* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: July 31, 2014

% *Judgment Delivered on: August 05, 2014*

\+ **CRL.A. 781/2013**

SYED MAQBOOL ..... Appellant

Represented by: Mr.Mehmod Pracha, Advocate with Mr.Ajay Kalra, Advocate

versus

N.I.A. ..... Respondent

Represented by: Mr.Sanjay Jain, ASG instructed by Mr.Amit Sharma, Special P.P. of NIA, Mrs.Shilpa Singh, Special P.P. of NIA, Mrs. Kanchan, P.P. of NIA, Mr.Vikas Vaibhav, CIO, NIA, Mr.Amod Kumar, IO, NIA and Mr.Som Prakash, Advocate

CRL.A. 782/2013

IMRAN KHAN ..... Appellant

Represented by: Mr.Mehmod Pracha, Advocate with Mr.Ajay Kalra, Advocate

versus

N.I.A. ..... Respondent

Represented by: Mr.Sanjay Jain, ASG instructed by Mr.Amit Sharma, Special P.P. of NIA, Mrs.Shilpa Singh, Special P.P. of NIA, Mrs. Kanchan, P.P. of NIA, Mr.Vikas Vaibhav, CIO, NIA, Mr.Amod Kumar, IO, NIA and Mr.Som Prakash, Advocate

CRL.A. 1554/2013

WASIM AKRAM MALIK ..... Appellant

Represented by: Mr.Mehmod Pracha, Advocate with
Mr.Ajay Kalra, Advocate

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent
Represented by: Mr.Sanjay Jain, ASG instructed by
Mr.Amit Sharma, Special P.P. of
NIA, Mrs.Shilpa Singh, Special P.P.
of NIA, Mrs. Kanchan, P.P. of NIA,
Mr.Vikas Vaibhav, CIO, NIA,
Mr.Amod Kumar, IO, NIA and
Mr.Som Prakash, Advocate

CRL.A. 1557/2013

SYED MAQBOOL ..... Appellant
Represented by: Mr.Mehmod Pracha, Advocate with
Mr.Ajay Kalra, Advocate

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent
Represented by: Mr.Sanjay Jain, ASG instructed by
Mr.Amit Sharma, Special P.P. of
NIA, Mrs.Shilpa Singh, Special P.P.
of NIA, Mrs. Kanchan, P.P. of NIA,
Mr.Vikas Vaibhav, CIO, NIA,
Mr.Amod Kumar, IO, NIA and
Mr.Som Prakash, Advocate

CRL.A. 1559/2013

IMRAN KHAN ..... Appellant
Represented by: Mr.Mehmod Pracha, Advocate with
Mr.Ajay Kalra, Advocate

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent
Represented by: Mr.Sanjay Jain, ASG instructed by
Mr.Amit Sharma, Special P.P. of

NIA, Mrs.Shilpa Singh, Special P.P.
of NIA, Mrs. Kanchan, P.P. of NIA,
Mr.Vikas Vaibhav, CIO, NIA,
Mr.Amod Kumar, IO, NIA and
Mr.Som Prakash, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Two legal issues have been raised by the appellants in the five captioned appeals. The first issue concerns the interpretation of the proviso to sub-Section 2 of Section 43D of the Unlawful Activities (Prevention) Act, 1967. The second concerns the interplay of sub-Section 2 of Section 173 of the Code of Criminal Procedure, 1973 with sub-Section 8 thereof.

2. Pursuant to FIRs registered by the National Investigating Agency for offences punishable under Section 121A and 123 of the Indian Penal Code, 1860 and Sections 17, 18, 18B, 19, 20, 38(2) and 39(2) of the Unlawful Activities (Prevention) Act, 1967 as amended by Act No.35 of 2008, the three appellants were arrested. Denied bail and sent to judicial custody the detention continued. Since investigation related to alleged offences committed under the Unlawful Activities (Prevention) Act, 1967 continued, Section 43D of the said Act permitted the designated Court to extend the period of detention to 180 days, and before 90 days period of detention lapsed, on May 23, 2013 an application was filed by the Investigating Officer supported by a report of the learned Public Prosecutor praying that period of detention of Syed Maqbool and Imran Khan be extended to 180 days.

3. The application dated May 23, 2013 filed by the Investigating Officer

of the National Investigating Agency reads as under:-

"IN THE COURT OF SPECIAL JUDGE, NIA, PATIALA HOUSE COURTS COMPLEX, NEW DELHI

NIA Case number RC-06/2012/NIA/DLI, u/s 121 A and 123 IPC, r/w section 17, 18, 18B and 20 of UA(P) Act, 1967

STATE (NIA) V/S Yasin Bhatkal and others

Sub:- Prayer for extension of Judicial remand beyond the period of 90 days to 180 days in r/o accused persons namely:

1. Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raju, S/O Wajid Khan R/o Peer Burhan Nagar, Near Masjid Saleheen, Bhagya Nagar, Nanded, Maharashtra (DOA – 28.02.2013)

2. Syed Maqbool @ Zuber s/o Syed Haji r/o Santan Nagar near Madina Masjid Dharmabad, Nanded, Maharashtra (DOA – 28.2.2013)

MAY IT PLEASE YOUR HONOUR

1. That a case No.RC-06/2012 has been registered at PS NIA, New Delhi u/s 121A, 123 of the IPC and 17, 18, 18B, 20 of the UA(P) Act 1967 in compliance of Order No.11011/47/2012-IS.IV dated 04.09.2013 of the Ministry of Home Affairs, Government of India. The above cited case is registered against Yasin Bhatkal @ Imran @ Asif @ Ahmed Sidibappa r/o Bhatkal, Karnataka and eleven others and is presently under investigation.

2. The gist of the allegations in FIR is that the members of the Indian Mujahideen (IM), a proscribed terrorist organization, in association with the other IM sleeper cells based in the country and others, are conspiring to commit terrorist act, by making preparation for targeting various important and prominent places of India especially in Delhi by causing bomb blast, with the active aid and support from their Pakistan based operatives and associates and others, thus, waging war against the Govt. of India.

3. During the course of investigation, it has been revealed that the members of Indian Mujhahideen have carried out several terrorist activities with active aid and support from Pakistan and in association with the sleeper cell operatives based in the country. These terrorist activities are in the form of deep rooted conspiracy widespread at various places and executed in well planned manner under the leadership of top IM operatives.

4. During the course of investigation, accused (1) Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raju, S/O Wajid Khan R/o Peer Burhan Nagar, Near Masjid Saleheen, Bhagya Nagar, Nanded, Maharashtra and accused (2) Syed Maqbool @ Zuber s/o Syed Haji r/o Santan Nagar near Madina Masjid Dharmabad, Nanded, Maharashtra were produced before the Ld. Court from Tihar Jail, on the strength of production warrant issued by this Hon'ble Court. They were shown arrested by NIA on 28.02.2013 and are presently in the Judicial custody. The Ld. Court was pleased to extend judicial custody remand of the said accused person upto 24.05.2013. Further, the 90 days period of remand would be expiring on 29.05.2013 in respect of the said accused persons.

5. That during the investigation of this case, huge numbers of Call details records (CDRs) have been collected and the analysis of the same is being done. Further CDRs/E-mail IDs of some other suspicious contact numbers are yet to be collected from the service providers for their examination and analysis, result of which are yet to come. Some items (mobile phone, retrieved e-mails etc.) have been forwarded to CFSL for forensic analysis and their examination reports are still awaited. The examination/ analysis of the call details/e-mails being time consuming process are likely to take further considerable time.

6. That during the investigation of this case, it has been revealed that accused persons are members of banned terrorist organization 'Indian Mujahideen' and involved in various terrorist activities endangering the safety and security of the nation and for which different Police Cases have been registered and Charge Sheets have been filed against them in the concerned Courts of Law after collection of sufficient

evidences against them. Moreover, the investigation of this case is quite lengthy and voluminous, scattered in different parts of India like Maharashtra, Andhra Pradesh, Bihar, U.P., Delhi, W.B., and the investigation is being carried out by different Branches of NIA viz., NIA, Lucknow and dissemination and assimilation of the data and evidences so collected during the investigation need more time.

7. That the other accused persons, who are absconding till date and could not have been apprehended so far, who were actively associated with the aforementioned arrested accused persons, in committing the crime, which would also require more time. That it would not be possible for the N.I.A. to complete the investigation of this case within the stipulated period of 90 days against the aforementioned accused persons.

8. That the remand period is essentially required to be extended beyond the period of 90 days to 180 days under UA (P) Act, 1967 in the interest of the investigation.

9. That petitioner further states that the extension of judicial custody of the accused persons is very much required for the purpose of unearthing the entire conspiracy they have committed and to collect more credible evidences against them, in the interest of the case and your Honour kindly allow the prayer of petitioner as per provision under section 43D of the unlawful activities (Prevention) Act, 1967. The report from Sr.Public Prosecutor, NIA w.r.t. the progress of the investigation and reasons for detention beyond the said period of ninety days as per the provisions under section 43 D of the unlawful activities (Prevention) Act, 1967 is separately attached.

PRAYER

In view of the above facts, it is humbly prayed that period of investigation be extended beyond the period of 90 days to 180 days in respect of the accused persons namely

1. Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raj, S/O Wajid Khan R/o Peer Burhan Nagar, Near Masjid Saleheen, Bhagya Nagar, Nanded, Maharashtra

2. Syed Maqbool @ Zuber s/o Syed Haji r/o Santan Nagar near Madina Masjid Dharmabad, Nanded, Maharashtra

And for this act of kindness your petitioner as is duty bound shall every pray.

Sd/-
Place : New Delhi *(Aseem Srivastava)*
Dated : 23.05.2013 *Add.SP*
NIA, New Delhi"

Emphasis supplied

4. The accompanying report dated May 23, 2013 submitted under the signatures of the learned Public Prosecutor reads as under:-

"IN THE COURT OF SPECIAL JUDGE, NIA, PATIALA HOUSE COURT COMPLEX, DELHI

NIA Case number RC-06/2012/NIA/DLI, u/s 121 A and 123 IPC, r/w section 17, 18, 18B and 20 of UA(P) Act, 1967

STATE (NIA) V/S Yasin Bhatkal and others

Sub:- Report of Sr.Public Prosecutor with regard to prayer for extension of Judicial remand beyond the period of 90 days to 180 days in r/o accused persons namely:

1. Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raj, S/O Wajid Khan R/o Peer Burhan Nagar, Near Masjid Saleheen, Bhagya Nagar, Nanded, Maharashtra (DOA – 28.02.2013)

2. Syed Maqbool @ Zuber s/o Syed Haji r/o Santan Nagar near Madina Masjid Dharmabad, Nanded, Maharashtra (DOA – 28.2.2013)

MAY IT PLEASE YOUR HONOUR

I have gone through the application of I.O. for extension of period of investigation from 90 days to 180 days. I have also

perused the Case Diary of Case No.RC-06/2012. The 90 days period of remand would be expiring on 29.05.2013.

I am of the view that investigation of the case is quite lengthy and voluminous. Huge number of call detail/email and IDs of the suspects are yet to be collected for examination and it would not be possible for C.I.O. of the case to complete the investigation within the period of 90 days.

Therefore, period of investigation is essentially required to be extended from 90 days to 180 days, in the interest of investigation.

It is, therefore, requested that this Hon'ble Court may please extend the period of Judicial custody of accused persons (1) Imran Khan @ Zakaria (2) Syed Maqbool @ Zuber from 90 days to 180 days as per the provision of section 43 D(2)(b) of UP (A) Act and oblige.

Sd/-
Place : New Delhi *(Ahmed Khan)*
Dated : 23.05.2013 *Sr.P.P./NIA/New Delhi"*

5. The application for period of detention to be extended up to 180 days was opposed. The learned Special Court dismissed the objections and extended the detention up to 180 days, inter-alia recording that having perused the case diary and the call details shown in the case diary as also the fact that the investigation is under progress the Court was satisfied that the two should be remanded to judicial custody till June 07, 2013.

6. The challenge in Crl.A.No.781/2013 and Crl.A.No.782/2013 by Syed Maqbool and Imran Khan is to the order dated May 28, 2013 passed by the learned Judge Special Court, New Delhi. The first issue which we are called upon to decide is whether the satisfaction to be recorded by the learned Designated Court was with reference to objective facts required to be set out in the order on which the satisfaction was premised upon. Contention

advanced by learned counsel for the appellants during hearing of the appeals was that it was not enough for the learned Judge presiding over the Designated Court to perfunctory record that having perused the case diary the Court was satisfied that the period of detention was liable to be extended from 90 days to 180 days.

7. Independent of the interpretation to the proviso to sub-Section 2 of Section 43 of the Unlawful Activities (Prevention) Act, 1967 was an argument raised on facts. The argument was that in the application filed by the Investigating Officer it was recorded that the report from the Senior Public Prosecutor with respect to the progress of the investigation and the reasons for detention beyond the period of 90 days was separately attached, meaning thereby, that the report of the Senior Public Prosecutor had already been prepared. Learned counsel urged that this meant that the learned Public Prosecutor had not read the reasons stated in the application filed by the Investigating Officer; for the reason if in the application it was indicated that the report of the Senior Public Prosecutor was being separately attached it meant that the report was prepared first. The Investigating Officer had the report with him. That is the reason why in the application the Investigating Officer wrote that the report of the Senior Public Prosecutor was separately attached.

8. Thus, on facts it was pleaded that the learned Judge presiding over the Special Court erred in granting the extension of the period of detention to up to 180 days.

9. The cause leading to the filing of the other three appeals Nos.1554/2013, 1557/2013 and 1559/2013 is that whereas against Wasim Akram Malik a charge sheet was filed on March 13, 2012 and a supplementary charge sheet was filed on August 27, 2013, concerning the

other two appellants, along with the charge sheet filed, applications were filed under Section 173(8) of the Criminal Procedure Code pleading and praying as under:-

> *"IN THE COURT OF THE LD. SPECIAL JUDGE, NIA, PATIALA HOUSE, NEW DELHI.*
>
> *National Investigation Agency, New Delhi*
>
> *Vs.*
>
> *Yasin Bhatkal & Others*
>
> *FIR No.6/2012/NIA/DLI u/s 121A, 123 IPC and 17, 18, 18 B, 20 UA (P) Act 1967*
>
> *Sub: Prayer for further investigation under provisions of Section 173(8) Cr.P.C. regd.*
>
> *May it please Your Honour*
>
> *1. That a case No.RC-06/2012/NIA/DLI was registered at PS NIA, New Delhi u/s 121A, 123 of the IPC and Sec 17, 18, 18B, 20 of the UA (P) Act 1967 in compliance of order No.11011/47/2012-IS.IV dated 04.09.2012 of the Ministry of Home Affairs, Government of India. The above cited case is registered against Yasin Bhatkal @ Imran @ Asif @ Ahmed Sidibappa r/o Bhatkal, Karnataka and 11 others.*
>
> *2. That during investigation the involvement of accused persons namely against accused persons namely (1) Md.Danish Ansari @ Abdul Waheb @ Saleem @ Abdullah, (D.O.A. 21.01.2013) (2) Mohd. Aftab Alam @ Farooq @ Shaikhchilli @ Hafij Ji, (05.02.2013) (3) Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrej @ Raj @ Patel, (D.O.A. 28.02.2013) (4) Syed Maqbool @ Zuber (D.O.A. 28.02.2013) and (5) Obaid Ur Rehman (D.O.A.13.03.2013), surfaced and after investigation, who are in judicial custody, the said accused persons were charged sheeted on 17.07.2013.*
>
> *3. That the investigation of the case is required to be*

continued to collect more evidence against FIR named accused persons namely, (1) Yasin Bhatkal @ Ahmed Siddibappa Zarrar @ Imran @ Asif @ Shahruk, resident of No.938, S.M.Zarrar Manzil, Jail Road, Maqdoom Colony, Batkal, Karnataka, (2) Riyaz Bhatkal @ Ahmed, son of Ismail Shahbandari, resident of Fatime Manzil, Tengingundi Cross, Bhatkal, Karnataka, (3) Iqbal Bhatkal @ Mohammad, son of Ismail Shahbandari, resident of Fatime Manzil, Tengingundi Cross, Bhatkal, Karnataka, (4) Mohsin Choudhary, son of Ibrahim Ismail Choudhary, resident of Flat No.3, Survey No.49, Maneesha Complex, Meetha Nagar, Kondhwa Khurd, Pune Maharashtra, (5) Amir Reza Khan @ Parvez @ Rizwan @ Muttaki, son of Ishaque Ali Khan, resident of Maheyan, PS Mahantapur, District- Gaya, Bihar, (6) Tahsin Akhtar @ Monu son of Wasim Akhtar resident of Maniarpur, PS Kalyanpur, District-Samastipur, Bihar, (7) Dr.Shahnawaz Alam son of Shadab Ahmed, resident of Village/PO Sanjarpur, PS Saraimeer, Tehsil- Nizamabad, District-Azamgarh, Uttar Pradesh, (8) Asadullah Akhtar @ Haddi, son of Dr.Javed Akhtar, resident of Near Ghulami ka Pura, Behind Tedia Masjid, District- Azamgarh, Uttar Pradesh, (9) Ariz Khan @ Junaid, son of Zafre Alam, resident of Kot Area, District-Azamgarh, Uttar Pradesh, (10) Md.Sajid @ Bada Sajid, son of Late Quraishan, resident of village/PO Sanjarpur, PS Saraimeer, Tehsil-Nizamabad, District- Azamgarh, Uttar Pradesh, (11) Md.Khalid, son of Late Sageer Ahmed, resident of Vilage/PO Sanjarpur, PS Saraimeer, Tehsil- Nizamabad, District- Azamgarh, Uttar Pradesh, (12) Mirza Shadab Beg, son of Mirza Ahtesham Beg, resident of Raja ka Kila, District-Azamgarh, Uttar Pradesh and others, who are presently absconding in the instant case, under provisions of section 173(8) Cr.P.C.

3. *That the investigation of the case is scattered in various parts of the country viz. Delhi, Bihar, West Bengal, Maharashtra, Karnataka etc. Prayers/requisitions for obtaining documents vital for the case and voluminous in nature, have been made before the appropriate authorities, orders for which are yet to be issued/received. Further, analysis reports and expert opinions from CFSL are also yet to be received. The said documents and other credible evidences likely to crop up*

during the further investigation against the accused persons being charge-sheeted on 17.07.2013 as well as against the absconding accused persons, are required to be submitted along with supplementary charge-sheet in the instant case before the Ld. Court.

PRAYER

In view of the above facts, it is humbly prayed to pass an order for permitting NIA to continue the investigation against the absconding accused persons as well as the charge-sheeted accused persons and any other accused persons whose involvement may crop up during further investigation under provisions of Section 173(8) Cr.P.C.

And for this act of kindness your petitioner as is duty bound shall ever pray.

Place : New Delhi
Date : 17.07.2013

Sd/-
(Vikas Vaibhav, IPS)
Supdt. Of Police & Chief Investigating Officer, National Investigation Agency, New Delhi."

10. The accused immediately applied for bail pleading that since investigation was not completed and 180 days from the date of the detention had expired, all of them were entitled to statutory bail. Whereas Wasim Akram Malik pleaded that the filing of the supplementary charge sheet was an admission of the fact that when the charge sheet was filed the investigation was not complete, Syed Maqbool and Imran Khan, making a reference to the prayer made by the Investigating Officer for further investigation contemplated by sub-Section 8 of Section 173 of the Code of Criminal Procedure, 1973 argued that said application was an admission of the fact that the charge sheet filed was not after completing the investigation.

11. Contention urged before the learned Special Judge was that the

mandate of sub-Section 2 of Section 173 of the Code of Criminal Procedure required that only on the completion of the investigation the report in the form prescribed had to be sent to the Magistrate empowered to take cognizance of the offence; under the Unlawful Activities (Prevention) Act, 1967 reference to the Magistrate under the Code of Criminal Procedure, 1973 had to be treated as a reference to the Designated Court constituted under the said Act. The contention was that under Section 43D of the Unlawful Activities (Prevention) Act, 1967 if the investigation was not complete the Designated Court could extend the period for detention up to 180 days and not beyond. The filing of the supplementary charge sheet and the admission contained in the application making a prayer for further investigation when the charge sheet was filed, was proof that when the charge sheet was filed the investigation was not complete. Thus, the three appellants would be entitled to statutory bail. The applications seeking statutory bail were rejected. The order dated September 18, 2013 has been challenged in the three criminal appeals No.1554/2013, 1557/2013 and 1559/2013.

12. The undisputed legal position on which neither side was at variance is that for offences under the Unlawful Activities (Prevention) Act, 1967 investigation can be conducted by the National Investigating Agency and the provisions of the Code of Criminal Procedure, 1973 would apply concerning investigation as also cognizance of offences by Courts, but as modified by the applicable provisions of the Unlawful Activities (Prevention) Act, 1967. The cognizance of reports had to be by the Designated Courts constituted as per law under the NIA Act.

13. Section 43D of the Unlawful Activities (Prevention) Act, 1967 which is material and relevant for our discussion reads as under:-

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

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

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

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

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

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

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

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

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

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

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

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

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

14. The centre of gravity of the first argument concerns the first proviso to sub-Section 2 of Section 43D of the Unlawful Activities (Prevention) Act, 1967. It reads: *Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is*

satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days.

15. Now, as a matter of fact, when the 90 days period of detention was about to expire, pleading that the investigation was still in progress, an application was filed contents whereof have been reproduced in paragraph 3 by us for detention to be extended up to 180 days and along with the application a report of the learned Public Prosecutor was filed contents whereof have been noted by us in paragraph 4 above.

16. The requirement of the proviso is that if it is not possible to complete the investigation within the period of 90 days, if the Court is satisfied with the report of the Public Prosecutor that the progress of the investigation requires detention of the accused beyond period of 90 days but up to 180 days, the Court may permit so. Undisputably the mandate of the law warrants : (i) a satisfaction to be recorded by the Court; (ii) with reference to the report of the Public Prosecutor; and (iii) which report must indicate the progress of the investigation and the specific reasons for the detention of the accused beyond 90 days up to 180 days.

17. The report of the Public Prosecutor makes a reference to the application prepared by the Investigating Officer. It also records that the learned Public Prosecutor has perused the case diary. The report highlights that a large number of call details and e-mails as also IDs of suspects have to be collected. It records that the investigation is voluminous and lengthy. The application brings out that the investigation related to activities of Indian Mujahideen, a proscribed terrorist organization, in association with the sleeper cells of Indian Mujahideen. The application brings out that the

investigation concerned terrorist activities by causing bomb blast with the aid of associates based in Pakistan. The application brings out that a large data pertaining to call details have been seized and the same were to be analyzed. Some items such as mobile phones and retrieved e-mails were sent to the CFSL for forensic analysis. The application brings out that the investigation was scattered in at least six states.

18. The application and the report of the Public Prosecutor have indicated the progress of the investigation and the specific reasons for the detention of the accused up to 180 days.

19. The contention that the report was prepared first and the application later on for the reason in the application it was written that the report of the Public Prosecutor was separately attached and therefore it has to be inferred that the report of the Public Prosecutor could not be based on the contents of the application, would presume that reference of one document in the other would make the existence of one antithetical to the existence of the other. The argument is fallacious. It is possible to author a document and based on the appraisal thereof the second document can be authored and knowing fully well that both documents have to be filed simultaneously, in the former document i.e. the document prepared first a reference is made that the second document is being separately attached.

20. Thus, nothing turns on the fact that in the application moved by the Investigating Officer on May 23, 2013 a reference was made that the report of the Public Prosecutor was being separately attached.

21. The requirement of law is that the Public Prosecutor has to file the report indicating the progress of the investigation and listing out the specific reasons for the extended detention of the accused up to 180 days.

22. We have already highlighted hereinabove that said requirement of law

has been complied with in the instant case; in letter and in spirit.

23. The argument that the reasons recorded by the learned Special Judge presiding over the Designated Court are perfunctory for the reason the learned Judge has only recorded that he had perused the case diary as also the call details and was satisfied that the accused should be remanded to judicial custody beyond 90 days and thus the order passed by the learned Special Judge of the Designated Court extending the period of detention was liable to be set aside, may appear attractive at the first blush for the reason a judicial mind would tend to move towards transparency and would expect that a judicial order should list out the objective facts on which the decision was taken.

24. But, when an investigation is in progress and all suspects have yet to be arrested and further part evidence is gathered and on an analysis of the same further evidence has to be gathered; from the material gathered the accused have to be interrogated, an exposure of the evidence gathered and the course of investigation chartered till said date giving clue to further course of investigation which may be chartered, it cannot be the requirement of law that the learned Special Judge of the Designated Court should descriptively pen down the objective facts noted by him till the current stage of the investigation and then record the opinion as to why period of detention was to be extended. This would expose the investigating agency to a severe handicap. The other suspects would know the line of investigation and would be in a position to destroy evidence which has yet to be coalesced by the investigating agency.

25. As long as the learned Special Judge has recorded that he has perused the case diaries, which as per law have not to be shared with the accused, and has opined in the order that the learned Special Judge was satisfied that

the completion of investigation warranted period of detention to be extended, it would be sufficient compliance with law.

26. Learned counsel for the appellants have vehemently relied upon the decision of the Supreme Court reported as (1994) 4 SCC 602 *Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors.* to urge that in view of said decision where a similarly worded proviso was added to sub-Section 4 of Section 20 of TADA, the impugned order had to be set aside.

27. The proviso considered by the Supreme Court reads as under:-

> *"Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days; and".*

28. The Supreme Court held in para 30 as under:-

> *"30. In conclusion, we may (even at the cost of repetition) say that an accused person seeking bail under Section 20 (4) has to make an application to the court for grant of bail on grounds of 'default' of the prosecution and the court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case since, Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the Court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the Public Prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b)*

of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge sheet is not filed within the extended period, the court shall have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (bb) can be granted by the Designated Court except on a report of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (bb) which must be strictly construed."

29. We fail to understand as to in what manner said decision helps the appellant. In the instant case an application for extension of time with the report of the Public Prosecutor was filed. Notice was served upon the appellants and after arguments were heard the learned Designated Court extended the time.

30. There is thus no merit in Crl.A.No.781/2013 and Crl.A.No.782/2013.

31. Concerning the other three appeals, the argument proceeds on the reasoning that the Code of Criminal Procedure, 1973 contemplates investigation of cognizable offences to be completed and a report filed in the Court of competent jurisdiction. The argument is premised on the reason that sub-Section 2 of Section 173 of the Code of Criminal Procedure envisages the filing of the report before a Magistrate empowered to take cognizance of the offence and that the report must be on the completion of the investigation. The forward limb of the argument would be that an incomplete report is no report in the eyes of law. If a complete report is not filed within 180 days, the appellants would be entitled to statutory bail.

32. Section 173 of the Code of Criminal Procedure reads as under:-

"173. Report of police officer on completion of investigation –

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, weather with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, In such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the

Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

33. It is trite that every investigation needs to be completed without

unnecessary delay as per the mandate of sub-Section 1 of Section 173. Under sub-Section 2 as soon as the investigation is completed the report has to be forwarded to the Magistrate empowered to take cognizance of the offence. The contents of the report have to be as per sub-clauses (a) to (h) of sub-Section 2.

34. Now, an investigation would be complete if the Investigating Officer is able to gather all the facts, information and evidence as also is able to identify the accused and the requirements of sub-clause (a) to (d) are complied with in respect to the contents of the report. But sub-Section 8 of Section 173, which begins with a non-obstante clause with a deeming provision interwoven, permits further investigation in respect of an offence after a report under sub-Section 2 has been furnished to the Magistrate.

35. It is settled law that every provision of a statute, in so far as the language permits, have to be read in a manner that each and every provision can be given effect to. If there is a conflict, two provisions have to be harmonized.

36. The decision of the Supreme Court reported as 2013 (5) SCC 762 *Vinod Tyagi Vs. Irshad Ali & Ors.* recognizes the difference between an investigation, a further investigation and a fresh or de novo or re-investigation. The decision highlights that sub-Section 8 of the Section 173 of the Code of Criminal Procedure, 1973 deals with further investigation and would be of a kind of a previous investigation being continued. The further investigation would relate to discovery of some more evidence pertaining to the same offence. It has to be understood in contradiction to a re-investigation, a fresh investigation or a de novo investigation. The purpose of a further investigation is to bring the true facts before the Court even if they are discovered at a stage subsequent to the primary investigation. Thus,

it cannot be said that if the prosecution prays to the Court that it be permitted to further investigate an offence, the challan filed has to be treated as incomplete. A further investigation is not antithetical to an investigation being completed.

37. As regards the contention that in the charge sheet filed a prayer was made to permit the Investigating Officer to continue with the further investigation and therefrom it has to be inferred that the investigation was not complete, the answer is to be found in the opinion of the Supreme Court in *Vinay Tyagi*'s case where it was held that the power of the Investigating Officer under sub-Section 8 of Section 173 of the Code of Criminal Procedure is not restrictive and it is a procedure of propriety that the police seeks permission of the Court to continue '*further investigation*' and file supplementary charge sheet. This approach has been approved by courts in a number of judgments.

38. To put it pithily the mandate of the law would be that if within the statutory period prescribed by law within which a charge sheet has to be filed, if the same is not filed the accused would be entitled to statutory bail; and the charge sheet being the report of the investigation forwarded as per sub-Section 2 of Section 173 of the Code of Criminal Procedure, 1973. The right to statutory bail would terminate with the filing of the charge sheet. The charge sheet filed has to be treated as the report of investigation. The further investigation under sub-Section 8 of Section 173 of the Code of Criminal Procedure supplements the charge sheet already filed and is not to be confused with the report of the investigation contemplated by sub-Section 2 of Section 173 of the Code of Criminal Procedure, 1973.

39. There is thus no merit in Crl.A.No.1554/2013, 1557/2013 and 1559/2013.

40. All appeals are dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 05, 2014
mamta