

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.09.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

CRL. A. NOS. 91 & 92 OF 2018

Shakul Hammed .. Appellant in both the appeals

- Vs -

State by
The Superintendent of Police
National Investigation Agency
Kochi. .. Respondent in both the appeals

C.A. No.91 of 2018 filed praying this Court to call for the records in Crl. M.P. No.8 of 2018 dated 18.1.2018 in RC-03/2017/NIA/DLI on the file of the Special Court for NIA Cases, Poonamallee, Chennai and set aside the same and grant bail to the appellant.

C.A. No.92 of 2018 filed praying this Court to call for the records in Crl. M.P. No.518 of 2018 dated 12.12.2017 in RC-03/2017/NIA/DLI on the file of the Special Court for NIA Cases, Poonamallee, Chennai and quash the same.

For Appellant : Mr. P.Pugalenth

For Respondent : Mr. R.Karthikeyan, Spl. PP for NIA Cases

Reserved on	Pronounced on
01.08.2018	12.09.2018

COMMON JUDGMENT

DR. S.VIMALA, J.

The petition filed by the learned Spl. Public Prosecutor for NIA cases, in the form of a report, u/s 43-D (2) (b) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAP Act') seeking permission for the prosecuting agency a) to continue the investigation for a further period of 90 days and b) also to order detention of the accused persons, viz., A-2-Khaja Moideen @ Abdullah Muthalif and A-3-Shakul Hameed @ Salavudin in judicial custody upto the period of 180 days was allowed by the Special Court under the NIA Act, 2008 by order dated 12.12.2017 in Crl. MP No.518 of 2017. Challenging this order, the accused Shakul Hameed has filed the appeal in

Crl.A.No.92 of 2018

1.1. The accused Shakul Hameed filed Crl. M.P. No.8 of 2018 seeking bail and it was rejected by the order dated 18.1.2018. Challenging this order, the accused has filed the appeal in Crl.A.No.91 of 2018.

2. The issues involved in both the cases are interconnected, hence, the common Judgment is pronounced.

3. Brief facts: The case of the prosecution is that 7 named persons along with others, were involved in a criminal conspiracy and they formed a terrorist gang, raised funds and trained some personnel and facilitated their travel from India to Syria to join the Daesh or the so-called ISIS. The National Investigating Agency, New Delhi, registered a case u/s 120-B IPC and Sections 17, 18, 18-B, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, (for short 'UAP' Act) and submitted the FIR before the Special Court for NIA cases Poonamallee, Chennai.

4. The Spl. Public Prosecutor filed a report and sought for extension of time for investigation and also for the continued detention of the appellant beyond the period of 90 days and upto the period of 180 days. This request was in terms of Section 43-D (2)(b) of the UAP Act. The application of the prosecution for extension of time having been ordered and the application for bail filed by the appellant having been dismissed vide the orders noted above, the same are under challenge as orders passed by the Special Court.

5. A perusal of the order passed by the Special Court dated 12.12.17 would disclose that reason for seeking extension of time for investigation has been explained by the Spl. Public Prosecutor and the line of investigation to be pursued for the remaining period is also indicated. To cite an example, it is stated that investigation is conducted abroad as well and requests have been sent to the Republic of Singapore under Mutual Legal Assistance Treaty (for short 'MLAT') between India and Singapore. Similar process of sending request to USA under MLAT is also under progress; efforts are being taken to get the call details of all the mobile phones recovered and to analyze the same for establishing the link between these accused persons and the absconding accused persons. Thus, the prosecution, indicating the progress in the investigation and the steps taken, sought for further time. It is further disclosed that the electronic gadgets seized from the accused had been forwarded to C-DAC, Thiruvananthapuram for analysis by Experts. Whether the investigation on these lines would require further detention of the accused is the issue to be considered.

6. It is rightly pointed by the learned counsel for the accused that the accused persons cannot have any influence/control over any investigation to be done by the Experts in the field of Electronic and Information Technology and as the materials were already in the hands of the investigating officials, it cannot be tampered with at all. It

is also contended that the accused cannot have any influence over the authorities functioning either in Singapore or United States of America.

7. The learned Special Public Prosecutor would submit that grant of bail is governed by the provisions of Section 43-D of the UAP Act and it cannot be granted invoking the provisions of 439 of Cr.P.C. as contemplated under Sections 43-D(5) and 6 of UAP Act. Therefore, it is relevant to consider the said provisions.

"43-D 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.]]"

8. From the perusal of Section 43-D (5) of the UAP Act, it is evident that bail cannot be granted under two circumstances:

a) bail cannot be granted without notice to the Public Prosecutor;

b) bail should not be granted if there are materials for the court to come to the conclusion that the accusation levelled against the accused may be prima facie true.

9. It is necessary to find out, whether the material collected would prima facie disclose the offence that is registered under Section 120B of IPC, besides Sections 17, 18, 18B, 20, 38, 39 and 40 of UA(P) Act. The order of the trial Court did not deal with the issue at all. The offence/punishment for those offences covered under the Sections cited supra is placed in some details below:

17. Punishment for raising funds for terrorists act

18. Punishment for conspiracy, etc.

18B. Punishment for recruiting of any person or persons for terrorist act

20. Punishment for being member of terrorist gang or organization

38. Offence relating to membership of a terrorist organisation

39. Offence relating to support given to terrorist organisation

40. Offence for raising funds for a terrorist organisation.

10. The act of terrorism that is spoken to in those section referred supra is defined in Section 15 of the UAP Act and it reads as under:

"15. Terrorist act.—Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, [economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 6 [an international or inter-governmental

organisation or any other person to do or abstain from doing any act; or] commits a terrorist act."

11. The learned counsel for the accused would submit that the materials on record did not establish that the act of the accused would be covered under act of terrorism and instead of invoking the provisions of ordinary law of the land, provisions of UAP Act has been invoked only for the purpose of keeping the accused under prolonged detention and therefore, the order extending the detention must be set aside and the accused must be released on bail.

11.1. The learned Special Public Prosecutor would submit that the materials collected after investigation may establish the offence against the petitioner.

11.2. The contention of the learned counsel for the accused appears to be correct. In any event, the necessity for further investigation would not justify further detention also.

12. 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.

13. 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."

14. 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."

Considering the materials available on record and the nature of investigation pending, this Court is of the view that the trial Court should have granted bail to the appellant and therefore, the order declining the bail is hereby set aside.

15. The next question that falls for consideration of this Court is whether the period of remand can be extended by 90 days in one single stretch, ie., from 90 days to 180 days on the application of the Special Public Prosecutor.

16. It is the contention of the learned counsel for the appellant that the learned Spl. Judge has jurisdiction to extend the period of remand only for a period of 30 days and not for a period exceeding 30 days at a time and, therefore, the order extending the detention as well as the period of investigation by 90 days at a time (from 90 days upto 180 days) is without jurisdiction. The provisions of Section 43-D (2) is also relied upon.

17. Per contra, it is the contention of the Spl. Public Prosecutor that the learned Spl. Judge has made specific orders of remand periodically and to substantiate the same, the list of dates of remand applications and the orders passed in the remand application have been furnished by the learned Special Public Prosecutor, which are given below :-

S. No.	Date of remand report filed by NIA	Remand extended by the Spl. Judge
1	12.12.2017 seeking remand for 15 days	Remanded up to 16.12.2017
2	16.12.2017 seeking remand for 15 days	Remanded up to 22.12.2017
3	22.12.2017 seeking remand for 15 days	Remanded up to 27.12.2017
4	27.12.2017 seeking remand for 15 days	Remanded up to 03.01.2018
5	05.01.2018 seeking remand for 15 days	Remanded up to 08.01.2018
6	08.01.2018 seeking remand for 15 days	Remanded up to 12.01.2018
7	12.01.2018 seeking remand for 15 days	Remanded up to 18.01.2018

8	18.01.2018 seeking remand for 15 days	Remanded up to 19.01.2018
9	19.01.2018 seeking remand for 15 days	Remanded up to 22.01.2018
10	22.01.2018 seeking remand for 15 days	Remanded up to 01.02.2018
11	01.02.2018 seeking remand for 15 days	Remanded up to 02.02.2018
12	02.02.2018 seeking remand for 15 days	Remanded up to 07.02.2018
13	07.02.2018 seeking remand for 15 days	Remanded up to 20.02.2018
14	20.02.2018 seeking remand for 15 days	Remanded up to 22.02.2018
15	22.02.2018 seeking remand for 15 days	Remanded up to 08.03.2018
16	12.03.2018 seeking remand for 15 days	Remanded up to 13.03.2018
17	13.03.2018 seeking remand for 15 days	Remanded up to 26.03.2018 u/s 309 Cr.P.C.

18. It is also pointed out that the final report u/s 173 Cr.P.C. has been filed before the Special Court on 13.3.18 well before the expiry of 180 days and the special court has taken the final report on file and has remanded the accused upto 26.3.18 as contemplated u/s 309 IPC. It is thus pointed out that there is no illegality in the order passed by the learned Spl. Judge and, therefore, the order has to be sustained.

19. It is further submitted by the learned Special Public Prosecutor that nowhere under the Act, it is mentioned that remand cannot be at a stretch for a period covering 90 days to 180 days. Emphasis is laid on the words 'up to 180 days', finding place in the relevant provision of the Act to drive home the point that if the learned Special Judge feels that the case warrants an extension up to 180 days from 90 days, the learned Special Judge is empowered to extend the remand by 90 days at a single stretch.

20. This Court bestowed its best attention to the contentions and counter contentions advanced by the learned counsel on either side and also perused the materials available on record as also the various provisions of law to which the attention of this Court is drawn.

21. The main issue in this matter revolves around the extension of period of remand and the manner in which the period of remand should be extended. While it is the contention of the appellant that extension cannot be in one single stretch for the entire period of 90 days, however, it is the contention of the

learned Special Public Prosecutor that it is otherwise and if the facts of the case warrants, the trial court can extend the remand period by 90 days in a single stretch.

22. The answer to the above issue revolves around Section 43-D (2) of the UAP Act, which speaks about the period of remand and extension of remand. For better appreciation, it is necessary to have a perusal of Section 43-D (2) (b) of the UAP Act, which is extracted hereunder for better clarity :-

"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.".

23. From the above provision envisaged under Section 43-D (2) (a), it is made clear that the applicability of the provisions of Section 167 (2) of Cr.P.C., shall be in terms of the following modification :-

"references to "fifteen days" shall be read as thirty days;

reference to "ninety days" shall be read as "ninety days"; and references to "sixty days" shall be read as "ninety days"."

24. It would also be useful to have a perusal of Section 167 (2) Cr.P.C., which reads as under :-

"(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding thirty days (fifteen days) in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of thirty days (fifteen days); if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, - (i) ninety days (ninety days), where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) ninety days (sixty days), where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]"

25. Reliance has been placed on the decision in 2009 (17) SCC 631 (Sanjay Kumar Kedia @ Sanjay Kedia - Vs - Intelligence Officer, Narcotics Control Bureau & Anr.) by the learned counsel for the appellant wherein it has been held that the period of detention may go up to the maximum period permitted therein, but before extending the same, the stringent conditions, as enumerated therein must be satisfied, which are :-

- i) The report of the PP;
- ii) That report should indicate the progress of

investigation;

iii) compelling reasons for seeking the detention of the accused beyond the prescribed period; and

iv) Notice to accused.

26. Learned Spl. Public Prosecutor, controverting the stand of the appellant, however, distinguished the above decision by submitting that the above decision is not applicable to the present case as the said decision was rendered in connection with the NDPS Act, 1985, wherein application for extension had to be filed by the investigating officer. However, in the case relating to National Investigating Agency, application for extension needs to be filed by Public Prosecutor and not by the investigating officer.

27. The decision in *Hitendra Vishnu Thakur - Vs - State of Maharashtra* (1994 (4) SCC 602) has been relied upon by the learned Special Public Prosecutor, whereunder the implication of the Public Prosecutor filing the report has been considered and the Supreme Court held as under :-

"The use of the expression "on the report of the Public Prosecutor" indicating the progress of investigation and the specific reasons for the detention of the accused beyond the said period as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20 (4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the Public Prosecutor. The report of the Public Prosecutor is not merely a formality but a vital report, because of 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).

"

(Emphasis supplied)

28. In the above backdrop of the decisions relied on by either side, this Court is entrusted with the task to find out whether there had been compelling reasons for the Special Public Prosecutor to seek extension of remand and whether at the time of extending the remand, the Trial Court has applied its mind to the reasons stated by the Public Prosecutor.

29. Coming to the pivotal argument of the learned counsel for the appellant relating to extension of remand at a single stretch by 90 days, Section 43-D (2) unambiguously provides 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.

From the above it is clear that the trial court is empowered to extend the detention, for specific reasons, up to a period of 180 days, i.e., by another 90 days over and above the initial period of 90 days.

30. A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other part of the statute. It is possible to avoid head on clash whenever it is possible to do so, so that any conflict that may appear in construing the provisions could be harmoniously construed. It should not be lightly assumed that Parliament had given with one hand what it took away with the other. The provisions of one section of a statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. The same rule applies in regard to sub-sections of a section. These principles have also been applied in resolving a conflict between two different Acts.

31. The above is the basic analogy in which the provisions are construed and interpreted by the Courts for the larger interest of the public and also in maintaining a uniform legal setup. The precedents being in the above fashion, does the extension of remand in a single stretch have the approval of law.

32. To decipher whether extension in a single stretch is permissible, it is but necessary to look into the legislative intent in which the said provision has been framed. The proviso to Section 43-D (2) contains the extension clause, which reads 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.

33. From the above, it is categorically clear that the legislative intent is that the maximum permissible period of remand shall be up to 180 days. That is, if the progress of investigation requires some more time, on the report of the Public Prosecutor and subject to its satisfaction, the Court may extend the period from 90 days to a maximum of 180 days. The use of the word "up to" determines the way in which the extension can be granted. "Up to" denotes the maximum time upto which extension of remand can be granted.

34. It is the case of the appellant that notice given to him was insufficient to oppose the grant of extension of remand. The records further reveal that the appellant was produced before the Court and thereafter, the appellant/accused has been put on notice about the case of the prosecution seeking extension of period of remand. But it is pointed out that the appellant/accused may not be able to give any instructions to

the counsel to file counter in the open Court and therefore, the opportunity given is not sufficient. This contention is perfectly justified. The opportunity given to the accused is certainly insufficient to raise his objections in a meaningful way.

35. The Supreme Court, in *Mustaq Ahmed Mohammed Isak - Vs - State of Maharashtra*, (2009) 7 SCC 480, had occasion to consider whether the power of extension can be granted more than once and in that context, it held as under :-

"15. There is nothing in the language of second proviso inserted in Section 167(2) of the Code by Section 21(2) of the Act to indicate that the power of extension can be exercised only once as contended by the appellants. Para 30 of *Hitendra Thakur* case [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] on which the appellants place reliance did not deal with the present issue i.e. whether the power can be exercised more than once under the proviso. In this context, we cannot lose sight of Section 167(2) of the Code. Section 167 of Code and Section 21 of the MCOC Act deal with power of remand. The provisions of Section 21 of the MCOC Act must be read in the light of Section 167 of the Code. Section 167(2) of the Code itself indicates that power of remand has to be exercised from time to time and this clearly dispels any doubt as regard the true effect of the second proviso added in Section 167(2) of the Code by Section 21(2) of the MCOC Act, 1999. The only possible interpretation of the said proviso is that the Special Court can exercise power under the said proviso from time to time, however, the total period for filing charge-sheet/challan cannot exceed 180 days."

36. The language of the proviso to Section 43-D (2) is unambiguously clear. No where, the said proviso indicate that power of extension of remand in a single stretch cannot be exercised. The ratio laid down in *Mustaq's* case (supra), clearly emphasises that it is within the domain of the Special Court to exercise its power either once or from time to time, however, depending upon the period of remand as prescribed u/s 43-D (2) of the UAP Act. It is to be emphasised that the Supreme Court has given its stamp of approval by holding that the remand can be extended more than once even, thereby implying that the remand can be extended at a stretch or more than once, however, subject to the satisfaction of the Court.

37. In *Ateef Nasir Mulla - Vs - State of Maharashtra*, (2005) 7 SCC 29, the Supreme Court had occasion to deal with the grant of extension of period of remand and in the said context, the Apex Court, held as under :-

"13. The report of the Public Prosecutor must

satisfy the court that the investigating agency had acted diligently and though there had been progress in the investigation, yet it was not possible for reasons disclosed to complete the investigation within the period of 90 days. In such cases, having regard to the progress of the investigation and the specific reason for grant of extension of time, the court may extend the period for completion of the investigation thereby enabling the court to remand the accused to custody during the extended period. These are compulsions which arise in extraordinary situations. The activities of the terrorists are well organised, well planned and deftly executed by professionals who have perfected the art of creating panic in public mind. Their activities are pursuant to a deep-rooted conspiracy, and the co-conspirators are more often than not stationed at different places where they perform the role assigned to them. It is only with great difficulty that the investigating agency is able to unearth the well-planned and deep-rooted conspiracy involving a large number of persons functioning from different places. It is even more difficult to apprehend the members of the conspiracy. The investigation is further delayed on account of the reluctance on the part of the witnesses to depose in such cases. It is only after giving them full assurance of safety that the police is able to obtain their statement. Thus, while law enjoins upon the investigating agency an obligation to conduct the investigation with a sense of urgency and with promptitude, there are cases in which the period of 90 days may not be sufficient for the purpose. Hence, the legislature, subject to certain safeguards, has empowered the court concerned to extend the period for completion of the investigation and to remand the accused to custody during the extended period. In this case, we are satisfied that the circumstances existed justifying the extension of period under Section 49(2) (b) of the Act."

(Emphasis Supplied)

38. Having found that it is open to the prosecution to seek extension of remand, but, the prosecution can ask for extension of remand only by fulfilling the second limb of the said provision. Just because further time is needed for investigation, it is not necessary that contemporaneously, remand should also be extended. The Public Prosecutor is expected to state the specific reasons for extension of remand.

39. The second limb of Section 43-D (2) (b) of the UAP Act

clearly specifies that where it is not possible to complete the investigation within the period of ninety days, the learned Public Prosecutor may file a report seeking extension of remand and the Court, upon careful perusal of the report has to satisfy itself that the report of the Public Prosecutor while indicating the progress of investigation also states the specific reasons for the extended detention of the accused beyond the period of ninety days. From the above, it is clear that while extension is permissible beyond the period of ninety days, but the same has to be exercised with caution, more particularly the report of the Public Prosecutor must reveal the specific reasons for which extension of remand.

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 bail.

44. For the reasons aforesaid, C.A. No.91 of 2018 is allowed and the order dated 18.1.2018, passed in Crl. M.P. No.8 of 2018 in RC-03/2017/NIA/DLI on the file of the Special Court for NIA Cases, Poonamallee at Chennai is set-aside. The 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 should appear before the said Court for every hearing as directed by it. The appellant is also directed to surrender passport before the trial court. Consequently, C.A. No.92 of 2018 is allowed by setting aside the order in Crl. M.P. No.8 of 2018 dated 12.12.2017 in RC-03/2017/NIA/DLI on the file of the Special Court for NIA Cases, Poonamallee, Chennai.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge
Special Court for NIA Cases
Poonamallee, Chennai.
2. The Special Public Prosecutor
for NIA Cases
High Court, Madras.

+1cc to Mr. P.Pugalenth, Advocate sr.no.63401
+1cc to Mr. R.Karthikeyan, Advocate sr.no.63563

CRL. A. NOS. 91 & 92 OF 2018

nr 20/09/2018