarranted and a very flimsy ground. This is no ground available in law to seek an extension of time to file a chargesheet. Thus, the said argument for seeking an extension on this ground is nothing but defeating the indefeasible right available to the accused to seek default bail. Thus, in the present case, the reason given in the impugned order to grant an extension of time to file the chargesheet is only for obtaining sanction and cannot be termed as legal and valid.

37. Thus, in view of the aforesaid facts of the case, the principles of law laid down in the aforesaid decisions and, in particular, the decision of the three-Judge bench of the Hon'ble Supreme Court in the case of *M. Ravindran*, the impugned order dated 18th January

2023 granting extension of time of fifteen days to file the chargesheet cannot be sustained being illegal.

38. In view of the aforesaid facts of the case, the remaining judgments referred to by both parties are not relevant, and hence, it is not necessary to discuss the same.

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

- (i) An extension of time to complete the investigation can be granted only if a legal and valid ground is shown for not completing the investigation within the time specified by law. Granting extension of time to complete the investigation on a flimsy or invalid ground will defeat the accused's right to seek default bail, and as such, would violate his right guaranteed to him under Article 21 of the Constitution of India.
- (ii) Under Section 45 of the UAPA, sanction is required for taking cognizance. In view of Section 196 of CrPC and Section 45 of the UAPA, the embargo is on taking cognizance and not on filing

a chargesheet. Thus, for the appropriate authority to apply its mind to grant sanction, chargesheet is necessary, as without a chargesheet, the appropriate authority will not be able to apply its mind to the grant of sanction.

- (iii) In the present case, the FSL report has been received. The report of the Investigating Officer and the application by the special PP stated that the investigation was complete and ample evidence was available against the appellants to file the chargesheet; however, a proposal for sanction under Section 45 of the UAPA, was awaited from the appropriate authority.
- (iv) Thus, the reason accepted in the impugned order to grant an extension of time to file the chargesheet is only for awaiting sanction, which cannot be termed legal and valid.
- (v) Thus, once the order granting extension is held illegal and stands vitiated, the appellants are entitled to default bail.

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

entitled to default bail.

41. We place on record our appreciation for the invaluable contribution and assistance of Mr. Mundargi, senior counsel who was appointed by us as Amicus Curiae to assist us in the matter.

42. Hence, for the reasons recorded above, the appeal is allowed by passing the following order:

- (i) Order dated 18th January 2023 passed by the Special Judge below Misc. Application No. 86 of 2023 is quashed and set aside, and the Misc. Application No. 86 of 2023 is rejected.
- (ii) Order dated 20th January 2023 passed by the Special Judge below Exhibit 44 in RA 946 of 2022 in CR No. 19 of 2022 is quashed and set aside.
- (iii) The application at Exhibit 44 is allowed, and the appellants are directed to be released, if not required in any other case, on the following terms and conditions;
 - (a) Appellants be released on bail in connection with CR No. 19/2022 registered with the Kala Chowki Police station (ATS)

on furnishing P.R. bond in the sum of Rs. 1,00,000/- each with one or more sureties in the like amount.

(b) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with any evidence.

(c) The appellants shall submit their address where they will be residing and their contact/mobile number to the Investigating Officer, and in the event of any change in the address or contact/mobile number, they shall intimate the same to the Investigating Officer forthwith.

(d) The appellants shall attend Kala Chowki Police station (ATS) and report to the Investigating Officer on every 2nd and 4th Saturday of every month between 10.00 a.m. to 1.00 p.m. till the conclusion of their trial.

(e) The appellants shall regularly attend all the dates of hearing before the trial court.

(f) In the event of breach of any of the conditions by the

appellants, the prosecution will be entitled to apply for cancellation of bail.

(iv) Appeal is allowed in the above terms.

All concerned to act on an authenticated copy of this Order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.

IRESH
MASHAL

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Date:
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