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

% **Date of Decision: 16<sup>th</sup> November, 2016**

+ **CRL.A. 602/2016**

ABU ANAS & ORS ..... Appellant  
Through: Mr. M.S. Khan, Adv.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent  
Through: Mr. Sanjay Jain, ASG with  
Mr. Abhishek Bagaria, SPP,  
Ms. Rajul Jain and  
Mr. Vignaraj Pasayat, Advs.

+ **CRL.A. 607/2016**

MOHD. NAFEES KHAN & ANR ..... Appellant  
Through: Mr. M.S. Khan, Adv.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent  
Through: Mr. Sanjay Jain, ASG with  
Mr. Abhishek Bagaria, SPP,  
Ms. Rajul Jain and  
Mr. Vignaraj Pasayat, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT (ORAL)**

**GITA MITTAL, J**

**Crl.M.A.Nos.10425/2016 & 10504/2016**

Heard.

For the reasons stated in the applications, we are satisfied that the appellants were prevented from sufficient cause from filing the appeals belatedly. Therefore, delay in filing the appeals is hereby condoned and the applications are allowed.

**CRL.A. 602/2016 & CRL.A.607/2016**

1. The instant appeal has been filed by the appellants under Section 21(4) of the National Investigating Agency Act, 2008 (*'NIA Act' hereafter*) assailing an order dated 23<sup>rd</sup> May, 2016 passed by the learned District & Sessions Judge, Special Court (NIA), New Delhi whereby the application for grant of statutory bail under Section 167(2) of the Code of Criminal Procedure of the appellants were dismissed.
2. These matters relate to a case registered by the National Investigation Agency being FIR RC No.14/2015/NIA/DLI under Section 125 of the IPC and Section 18/18B/38/39 of the Unlawful Activities (Prevention) Act, 1967
3. For the purposes of the present appeals, it is completely unnecessary to go into the matter on merits. It is an admitted position that the aforesaid cases stand registered and the appellants were arrested in the case (some on the 22<sup>nd</sup> January, 2016 while the other on 23<sup>rd</sup> January, 2016).
4. A compilation of the relevant orders and applications

relating to the cases has been handed over in court by Mr. Sanjay Jain, learned ASG after giving copy to the other side which is taken on record.

5. In accordance with the provisions of Section 43D{(2)b} of the Unlawful Activities (Prevention) Act, on 19<sup>th</sup> April, 2016 the NIA-respondent herein filed an application praying for extension of the judicial custody of the appellants for the next 30 days wherein reliance was placed on the report of the Public Prosecutor (of the same date) which prayed for extension of the period of detention in the case against the appellants beyond the period of 90 days for completing the investigation.

6. For purposes of expediency, we extract hereunder the relevant averments and the prayer from the report of the Public Prosecutor, NIA:

*“03. That during the custodial interrogation of accused persons, they have disclosed names, codes and mobile numbers of some active members, recruiters, sympathizer and motivator of ISIS involved in furtherance of activities and its ideologies using internets, telephones/facebook/skype/telegrams and other means of communications, thereby luring youths to join this proscribed terrorist organization. The identity involved of such associates is being ascertained on day to day basis.*

*04. That during the course of investigation NIA has sealed mobile sets, Sims, Dell Tablet, Laptop, Hard Disk and Micro SD card from the possession of all accused which have been set for forensic analyses to CERT-In, New Delhi on various dates, in this regard the report from CERT-In is still awaited.*

05. On 01.04.2016, NIA has sent MLAT (Mutual Legal Assistance Treaty) to United States of America, UAE and Canada requesting to provide the evidence regarding social media and other digital communication used by accused persons. Reply in this regard is still awaited.

06. That during the course of investigation, the accused had unearthed the larger conspiracy of IS activities in India and abroad including recruitment of resident and non-resident Indians by the IS. The identity involved of such associates is being ascertained.

07. That the investigation in the instant case is spread in different parts of country and abroad. The prosecution in respect of accused above accused persons is enclosed herewith in sealed cover for your perusal.

08. That, in view of the above facts and circumstances, more time is required for completion of investigation in respect of above accused persons. The period of their detention needs to be extended from ninety days to one hundred eighty days.

#### **Prayer**

It is therefore humbly prayed that Hon'ble Court may graciously be pleased to order for the detention of accused above said accused persons in this case beyond the period of 90 days i.e. 23.04.2016 onward from the date of his arrest i.e. on 25.01.2016 and extend the same as provided under Section 43D(2)(b) of UA(P) Act up to 180 days or the period as may be deemed fit by the Hon'ble Court justifiable in view of the facts and circumstances enumerated in this humble petition as well as on the basis of record as per the case diaries which is submitted for kind perusal and appreciation by the Hon'ble Court."

7. The application dated 19<sup>th</sup> April, 2016 was heard and considered by the Special Court, NIA and stood allowed by the order dated 19<sup>th</sup> April, 2016 observing thus :

*“During the course of investigation, NIA sealed mobile sets, SIMS, Dell Tablet, Laptop, Hard Disk and Micro SD card from the possession of all accused which have been sent for forensic analyses to CERT-in. It is further stated that on 01.04.2015, NIA has sent MLAT (Mutual Legal Assistance Treaty) to USA, UAE and Canada requesting them to provide the evidence regarding social media and other digital communication used by the accused persons and reply in this regard is still awaited. It is further stated that during the course of investigation, it was unearthed that there is larger conspiracy by IS activities in India and abroad for recruitment of resident and non-resident Indians by the IS and the identity of such associates is being ascertained. Report of the Ld. PP, NIA u/s 43D of UA(P) Act has also been filed in a sealed envelope and the same is taken on record.*

*Heard. Keeping in view the aforesaid facts and circumstances, the application stands allowed and the accused persons above named are directed to be kept in Judicial Custody and be produced before this court on 18.05.2016.”*

8. Subsequently, an application for extension of custody dated 18<sup>th</sup> May, 2016 was filed by the NIA.

9. This application was considered and granted by an order dated 18<sup>th</sup> May, 2016 directing that the appellants be kept in judicial custody and to be produced before the court on 24<sup>th</sup> May, 2016.

10. It appears that the NIA thereafter moved an application for preponement of the date of hearing from 24<sup>th</sup> May, 2016 to 23<sup>rd</sup> May, 2016 by an application filed on 19<sup>th</sup> May, 2016, which stood granted by the Special Court, NIA on 19<sup>th</sup> May, 2016 itself on 19<sup>th</sup> May, 2016 itself.

11. The NIA sought extension of the judicial custody of the appellants for 30 days again by an application moved in this regard on the 23<sup>rd</sup> May, 2016. This prayer was also granted by an order dated 23<sup>rd</sup> May, 2016 directing the arrested persons to be produced before court on 9<sup>th</sup> June, 2016.

12. Applications were filed by the appellants (and other co-accused persons) praying for grant of statutory bail under Section 167(2) CrPC on the ground that NIA had failed to file charge sheet within the period as extended. This application was rejected by the impugned order passed on 23<sup>rd</sup> May, 2016 noting the previous order dated 19<sup>th</sup> April, 2016 whereby the period of investigation for filing the charge sheet beyond the period of 90 days to 180 days had been granted and that, however, custody period was extended for only 30 days. The learned NIA, Special Court has also noted that this order had attained finality and had not been set aside or modified.

13. Mr. Khan, learned counsel for both the appellants has contended that the court had specifically granted extension of the judicial custody of the appellants only for a period of 30 days up to 18<sup>th</sup> May, 2016 and as such, the period under 43D{2(b)} of the UA(P) Act for completing the investigation stood concluded on

23<sup>rd</sup> May, 2016 entitling the appellants to be discharged on bail upon failure of the investigating agency to file the charge sheet.

14. In view of the position pointed out by the Special Court in the order dated 23<sup>rd</sup> May, 2016, we are unfortunately unable to agree with learned counsel. The report which was filed by the Public Prosecutor under Section 43D{2(b)} of the UA(P) Act pointed out the fact that investigation was underway and that it required inquiries in different parts of this country as well as abroad and could not be, therefore, completed. A specific prayer was made by the NIA for extension of the investigation upto 180 days. The court had found this prayer justified and had granted the same absolutely without making any reservations.

15. In view of the above, the submission of the appellants that the NIA had failed to file the charge sheet within the period stipulated under Section 43D{2(b)} of the UA(P) Act and therefore, they were entitled to be released on bail is completely untenable.

16. It is complained by Mr. M.S. Khan, learned counsel for the appellants that in as much as no charge sheet came to be filed till 23<sup>rd</sup> May, 2016 nor the period of investigation extended beyond this day, an indefeasible right accrued to the appellants to be released on bail in accordance with the provisions of Section 167(2) of the Code of Criminal Procedure. For this reason, they moved an appropriate application seeking grant of bail on 23<sup>rd</sup> May, 2015. This application was placed before the Special Court, NIA on the same date.

17. Mr. M.S. Khan, learned counsel for the appellant has placed before us the application which was filed by the NIA on 23<sup>rd</sup> May, 2016 to contend that by the order dated 19<sup>th</sup> April, 2016 extension had been granted only for 30 days and it was so understood by the NIA.

18. It has been submitted by Mr. Sanjay Jain, learned ASG that the application was filed on a misreading of the order and as a matter of abundant caution by the officer, it filed the application on 23<sup>rd</sup> May, 2016.

19. We also find that the order dated 19<sup>th</sup> April, 2016 is explicit when it states that the application stands allowed, meaning thereby that the prayer as made in the application had been granted.

It needs no elaboration that an understanding of an order by the party would not detract from what has been stated in the order.

20. We may point out that by a separate order, a second application which had been filed by NIA for extension of judicial custody of the appellants was also granted by an order of the same date. This order restricted the extension of the judicial custody alone by 30 days and had required the NIA to produce the appellants before the court on 24<sup>th</sup> May, 2016 (which date was preponed to 23<sup>rd</sup> May, 2016). It is apparent from the record which we have extracted above that the matter of judicial custody was treated independent of the aspect of the period for completion of investigation.

21. In view of the above discussion, these appeals are devoid of any legal merit and are hereby dismissed.

**GITA MITTAL, J**

**NOVEMBER 16, 2016/kr**

**ANU MALHOTRA, J**

