



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.28659 OF 2024 (GM-RES)

BETWEEN:

1. NASEER
AGED ABOUT 32 YEARS,
S/O BASHA A,
R/AT, #590, 8TH CROSS,
MOHAMMADIYA MASJID VINOBHA NAGAR,
KG HALLI, BENGALURU NORTH,
ARABIC COLLEGE, BENGALURU,
KARNATAKA-560045
AND PRESENTLY R/AT H.NO.46,
5TH CROSS, 2ND MAIN,
VINOBHA NAGAR, BENGALURU,
KARNATAKA-560045.
2. IRSHAD HUSSIN
AGED ABOUT 32 YEARS,
S/O ALTHAF HUSSIN,
R/O #141, 2ND CROSS,
OPP. GANESHA TEMPLE,
GANDHIPURA, WHITEFIELD (P),
BENGALURU, KARNATAKA-66
AND PRESENTLY R/AT, NO.419,
2ND MAIN, 6TH CROSS,
OPPOSITE MASJID-E-KHAIR
VINOBHANAGAR, KG HALLI,
BENGALURU, KARNATAKA-560045.
3. ABDUL GHANI M @ MANIKANDAN
AGED ABOUT 35 YEARS,
S/O MADAVAN,
R/O #1144, 7TH CROSS, RK HEGDE NAGAR,

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



THANISANDRA MAIN ROAD,
BENGALURU NORTH,
DR. SHIVARAMA KARANTH NAGAR,
BENGALURU, KARNATAKA-560077
AND PRESENTLY RESIDING AT
1ST CROSS, BHARAT SWEETS LANE,
VENKATESHAPURAM, BENGALURU,
KARNATAKA-560045.

4. MOHAMMED ADIL .C
AGED ABOUT 25 YEARS,
S/O MOHAMMED FAROOQ C,
R/O. #05, 3RD MAIN, BHARATH
MATHA LAYOUT NEAR MAKKA MASJID,
VENKATESHPURA KG HALLI,
BENGALURU NORTH, ARABIC COLLEGE,
BENGALURU, KARNATAKA-560045.
5. ABDUL LATHIF C
AGED ABOUT 29 YEARS,
S/O MOHAMMED FAROOQ,
R/O #05, 3RD MAIN, BHARATH
MATHA LAYOUT NEAR MAKKA MASJID,
VENKATESHPURA KG HALLI,
BENGALURU NORTH, ARABIC COLLEGE,
BENGALURU, KARNATAKA-560045.
6. JALAL PASHA
AGED ABOUT 39 YEARS,
S/O AMEER JAN,
R/O #09, 1ST CROSS, AYUDHA DAS NAGAR,
DJ HALLI, NEAR AMMAR SCHOOL,
BENGALURU NORTH, ARABIC COLLEGE,
BENGALURU, KARNATAKA- 560045.
7. MOHAMMED YOUNUS
AGED ABOUT 26 YEARS,
S/O KAJA,
R/O #243, 7TH CROSS,
OLD BAGLUR LAYOUT, BENGALURU,
ST. THOMAS TOWN BENGALURU,
KARNATAKA-560 004.
8. MOHAMMED FAIZAL
AGED ABOUT 22 YEARS,
S/O LATE ABDUL SHOOKUR,



R/O #54, 3RD CROSS,
KHUSHAL NAGAR, KG HALLI,
NEAR SAYEED MASJID,
BENGALURU NORTH, BENGALURU,
KARNATAKA-560045
AND PRESENTLY RESIDING AT
3RD FLOOR, 3RD CROSS, LR BHANDE,
SHAMPURA MAIN ROAD,
NEAR APARTMENTS, HANI ENCLAVE
KARNATAKA-560045 BENGALURU.

9. IRFAN KHAN
AGED ABOUT 27 YEARS,
S/O DASTAGIR KHAN,
R/O #1057, 13TH CROSS,
NEAR GANPATI TEMPLE,
GOVINDAPURA MAIN ROAD,
AC POST, BENGALURU,
KARNATAKA-560045.
10. AZIL PASHA
AGED ABOUT 34 YEARS,
S/O MOHD. SHAUKAT,
R/O #3216, 7TH MAIN, 3RD CROSS,
NAGAMMA LAYOUT, KAVAAL BAIRASANDRA,
BENGALURU NORTH, RT NAGAR,
BENGALURU, KARNATAKA-32
AND PRESENTLY RESIDING AT
NO.2, NAGAMMA, LAYOUT,
KAVALBYRASANDHRA, RT NAGAR,
BENGALURU, KARNATAKA.
- 11 . AKBAR KHAN
AGED ABOUT 38 YEARS,
S/O. LATE AMANULLAH KHAN,
R/O #654, 14TH CROSS, FATHIMA LAYOUT,
BENGALURU RASHAD NAGAR, NORTH,
ARABIC COLLEGE, BENGALURU,
KARNATAKA- 45
AND PRESENTLY RESIDING AT NO.27/107,
YALLAMMA TEMPLE ROAD, 2ND CROSS,
GOVINDAPURA, BENGALURU,
KARNATAKA-560045.
- 12 . KALEEMULLA @ SHAHRUKH
AGED ABOUT 27 YEARS,



S/O RAHAMUTHULLA,
R/O #12, 11TH CROSS,
VINOBHANAGAR, KG HALLI,
BENGALURU NORTH, BENGALURU,
KARNATAKA-560045.

13. MOHAMMED ZABIULLA
AGED ABOUT 19 YEARS,
S/O ASLAM PASHA,
R/O #91/5, 7TH CROSS,
BM LAYOUT VENKATESHAPURAM,
KG HALLI BENGALURU NORTH,
ARABIC COLLEGE, BENGALURU,
KARNATAKA- 45
AND PRESENTLY RESIDING AT
H.NO.421, 6TH CROSS, 2ND MAIN ROAD,
VINOBHA NAGAR, KG HALLI,
BENGALURU, KARNATAKA- 560045.
14. TANVEER
AGED ABOUT 31 YEARS,
S/O IQBAL,
R/O M8, SHASTRI STREET, VENKATESHPURAM,
VTC, BENGALURU NORTH, PO ARABIC COLLEGE,
BENGALURU, KARNATAKA- 45
AND PRESENTLY RESIDING AT
H. NO.52, 2ND MAIN, OPP. TOTAL GAS BUNK,
BM LAYOUT, VENKATESHPURAM,
AC POST, BENGALURU,
KARNATAKA- 560045.
15. FAZIL
AGED ABOUT 19 YEARS,
S/O AZHAR ALI,
R/O #152, 11TH CROSS, MODI MAIN ROAD,
MUSKAN TEA HOTEL, BENGALURU NORTH,
ARABIC COLLEGE, BENGALURU,
KARNATAKA-45
AND PRESENTLY RESIDING AT
D. NO.388, 5TH CROSS, VINOBHA NAGAR,
KG HALLI, BENGALURU,
KARNATAKA-560045.
16. MOHAMMED TALISH
AGED ABOUT 28 YEARS,
S/O ABDUL RAHIM,



R/O NO.186, 5TH VINOBHANAGAR CROSS,
KG HALLI, BENGALURU NORTH,
COLLEGE, ARABIC BENGALURU,
KARNATAKA-560045.

17. MOHAMMED ZABIULLA
AGED ABOUT 35 YEARS,
S/O JANI BASHA,
R/O #26, 8TH CROSS, RASHAD NAGAR,
GOVINDPURA, AC POST,
BENGALURU NORTH,
BENGALURU, KARNATAKA-45
AND PRESENTLY RESIDING AT
#7, 13TH CROSS, UMAR NAGAR,
KG HALLI, BENGALURU,
KARNATAKA-560045.
18. MOHD JUNAID
AGED ABOUT 30 YEARS,
S/O MOHAMMED FAROOQ C,
R/O #05, 3RD MAIN, BHARATH
MATHA LAYOUT NEAR MAKKA MASJID,
VENKATESHPURA KG HALLI,
BENGALURU NORTH, ARABIC COLLEGE,
BENGALURU, KARNATAKA- 560045.
19. ZAMEERUDDIN @ ZAMEER
AGED ABOUT 35 YEARS,
S/O NAWAB JAN,
R/O #284, 14TH CROSS,
GOVINDAPUR MAIN ROAD,
BENGALURU NORTH,
ARABIC COLLEGE BENGALURU,
KARNATAKA-45.
20. BASHEER UDDIN
AGED ABOUT 34 YEARS,
S/O NAWAB JAN,
R/O #284, 14TH CROSS,
GOVINDAPUR MAIN ROAD,
BENGALURU NORTH,
ARABIC COLLEGE BENGALURU,
KARNATAKA-560045.

... PETITIONERS

(BY SRI MOHAMMED TAHIR, ADVOCATE)



AND:

NATIONAL INVESTIGATION AGENCY
MINISTRY OF HOME AFFAIRS (GOI)
BRANCH OFFICE, BENGALURU
#3RD FLOOR, BSNL TELEPHONE EXCHANGE,
HAL 2ND STAGE, INDIRANAGAR,
BANGALORE-560008.
REPRESENTED BY ITS
SUPERINTENDENT OF POLICE.

(AMENDED AS PER COURT
ORDER DATED 15/11/2024).

... RESPONDENT

(BY SRI P. PRASANNA KUMAR, SPL. PP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W 482 OF CR.P.C. R/W 407 OF CR.P.C. PRAYING TO ISSUE WRIT OF CERTIORARI AND QUASH THE IMPUGNED ORDER DATED 17.09.2024 PASSED BY THE HON'BLE XLIX ADDITIONAL CITY CIVIL AND SESSION JUDGE (SPECIAL JUDGE FOR THE TRIAL OF NIA CASES) (CCH-50) BENGALURU IN SPL.C NO.141/2021 FOR THE OFFENCES PUNISHABLE SECTIONS 120B, 143, 145, 147, 188 353 AND 427 R/W 34 AND 149 OF IPC AND SECTION 2 OF THE PREVENTION OF DESTRUCTION AND LOSS OF PROPERTY ACT 1981 WHERE IN THE PETITIONERS ARE ARRAYED AS ACCUSED NO.29-30, 32, 36-37, 43, 46, 48, 51-54, 67-68, 70, 71, 78, 85, 125 AND 126 RESPECTIVELY AT ANNEXURE-A CONSEQUENTLY AND ETC.

Date on which the appeal was reserved for Orders	05.03.2025
Date on which the Orders was pronounced	18.03.2025

THIS WRIT PETITION 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

The petitioners who are arrayed as accused No.29, 30, 32, 36, 37, 43, 46, 48, 51, 52, 53, 54, 67, 68, 71, 78, 85, 125, 126 and 137 in Spl.C.No.141/2021 have called in question the order dated 17.09.2024 passed by the XLIX Additional City Civil and Sessions Judge (Special Court for NIA cases) at Bangalore by which the application filed by them under Section 8 read with Sections 14 and 20 of the National Investigation Agency Act, 2008 (for short '*NIA Act*') seeking transfer of the case from Special Court trying cases under NIA Act to the court having jurisdiction to try Indian Penal Code (IPC) offences was rejected.

2. The case of the prosecution is that on 11.08.2020 at about 8.45 p.m., a group of 25 to 30 people gathered in front of Kadugondana (KG) Halli Police Station and started shouting slogans demanding arrest of one Naveen, nephew of Sri.Akhanda Srinivasa Murthy, MLA who had posted certain derogatory message on his facebook



account, insulting the religious faith of the people who belong to a particular religion. At about 8.50 p.m., another group of people under the leadership of one Syed Ikramuddin entered K.G.Halli police station, demanding registration of a case against Naveen and others. The complaint was accepted by the police and registered NCR for preliminary enquiry as a case vide FIR No. 195/2020 was already registered on the same set of fact at Devarajeevana (DJ) Halli on 11.08.2020.

3. The gathering at K.G.Halli police station was increasing gradually and becoming violent and considering the violent situation which had already erupted at D.J.Halli police station area and further more gathering at K.G.Halli police station on 11.08.2020 at 21.00 hours, the Commissioner imposed curfew in D.J.Halli and K.G.Halli police station. The gathering of mob turned unruly and intensified their protest, which led to untold incidents and registration of FIR against all those who were involved in the incidents that happened on that date. Accordingly, a



crime vide FIR No.229/2020 dated 12.08.2020 under Sections 143, 147, 148, 149, 332, 333, 353, 427 and 436 of Indian Penal Code, 1860 and Section 4 of the Prevention of Damage to Public Property Act, 1984 were registered against the petitioners and other individuals and on investigation done by the State Police, a crime was registered for offences punishable under Section 120B, 143, 145, 147 and 188 read with Section 34 and 149 of IPC against the petitioners and others. On investigating and recording statement of several witnesses, the Central Government, Ministry of Home Affairs, New Delhi having regard to the gravity of offence directed the NIA to take up the investigation of the said case pursuant to which a charge sheet was filed against the petitioners for the offences punishable as aforesaid. Before the NIA court, the petitioners filed an application under Section 8 read with Sections 14 and 20 of the NIA Act seeking to transfer of the case of the petitioners to the court having jurisdiction to try the offences under IPC contending that they have been charge sheeted for the offences other than the scheduled



offences along with the other accused persons who have been charge sheeted for the scheduled offences. The Special Court by impugned order rejects the application on the ground that the court has power to try the offences when all the accused persons were part of the same incident.

4. Heard Mr.Mohammed Tahir, learned counsel appearing for the petitioners and Mr.P.Prasanna Kumar, learned Special Public Prosecutor for the respondent and perused the material on record.

5. Learned counsel appearing for the petitioners taking this court to the provisions of NIA Act more particularly, Section 8, 14 and 20 submits that the Special Court of the NIA cases is designated under the NIA Act and has jurisdiction only over the cases investigated by NIA only for the scheduled offence. It is submitted that the law mandates that if accused committed other offences along with the scheduled offences only then the Special Court can investigate the case and the fact remains that the



petitioners are not involved in any of the scheduled offences and the Special Court has no jurisdiction to try the IPC offences, which is leveled against the petitioners herein. Stressing on the expression 'the accused' in Section 8 of the NIA Act, learned counsel for the petitioners submits that 'the accused' has to be read in respect of whom a scheduled offence is being tried by the NIA court and if such an accused has committed any other offence, which is connected to the scheduled offence, then such other offence could be tried by NIA court and not otherwise.

6. *Per contra*, the learned counsel appearing for NIA would contend that the offence / incident that occurred on 11.08.2020 gave rise to offences against all the accused therein under the Unlawful Activities (Prevention) Act, 1967 (UAPA) and also under the IPC. Learned counsel stressing on the terms of Section 8, 14 and 20 of the NIA Act read with Section 223 of Code of Criminal Procedure, 1973 (for short '*the Code*') contends that the NIA court is empowered to try the offences connected with the scheduled offence.



Learned counsel submits that the issue involved in this petition regarding the jurisdiction of the NIA Act to conduct trial of offences, which are one punishable under IPC is squarely covered and is no more a *res integra* in the light of the decision of the Apex Court in the case of **ANKUSH VIPIN KAPOOR VS. NATIONAL INVESTIGATION AGENCY¹** (ANKUSH). It is further submitted that the co-accused No.137 had approached this court in W.P.No.19091/2021 taking similar contention and the learned Single Judge who had at that point of time jurisdiction to entertain the cases that arises out of Special Court for NIA cases, on consideration, has dismissed the writ petition.

7. In this context, learned counsel appearing for the petitioners submits that the decision in the case of **ANKUSH** is distinguishable as the decision delivered by the Apex Court is in respect of an investigation carried out by the NIA under Section 18 for any scheduled offence and in

¹ 2024 SCC ONLINE SC 3750



that context, the Apex court held that the NIA, which is carrying on an investigation into an scheduled offence can also investigate any other offence, which any other accused have committed and in the present facts, it is not the investigation, but the proceedings / trial before the NIA court.

8. Having heard the learned counsel appearing for the parties and on perusal of the records, the question that falls for consideration is, *"whether the NIA court has jurisdiction to try the offences other than the scheduled offences along with the other accused persons who have been charge sheeted for the scheduled offences?"*

9. To answer the aforesaid issue, it is necessary to consider the provisions of NIA Act, UAPA and the Cr.P.C. The petitioners are charge sheeted for the offences punishable under Section 120B, 143, 145, 147, 188, 353, 427 read with Section 34 and 149 of IPC and Section 2 of the Prevention of Destruction and Loss of Property Act, 1981. The investigation revealed that in pursuance of a



common intention and in conspiracy with other accused persons, the petitioners actively participated in the riots at K.G.Halli police station area on the intervening night of 11.08.2020 and 12.08.2020 and were part of unruly mob that assembled unlawfully at K.G.Halli police station, which attacked the police personnel and damaging the public as well as the government properties and was found carrying wooden stick during riots. The petitioners are alleged of the offences punishable as stated supra and also formation of an unlawful assembly. The NIA Act was enacted with a view to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India. Security of State, friendly relation with foreign states and offences under the Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other International Organization and for matters connected therewith or incidental thereto. Section 8 of the NIA Act reads as under:



8. Power to investigate connected offences.

While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence.

10. A plain reading of the aforesaid Section indicates that a power to investigate connected offences with the scheduled offence is amenable for investigation if such an offence is connected with the scheduled offence, meaning to say, that the offence that is alleged to have been committed by the accused and the other offence should be in connection with the offence scheduled under the Act. Section 8 of the NIA Act as stated supra, gives power to investigate connected offences with the scheduled offence. The 'scheduled offence' is described in Section 2 as an offence specified in the 'schedule'. Section 11 of the NIA Act empowers the Central Government to designate Special Courts. Section 13 of the NIA Act deals with the jurisdiction of the Special Courts with respect to every scheduled offence to be investigated by the agency shall be tried by the Special Court, which reads as under:



13. Jurisdiction of Special Courts.—(1)

Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) If, having regard to the exigencies of the situation prevailing in a State if,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice, the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the



applicant is the Attorney-General for India, be supported by an affidavit or affirmation.”

11. Section 14 of the NIA Act deals with the jurisdiction of the Special Court with respect to other offences, which reads as under:

14. Powers of Special Courts with respect to other offences.—(1) *When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.*

(2) *If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law.*

Sub-clause(1) of Section 14 of the NIA Act states that when a Special Court trying any specific offence may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.



12. Section 20 of the NIA Act deals with the power to transfer the cases to the regular courts, which reads as under:

20. Power to transfer cases to regular courts.—Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Section 20 of the NIA Act empowers the Special Court after taking cognizance of any offence, is of the opinion that the offence is not triable by it, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction.

13. Section 18 of the UAPA deals with the punishment for conspiracy. As could be seen from the charge sheet, the investigation reveals that the petitioners



with common intention and in conspiracy are involved with other accused persons. However, the petitioners are charged with Section 120B, which is a punishment of criminal conspiracy. Section 223 of the Cr.P.C deals with the persons who may be charged jointly, which reads as under:

223. What persons may be charged jointly.—*The following persons may be charged and tried together, namely:—*

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons



accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would



not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

14. A plain reading of Section 223 of Code indicates that if a person is accused of more than one offence of the same arising out of the same transaction can be tried together. The charges leveled against the petitioners as indicated above are one which are punishable under the IPC and NIA court can try only the offences that are appended to the schedule. The schedule appended to Section 2(1)(f) of the NIA Act states the offences, are triable by the NIA court as under:

"THE SCHEDULE

[See Section 2(1) (f)]

1. *The Explosive substances Act, 1908 (6 of 1908);*
- 1A. *The Atomic Energy Act, 1962 (33 of 1962)*
2. *The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);*
3. *The Anti-Hijacking Act, 1982 (65 of 1982)*
4. *The Suppression of Unlawful Acts against safety of Civil Aviation Act, 1982 (66 of 1982);*
5. *The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);*



6. *The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);*
7. *The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);*
8. *Offences under –*
 - (a) *Chapter VI of the Indian Penal Code (45 of 1860) [Sections 121 to 130 (both inclusive)];*
 - (b) *Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860);*
 - (c) *Sections 489A to 489E (both inclusive) of the Indian Penal Code (45 of 1860);*
 - (d) *Sub-Section (1-AA) of Section 25 of Chapter V of the Arms Act, 1959 (54 of 1959); and*
 - (e) *Section 66-F of Chapter XI of the Information Technology Act, 2000 (21 of 2000)."*

15. On cursory reading of Section 8 and 14 of the NIA Act referred above, Section 8 refers to the power of the agency to investigate any scheduled offence and also investigate any other offence if connected with the scheduled offence. Section 14 of the NIA Act refers to the



power of the Special Court which, while trying any offence, may also try any other offence with which the accused may under the Code be charged at the same trial if the offence is connected with such other offence. In Section 8 and Section 14(1) of NIA Act, the term 'the accused' refers to all persons charged with the offences in a particular case who are being tried before the Special Court. The term 'the accused' is not limited to a single person but includes all accused persons involved in the scheduled offence or any connected offence. If multiple accused persons are part of the same transaction or are charged together in the same trial under the Code, the Special Court can try the offence. Section 14(2) states that in the course of any trial under the NIA Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special court may convict such person of such other offence and pass any sentence or award punishment authorized by NIA Act or as the case may be, under such other law. On joint reading of Section 8 and Section 14 of the NIA Act, both the provisions are akin,



which deal with the jurisdiction of investigation agency, and the Special Court to try additional or connected offences, however, they are distinct in their scope and application. Both the Section expands the jurisdiction beyond the scheduled offences under the NIA Act. Section 8 ensures investigation of offences related to scheduled offence, Section 14 envisages that the Special Court while trying any offence has also jurisdiction to try any other offence that 'the accused' is charged with, as long as it is part of / connected to such offence and Section 14(2) further broadens the power of the Special Court. Similar question fell for consideration before the Apex Court at the stage of investigation in the case of **ANKUSH** and the Apex Court observed that, *if the provisions of Section 17 and 18 of UAPA are attracted in a given case being scheduled offences under the NIA Act, the Central Government if it is of the opinion that such offences have been committed which are required to be investigated under the Act may under Sub-section (5) of Section 6 of the said Act, in exercise of its suo motu power direct the NIA to investigate the scheduled*



*offences, but while investigating such scheduled offences, the NIA can also investigate any other offence, which the accused is alleged to have committed provided the other offence is connected with the scheduled offence. In **ANKUSH's** case the Apex Court provided an expansive interpretation of Section 8 of the NIA Act holding that the Section allows NIA to investigate offences connected to scheduled offences, even if they are not originally within its purview. The Apex Court interpreted the word 'the accused' and clarified that the term 'the accused' in Section 8 should not be narrowly interpreted to refer only to individuals initially under investigation for schedule offences. Instead it encompasses any person who, during the investigation, is found to have committed an offence connected to the scheduled offence. The Apex Court emphasized that while investigating a scheduled offence, the NIA is empowered to probe any other offence committed by any accused, provided there is a connection between the two offences. The Apex Court in the case of **ANKUSH** giving a deliberate*



consideration has held at para 7 to 7.18, which read as under:

7. Thus, if the provisions of Sections 17 and 18 of the UAPA are attracted in a given case being Scheduled Offences under the NIA Act, the Central Government, if it is of the opinion that such Offences have been committed which are required to be investigated under the Act, may under sub-section (5) of Section 6 of the said Act, in exercise of its suo motu power direct the NIA to investigate the Scheduled Offences. But while investigating such Scheduled Offences, the NIA can also investigate any other offence which the accused is alleged to have committed provided the other offence is connected with a Scheduled Offence. Applying the aforesaid provision to the facts of the present case, it is held that while investigating the offences under Sections 17 and 18 of UAPA (Scheduled Offences) by virtue of sub-section (5) of Section 6, under Section 8 any other offence such as (an offence under the NDPS Act connected with the Scheduled Offences (Sections 17 and 18 of the UAPA in the instant case) could also be investigated. But, such other offence must have a connection with the Scheduled Offence. 7.1 Furthermore, in our view, the investigation could also be of a person accused of an offence which has a connection with a Scheduled Offence which is being



investigated on the basis of Section 8 of the NIA Act. Then, the Central Government may also direct any such offence also to be investigated on receipt of a report from the NIA as against any accused when it is already investigating a Scheduled Offence against a certain accused, as in the instant case provided that offence has a connection with the Scheduled Offence. Also, the NIA has been conferred wide powers under Section 8 of the NIA Act to also investigate into any other offence committed by the accused in respect of whom a Scheduled Offence is being investigated provided the offence is connected with the Scheduled Offence under the Schedule to the NIA Act.

7.2 *The interpretive challenge that has come to the forefront in this case is due to the fact that there are certain co-accused persons who are present in FIR No.20/2020 and FIR No.23/2020 who are not accused under the prior FIR No. 01/2018 registered in the State of Gujarat. Therefore, the question is whether, the NIA can investigate only the same accused who is present in the NIA investigation qua Scheduled Offences and for non-scheduled offence by virtue of Section 8 of the NIA Act. In other words, can the NIA investigate any other accused person who, although not being investigated for any Scheduled Offences could be investigated by NIA because there exists a link between the two namely,*



Scheduled and non-scheduled offences, thereby connecting every co-accused.

7.3 *On a plain reading of Section 8, it is clear that the said Section has to be read in continuation of what has been stated in sub-section (5) of Section 6 of the NIA Act. Once the Central Government directs the NIA to investigate a Scheduled Offence and during the course of such investigation of a Scheduled Offence against an accused, it becomes necessary for the NIA to also investigate any other offence which the said accused is alleged to have committed, then such offence could also be investigated provided that other offence to be investigated is connected with the Scheduled Offence.*

7.4 *However, in our view, the expression "the accused" in Section 8 of the NIA Act needs to be interpreted contextually. Learned senior counsel for the petitioner submitted that the said expression has to be read narrowly and as per its plain meaning as referring to only "the accused" in respect of whom a Scheduled Offence is being investigated by the NIA and if such an accused has committed any other offence which is connected to the Scheduled Offence then such other offence could also be investigated by the NIA provided there is a connection with the Scheduled Offence. In other words, the argument*



was, that in the first place, the investigation must be of "the accused" who is accused of a Scheduled Offence and not any other accused. Next, it is only in respect of such an accused if any other offence is alleged to have been committed by him which is connected with the Scheduled Offence, which could also be investigated by the NIA on the strength of Section 8 of the NIA Act.

7.5 *We do not think that such a narrow interpretation could be given to the expression "the accused" in Section 8 of the NIA Act to not include any other accused. The expression "Agency may also investigate any other offence which the accused is alleged to have committed" has no doubt to be read with the rigour of "if the offence is connected with the Scheduled Offence". In other words, if any other offence is connected with the Scheduled Offence, then the NIA may investigate such other offence which the accused is alleged to have committed provided there is a connection of such other offence with the Scheduled Offence.*

7.6 *The question is, whether, the expression "the accused" in Section 8 of the NIA Act has to refer to only the accused in respect of whom a Scheduled Offence is being investigated or it could include any other accused whose name would emerge during the course of investigation of a Scheduled Offence and*



who has committed an offence which has a connection with the Scheduled Offence. In our view, the expression "the accused" in Section 8 of the NIA Act cannot be restricted in its meaning and connotation to only the accused in respect of whom investigation is being carried out pursuant to sub-sections (4) and (5) of Section 6 of the NIA Act in respect of a Scheduled Offence. It could also include any other accused who has committed any other offence provided that other offence committed by any other accused has a connection or a nexus with the Scheduled Offence which is detected during the course of investigation of any Scheduled Offence. More importantly, in the case of any other accused, the offences alleged need not be Scheduled Offences, it could be any offence but must necessarily have a connection with the Scheduled Offence. In such an event, on the basis of Section 8 of the NIA Act, a report may be made to the Central Government which can direct investigation against any other accused (i.e., an accused other than the accused who is being investigated) provided it has a connection with the Scheduled Offence. In such a contingency, the Central Government while invoking sub-section (5) of Section 6 read with Section 8 of the NIA Act can direct investigation of any other accused alleging he has committed an offence which is connected with the Scheduled Offence already



being investigated. On such a direction by the Central Government the NIA can assume jurisdiction to investigate any other accused on the basis that he has committed an offence which has to be investigated along with the Scheduled Offence already under investigation.

7.7 *The reasons for holding so shall be discussed. One reason being that Section 8 of the NIA Act applies not only when it is acting under sub-section (5) of Section 6 of the NIA Act; it also applies to sub-section (4) of Section 6 of the NIA Act where the Central Government acts on the receipt of a report from the State Government when information received by the officer-in-charge of the Police Station relates to any Scheduled Offence and the State Government has forwarded the report to the Central Government. Then, the Central Government, having regard to the gravity of the offence and other relevant factors, if is of the opinion that the offence is a Scheduled Offence and it is fit to be investigated by the NIA, a direction would be issued to the NIA to investigate the said Scheduled Offence. Irrespective of the contingency under which the NIA is directed to investigate a Scheduled Offence under Section 6, Section 8 would apply. In either case, while carrying out the investigation in respect of the accused alleged to have committed a Scheduled Offence, information may emerge that there are other*



accused who have committed any other offence which is connected with the Scheduled Offence committed by the accused in respect of whom investigation is being made by the NIA on the basis of Section 6 of the NIA Act.

7.8 *Therefore, owing to the connection of any other offence with the Scheduled Offence committed by any other accused in respect of whom investigation is necessary, steps could be taken to investigate the said other accused also. This is because the offence said to have been committed by any other accused has a connection with the Scheduled Offence. One cannot determine the manner in which such information may emanate while carrying out an investigation in respect of the accused who is alleged to have committed a Scheduled Offence and who may have also committed any other offence (non-scheduled offence) which could be along with any other accused in respect of whom no direction may yet have been issued to carry on an investigation by the NIA under Section 6(5) of the NIA Act but exercise of jurisdiction under Section 8 may become necessary. Therefore, during the course of investigation of an accused alleged to have committed a Scheduled Offence, if, it emerges or it is detected that the said accused along with any other accused has committed other offence/s, then investigation with regard to any*



other offence committed by some other accused along with the accused said to have committed the Scheduled Offence could also be carried out by requesting the Central Government for a direction to investigate the other accused. Such other accused may have committed an offence which has a connection with the Scheduled Offence of the accused who is being investigated and therefore Section 8 provides such a contingency.

7.9 *Therefore, the nexus or connection between any other offence and the Scheduled Offence is of critical importance and must be present in order to enable the NIA to investigate any other offence committed by an accused in connection with the Scheduled Offence. The connection between a Scheduled Offence and any other offence being established would enable the NIA to investigate the accused of committing any other offence which is connected with the Scheduled Offence. Once there is such a connection between a Scheduled Offence and a non-scheduled offence then, for all practical purposes the non-scheduled offence would come within the connection of a Scheduled Offence. Therefore, it is held that the accused who may have committed a non-scheduled offence having a connection with a Scheduled Offence can be investigated by the NIA in respect of a non-scheduled offence.*



7.10 *It is reiterated that, while investigating the accused regarding Scheduled Offences, if the NIA submits a report about some other accused who may have also committed certain offences connected with the Scheduled Offences under investigation then, the Central Government on a consideration of such a report may exercise suo motu powers and direct the NIA to also investigate the other accused also provided the offences alleged against the other accused are offences, having a connection with the Scheduled Offence already under investigation. Thus, on the aforesaid basis NIA would be enabled to also carry out an investigation of any other accused who has committed an offence connected with the Scheduled Offence already being investigated. This would be in the realm of a joint investigation into Scheduled Offences which may have occurred in different parts of the country but having a connection with other offences also. Thus, the expression "the accused" would have to be given an expansive and enlarged meaning in the above context having regard to the object and purpose of Section 8 of the NIA Act and the context in which provision has to be interpreted.*

7.11 *The word "the" used before a noun "accused" in Section 8 of the NIA Act has a particularizing effect, as opposed to "a" or "an". However, "a" and "the" sometimes have to be*



interchangeably interpreted having regard to the context in which it is found and in order to give it a contextual connotation so as to advance the object and purpose of the provision. Section 8 of the NIA Act has to be given a purposive and meaningful interpretation and one which would advance the object of Section 6 and other provisions of the Act and cannot be read in a curtailed and narrow fashion as submitted by learned senior counsel for the petitioner.

7.12 *We have interpreted Section 8 of the NIA Act in such a way that while investigating the accused of a Scheduled Offence, any other accused could also be investigated on the strength of Section 8 provided the following condition precedents are applicable:*

(i) the NIA is of the opinion that during an investigation, any other accused who is alleged to have committed an offence having a connection with the Scheduled Offence has also to be investigated. In other words, there is a connection between the Scheduled Offence under investigation and any other offence committed by any other accused;

(ii) a report by the NIA is submitted incorporating the aforesaid opinion to the Central Government;



(iii) the Central Government on consideration of such a report, in exercise of its suo motu powers under sub-section (5) of Section 6 read with Section 8 of the NIA Act directs the investigation to be carried out in respect of any other accused also; and

(iv) the said investigation of any other accused must be carried out jointly as far as practicable with the investigation of the accused already under progress owing to the connection between the Scheduled Offence and any other offence.

7.13 *On a holistic reading of the Section 8, the expression "the accused" cannot be restricted to only the accused in respect of whom investigation is being carried out by the NIA for any Scheduled Offence. The NIA, which is carrying on an investigation into any Scheduled Offence, can also investigate any other offence which any other accused may have committed provided such other offence is also an offence connected with the Scheduled Offence under investigation.*

7.14 *Thus, so long as the connection between any offence committed by any other accused and the Scheduled Offence committed by the accused in respect of whom investigation has been handed over by the Central Government to the NIA is established,*



the NIA would be empowered to conduct an investigation of any other accused in respect of a Scheduled Offence which is connected with the Scheduled Offence committed by the accused in respect of whom the Central Government has handed over or directed the investigation to be conducted by it. Therefore, the scope of the powers of the NIA under Section 8 of the NIA Act has to be interpreted expansively and not in a narrow manner.

7.15 *While learned counsel for the petitioner would submit that the correct course would be for the NIA to add those accused under FIR No.20/2020 and FIR No.23/2020 as accused persons under the NIA investigation rather than treating other offences as connected, we find that such a course would lose sight of the salutary statutory intent to investigate and prosecute at a national level and, in particular, Section 6(6) of the Act which clearly envisions culling of any duplicity of investigation. By allowing the NIA to investigate those accused under different FIRs registered in different States, an enlarged scope is provided to the investigation into the Scheduled Offences.*

7.16 *As already noted in the preceding discussion we must be alive to the statutory intent for an actual realization of the statutory scheme. In that regard, it is noteworthy that the Act, especially Section 6 of the NIA Act, is offence-centric and not*



accused-centric. The Act revolves around effective investigation of Scheduled Offences. Similarly, the central concern of Section 8 of the NIA Act is defining the scope of offences that can be investigated by the NIA and on what basis and not who are the accused.

7.17 *Additionally, we might also note that the phraseology of Section 8 of the NIA Act also establishes that the NIA can only widen its investigation to a non-scheduled offence only 'while investigating any Scheduled Offence'. Importantly, the NIA has not been given unbridled power to initiate investigation of a connected and non-scheduled offence in the absence of an investigation of any Scheduled Offence. In our opinion, this speaks to the Parliament's wisdom to build safeguards within the text of the NIA Act.*

7.18 *Therefore, the submission of learned senior counsel Sri Dave to read Section 8 of the NIA Act in a restrictive fashion and not expansively, does not advance the object and purpose of the Act and particularly Section 6 thereof and hence, is rejected.*

16. If the same reasoning as observed by the Apex Court in the case of **ANKUSH** while interpreting Section 8 of the NIA Act is applied to Section 14, the Special court under the NIA Act can try both scheduled and connected non-



scheduled offences together. As stated supra, Section 8 and Section 14 are *akin* to each other and if Section 8 allows NIA to investigate connected offences, then Section 14 logically extends this power of trial, meaning to say that once the case is before the Special Court, it can try both NIA Act offences and related / connected IPC offences. For example: A is charged under UAPA (NIA Act) offence and B is charged under IPC for harboring A, Since the offences are connected and if NIA is allowed to investigate under Section 8, then under Section 14, the Special Court can try both A and B in the same trial. The **ANKUSH** judgment under Section 8 strengthens the interpretation of Section 14 that the NIA Special Court can try the offences connected with the scheduled offence.

17. The law laid down by the Apex Court in the cases of **VIVEK GUPTA VS. CBI**² (*VIVEK GUPTA*), **ESSAR TELEHOLDINGS LIMITED VS. REGISTRAR GENERAL,**

² (2003) 8 SCC 628



DELHI HIGH COURT³ (*ESSAR TELEHOLDINGS LIMITED*),
STATE THROUGH CBI VS. JITENDER KUMAR SINGH⁴
(*JITENDER KUMAR SINGH*), **HCL INFOSYSTEM LIMITED**
VS. CENTRAL BEAREAU OF INVESTIGATION AND
ANOTHER⁵ (*HCL INFOSYSTEM LIMITED*), **KADIRI**
KUNHAHAMMAD VS. STATE OF MADRAS⁶ (*KADIRI*
KUNHAHAMMAD) was that the special Judge while
exercising exclusive jurisdiction i.e., while trying any case
relating to the offences of a particular Act may also try any
offence other than the offence specified in the particular Act
with which the accused may, under the Code be charged at
the same trial. The learned Single Judge in the case of
SAYYED SOHEL TORVI VS. NATIONAL INVESTIGATING
AGENCY⁷ (*SAYYED SOHEL TORVI*) filed by the co-accused
on a coalesce of the decision rendered by the Apex Court
stated supra held that the petitioner therein being part of
the mob that had indulged in the acts which became

³ (2013) 8 SCC 1

⁴ (2014) 11 SCC 724

⁵ (2016) 9 SCC 281

⁶ AIR 1960 SC 661

⁷ W.P.NO.19091/2021



punishable under IPC and UAPA in respect of the other co-accused, could be charged in terms of Section 223 of the Code and tried by the NIA Court.

18. For the foregoing reasons, the point framed for consideration is answered holding that the NIA court has jurisdiction to try the offences other than the scheduled offences along with the other accused persons who have been charge sheeted for the scheduled offences. The offences charged against the petitioners is punishable under the IPC, is connected with the scheduled offence and we are of the considered view that the petitioners have not made out any ground for interfering with the order passed by the Special Court and there is no error committed by the Special Court in declining to transfer the case from the jurisdictional Special Court to the court having jurisdiction to try IPC offences and accordingly, this court pass the following:

ORDER

- (i) Writ petition is ***dismissed***.



Per: Hon'ble Mr Justice Sreenivas Harish Kumar

I have perused the judgment prepared by Mrs. Justice K.S. Hemalekha. While concurring with her view that the petition deserves to be dismissed, I would like to add further analysis.

2. The argument of Sri Mohammed Tahir is that since the charge sheet indicates that petitioners have not committed scheduled offences under the NIA Act, and they are implicated of having committed only non-scheduled offences, they cannot be tried in the Special Court along with other accused against whom scheduled offences are invoked. He has referred to charge sheet where the overt acts of the petitioners are separately shown by the investigator. Probably this could be the reason for the argument put forth by Sri Mohammed Tahir.

3. But according to prosecution both scheduled and non-scheduled offences were committed during the course of incident, and therefore Sri P. Prasanna Kumar argued that in view of Section 8 of the NIA Act, NIA can conduct



investigation against such persons who are alleged to have committed scheduled offences and who have committed non-scheduled offences. And for the same reason the Special Court by virtue of Section 14 of the NIA Act can hold trial in relation to two categories of accused, as the non-scheduled offences are connected with the incident of scheduled offence being committed.

4. It is not possible to accept the argument of Sri Mohammed Tahir. The incident is aftermath of some derogatory statement that was posted on Face Book and hurt the religious sentiments of one section of the society. A large number of people gathered and took law into hands; they went unruly and committed certain acts which amounted to various offences including scheduled and non-scheduled offences. Now, if the scope of Section 8 and Section 14 of the NIA Act are considered, meaning conveyed is that Section 8 confers power on the NIA to investigate any other offence with scheduled offence. That means there must be an allegation that the accused has



committed not only scheduled offence but also non-scheduled offence. Section 14 states that the Special Court can try an accused against whom there are allegations of having committed both scheduled offence and non-scheduled offences, only rider commonly applicable to both sections is that non-scheduled offence must be in connection with scheduled offences. Considering the plain language of the two Sections, it is possible to interpret that they operate if the very same accused has committed scheduled offence as also non-scheduled offence. Now the judgment of the Supreme Court in **Ankush** has given purposive interpretations to Sections 8 and 14 of the NIA Act and it is not necessary to refer to the said decision once again as Mrs. Justice K.S. Hemalekha has dealt with it in detail. That apart when there are more than one accused some of whom have committed scheduled offence and the rest non-scheduled offence, it is not only by virtue of Section 8 or Section 14 of the NIA Act as has been held in **Ankush**, but by the reason of applicability of Section 223 of Cr.P.C, two categories of accused can be charged and tried



by the Special Court which has to follow the procedure prescribed in Cr.P.C. In fact Section 14 of the NIA Act states that the charges are to be framed in accordance with Cr.P.C. If all the offences appear to have been committed in relation to one transaction, Section 223 (d) of the Code of Criminal Procedure has applicability. It states that persons accused of different offences committed in the course of the same transaction can be charged and tried together. To apply proviso to Section 223 of the Code, numerous persons charged with separate offences should not fall within the categories (a) to (g) of Section 223. But this is not the case here, and the petitioners answer the requirement of clause (d) of Section 223.

5. As regards the question whether the common object of the petitioners and other accused was same or not, it is a matter of trial, nothing can be deciphered at pre-trial stage. But one thing is clear that there was a common reason for occurrence of incident. As it is found that accusations of offences are traceable to the course of same



transaction, the petitioners need to face trial in the Special Court. There is no infirmity in the order impugned in this petition. Petition deserves to be dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

SS/Ckl