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

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Date of Decision: 16th November, 2016

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CRL.A. 600/2016

ADNAN HASSAN & 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

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 10th June, 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 appellant was dismissed.

2. The matter relates to a case registered by the National

Investigation Agency being FIR RC No.04/2016/NIA/DLI under Section 120B of the IPC and Section 18, 18A, 18B of the Unlawful Activities (Prevention) Act, 1967

3. For the purposes of the present appeal, it is completely unnecessary to go into the matter on merits. It is an admitted position that the aforesaid case stand registered and the appellants stand arrested in the case on 29th January, 2016.

4. A compilation of the relevant orders and applications relating to the case has been handed over in court by Mr. Sanjay Jain, learned ASG after giving copy to the other side which is taken on record.

We have heard Mr. M.S. Khan, learned counsel for the appellants and Mr. Sanjay Jain, learned ASG for the respondents.

5. In accordance with the provisions of Section 43D{(2)b} of the Unlawful Activities (Prevention) Act, the NIA-respondent herein filed an application on 21st April, 2016 seeking extension of the period of detention in the case against the appellants beyond the period of 90 days upto 180 days for completing the investigation. For purposes of expediency, we extract hereunder the relevant averments and the prayer made in the application:

“11. That investigation in the instant case is in progress and it is spread to several areas including but limited to Jammu and Kashmir, Maharashtra and Hyderabad in India and Dubai, Sharjah and Abu Dhabi abroad. In order to unravel the larger criminal conspiracy of IS activities in India and abroad including

recruitment of resident and non-resident Indians by the IS, period of investigation is required to be extended beyond 90 days to 180 days and also the presence of accused person in judicial custody is essential for verifying the facts that emerges out of the forensic reports and execution reports of requests made under MLAT.

12. In view of the above stated facts and under provisions of Section 43(D)(2)(b) of UA(P) Act, 1967 (as amended in year 2008), period of investigation and judicial custody of accused namely 1, Sheikh Azhar ul Islam, 2. Mohammed Farhan Shaikh and 3, Adnan Hassan is required to be extended from 90 days to 180 days to verify the facts that emerge out of the contents of the execution reports of requests made under MLAT and forensic examination reports of the electronic gadgets seized from the possession of the accused persons in the interests of investigation of the instant case.

Prayer

It is therefore, prayed that period of investigation and judicial custody of three accused namely 1, Sheikh Azhar ul Islam son of Absatar Sheikh resident of Prang, Kangan, Ganderbai-191131, Jammu and Kashmir, 2, Mohammed Farhan Shaikh son of Mohammed Rafiq Sadique Shaikh Dost Apartments B-Building, C-Wing, 2nd Floor, Flat No.18, Opposite Noorani Hotel, Kausa Mumbra District Thane-400512, Maharashtra and 3, Adnan Hassan son of Mohammed Hussain Damudi resident of House No. 26, Daman, Sagar

*Road, Bhatkal, North Kanara-581320, Karnataka
may kindly be extended from 90 days to 180 days
in the interest of justice and purpose of
investigation.”*

(Emphasis supplied)

6. This application dated 21st April, 2016 was heard and considered by the Special Court, NIA and was disposed of on 22nd April, 2016. The operative part of the order reads thus :

“The investigation in the case is still in progress and cannot be completed within 90 days i.e. on or before 27.04.2016 and as such, the period of investigation and judicial custody of the accused persons above named is required to be extended from 90 days to 180 days for completion of the investigation. It is further stated that during this period, substantial progress has been made but a lot of work still remains to be done in the investigation of the case. 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 20.05.2016.

Application stands disposed of accordingly.”

7. On 20th May, 2016, a second application for extension of period of investigation and custody of the accused persons came to

be filed on behalf of the respondent-NIA. Learned counsel for the appellant has drawn our attention to the following averments contained therein:

*“d) That the period of investigation and judicial custody of the accused persons was accordingly got extended beyond 90 days till 20.5.2016 i.e. 113 days for completion of the investigation and in the interest of Justice. The investigation in the case is still in progress and as such period of investigation and judicial custody of the accused persons is **required to be further extended beyond 20.5.2016 i.e., 113 days to 180 days for completion of the investigation and in the interest of Justice.***

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xxx

i) That investigation in the instant case is in progress and it is spread to several areas including but limited to Jammu and Kashmir, Maharashtra and Hyderabad in India and Dubai, Sharjah and Abu Dhabi abroad. In order to unravel the larger criminal conspiracy of IS activities in India and abroad including recruitment of resident and non-resident Indians by the IS, period of investigation is required to be extended beyond 20.5.2016 i.e 113 days to 180 days and also the presence of accused person in judicial custody is essential for verifying the facts that emerges out of the forensic reports and execution reports of requests made under MLAT.

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(k) That the CIO has prayed for extension of JC of the accused beyond 113 days. In view of the above stated facts and under the provisions of Section 43(D)(2)(b) judicial custody of accused namely 1. Sheikh Azhar ul Islam, 2. Mohammed Farhan Shaikh and 3. Adnan Hassan is **required to be extended beyond 20.5.2016 i.e. 113 days to 180 days to verify the facts that emerge out of the contents of the execution reports of requests made under MLAT and forensic examination reports of the electronic gadgets seized from the possession of the accused persons in the interest of investigation of the instance case.**

(l) In view of the above, it is requested to the Hon'ble Court that the period of investigation and the detention of the above mentioned accused persons may please be **extended beyond 20.5.2016 i.e 113 days to 180 days to complete the investigation and file the final report in the interest of justice.**"

8. Unfortunately, the regular court seized of matters under the NIA Act was on leave and as such, the case was placed before the Link Judge, NIA, ASJ-01 who recorded an order dated 20th May, 2016 directing as follows :

"Heard. After going through the entire material brought before me, the period of investigation and judicial custody of the above named accused persons is extended till 10.06.2016. Let they be produced before the concerned court on 10.06.2016."

9. It is complained by the appellant that in as much as no charge sheet came to be filed on 10th June, 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. This application was placed before the Special Court, NIA on 10th June, 2016 when it was contended on behalf of NIA that the time for filing of the charge sheet had already been extended vide the order dated 22nd April, 2016. After hearing, the learned Special Judge was also of the view that the time for extension for filing the charge sheet had been sought by the NIA and the application stood granted as prayed and therefore, the application was dismissed as infructuous.

This order has been assailed before us by the appellants contending that in view of the order dated 20th May, 2016, the time had been specifically extended only up to 10th June, 2016 and not beyond that and as such, the charge sheet not having been filed by 10th June, 2016, the appellants' application under Section 167(2) of the CrPC had to be granted by the court.

10. Mr. Sanjay Jain, learned ASG has placed before us yet another order, also dated 10th June, 2016, which was passed by the Special Court, NIA. Our attention is drawn to an application which was filed by the NIA before the Special Judge, NIA dated 10th June, 2016 praying for extension of the judicial custody of the

appellants for 30 days for the purposes of completion of investigation.

11. This application was taken up for consideration in the presence of the appellants as well as their counsel and by the order dated 10th June, 2016 the learned judge observed thus :

“xxx The investigation in the case is still in progress and could not be completed till today and as such, the period of investigation and detention of the above named accused persons is required to be extended from 134 days to 190 days for completion of the investigation. It is further stated that during this period, substantial progress had been made but a lot of work still remains to be done in the investigation of the case. 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.

Another application has been moved by NIA seeking extension of Judicial Custody of the above named accused persons for 30 days.

Heard. The prayer for extension of the period of filing the charge sheet has already been dealt with on 22.04.2016 by the court whereby the period beyond 90 days to 180 days for filing the charge sheet was extended. The statutory period of 180 days have not been expired as yet and as such, no further order is required to be passed in that regard however, the judicial custody of the accused has to be extended till the filing of the charge sheet. Hence, the above named accused persons are

directed to be kept in JC and be produced before this court on 08.07.2016.

The application for extension of judicial custody of the accused above named stands disposed of accordingly.

Copy of the order be given dasti, as prayed for.”

(Emphasis supplied)

12. It is pointed out by Mr. Sanjay Jain, learned ASG that even the applications seeking extension of time which have a bearing on the present appeal have not been placed on record by the appellants. In fact the appeal deserved to be dismissed at the outset on the ground of concealment of material fact but given the fact that the appellants stands incarcerated, we have heard learned counsel on merits.

13. We may note that this order dated 10th June, 2016 passed by the Special Court, NIA has not been placed by the appellants before us. We may note that there is no challenge to this order as well.

14. In view of this order of 10th June, 2016 specifically noting that extension of the period of investigation beyond 90 days to 180 days had been granted on 22nd April, 2016 which period had not expired and that no further order was, therefore, required to be passed. The present appeal is completely misconceived.

15. Mr. Sanjay Jain, learned ASG would press that the appellants deserve to be non-suited on the ground that they have

suppressed material facts as well as the record of the court which is referred to in the appeal is completely misconceived and not maintainable. Be that as it may, in as much as the period for investigation stands extended by the Special Court, NIA, we find that on 22nd April, 2016, while considering the first application which was filed for the extension for the period of investigation under Section 43D{(2)b} of the Unlawful Activities (Prevention) Act, the court had ruled that “*the application stands allowed*”. It was apparent that the complete prayer made therein had been granted without any reservation of period. Simply, a separate direction for production of the appellants before the court on 20th May, 2016 had been passed which was independent of the prayer regarding the investigation which had been granted. This position stands clarified by the Special Court, NIA while recording the order on 10th June, 2016 passed on the application made by the NIA seeking specific direction for extension of the period of custody from 134 days for a further period of 30 days.

16. Mr. M.S. Khan, learned counsel for the appellant has placed before us the application which was filed by the NIA on 20th May, 2016 to contend that by the order dated 22nd April, 2016 extension had been granted only up to 20th May, 2016 and it was so understood by the NIA.

17. It needs no elaboration that an understanding of an order by the party would not detract from what has been stated in the order. 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 who filed the application on 20th May, 2016.

18. We also find that the order dated 22nd 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.

19. In view of the above discussion, this appeal is devoid of any legal merit and is hereby dismissed.

GITA MITTAL, J

ANU MALHOTRA, J

NOVEMBER 16, 2016/kr

