

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 5022 OF 2017

Naser Bin Abu Bakr Yafai
age 34 yrs, Occ: Agri.
Res. Of Deshmukh Galli,
Gadiwan Mohalla, Parbhani
District Parbhani
(presently in judicial custody) .. Petitioner

v/s.

1. The State of Maharashtra
at the instance of ATS Mumbai

2. National Investigation Agency, Mumbai.
7th Floor, MTNL Building,
Peddar Road, Mumbai. ..Respondents

Mr. T.W.Pathan a/w. I. A. Khan a/w. Faizaan Qureshi for the
Petitioner.

Mr. A. A. Kumbhakoni-AG aw. Akshay Shinde – B. Panel Counsel for
the ATS-State-Respondent No.1.

Mr. Anil C. Singh ASG a/w. Anand P. Sukhadeve, Ms. Geetika Gandhi
for the NIA-Respondent No.2 .

**WITH
CRIMINAL APPLICATION NO. 27 OF 2017**

The State of Maharashtra,
represented by
National Investigating Agency, Mumbai .. Applicant

v/s.

1. Naser Bin Abubakr Yafavi (Chaus)
@ Naserbin Yafai (Chaus)
S/o. Abubaker Bin Naser
age 34 yrs,
Res. Of Deshmukh Galli,
Gadiwan Mohalla, Parbhani
Maharashtra.

2. Mohammed Shahed Khan @ Lala
S/o. Mohammed Khader Ali Khan,
Age 24 years,
R/o. Roshan Khan Mohalla,
Near Gol Ghumat,
P.S. Nanalpeth,
Parbhani, Maharashtra

3. Iqbaul Ahemad S/o. Kabir Ahema,
Age 24 years,
R/o. Gulzar Colony, Madina Pati,
Near Noor-UI-Quran Masjid,
Parbhani, Maharashtra.

4. Mohammed Raisuddin,
S/o. Mohammed Siddiqui,
Age 37 yers,
R/o. Ameen Colony,
Near Johara Masjid,
Dhar Road, Parbhani,
Maharashtra

(All accused are arrested and
presently lodged at Aurangabad
Central Prison, Harsool, Aurangabad).

5. Anti Terrorism Squad,
Kalachowki Police Station,
Mumbai.

..Respondents

Mr. Anil C. Singh ASG a/w. Anand P. Sukhadeve, Ms. Geetika Gandhi for the Applicant-NIA.

Mr. T.W.Pathan a/w. I. A. Khan a/w. Faizaan Qureshi for the Respondent Nos.1 to 4 .

Mr. A. A. Kumbhakoni-AG aw. Akshay Shinde – B. Panel Counsel for the ATS-State-Respondent No.5.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 05 JULY, 2018.

JUDGMENT (PER ANUJA PRABHUDESSAI, J.) :

1. The Petitioner in Writ Petition No. 5022 of 2017 has challenged the Order dated 14th November, 2016 passed by the Addl. Sessions Judge and Special ATS Judge at Nanded in Sessions Case No. 106 of 2016 and has prayed that he should be released in connection with the said crime. Whereas, the applicant in Criminal Application No. 27 of 2017 has sought transfer of Sessions Case No. 106 of 2016 from the Court of Addl. Sessions Judge and Special ATS Judge at Nanded to the Court of Shri N.K.More, Special Judge for National Investigating Agency at Mumbai .

2. The petitioner Naser Bin Abu Bakr Yafai, is one of the accused

in Sessions Case No.106 of 2016 under Section 102-B, 471 of IPC, and Section 13, 16, 18, 18-B, 20, 38, 39 of Unlawful Activities (Prevention) Act (for short UAP Act), and Section 4, 5 and 6 of Explosive Substance Act. The said Sessions Case arises from C.R.No. 8 of 2016 which was registered at Kala Chowki Police Station, pursuant to the FIR dated 14th July, 2016 lodged by Shri Manik Vithalrao Bendre, Police Inspector Anti Terrorism Squad, Nanded Unit. It was alleged that the Anti Terrorism Squad (for short ATS) had received source information that the petitioner was in contact through Internet with the persons of Islamic State (IS), Islamic State of Iraq and Syria (ISIS), Islamic State of Iraq and Levant (ISIL)/Daish, terrorist organizations banned by the UN and the Indian Government. The ATS arrested the petitioner and other co-accused, investigated the crime and filed charge-sheet dated 7.10.2016 before the learned Chief Judicial Magistrate, Nanded against the petitioners and others for the offences stated above. The learned Chief Judicial Magistrate, took cognizance of the offence and on 18.10 2016 committed the case to the Addl. Sessions Judge and Spl. Judge, ATS, Nanded. Upon committal, the said case came to be

registered as Sessions Case No 106 of 2016.

3. On 8.9.2016, the Ministry of Home Affairs, Government of India, New Delhi, in exercise of powers under Section 6(4) of the National Investigation Agency Act, 2008 (for short the NIA Act) directed the National Investigation Agency (for short NIA) to take over further investigation into the said case. Accordingly, on 14.9.2016 the NIA re-numbered the said crime as RC-03/16/NIA/MUM. In the meantime, the petitioner filed an application before the learned Addl. Sessions Judge-I & Spl. Judge, ATS, Nanded to release him mainly on the ground that the offence under UAP Act, being scheduled offence under NIA Act, the Magistrate had no jurisdiction to pass remand order or to take cognizance of the offence. The petitioner also questioned the jurisdiction of the Addl. Sessions & Spl. Judge ATS Nanded to try the case.

4. The learned Spl.Judge ATS while dismissing the application observed that NIA had not taken over the investigation from the ATS

and hence in view of provisions under Section 6(7) of the NIA Act, the ATS was competent to investigate the crime and file the chargesheet in the Court of Chief Judicial Magistrate, Nanded, which has been designated as Court of remand. The learned Spl. Judge therefore held that the learned Chief Judicial Magistrate had jurisdiction to grant remand and to commit the case to the Court of Addl. Sessions Judge-I which has been designated as Special Court for trying cases investigated by the ATS Mumbai. Being aggrieved, the petitioner has challenged this order in Writ Petition No. 5022 of 2017.

5. Subsequently, by communication dated 23rd November, 2016 the NIA requested to hand over the case papers in the said crime. The said case papers were handed over to the NIA on 8.12.2016. On receipt of the said papers, the NIA took over further investigation into the said crime. Since the offence investigated by the NIA is required to be tried by the Special Court constituted under Section 11 of the Act, the Applicant in Criminal Appeal No.27 of 2017 has sought transfer of the record and proceedings of the Sessions Case No.106 of

2016 to the Special Court presided over by Shri N.K.More, Special Judge, designated under the NIA Act for trial of the said cases.

6. Shri Pathan, the learned Counsel for the petitioner, submits that pursuant to the decision dtd. 8th September 2016 of the Central Government, the NIA re-registered the offence on 14.9.2016. He contends that in view of the said decision, in terms of Section 6(6) of the NIA Act, 2008, the State Government and any Police Officer of the State Government investigating the offence was not competent to proceed further with the investigation and was required to transmit the relevant documents and record to the NIA. He contends that in the instant case, despite the order of the Central Government, under sub Section 4 of Section 6 of the NIA Act, the ATS did not transmit the documents on record and continued with the investigation and filed the charge sheet before the Chief Judicial Magistrate on 7th October, 2016. He has further stated that the offence being a scheduled offence, and particularly considering the provisions of Section 16 of the NIA Act, the Chief Judicial Magistrate had no jurisdiction to take cognizance of the offence or remand the

petitioner/accused and/or to commit the case to the Court of Sessions/Special Judge ATS Nanded.

7. Shri Kumbhakoni, the learned AG and Shri Anil Singh, the learned Counsel for the Applicant in Cri. Application No.27 of 2017 have submitted that it is not mandatory that all scheduled offences are to be investigated by the NIA, and that it is for the Central Government to decide whether it is a fit case to be investigated by the NIA. Drawing our attention to Section 10 of the NIA Act, it is submitted that the provisions of NIA Act do not affect the powers of the State Government to investigate and prosecute any scheduled offence or any other offence. They have further submitted that sub Section 7 of Section 6 makes it clear that the Officer in charge of the Police Station is under obligation to proceed with the investigation till the NIA takes up the investigation of the case. It is contended that in terms of Section 13 of the NIA Act, the Special Court has jurisdiction to try the scheduled offences which have been investigated by the NIA. It is contended that since the records of Crime No. 8 of 2016 were transmitted to the NIA on 8.12.2016, in

terms of section 6(7) of NIA Act, the ATS was under obligation to continue with the investigation and file the charge sheet. They have further contended that the jurisdiction of the criminal court would stand excluded only when the scheduled offences are investigated by the NIA. Since the case was not investigated by the NIA, the magistrate had jurisdiction to remand the accused, take cognizance and to commit the case to the designated ATS court.

8. It would be essential to consider the object as well as the relevant provisions of NIA Act to appreciate the submissions made by the learned counsels for the respective parties.

9. The NIA Act was enacted with the object of constituting the Investigation Agency at the National level to investigate and prosecute the offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nation, its agencies and other international organizations and for

matters connected therewith or incidental thereto.

10. Under the provisions of the NIA Act, the Central Government has constituted NIA as a special agency to investigate and prosecute the offences under the Act specified on the schedule. The Acts listed in the Schedule are as under:-

“(i) The Atomic Energy Act, 1962.

(ii) The Unlawful Activities (Prevention) Act, 1967.

(iii) The Anti-Hijacking Act, 1982.

(iv) The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.

(v) The SAARC Convention (Suppression of Terrorism) Act, 1993.

(vi) The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.

(vii) The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 and

(viii) The offence under Chapter VI of the Indian Penal Code and Section 489-A to 489-E of the Indian Penal Code.”

11. Section 2(g) of the NIA Act defines 'Scheduled Offence' to mean an offence specified in the aforesaid Schedule. Sections 6 to 10 of the NIA Act prescribe the procedure of investigation of the scheduled offences by the NIA. Sections 6 to 8 of the NIA Act, which assume significance to decide the case at hand read as under:

“Investigation of Scheduled Offences.

6.(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation. Power to transfer investigation to State Government.

Power to transfer investigation to State Government :-

7. While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—

(a) if it is expedient to do so, request the State Government to associate itself with the investigation;

or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

Power to investigate connected offences.

8. 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.”

12. A plain reading of these sections clearly indicates that the Officer in charge of the police station who receives and records information under Section 154 of the Code, relating to any scheduled offence is required to forward the report to the State Government forthwith. On receipt of such report, the State Government is required to forward a report to the Central Government as expeditiously as possible. Upon receipt of the report of the State Government, and upon considering the gravity of the offence and other relevant factors, the Central Government has to determine within 15 days whether the offence is a scheduled offence or not and whether it is a fit case to be investigated by the NIA. Once the Central Government forms an opinion that the offence is a scheduled offence and that it is a fit case to be investigated by the NIA, it shall direct the NIA to investigate the said offence. Even in the absence of the report from the State Government, the Central Government can exercise suo-moto powers to direct the NIA to investigate the scheduled offences.

13. It is further to be noted that by virtue of Sub Section (6) of Section 6 where the Central Government, either on the report of the State Government or in exercise of suo-moto powers, directs the NIA to investigate the scheduled offence, the State Government and any Police Officer of the State Government investigating the scheduled offence is precluded from proceeding with the investigation and is required to forthwith transmit the relevant documents and records to the NIA. Nevertheless, sub Section (7) of Section 6 declares that until the NIA takes up the investigation of the case, it shall be the duty of the Officer-in-charge of the Police Station to continue the investigation.

14. A conjoint reading of Sub Section (6) and (7) of Section 6 would clearly indicate that despite the directions of the Central Government, to the NIA, either under sub-Section (4) or (5) of Section 6, the Officer in charge of the police station is duty bound to continue with the investigation of the scheduled offence till such time the NIA takes up the investigation of such offence. In other words,

the power of investigation by the police officer of the State Government would cease only once the NIA takes over the investigation of the scheduled offence.

15. It is also to be noted that, once the Central Government entrusts the investigation of the scheduled offence to the NIA it is open to the NIA, in terms of Section 7 of the Act, either to investigate such offence or to request the State Government to associate itself with the investigation or with the previous approval of the Central Government, to transfer the case to the State Government for investigation and trial of the offence.

16. Once the Central Government entrusts the investigation of the scheduled offences to the NIA, and the NIA chooses to exercise the option of investigating the offence by itself or in association with the State Government, then such offence is exclusively triable by Special Court constituted by the Central Government under Section 11 of the NIA Act. Whereas, the cases transferred to the State Government in exercise of powers of Section 7(b) of the NIA Act are triable by a

Special Court constituted under Section 22 of the NIA Act. Until the State Government constitutes such a Special Court, by virtue of Sub section (3) of Section 22, the jurisdiction conferred by this Act on a Special Court shall be exercised by the Court of Sessions within whose jurisdiction the offence is committed and it shall have all the powers and follow the procedure provided under Chapter 4 of the Act. However, once the State Government constitutes the Special Court, the trial of the offences investigated under the provisions of the Act would stand transferred to that case on the date on which it is constituted.

17. Section 14 relates to the powers of the Special Court with respect to other offences. This Section provides that while trying the scheduled offence, the Special Court is also empowered to try any other offence, if the offence is connected with the scheduled offence tried by it, at the same trial. Section 16 of the NIA Act prescribes the procedure to be adopted and powers to be exercised by the Special Court for trial of the scheduled offences. By virtue of this Section, upon receiving a complaint of facts constituting scheduled offence, or

upon a police report of such facts, the Special Court may take cognizance of any offence without the accused being committed to it for trial. Sub-section (3) of Section 16 stipulates that subject to the provisions of the NIA Act, a Special Court will have all the powers of a Court of Sessions under the Code of Criminal procedure for the purpose of trial of any offence under this Act. Section 20 of the Act confers powers on the Special Court to decide its own jurisdiction. Where, after taking cognizance of the offence, the Special Court forms an opinion that the offence is not triable by it, it shall transfer the case for the trial of such offences to a regular Court having jurisdiction under the Code.

18. It may be mentioned that Section 10 of the NIA Act explicitly provides that the provisions of the said Act shall not affect the powers of the State Government to investigate and prosecute any scheduled offence or other offences under any law for the time being in force. A conjoint reading of Section 6 and section 10 makes it clear that it is not only the NIA, but also the State Investigation Agency that has power to investigate and prosecute any scheduled offence or any

other offences under any law for the time being in force. Suffice it to say that the NIA can investigate the scheduled offence only if the Central Government declares that the offence in question is a scheduled offence and is fit to be investigated by the NIA and entrusts the investigation to the NIA. The scheduled offences investigated by the NIA are exclusively triable by the special courts constituted under the NIA Act. Therefore, the provisions of NIA Act would come into operation only when the Central Government takes the decision and entrusts investigation of the scheduled offence to the NIA.

19. In the instant case, the challenge raised by the petitioner is twofold. It is sought to be contended that since the Central Government had entrusted the investigation to the NIA, the ATS had no jurisdiction to continue with the investigation. Secondly, the offences under UAP Act being scheduled offences, even if investigated by the State Investigation Agency, are exclusively triable by special court constituted under section 22 of the NIA Act and that the CJM Nanded had no jurisdiction to remand the accused, to take

cognizance and commit the case to the Special Court, ATS.

20. It is to be noted that pursuant to the report lodged by Shri Manik V, Bendre, Police Inspector, Anti Terrorism Squad (ATS), Nanded Unit, Crime No. 8 of 2016 came to be registered at Kalachowki Police Station on 14.07.2016 for the offences under Section 13, 16, 18, 18B, 20, 38, 39 of UAP Act, 1967 as well as other offences of IPC and Explosive Substances Act. The UAP Act is listed in the Schedule to the NIA Act and as such the offences under this Act are scheduled offences within the meaning of Section 2(1)(g) of NIA Act. This being the case, the State Investigation Agency was competent to investigate the case keeping in mind the provisions under Section 43, 43A, 43B, 43C, 43D of the Act. The UAP does not provide for creation of Special Courts and hence a Criminal Court having jurisdiction under the Code was competent to try the offence till such time the investigation of the scheduled offences was entrusted to and taken over by the NIA.

21. The offence under UAP Act being a scheduled offence, the

Officer-in-charge of the Police Station had submitted a report to the State Government, and the State Government, in turn forwarded the report to the Central Government. Upon receipt of the report from the State Government under sub-section (1) of Section 6, the Central Government by Order dated 8.9.2016, in exercise of powers under sub-section (4) of Section 6 of the NIA Act, entrusted the investigation to the NIA. Though in terms of Sub-Section (6) of Section 6, the Police Officer of ATS was precluded from proceeding with the investigation and was further required to transmit the relevant documents and records to the NIA, by virtue of sub-Section (7) of Section 6 it was obligatory on the part of the Officer-in-charge of ATS to continue with the investigation till the NIA took up the investigation of the case. In other words the ATS was empowered to continue with the investigation till the NIA took over the investigation.

22. The records reveal that on 14.9.2016, upon entrustment of the investigation, the NIA had merely re-registered/ re-numbered the crime as RS-03/2016/NIA/MUM. Suffice it to say that mere re-

registration or re-numbering of the crime, without any further steps to collect evidence in the matter, would not amount to investigation. It may be mentioned that investigation, which commences with registration of the FIR, includes several stages such as ascertainment of facts and circumstances of the case, arrest of the suspected offender, collection of evidence relating to the crime in the form of statements of witnesses, search, seizure etc. In the instant case, the NIA had not taken any such steps. On the contrary, the records reveal that the NIA had called for handing over of the records in Crime No. 8 of 2016 vide communication dated 23.11.2016. In response to the said communication, the ATS had transmitted the records of the said case to the NIA on 8.12.2016 and the NIA had continued investigation of the said scheduled offence only upon receipt of the said records,

23. It is therefore evident that the NIA had taken over the investigation on 8.12.2016. Till such taking over of the investigation, in terms of sub-section (7) of Section 6 the ATS was under obligation to continue with the investigation. It is not in dispute that the ATS

Mumbai had obtained remand, continued with investigation, and filed chargesheet prior to 8.12.2016 i.e. prior to taking over investigation by NIA. Suffice it to say that by virtue of provisions under sub Section (7) of Section 6 the ATS had jurisdiction to continue with the investigation till 8.12.2016.

24. The next question that falls for our determination is whether the offences under the UAP Act, being scheduled offences are exclusively triable by a special court constituted by the State under section 22 of the NIA Act. It may be noted that UPA Act was enacted in the year 1967 and the scope of this Act was enlarged by amendment of the years 2004, 2008 and 2013 to provide for the more effective prevention of certain unlawful activities of individual and associations and dealing with terrorists activities and for matters connected therewith. Under this Act, the State and Central Government are conferred with the powers to declare certain associations whose activities are found to be a threat to the sovereignty of the State as unlawful. The acts undertaken by such prohibited associations are made punishable under this Act. Chapter 3 and 4 of the UAP Act prescribes the punishment for the offences

mentioned therein. It is to be noted that this Act does not prescribe any special procedure to be followed for trial of the offence defined therein. Unlike NIA Act, it does not provide for creation of any special Court. Thus, the essential difference between NIA Act and UAP Act is that NIA Act does not classify any act as an offence, but only creates a separate agency for investigation and a special court for trial of scheduled offences, whereas UAP Act, which is also listed in the schedule of NIA Act, defines certain acts as offences but does not prescribe special procedure and creation of special court.

25. A reading of both these enactments particularly Section 10 of the NIA Act would show that there is no embargo on the State Investigation Agency to investigate the scheduled offence, which would include offences under UAP Act. In fact, the NIA would have no power to investigate the scheduled offence until and unless the Central Government takes a decision and directs the NIA to take over the investigation. In the absence of such decision and entrustment, it is primarily the duty of the State Investigation Agency to investigate the scheduled offence including offences under UAP Act.

26. Furthermore, the provisions of both the enactments, particularly Section 2(d) of the ULP Act, which defines "Court", makes it clear that the offences under UAP Act which are investigated by the State Investigation Agency are triable by the criminal courts having jurisdiction under the Code, in accordance with the procedure provided under the Code. It is only when the Central Government takes a decision and entrusts the investigation to the NIA, that the jurisdiction of the criminal court shall stand excluded and the Special Court constituted under the NIA Act will get jurisdiction to try such scheduled offences.

27. At this stage it may be mentioned that a similar issue was considered by the Full Bench of Patna High Court in ***Bahadur Kora and others v/s State of Bihar (2015 Cri.LJ. 2134)***. The Full Bench after considering the scope of section 11 and 22 of the NIA Act has observed that under section 11 the Central Government is placed under obligation to constitute a special court, whereas section 22

leaves it to the discretion of the State Government to constitute the special courts for trial of offences investigated by the State Investigation Agency. It has been held that the objective of the NIA Act, is not to make the offences punishable under the Acts mentioned in the schedule thereof triable invariably and exclusively by the NIA, or for that matter, the special courts constituted under it. It is only when the offences are entrusted for investigation to the NIA that they become triable by the Special Courts. Considering the scope and object of Section 7, the Full Bench held that it is only when the NIA transfers the case to the State Government for investigation and trial, that the State Government comes into picture for conducting the cases under NIA Act. Barring that, the State Government or its Investigating Agency does not have any authority or discretion to choose or pick up cases in which the offences under the enactments mentioned in the schedule are alleged; for investigation under the NIA Act. Once a case is "transferred" under clause (b) of Section 7 of the Act, by the NIA to the Investigating Agency of the State Government, the later gets equated to the form, under Section 22(2) (ii) and acquires the power to investigate such matters under the Act.

It is only for trial of such cases, that were initially entrusted to the NIA under Section 6 by the Central Government and the NIA in turn transfers the investigation of the case to the Investigation Agency of the State Government, under Section 7(b) of the Act, that the constitution of Special Court under Section 22 of the NIA Act is provided. It is further observed that if the Special Court under Section 22 is not constituted for trying the case investigated by the State Investigation Agency under Section 7(b) of the Act, sub Section (3) of Section 22 provides for trial of such cases by Court of Sessions of the division in which the offence has been committed. The Full Bench has therefore held that as long as the investigation of a case is not entrusted to NIA, the powers of the State Government and its investigating agencies remain intact and the investigation and trial of such cases must be proceeded under Cr.P.C. without any reference to the Act.

28. Considering the provisions of both the enactments, as well as the principles enunciated by the Full Bench of Patna High Court in the aforestated decision, we are of a considered view that in the

absence of any decision and direction of the Central Government to the NIA to investigate the scheduled offence, the State Investigation Agency was competent to investigate the said offence in accordance with the procedure prescribed under the Criminal Procedure Code. Furthermore, in the absence of entrustment of investigation to the NIA, the criminal Court had jurisdiction to try the offences in accordance with the procedure prescribed under the Criminal Procedure Code .

29. In the instant case, the ATS Mumbai had completed the investigation of the crime and filed the chargesheet in the Court of the CJM, Nanded even prior to taking over of the investigation by the NIA. Under the circumstances, as on the date of filing of the charge sheet, the provisions of NIA Act including the provision under Section 22 of the Act had no application. Consequently, the learned CJM, Nanded (designated Court ATS) had jurisdiction to remand the accused, take cognizance and commit the case to the Special Court, (ATS), Nanded. Under the circumstances, there is no merit in the petition filed by the petitioner Nasir Bin Abu Bakr Yafai and the same

is liable to be dismissed.

30. Coming to the Criminal Application No. 27 of 2017, as stated earlier, the Central Government has entrusted the investigation to the NIA. The records and documents of Crime No. 8 of 2016 are already transmitted to the NIA. In terms of provisions of the N.I.A Act, the offence being scheduled offence, is required to be investigated by the NIA and tried by the Special Court constituted under the NIA Act.

31. Hence the following Order:

- (i) Writ Petition No.5022 of 2017 is dismissed.
- (ii) Criminal Application No. 27 of 2017 is allowed.
- (iii) The records and proceedings of Sessions Case No. 106 of 2016 along with all material objects, articles/ properties, is ordered to be transferred to the Court of Shri N.K.More, Special Judge for the NIA, at Mumbai (presiding over the Court No.52.).

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)

Prasanna
Pradeep
Salgaonkar

Digitally signed
by Prasanna
Pradeep
Salgaonkar
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