

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.09.2018

CORAM

THE HON'BLE DR. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

CRL. A. NO.262 OF 2018

Mubarak @ Mohammed Mubarak

... Appellant

versus

Union of India,
Rep. by The Superintendent of Police,
National Investigation Agency,
MHA Government of India, New Delhi
(RC.03/2018/NIA/DLI)

... Respondent

Criminal Appeal filed under Section 21 (A) of the NIA Act, 2008 against the order, dated 22.03.2018 passed in Crl.M.P.No.131 of 2018 under Section 43-D (2)(b) UAP Act 1963 on the file of the Special Court (Under National Investigation Agency Act, 2008), Chennai at Poonamallee.

For Appellant : Mr. S.Shanmugavelayutham, SC,
for, Mr. A.Raja Mohamed

For Respondent : Mr. R.Karthikeyan, Spl. P.P. For NIA Cases

Reserved on	Pronounced on
20.07.2018	12.09.2018

J U D G M E N T

DR. S.VIMALA, J.

When the history of liberty has largely been the history of observance of procedural safeguards, (as stated by Felix Frankfurter) whether liberal interpretation is warranted to Section 43-D of the Unlawful Activities Prevention Act, (for short 'UAP Act'), which prescribes a longer period of detention during investigation (thus affecting the liberty of an individual) than the period prescribed under the ordinary law of the land, is the issue to be considered.

2. The power of the State to protect the sovereignty and integrity of the Nation on one hand and the fundamental right of the individual to the dignity and liberty inherent in himself on the other hand, have to be balanced and how to do that is a challenge made in this case.

3. The special court, under the NIA Act, 2008, by the judgment dated 22.03.2018 extended the period of detention of the accused/appellant from 90 days to 180 days. This order is under challenge before this Court.

4. The brief facts of the case could be summarised as hereunder :-

A case was registered initially by Thudialur Police Station, in Cr. No.735/2016 based on the written complaint of one Dhanapal, brother of the deceased (Sasikumar) who was a spokesperson of Hindu Front at Coimbatore, who was brutally hacked to death by a gang of unknown persons on 22.9.16 at about 23.15 Hrs. Later, this case was transferred to SID, CB-CID of Coimbatore.

5. Due to the above murder, violence broke out in Coimbatore when the body of the deceased was taken for cremation. As the violence spread out to neighbouring districts of Tirupur, viz., Nilgiris and Erode, about 237 cases came to be registered against both Muslims and Hindus in respect of the incidence of stone pelting, hurling of petrol bomb on Mosque, setting fire to shops, attack on police vehicles and buses, attack on shops belonging to Hindus and Muslims, attack on Toll gates etc. For days together, the harmony, public peace and tranquility got affected.

6. During the course of investigation, four accused were arrested out of which this accused (A4) was arrested on 25.12.2017. They were taken to police custody by SIC, CB-CID. The provisions of Unlawful Activities Prevention Act was invoked against this accused considering the nature of the case.

7. Out of four accused, A-1 and A-2 were released on statutory bail on 19.06.17 and 01.10.17 respectively. The period of judicial detention of A-3 was extended by the court from 90 to 180 days, by the order dated 12-12-2017. A4 is before this Court in this appeal.

8. It is a case of the prosecution that 50 CCTV footages, 2500 call data records have been collected and investigation is pending in that regard. During the search conducted at the residence of the accused on 18.03.18, electronic gadgets, such as mobile phone, DVD/CD, memory cards, hard disk containing CCTV footage were all recovered and they have been forwarded to Director, CDAC, Tiruvananthapuram, for analysis. The

investigation is in progress. Efforts are being taken to unravel the larger conspiracy. The role of many other actors are anticipated to be involved (behind the scene) during the commission of an offence. The travel details of the accused and report from Finance Intelligence Unit, New Delhi, are being verified through concerned authorities. Therefore, the prosecution sought for extension of remand from 90 to 180 days.

9. The communication channels used by the accused and his associates using social media and e-mail have to be analysed and request has been sent to USA under Mutual Legal Assistance Treaty and it is in progress. Request has been sent to various service providers to get the CDR of all mobile phones recovered. It is also suspected that they would have got some assistance and shelter from some other organisation. Under the circumstances, the period of detention was sought to be extended from 90 to 180 days as envisaged u/s 43-D (2) (b) of UAP Act.

10. In this connection, disclosing all those facts, the learned Special Public Prosecutor for NIA cases filed the miscellaneous petition seeking extension of judicial detention of the accused from 90 to 180 days. The copy of this petition has been served to the accused and the accused has also filed a counter. The Court, after perusing the CD file and other connected records, has recorded its satisfaction that the judicial detention of the accused must be extended from 90 to 180 days and thus, has allowed the application filed by the learned Spl. PP for NIA cases, which is under challenge in this appeal.

11. The order of extension of remand is under challenge on several grounds and the essential ground is that the report of the Public Prosecutor did not indicate the specific reasons for seeking the detention of the accused beyond the period of 90 days and therefore, the order of remand is invalid. It would be appropriate to extract the provisions of Section 43-D of the said Act, which reads thus:-

"43D. Modified application of certain provisions of the Code. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that--

(a) the reference in sub-section (1) thereof--

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable

under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

12. The proviso to Sub-section (2) (b) of Section 43-D UAP Act is similar to the proviso (bb) which was inserted after clause (b) sub-section (4) of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA). This proviso (bb) came up for consideration before the Hon'ble Apex Court in the case of Hitendra Vishnu Thakur - Vs - State of Maharashtra (1994 (4) SCC 602), in which it was held that if the investigation is not completed within the period provided under Section 167 (2) of the Code r/w Section 20 (4) (b) of TADA, then, on account of the fault of the investigating agency in completing the investigation, within the maximum period prescribed or extended, as the case may be, an indefeasible right accrues in favour of the accused to seek an order of his release on bail. It was also held that before granting extension to the prosecution, notice must be given to the accused so that the accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him.

13. The learned counsel appearing for the appellant relies upon the decision reported in Hitendra Vishnu Thakur's case (supra) apart from the following other decisions, which are discussed in detail in the succeeding paragraphs.

14. Contending that the extension of remand is not an empty formality and that the affording of opportunity which must be a sufficient opportunity is a sine qua non for passing order of extension of remand, the decision of the Division Bench of this Court reported in (2017) 3 MLJ (CrL.) 641 : LNIND 2017 MAD 2789 (Thangaraj @ Thamizharasan v. State, Rep. by the DSP, NIA, Hyderabad) in which the relevant observations reads as under:-

"13. Similar provision as to Section 43(D) of Unlawful Activities (Prevention) Act, 1967 is also available in NDPS Act, 1985 under Section 36A. The Hon'ble Supreme Court while dealing with the above analogous provision has held in Sanjay Kumar Kedia v. Narcotics Control Bureau reported in (2009) 17 SCC 631 held as follows :

"12. The maximum period of 90 days fixed under Section 167(2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorities a yet further period of detention which may in total go up to one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are :

(1) a report of the Public Prosecutor, (2) which indicates the progress of the investigation, and (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and (4) after notice to the accused."

15. From the perusal of the decision, it is clear that what is mandatory on the part of the prosecution is: (a) the report of the Public Prosecutor indicating the progress of the investigation; (b) the report is expected to specify the compelling reasons for seeking the detention of the accused beyond the limited period; and (c) the accused must have been given notice regarding the filing of the petition.

16. The specific contention of the learned counsel for the appellant / A-4 is that the special court is not expected to mechanically accept the report of the Spl. PP and without even analysing as to how a case of murder can be converted into a case of terrorism u/s 15 of the UAP Act without any incriminating materials, the Special Court has passed an order which is illegal.

17. The further contention raised by the learned counsel for the appellant is that even the prisoners and detenu cannot be deprived of their fundamental right under Art. 21 and, therefore, the abdication of its judicial mind and judicial responsibilities shown by the trial court would make the

impugned order void and non est in the eye of law. Contending that the detinue is entitled to public law remedy, the decision of the SC in Nilabati Behra - Vs -State of Orissa 1983 (2) SCC 746 is relied upon and the important observation reads thus:-

"The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen."

18. In response to those contentions, the learned Special Public Prosecutor representing UOI submits that sufficient opportunity has been given to the accused and the fact that the accused has received the copy of the report of Public Prosecutor is a matter of record and a detailed counter setting out the various details has also been filed.

19. Countering the above contention, the learned counsel appearing for the appellant points out that the report of the Public Prosecutor is a lengthy report consisting of 16 pages and the instructions from the accused cannot be taken in open court so as to file the counter and as the sufficient opportunity was not given, the detinue was compelled to file the counter on that date itself and therefore, it cannot be contended that the opportunity given was a sufficient opportunity. It is specifically pointed out that the averments stated in paragraphs 9 to 13 are insufficient to make out the justification for the extension of remand.

20. The next contention of the learned counsel appearing for the appellant is that there are no materials for the Court to arrive at the subjective satisfaction and therefore, the

impugned order must be set-aside.

21. This contention is responded by the learned Special Public prosecutor appearing for the respondent / UOI by stating that the stage of investigation, necessity for further investigation, the line of investigation and the details of the factors requiring further investigation have been pointed out in paragraphs 6 to 15 of the report of the Public Prosecutor and, therefore, it cannot be contended that the satisfaction of the Special Court has been recorded without any basic materials. The decision of the Apex Court in Ateef Nasir Mulla v. State of Maharashtra (2005 (7) SCC 29) is relied upon where-under a contention was raised that the application of the special Public Prosecutor did not disclose any specific reason for the extension of period of remand as required by Section 49 (2) (b) of the Act. In para - 15 of the judgment, it is described as to how the opportunity of hearing was given to the accused and the court passed the order after hearing both parties. The court has given a finding that the Court is satisfied that the requirement of giving notice to the accused before passing such an order was complied with and the order cannot be faulted on that ground.

22. So far as this case is concerned, even though notice was served on the accused, but, when the accused is in custody, grant of insufficient time to file counter would not amount to grant of sufficient opportunity to the accused.

23. The learned counsel for the accused would submit that just because there is a power to arrest, that power need not be exercised without necessity and that without necessity detention need not be asked for. It is pointed out that considering the nature of investigation, the further detention of the accused would be totally unnecessary.

23.1. At this stage, It would be appropriate to quote the decision reported in Arnesh Kumar - vS - State Of Bihar & Anr. (in Special Leave Petition (Crl.) No.9127 Of 2013, Order dated July 01, 2014), wherein it has been held as follows:-

".....The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not

decreased."

23.2. It would also be necessary to consider the consultation paper on law relating to arrest published by Law Commission of India, in which, the guidelines issued by the Supreme Court with regard to balancing of interest, i.e. between the individual interest and national interest has been highlighted.

"Guidelines laid down by the Supreme Court.- The effort of the courts, and in particular of the Supreme Court over the last more than two decades has been to circumscribe the vast discretionary power vested by law in Police by imposing several safeguards and to regulate it by laying down numerous guidelines and by subjecting the said power to several conditionalities. The effort throughout has been to prevent its abuse while leaving it free to discharge the functions entrusted to the Police. While it is not necessary to refer to all of them for the purpose of this working paper, it would be sufficient if we refer to a few of them (which indeed reaffirm and recapitulate the directions and guidelines contained in earlier decisions). In *Joginder Kumar v. State of U.P.* (AIR 1994 SC 1349), the power of arrest and its exercise has been dealt with at length. It would be appropriate to refer to certain perceptive observations in the judgment:

"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that

the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered.

The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law."

This court in Smt. Nandini Satpathy v. P.L. Dani AIR 1978 SC 1025 at page 1032, quoting Lewis Mayers, stated:

"To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft." The pendulum over the years has swung to the right."

24. The next contention of the learned counsel appearing for the appellant is that the satisfaction of the Court did not reflect on what basis satisfaction of the trial Court was arrived at.

25. Learned Special Public Prosecutor pointed out various averments made in paragraphs 6 to 11 of the report of the Public Prosecutor and submitted that the same is sufficient for the Court to arrive at the satisfaction that the extension of remand is essential and that the Special Court has also relied upon CD file and other connected records and thus, justified the order of the Special Court.

25.1. This contention cannot be accepted because the nature of investigation involves analysis of electronic records, which had already been seized. The accused has no opportunity to tamper with the electronic records, which are in custody of the Investigating Agency. Moreover, investigation is pending for a long time and in the name of investigation, the liberty of individuals cannot be curtailed without reasonable basis.

26. The next contention is that the order of remand cannot be extended at a stretch for a period of 90 days and it could be extended for every 30 days and for the extension of the judicial detention every time, the court must record its satisfaction regarding the necessity for further detention.

27. The learned counsel appearing for the appellant further submitted that the procedural safeguards or procedural prerequisite must be scrupulously followed in a case where the statute gives power for curtailing the liberty of a citizen which is a longer period of detention during investigation than under the ordinary law and when this safeguard is not followed,

the impugned order must be set-aside. The decision of the Calcutta High Court reported in 2017 (3) Crimes 641 (Cal.) (Sharmishta Chowdhury and Anr. v. State of West Bengal and Ors.) is relied upon and the relevant observation is as follows:-

"12.The procedural pre-requisites in section 43d of UAP act which vest jurisdiction on the Court to prescribe a longer period of detention of an accused during investigation than under ordinary law must be scrupulously adhered to. It is an axiomatic principle of interpretation that any law affecting liberty of an individual must be strictly interpreted. It may not be out of place to recount the sage opinion of Felix Frankfurter, a noted jurist, in *Mc Nabb vs. United States*, 318 US 332 (1943), that the history of liberty has largely been the history of the observance of procedural safeguards."

28. Yet another decision relied upon by the learned counsel for the appellant / A-4 is the one reported in *Sanjay Kumar Kedia alias Sanjay Kedia v. Intelligence Officer, NCB & Anr.* (2009 (17) SCC 631) whereunder it has been held that when the report of the Public Prosecutor does not indicate the progress of the investigation, nor the compelling reasons, which required an extension of custody beyond the prescribed period, the order of detention has to be set-aside.

29. Per contra, learned Public Prosecutor submitted that the usage of the expression 'upto' in Section 43-D (2) (b) of the UAP Act clearly shows that the period of extension can be extended at one stretch and that it is not necessary that it should be extended once in 15/30 days as contended by the appellant.

30. Learned Special Public Prosecutor, placed reliance upon the decision of the Delhi High Court, reported in *Syed Sahib Yusuf - Vs - NIA*, whereunder it has been held that, for every extension of remand report of the Public Prosecutor is not essential. It is specifically held that once the Special Court extended the period of completion of investigation, separate application for extension of judicial custody was unnecessary.

31. The above contentions, though seem to be very many, falls under two issues, viz., (i) that the extension of remand in one single stretch from 90 days to 180 days is impermissible; and (ii) that the report of the Public Prosecutor is silent as to the special/specific reasons for seeking extension of remand and, therefore, rejection of bail and extension of remand is not in conformity with the provisions of the UAP Act and the same

deserves to be set aside and the accused should be enlarged on bail.

32. Taking up the first issue relating to extension of remand at a single stretch, as could be seen from the terminology used in the said provision, viz., Section 43-D (2) (b), the Section employs the term 'upto' for extending the period of remand from 90 days to 180 days. This clearly means that the maximum period upto which the remand can be extended is upto the period as specified under the Act. Had the intention of the Legislature been otherwise, then the word 'upto' would not have found place in the said provision. The usage of the word 'upto' clearly shows the intention of the Legislature, which thought it fit to leave it to the wisdom of the Court to extend the period of remand, however, subject to the limitations as envisaged under the second limb of Section 43-D (2) (b) of the UAP Act.

33. This Court, in C.A. Nos.91 and 92 of 2018, vide the order of even date, relating to the matter of another accused, who is connected with the same incident, has held that the extension from 90 days to 180 days, i.e., for a period of 90 days, in one single stretch is in accordance with law and is permissible and extension of the time by a single stretch, done by the Trial Court, does not warrant any interference. Depending upon the facts and circumstances, considering the nature of investigation, the Court may straight away extend the period of remand/period of investigation, subject to the provisions of Section 43-D of UPA Act. In such view of the matter, the above contention that the extension in one single stretch is impermissible does not merit acceptance and, accordingly, the said contention is dismissed.

34. Insofar as the second issue relating to specific/special reasons to be shown in the report of the Public Prosecutor seeking extension of remand, learned counsel appearing for the appellant submitted that the allegations levelled in paragraphs 6 to 11 are the summary of the steps already taken towards investigation and the steps yet to be taken towards investigation and that does not in any way indicate the compelling reasons or special reason as envisaged under the second limb of Section 43-D (2) (b) of the Act.

35. This Court, in C.A. Nos. 91 and 92 of 2018, by order of even date, has discussed threadbare the necessity of the Public Prosecutor to file a report stating specific reasons seeking extension of remand and the necessity of the specific reasons, which is mandatory for the Trial Court to consider before granting extension of remand. For better clarity, the relevant portion is extracted hereunder :-

"40. In Hitendra Vishnu Thakur's case

(supra), the Supreme Court had imbibed a word of caution regarding extension of remand and held that the legislative intent is not to keep an accused in custody unreasonably and to grant extension only on the report of the Public Prosecutor. It further held that the report of the Public Prosecutor is not merely a formality but a vital report, because, the consequences of its acceptance affects the liberty of the accused and it must therefore strictly comply with the requirement as contained in clause (bb).

41. From the above it is categorically clear that the report must be a comprehensive one detailing the specific reasons for which remand extension is sought for and only on the Court being satisfied with the specific reasons placed on record by the Public Prosecutor, the Court can grant extension of remand.

42. In the present case on hand, a careful perusal of the report of the Public Prosecutor, which has been placed before the Court below seeking extension of remand, reveals that the report speaks about the investigation that is being carried on and the steps that are being taken by the prosecution in unearthing the evidence. The report also speaks about the investigation to be carried on by the investigating agency on the basis of information received from the accused. Further, the materials collected have been sent for forensic analysis and the report is awaited. In all, the report reveals the route in which the investigation is being conducted and not the reasons for extending the remand.

43. On a holistic consideration of the report of the Public Prosecutor submitted before the Court below, it is to be stated that the said report does not satisfy the second limb of Section 43-D (2) (b) of UAP Act. While the second limb of Section 43-D (2) (b) speaks about the specific reasons that are to be stated for the extension of remand, the report falls well short of the legislative necessity, which has been specified in the said provision. It is to be pointed out that general investigative procedures cannot be a ground for seeking extension of remand. Specific reasons that really necessitate the extended remand of the accused does not form

part of the report, which is the basic requirement for extension of remand. The report of the Public Prosecutor reveals that the procedures are general investigative procedures, which, by no stretch of imagination could be termed as special reasons for the grant of extension of remand. The legislative intent not being satisfied, the ratio laid down in Hitendra Vishnu Thakur's case (supra) squarely stands attracted to the case on hand. The Trial Court has not appreciated this aspect of the matter and the rejection of bail is against the provision of the UAP Act and deserves to be set aside. The accused is entitled for release on statutory bail."

This decision applies to the facts of this case and the report of the Special Public Prosecutor did not point out any specific reasons for detaining the accused.

36. A perusal of the impugned order reveals that the Court has taken note of the alleged admission made by the accused/appellant that the extension of the remand is the matter between the Public Prosecutor and the Court. However, the learned counsel appearing for the appellant submitted that it was not the stand of the appellant that the extension of remand is the matter between the Court and the Public Prosecutor. In paragraph 11 of the impugned order, it is stated that the report of the Public Prosecutor is indicative of the progress in the investigation. The learned counsel appearing for the appellant submitted that the report of the Public Prosecutor would only indicate the details with regard to the phases on which further investigation needs be conducted and did not indicate any specific/special reasons, which necessitates the extension of remand.

37. This Court perused the report of the Public Prosecutor filed before the Trial Court seeking extension of remand and on an overall consideration of the report, this Court finds that the contention raised by the learned counsel for the appellant that no specific/special reasons have been given in the report seeking extension of remand seems to be correct and justified. The Trial Court has not recorded any reasons as to why the prayer for extension of remand is being allowed. The report is mere indicative of the progress made in the investigation and the phases in which investigation needs to be made. The reasons contained in the report cannot in any manner be said to be special/specific reason which restrains the Court from releasing the accused on bail. The legislative intent in extending the remand of the accused has been discussed by the Supreme Court in Hitendra Vishnu Thakur's case (supra) and on consideration of the principles laid down therein, this Court is of the

considered view that no specific/special reasons have been shown in the report of the Public Prosecutor, which aspect has been lost sight of by the Court below and without analysing the reasons given by the Special Public Prosecutor, the Trial Court has granted extension of remand, which is unsustainable and the same needs to be set-aside.

38. For the aforesaid reasons, the appeal is allowed and the order dated 22.03.2018 passed in CrI. M.P.No.131 of 2018 by the Special Court (Under National Investigation Agency Act, 2008), Chennai at Poonamallee, is set-aside. The accused/appellant is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a likesum to the satisfaction of the said Court and on further condition that the appellant shall appear before the trial court for every hearing as directed by it. The appellant is also directed to surrender passport before the trial court.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

srk/GLN

To

1. Special Court (Under National Investigation Agency Act, 2008),
Chennai at Poonamallee.
- 2.The Special Judge,
(Under National Investigation Agency Act, 2008,
Sessions Court Exclusive Trial of
Bomb Blast Cases)
Chennai at Poonamallee,
- 3.The Superintendent of Police,
Central Prison,
Salem.
- 4.The District Collector,
Salem.
- 5.The Director General of Police,
Mylapore, Chennai.

6. The Public Prosecutor, High Court, Madras.

7.The Criminal Section,
High Court, Madras.

+1cc to M/s.R.Karthikeyan, Advocate sr.no.63561
+5cc to M/s.A.Raja Mohamed, Advocate sr.no.63582

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nr 20/09/2018



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