



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.14071 OF 2021 (GM-RES)

C/W

WRIT PETITION NO.18715 OF 2021 (GM-RES)

IN W.P. NO.14071 OF 2021

BETWEEN:

1. PEER MOHIDEEN @ PEER
S/O LATE KHAZA MOHIDEEN
AGED ABOUT 45 YEARS,
R/O NO.16/134, AVIMPURAM,
4TH STREET, PEDAPALYAM,
THIRUNELVELI TAMILNADU-627005.

AND NO.6, P & T COLONY,
AROGYAMATHA LAYOUT,
2ND CROSS, TANNERY ROAD,
K.G. HALLI, BANGALORE-560045.

(DELETED AS PER COURT
ORDER DATED 10.03.2022)

2. KICHAN BUHARI @ BUGARI
S/O. SHAIK MOHINUDIDIN,
AGED ABOUT 45 YEARS,
R/O NO.96, VALLKATTEKUTTIL VILLAGE,
MELAPALYAM, THIRUNELVELI,
TAMIL NADU-627 005.
3. SYED SULEMAN @ TENKASI SULEMAN
S/O. SHAIK MEERAN,
AGED ABOUT 32 YEARS,
R/O NEAR PFI OFFICE,

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA



9TH CROSS, KARUMBAKADAI,
AZAD NAGAR, COIMBATORE,
TAMIL NADU-641001.

4. TENKASI HANEEF @ MOHAMMED HANEEF
@ NAGOOR HANEEF
S/O. MEERA MOHIDDIN,
AGED ABOUT 43 YEARS,
R/O. 5TH STREET, MELUPALYAM,
THIRUNELVELI, TAMIL NADU-627005.

(DELETED AS PER COURT
ORDER DATED 10.03.2022)

5. PARAVAI BASHA
S/O. K.N. KASAMYDEEN
AGED ABOUT 38 YEARS
R/AT HAMEEMPURAM,
11TH STREET, MELUPALYAM,
THIRUNELVELI, TAMIL NADU-627006

(DELETED AS PER COURT
ORDER DATED 10.03.2022)

PET. NO.1-5 ARE IN
JUDICIAL CUSTODY,

ALL REP BY MUMTAJ
W/O. K.N. KASAMYDEEN
AGED ABOUT 56 YEARS,
R/AT HAMEEMPURAM,
11TH STREET, MELUPALYAM,
TIRUNELVELI-627006.

... PETITIONERS

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

1. STATE BY VYALI KAVAL POLICE
BANGALORE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX BUILDING,
BANGALORE-560001.



2. PRINCIPLE SECRETARY
ADMINISTRATIVE DEPT.
STATE GOVERNMENT
VIDHAN SOUDHA,
BANGALORE-01.
3. DIRECTOR
DEPARTMENT OF PROSECUTION
GOVERNMENT OF KARNATAKA
VIDHAN SOUDHA,
BANGALORE-560001.

... RESPONDENTS

(BY SRI P. THEJESH, HCGP FOR R-1 TO R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI TO QUASH THE NOTIFICATION NO.HD 64 MOHIBA 2012 DATED 20.05.2013 WHICH IS ALSO A CONTINUATION OF HD 137 MOHIBA 2010 DATED 30.07.2010 AT ANNEXURE-AA; SET ASIDE THE IMPUGNED SANCTION ORDER DATED 19.09.2017 ISSUED BY THE RESPONDENT NO.3 VIDE ANNEXURE-D IN S.C. NO.381/2015 PENDING IN THE FILES OF 49TH ADDL. CITY CIVIL AND SESSION JUDGE AT BANGALORE WHEREIN THESE PETITIONER ARE ARRAYED AS ACCUSED NO RESPECTIVELY.

IN W.P. NO.18715 OF 2021

BETWEEN:

1. PANNA ISMAIL @ MOHAMMED ISMAIL
S/O. ABDULLA
AGED ABOUT 45 YEARS,
R/O NO.39, 5TH CROSS,
MAILA KHADAR ROAD, MALEPALLYAM,
THIRUNELVELI
TAMILNADU – 627005.
2. FAKRUDDIN @ POLICE FAKRUDDIN
S/O. SIKANDER PASHA,
AGED ABOUT 42 YEARS,
R/O NO.5/2, KAREEM SHA PALLI VASAL,
4TH CROSS, MUNNICALAI ROAD,



NELAPET VILLAGE, MADURAI,
TAMIL NADU-625001.

3. BILAL MALIK @ BILAL
S/O. LATE SYEED,
AGED ABOUT 32 YEARS,
R/O NO.2/5, KARIMASHA PALLI VASSAL,
4TH CROSS, MUNNI CHALAI ROAD,
NELAPET VILLAGE, MADURAI,
TAMIL NADU-625001.
4. SHAHUL HAMEED BAHADDUR SHA
@ PARAVAI BASHA,
S/O. KHAJA MOHIDDIN,
AGED ABOUT 32 YEARS,
R/O. AMEEN PURAM,
MELUPALYAM, THIRUNELVELI,
TAMIL NADU-627005.
5. ALI KHAN KUTTI S/O. NOT KNOWN
AGED ABOUT MAJOR
MELUPALYAM, THIRUNELVELI,
TAMIL NADU-627005.

PET. NO.1-5 ARE IN
JUDICIAL CUSTODY,

ALL REP. BY MUMTAJ
W/O. K.N. KASAMYDEEN
AGED ABOUT 56 YEARS,
R/AT HAMEEMPURAM,
11TH STREET, MELUPALYAM,
TIRUNELVELI-627006.

... PETITIONERS

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

1. STATE BY VYALI KAVAL POLICE
BANGALORE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX BUILDING
BANGALORE-560001.



2. PRINCIPLE SECRETARY
ADMINISTRATIVE DEPT.
STATE GOVERNMENT
VIDHAN SOUDHA
BANGALORE-01.
3. DIRECTOR
DEPARTMENT OF PROSECUTION
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560001.

... RESPONDENTS

(BY SRI P. THEJESH, HCGP FOR R-1 TO R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUED WRIT OF QUA WARRANTO AND CERTIORARI AGAINST THE RESPONDENT NO.3 TO ESTABLISH HIS STATUS AS INDEPENDENT AUTHORITY UNDER THE SECTION 45(2) OF UAPA AS PER LETTER AND SPIRIT OF ACT, CONSEQUENTLY DECLARE THAT RESPONDENT NO.3 IS NOT AN INDEPENDENT AUTHORITY AS THE REQUIREMENT OF SECTION 45(2) OF UAPA; SET ASIDE THE IMPUGNED SANCTION ORDER DATED 05.05.2014 ISSUED BY THE RESPONDENT NO.2 AS ANNEXURE-D WHICH IS ISSUED ON THE RECOMMENDATION OF RESPONDENT NO.3, WHICH IS NOT A PROPER INDEPENDENT REVIEW AUTHORITY UNDER SECTION 45(2) OF UAPA IN CRIME NO.118/2013.

Date on which the appeal was reserved for Orders	14.03.2025
Date on which the Orders was pronounced	04.04.2025

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA



CAV ORDER

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

Accused Nos.1, 3, 12, 16, and 17 are before this Court in WP No.14071/2021, challenging the sanction order dated 17.10.2013 issued by respondent No.3 and the notification dated 20.05.2013, which is in continuation of the notification dated 30.07.2010, wherein the Government of Karnataka had appointed the 'Director of Prosecutions and Government Litigations, Bangalore' as 'Authority' in exercise of the powers conferred under sub-section (2) of Section 45 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA' for short) read with clause (b) of Sub-Rule 2 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (referred to as 'Rules, 2008' for short) and by notification dated 20.05.2013, appointed 'Additional Law Secretary, Law Department, Government of Karnataka' as a 'Co-member/Joint Authority'.

2. By an order dated 10.03.2022, petitioner Nos.1, 4 and 5 were deleted from the array of the parties, hence the



writ petition survives only in respect of petitioner Nos.2 and 3/accused 3 and 12.

3. Accused Nos.8 to 10, 16 and 18 are before this Court in WP No.18715/2021 seeking for the following prayers:

"a) Issue writ of qua warranto and certiorari against the Respondent no.3 to establish his status as independent authority under the section 45(2) of UAPA as per letter and spirit of act, consequently declare that respondent no.3 is not an independent authority as the requirement of section 45(2) of UAPA.

*b) Set aside the Impugned sanction Order No.OE/184/MOHIB/2013(2) Dated 05/05/2014 issued by the respondent no.2 as **Annexure D** which is issued on the recommendation of Respondent no.3, which is not a proper independent review authority under section 45(2) of UAPA in Crime no.118/2013*

*c) Consequently quash the cognizance order dated 23/10/2013 taken by the Magistrate court 1st ACMM, at Bangalore in connection of crime no.118/2013 Vyalikaval Police Station same at **Annexure E** "presently" pending in the files of 49th Addl. City Civil and Session Judge at Bangalore as*



SC no.1347/2016 c/w SC no.381/2015 under section 120(B), 121, 121A, 123, 307, 332, 435, 201 of IPC, 3,4,5,6 of Indian Explosive Substance Act, 4 of Prevention of damage to public property act and section 11,16,17,18,19 and 20 of UA(P)A act, wherein these petitioner are arrayed as Accused no.8,9,10,16 and 18 respectively.

d) Pass any other order by seeing the fact and circumstance of the case"

4. Challenge in these writ petitions is to the appointment of 'Director of Prosecutions and Government Litigations, Bangalore' as 'Authority' and to the sanction order issued by the Principal Secretary, Administrative Department on the recommendation of the Authority, contending that the recommendation of the Authority is not in consonance with Section 45 of the UAPA.

5. Brief facts necessary for consideration of the present writ petitions, shorn of unnecessary details are: On 17.04.2013, a blast took place in Malleshwaram near BJP Office. FIR was registered at Vyalikaval Police Station in Crime No.118/2013 against unknown persons. The investigation was transferred to the CCB Branch. During



investigation the police arrested several accused persons and implicated them of committing offences punishable under Sections 120B, 121, 121A, 123, 307, 332, 435, 201 of Indian Penal Code read with Sections 3, 4, 5 and 6 of the Indian Explosive Substances Act, 1908 read with Section 4 of the Prevention of Damage to Public Property Act, 1984 read with Sections 11, 16, 17, 18, 19 and 20 of the UAPA, the petitioners were arrayed as accused persons.

6. The Investigation Officer addressed a letter to Home Department, Government of Karnataka seeking sanction to prosecute the accused persons under the UAPA. The Government of Karnataka in continuation of its notification dated 30.07.2010 issued a notification dated 20.05.2013 in exercise of its power conferred by sub-section (2) of Section 45 of the UAPA read with Clause (b) of sub-Rule 2 of Rules, 2008 appointed Additional Law Secretary, Law Department, Government of Karnataka as a 'Co-Member/Joint Authority' along with the Authority who had been appointed on 30.07.2010, i.e., 'Director of Prosecutions and Government Litigations, Bangalore' as an 'Authority'.



7. Learned counsel for the petitioners, taking us to Section 45 of the UAPA and Rules 3 and 4 of Rules, 2008, would primarily contend that respondent No.3-Director, Department of Prosecution appointed as an 'Authority' is not an independent authority as envisaged under sub-section (2) of Section 45 of UAPA and as such, the recommendation made by the Director, Department of Prosecution, cannot be considered for according a sanction against the petitioners. It is submitted that Rules 3 and 4 of Rules, 2008 provide a detailed procedure with respect to grant of sanction under a fixed time line within which the sanction has to be granted. In regard to the impugned sanction in WP No.18715/2021, there was a delay of 13 months after the incident, 07 months after receipt of the evidence gathered by the Investigating Officer and after receipt of the recommendation of the authority, as such, the impugned sanction is not in consonance with the statutory mandate as set out in Rules 3 and 4 of Rules, 2008. It is submitted that sub-clause (2) of Section 45 of UAPA has been violated, as the requirement of



'independent review' while according sanction was not complied with.

8. *Per contra*, learned counsel appearing for the State submits that the sanction order issued by the State Government is in accordance with Section 45 (2) of the UAPA. There is no infirmity in the appointment of an Authority for the purpose of independent review. It is submitted that since the trial is at a fag end and at this stage, the petitioners cannot seek to quash the criminal proceedings.

9. Having heard the learned counsel for the parties, the questions that fall for consideration are:

"i. Whether the impugned sanction order can be challenged at a belated stage?

ii. Whether the appointment of the 'Authority' by the State Government is in violation of Section 45 (2) of UAPA?

iii. Whether the sanction order impugned is in consonance with the statutory mandate of Rules 3 and 4 of Rules, 2008?"



Point No.i and ii

Point Nos.i and ii are taken up together to avoid repetition of facts.

10. Before adverting to the points for consideration, it would be appropriate to state here that both the counsel have relied upon the decision of the Apex Court in the case of ***Fuleshwar Gope Vs. Union of India and others***¹ (*Fuleshwar Gope*). The context of reliance on the judgment of ***Fuleshwar Gope's*** case by the petitioners is that the word 'independent' and 'independent review' has not been properly understood by the State Government while recommending the Authority. It is submitted that regarding the intent behind involving an independent authority in the sanction process, the Apex Court in ***Fuleshwar Gope's*** case, underscored that the purpose is to ensure an unbiased and impartial evaluation of the case before granting sanction for prosecution. This being so, the appointment of the 'Authority'-the Director, Department of Prosecution by the State Government cannot be termed as an 'independent

¹ 2024 SCC Online SC 2610



authority' who can scrutinize the entire evidence that is gathered and then make a recommendation to the State Government impartially.

11. Learned HCGP placing reliance on the decision of **Fuleshwar Gope's** case stated *supra* submits that the decision of the Apex Court is aptly applicable to the present facts, the Apex Court clearly observed that the independent review and the application of mind are the questions to be determined by way of evidence and as such, should be raised during the trial before the Trial Court.

12. The questions in regard to the validity of sanction and the stage at which it can be challenged, fell for consideration before the Apex Court in **Fuleshwar Gope's** case. The Apex Court while observing that the challenge to the validity of a sanction should be raised at the earliest opportunity, preferably before the Trial Court, referred to the various decisions of the Apex Court in the case of **Central Bureau of Investigation vs. Ashok Kumar Aggarwal**² (*Ashok Kumar*), **Parkash Singh Badal vs. State of**

² (2014) 14 SCC 295



Punjab³ (Parkash Singh), **Dinesh Kumar vs. Airport Authority of India⁴** (Dinesh Kumar), **Central Bureau of Investigation & Ors. vs. Pramila Virendra Kumar Agarwal⁵** (Pramila Virendra) and **State of Karnataka Vs. Subbegowda⁶** (Subbegowda) and held at paragraph Nos.17 and 18 as under:

"17. The afore-cited authorities point to only one conclusion which is that sanction, though should be challenged at the earliest possible opportunity, it can be challenged at a later stage as well. These judgments, although not specifically in the context of laws such as UAPA, posit a generally acceptable rule that a right available to the accused, which may provide an opportunity to establish innocence, should not be foreclosed by operation of law, unless specifically provided within the statutory text. At the same time, challenging validity of sanction cannot and should not be a weapon to slow down or stall otherwise valid prosecution. Other legislations such as the CrPC provide mechanisms for the sanction and subsequent actions to be saved from being invalidated due to any irregularity etc. Section 465 CrPC provides for the possibility that a sanction

³ (2007) 1 SCC 1

⁴ (2012) 1 SCC 532

⁵ (2020) 17 SCC 664

⁶ 2023 SCC Online SC 911



granted under Section 197 CrPC can be saved by its operation. Similarly, a sanction under the PC Act, if found that there was any error, omission or irregularity would not be vitiated unless the same has resulted in failure of justice.

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



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

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

13. The law that emerges from the decisions of the Apex Court stated *supra* is that,

i To examine the validity of the sanction for prosecution is to be done at the stage of trial or at the earliest point of time, that is, when the Authority is appointed or the sanction of prosecution is granted.

ii. If the authority appointed by the Central Government or the State Government reviews the evidence



gathered by the Investigator, and if it is to be questioned for any reason, the appropriate stage is trial.

iii. Whether there was an application of mind independently by the Recommending Authority and the Sanctioning Authority, has to be established by the prosecution and satisfy the Court by leading evidence that the entire relevant facts were placed before the Recommending Authority and the Sanctioning Authority had applied its mind and the sanction is granted in accordance with law.

14. In the instant case, the petitioners seek to challenge the appointment of the Authority as well as the sanction order issued by the State Government. The Authority appointed by the State Government is on 30.07.2010 and pursuant to appointment of the authority by the State Government under notification dated 30.07.2010, another notification came to be issued in continuation on 20.05.2013, thereby appointing a 'co-member/Joint Authority', the petitioners have not made out any ground as to how they are prejudiced on account of recommendation



made by the authority based on the evidence gathered in the course of the investigation.

15. For better understanding we also refer to Section 45 of the UAPA, which reads as under:

"45. Cognizance of offences.-(1) *No court shall take cognizance of any offence—*

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

(ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and if such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be



prescribed, to the Central Government or, as the case may be, the State Government.”

(Emphasis supplied)

16. Section 45 of UAPA pertains to cognizance of offences under the Act, it specifies that no Court shall take cognizance of any offence under Chapter III (Offences and Penalties) and Chapter IV (Punishment for Terrorist Activities), Chapter VI (Terrorist Organizations and Individuals) without prior sanction of the Central Government or, the State Government, as applicable. Sanction for prosecution under Section 45 (1) of UAPA is granted only after an independent authority reviews the investigation evidence and submits a report. The Central Government or the State Government then examines the material, considers the authority's recommendation and determines if a *prima facie* case exists before according sanction.

17. What flows from the description of Section 45 is that the sanction is not the function of the Government alone and it can be granted only after an independent body, *albeit*



appointed by the Government, makes an independent review of the evidence. The Authority is required to reach a *prima facie* satisfaction that the relevant facts, as gathered in the investigation would constitute the offence or not. The Apex Court in the case of ***State of Maharashtra v. Mahesh G. Jain***⁷ (*Mahesh G. Jain*) held that the prosecution is to prove that the valid sanction has been granted. It can only be done by adducing evidence at trial, where the defence in challenge thereto, will necessarily have to be given an opportunity to question the same and put forward its case. Whether the authority has made an independent review or whether with an application of mind or clothed with cloud are the questions to be determined by considering the evidence and as such, the ground touching sanction should be raised at the stage of trial. The order passed by the administrative authority cannot be tested by way of judicial review on the same anvil as judicial or quasi judicial order. The Apex Court in ***Fuleshwar Gope's*** case faced with similar situation observed at paragraph No.41 as under:

⁷ (2013) 8 SCC 119



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



detailed above, have not been met. Furthermore, in Mohd. Iqbal M. Shaikh v. State of Maharashtra, a case under the TADA, this Court was faced with a similar situation, the sanction wherein was granted by the competent authority, i.e., the Commissioner of Police, Greater Bombay on the same day that he received the papers in that regard. The contention of non-application of mind was not accepted by the Court observing that so long as the sanction was by a competent authority and after applying its mind to all materials and the same being reflected in the order, the sanction would hold to be valid. It was further held that when an order does not so indicate, the prosecution is entitled to adduce evidence aliunde of the person who granted the sanction and that would be sufficient compliance. The Court would then, look into such evidence to arrive at a conclusion as to whether application of mind was present or absent. In conclusion, we hold that independent review as well as application of mind are questions to be determined by way of evidence and as such should be raised at the stage of trial, so as to ensure that there is no undue delay in the proceedings reaching their logical and lawful conclusion on these grounds. As a result of the conclusion drawn by this Court on the first issue, it is also to be said that if the sanction is taken exception to, on the above grounds, it has to be



raised at the earliest instance and not belatedly, however, law does not preclude the same from being challenged at a later stage. It is to be noted that the scheme of the UAPA does not house a provision such as Section 19 of the PC Act which protects proceedings having been initiated on the basis of sanctions which come to be questioned at a later point in time and, therefore, Courts ought to be careful in entertaining belated challenges. If it is raised belatedly, however, the Court seized of the matter, must consider the reasons for the delay prior to delving into the merits of such objections. This we may say so for the reason that belated challenges on these grounds cannot be allowed to act as roadblocks in trial or cannot be used as weapons in shirking away from convictions arising out of otherwise validly conducted prosecutions and trials.

An order passed by an administrative authority is not to be tested by way of judicial review on the same anvil as a judicial or quasi-judicial order. While it is imperative for the latter to record reasons for arriving at a particular decision, for the former it is sufficient to show that the authority passing such order applied its mind to the relevant facts and materials [See: P.P. Sharma (supra); Navjot Sandhu (supra) and Mahesh G. Jain (supra)] That being the accepted position we



find no infirmity in the order granting sanction against A-17. It is not incumbent upon such authority to record detailed reasons to support its conclusion and, as such, the orders challenged herein, cannot be faulted with on that ground."

(Emphasis supplied)

18. Section 45 of UAPA has two distinct facets, which govern the sanction for prosecution in terrorism related cases. These facets ensure that the prosecution under the UAPA is not arbitrary and follows due process. Under Section 45 (2) of UAPA, before granting sanction for prosecution, the Government receives a report from an independent authority who is appointed by the State or Central, as the case may be, and this independent review ensures that there is *prima facie* evidence against the accused before formal prosecution begins, thus, these two facets emphasize as a procedural safeguard to prevent arbitrary prosecution under the UAPA.

19. For the reasons stated and in light of the decision of the Apex Court in **Fuleshwar Gope's** case, it would not hold this Court for long to arrive at a conclusion that the



'Authority' so appointed was a competent authority, or whether the Authority has made an independent review as well as applied its mind, or whether there was application of mind by the sanctioning authority while sanctioning, are the questions that have to be determined by way of evidence and as such, should be raised at the stage of trial so as to ensure that there is no undue delay in reaching their logical and lawful conclusion. It is also to be stated here that if the challenge is to the appointment of the 'authority' by the State Government or the Central Government as the case may be, it has to be raised at the earliest instance and not belatedly. If the initial appointment of the 'authority' is not challenged at the earliest point of time, it does not preclude the same being challenged at a stage of trial before the Trial Court, but when a challenge is made belatedly before the Appellate Court, the Court should refrain from entertaining it, and liberty to raise the issue at the stage of trial may be given. The challenge to appointing of the 'authority' and the sanction order is made by the petitioners when the trial is underway and numerous witnesses have been examined



(upto 113), challenge made is belatedly and thus, we refrain from entertaining these writ petitions, holding that the petitioners have failed to challenge at the earliest possible opportunity and thus, it is open for the petitioners to raise the issue during trial and if it is raised the trial Court shall promptly consider that issue. Point Nos.i and ii are answered thus.

Point No.iii

20. Rules 3 and 4 of Rules, 2008 reads as under:

"3. Time limit for making a recommendation by the Authority.-*The Authority, shall under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government or, as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.*

4. Time limit for sanction of prosecution.-*The Central Government or, as the case may be, the State Government shall, under sub-section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within*



seven working days after receipt of the recommendations of the Authority.”

21. Rules stated *supra* prescribe a mandate and a time limit. The Apex Court in ***Fuleshwar Gope’s*** case put a caveat observing that the time limit mentioned in Rules 3 and 4 of Rules, 2008, shall not affect any decision of the authority which has been passed before the date of decision in ***Fuleshwar Gope’s*** case, the Apex Court emphasized that the legislative intent is clear and Rules 3 and 4 of the Rules, 2008 are to be applied prospectively in strict adherence to the time line thereafter.

22. It is argued by the counsel appearing for the petitioners that as on the date of filing of WP No.18715/2021, ***Fuleshwar Gope’s*** decision was not in force. Applicability of doctrine of prospective overruling is de-merited and as such, the time limit prescribed by the Rules, 2008 has to be applied in its full rigor, placing reliance on the decision of the eight bench of the Apex Court in the case of ***Mineral Area Development Authority and***



another Vs. M/s. Steel Authority of India and Another⁸
(*Steel Authority*) (Enforcement Order)

23. The Nine judge bench of the Apex Court in ***Mineral Area Development Authority Vs. SAIL⁹*** (*MADA*) answered the questions referred and in the process overruled the decision in the case of ***India Cement Ltd., Vs. State of T.N.¹⁰*** (*India Cement Ltd.,*) and subsequent decision of the Apex Court which relied on it. After the judgment was pronounced, the assessee moved an application seeking that the judgment rendered in ***MADA*** be given prospective effect. The Apex Court while dealing with the said aspect whether or not the judgment in ***MADA*** should be given prospective effect elaborated the doctrine of prospective over ruling and emphasized that this doctrine is applied when a Constitutional Court overturns an established precedent by introducing a new rule, but confines its application to future cases to prevent injustice or hardship. The Apex Court observed that the doctrine aims to validate

⁸ (2024) 10 SCC 257

⁹ (2024) 10 SCC 1

¹⁰ (1990) 1 SCC 12



actions taken before the new declaration in the broader public interest, ensuring that the invalidation of prior laws takes effect from a future date. The Apex Court in the ***Steel Authority*** (Enforcement Order) decided that the ***MADA*** judgment would apply retrospectively from 01.04.2005, the application of doctrine of prospective overruling by the Apex Court in ***Steel Authority*** (Enforcement order) balanced the need for legal consistency with fairness to those affected by change of law.

24. As stated *supra*, the Apex Court's decision in ***Fuleshwar Gope's*** case emphasized that the time line specified in Rules 3 and 4 of Rules, 2008 are mandatory and must be strictly adhered to. Non-compliance of time line can render a sanction order invalid, clarifying that its observation regarding strict adherence to these time lines would apply prospectively. That means to say that the sanction orders issued before the date of judgment would not be invalidated solely due to non-compliance of the prescribed time line. The sanction order in question was issued in the year 2013, well before the ***Fuleshwar Gope's*** decision. The Apex Court's



decision clearly indicates that a strict adherence to the time lines in Rules 3 and 4 would not retroactively affect the validity of the sanction order passed by the Authority before the decision rendered in ***Fuleshwar Gope's*** case. Therefore, the argument that the sanction is invalid solely due to non-compliance with the time lines as prescribed under Rules 3 and 4 of Rules, 2008 does not hold any merit. Mere pendency of the writ petition challenging the sanction order in the absence of any stay order means the sanction order remains valid and operative and thus based on the principles in ***Fuleshwar Gope's*** case, the sanction order cannot be quashed solely on the ground of non-compliance with the time lines prescribed in Rules 3 and 4 of Rules, 2008. The Apex Court's judgment in ***Steel Authority*** (Enforcement Order) discussed the doctrine of prospective overruling, which allows the Court to apply its decision only to the future cases to prevent undue hardship and similarly, in ***Fuleshwar Gope's*** case, the Apex Court has observed that the mandatory time line prescribed to be applied prospectively, ensuring that the past sanction orders are not



invalidated. We have already observed that the challenge to the validity of the sanction should be raised promptly.

25. In the instant case, though the sanction order was not in strict adherence to the mandate and time limit as envisaged in Rules 3 and 4 of Rules, 2008, however, in light of the decision of the Apex Court in **Fuleshwar Gope's** case about prospective applicability, the sanction order having been passed on 17.10.2013 i.e., prior to the decision in **Fuleshwar Gope**, is not invalid on account of procedural non-compliance of Rules 3 and 4 of Rules, 2008. Accordingly point No.iii is answered. For the foregoing reasons, we pass the following:

ORDER

Writ petitions are hereby ***dismissed***.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE