

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08 . 06 . 2018

PRONOUNCED ON : 20 . 06 . 2018

CORAM :

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.Nos.550 and 577 of 2017

1.Thiruselvam S/o.Raman
2.Kaviyarasan S/o.Ganesan
3.Kalai @ Kalailingam S/o.Raman ... Appellants in
Crl.A.550/2017

1.Karthick S/o.Vijayan
2.John Marteen @ John ... Appellants in
Crl.A.577/2017

Vs.

State rep by
The Deputy Superintendent of Police
National Investigation Agency
Hyderabad (Camp at Puducherry) ... Respondent in
both Appeals

Criminal Appeals filed under Section 21 of the NIA Act to
call for the records and set aside the order in Crl.M.P.Nos.1669
and 1670 of 2017, in SC.5 of 2014 dated 21.08.2017 on the file
of the Special Court for NIA Cases at Puducherry, quash the same
and grant bail to the appellants.

For Appellants : Mr.M.Radhakrishnan
in Crl.A.550/2017 for Mr.P.Pugalendhi

For Appellant : Mr.R.Sankarasubbu
in Crl.A.577/2017

For Respondent : Mr.R.Karthikeyan
Special Public Prosecutor
(For NIA Cases)

C O M M O N J U D G M E N T

M.VENUGOPAL & P.N.PRAKASH, JJ.,

These Criminal Appeals have been preferred challenging the order dated 21.08.2017 passed in Crl.M.P.Nos.1669 and 1670 of 2017 on the file of the Special Court for NIA Cases at Puducherry,

2. The facts in brief leading to the present Appeals are as under:

On 29.01.2014, an explosive device was detected beneath the parked car of an Ex-Central Minister in Puducherry and based on the complaint given by N.Prem Kumar, P.C.015298, who was on duty at the Ex-Minister's residence, a case in Odiansalai Police Station, Puducherry Cr.No.25 of 2014 was registered under Section 4 of the Explosive Substances Act, 1908. The case was taken up for further investigation by the CBCID, Puducherry and the penal provisions were altered to include Section 307 IPC and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 (for short "the UAP Act"), apart from Section 4 of the Explosive Substances Act, 1908. On the orders of the Central Government, the case was transferred to the National Investigating Agency (for short "the NIA") on 31.01.2014 and was re-registered as RC.No.01/2014/NIA/HYD on 02.02.2014.

3. A somewhat similar incident took place in Madurai District, in which, a case in Othakkadai Police Station Cr.No.47 of 2014 was registered and the Tamil Nadu police had arrested Thiruselvam @ Kumar [A1], Thangaraj @ Thamizharasan[A2], Kaviarasan @ Raja [A3] and Kalailingam @ Kalai [A4] and during the course of their interrogation, they disclosed about their involvement in the Puducherry case. The Tamil Nadu police produced them before the jurisdictional Magistrate in Tamil Nadu and placed them under judicial remand at Central Prison, Madurai. On being informed, the NIA stepped in and effected formal arrest of Thiruselvam [A1], Thangaraj [A2], Kaviarasan [A3] and Kalailingam [A4] on 03.04.2014 at the Central Prison, Madurai and applied for a P.T. warrant for their production before the Special Court at Puducherry, where the FIR was pending.

4. Similarly, the Tamil Nadu police had arrested one Karthik [A5] and John Martin [A6] in connection with Othakkadai Police Station Cr.No.47 of 2014 and they were remanded to judicial custody. The NIA effected the formal arrest of the said Karthik [A5] and John Martin [A6] while they were in custody in Central Prison, Madurai and Central Prison, Palayamkottai on 15.04.2014 and 18.04.2014 respectively in connection with the Puducherry case. It may be pertinent to state here that these accused were

placed under notional arrest by the NIA while they were already in judicial custody for their involvement in Othakkadai Police Station Cr.No.47 of 2014.

5. On the application of the NIA, the Special Court at Puducherry issued P.T. warrant, pursuant to which, Thiruselvam [A1], Thangaraj [A2], Kaviarasan [A3] and Kalailingam [A4] were produced before the Special Court, Puducherry on 09.04.2014 for the first time. Similarly, on the P.T. warrant issued by the Special Court, Puducherry, Karthik [A5] and John Martin [A6] were produced before the Special Court, Puducherry for the first time on 08.05.2014. The NIA took police custody of the arrested accused for their investigation. Thus, for all practical purposes, the statutory period fixed by Section 167 Cr.P.C. should be reckoned for Thiruselvam [A1], Thangaraj [A2], Kaviarasan [A3] and Kalailingam [A4] from 09.04.2014 and for Karthik [A5] and John Martin [A6] from 08.05.2014, those dates being the dates on which they were produced before the Special Court, Puducherry for the first time.

6. The 90-day period reckoned from 09.04.2014 and 08.05.2014 fell on 08.07.2014 and 06.08.2014 respectively, calculation being done based on the judgment of the Supreme Court in Ravi Prakash Singh vs. State of Bihar [(2015) 8 SCC 340]. However, before the expiry of the 90-day period, the Special Public Prosecutor submitted a report under Section 43-D of the UAP Act before the Special Court for NIA cases on 30.06.2014 seeking remand of the accused beyond the period of 90 days on the ground that the Agency needs some more time to complete the investigation. On 04.07.2014, the learned Special Judge passed orders on the remand extension application and remanded the accused upto 18.07.2014. On 11.07.2014, Thiruselvam [A1], Thangaraj [A2], Kaviarasan [A3] and Kalailingam [A4] filed a bail application before the Special Court seeking statutory bail under Section 167(2) Cr.P.C. on the ground that the prosecution had not completed the investigation and filed the final report. This petition was returned by the Special Court on the ground that under the UAP Act, the period of 90 days has been extended to 180 days.

7. Thiruselvam [A1], Thangaraj [A2], Kaviarasan [A3] and Kalailingam [A4] filed CrI.O.P.No.32224 of 2014 for quashing the order of remand dated 20.06.2014 passed by the Special Judge, Puducherry and for releasing them on bail. They contended that the 90-day remand period as envisaged under Section 43-D of the UAP Act expired on 07.07.2014 and therefore, their custody from 07.07.2014 to 18.07.2014 was illegal and the remand order requires to be quashed.

8. This Court dismissed CrI.O.P. No.32224 of 2014 on

03.06.2014 after holding thus:

"5.This Court called for report from the trial Court and found that the Public Prosecutor in the case appears to have filed an application for extension of the remand in terms of the proviso to Section 43 D (2) of the Unlawful Activities (Prevention) Act on 30.06.2014 itself, though 90 days period was expiring only on 07.07.2014. Had the prosecution not filed the extension petition on or before 07.07.2014, then the accused would have been willy nilly entitled to compulsory bail as held by the Apex Court in Union of India (UOI) Vs. Nirala Yadav, [2014 (8) Scale 9].

6.It is seen that investigation was completed in the case and final report was filed on 30.09.2014 itself and the Special Court has taken it on file as Special S.C.No.5 of 2014 and after compliance with Section 207 Cr.P.C., the case is posted for framing of charge. In the light of the fact that the final report was filed before the expiry of 180 days as provided under the proviso to Section 43 D (2) of the Unlawful Activities (Prevention) Act, subsequent remand stood regularised under Section 309 Cr.P.C."

9. Not satisfied with that, Thiruselvam [A1], Thangaraj [A2], Kaviarasan [A3], Kalailingam [A4], Karthik [A5] and John Martin [A6] filed individual Habeas Corpus Petitions contending that there were no valid orders of remand from 18.07.2014 to 12.09.2014 and therefore, they should be set at liberty. A Division Bench of this Court dismissed the Habeas Corpus Petitions on 16.02.2017.

10. Thangaraj [A2] filed Crl.M.P.No.1471 of 2016 for bail, which was dismissed by the Special Court on 29.03.2017, aggrieved by which, he filed Crl.A.No.227 of 2017 before this Court. A Division Bench of this Court allowed his appeal on 08.08.2017 and directed his release on statutory bail [Thangaraj @ Thamizharasan vs State, rep. by the Deputy Superintendent of Police [(2017) 3 MLJ (Crl) 641].

11. Placing reliance upon the said judgment of the Division Bench, Thiruselvam [A1], Kaviarasan [A3] and Kalailingam [A4] filed Crl.M.P.No.1669 of 2017 in Special S.C.No.5 of 2014 before the Special Court, Puducherry for bail. Similarly, Karthik [A5] and John Martin [A6] filed Crl.M.P.No.1670 of 2017 in Spl.S.C.No.5 of 2014 before the Special Court, Puducherry, for bail. Both the bail applications have been dismissed by the Special Court, challenging which, these two appeals have been filed under Section 21 of the NIA Act.

12. Heard Mr.M.Radhakrishnan and Mr.R.Sankarasubbu, learned counsel appearing for the accused. They placed strong reliance on Sanjay Kumar Kedia alias Sanjay Kedia vs. Intelligence Officer, Narcotics Control Bureau and another [(2009) 17 SCC 631], Sayed Mohd. Ahmad Kazmi vs. State (Government of NCT of Delhi) and others [(2012) 12 SCC 1] and the bail order of the Division Bench of this Court in Thangaraj (supra). They also placed reliance on the following observation made by the Division Bench of this Court while dismissing the Habeas Corpus Petitions on 16.02.2017:

"68. In the instant case, on 18.07.2014, 14.08.2014 and 12.09.2014 the learned Special Judge did not pass any such order on considering the request of the first respondent and on perusal of the records. But at the same time, the learned Judge had made an endorsement only in the warrant authorising his detention in prison. Issuing a warrant remanding the accused to prison is only a consequential act and that cannot be equated to an order of judicial remand. It is the common perception that the warrant is a document to be kept in a prison to show that the custody of the inmate in the prison is in pursuance of a judicial order passed by the Court. An order of remand is undoubtedly made on the request made by the police and on considering the materials available and after hearing the accused. Therefore, in the instant case, it is crystal clear that without passing any order of remand applying his judicial mind, as required under law after affording sufficient opportunity to the accused, the learned Special Judge has simply made endorsement on the warrant of remand thereby authorising their detention in prison. This, in our considered view, is not in accordance with law and thus we have got no hesitation to accept the contention of the learned counsel for the petitioners that the custody of the detenus in prison between 18.07.2014 to 12.09.2014 was not in pursuance of any legal order of remand.

13. Learned counsel for the accused contended that the accused would be entitled to statutory bail on par with the co-accused Thangaraj [A2], in whose case, a Division Bench of this Court has given a finding in paragraph 18 as under:

"18. Here in this case also the appellant moved an application for statutory bail after completion of 90 days and the same was returned. Thus immediately after completion of 90 days and before filing charge sheet, the appellant exercised

his right to grant of statutory bail. The custody without an order of the Special Judge beyond 90 days cannot be validated retrospectively. This ground alone is suffice to enlarge the appellant on bail."

14. Per contra, Mr.R.Karthikeyan, learned Special Public Prosecutor for NIA cases, refuted the contentions and submitted that the NIA filed the special report under Section 43-D of the UAP Act before the trial Court on 30.06.2014 itself, much before the expiry of the period of 90 days and therefore, the accused will not be entitled to statutory bail.

15. This Court gave its anxious consideration to the rival submissions.

16. To appreciate the contentions put forth by the learned counsel for the accused relating to grant of statutory bail, it may not be out of place to briefly trace the historical background of this concept. Under Section 61 of the Code of Criminal Procedure, 1898 (for short "the old Code") a person arrested by the police without warrant cannot be detained beyond 24 hours in the absence of a special order of the Magistrate. If the police complete the investigation within 24 hours after arrest of a person, they were required to produce the person before the jurisdictional Magistrate along with the final report. In a case, where the police were not able to complete the investigation within 24 hours after the arrest of the accused, they were required to produce the accused before a Magistrate and seek remand. However, under Section 167(2) of the old Code, the Magistrate was empowered to remand the accused to a maximum period of only 15 days for the purpose of completing the investigation, failing which, the accused was entitled to statutory bail. Section 167(1) and (2) of the Old Code reads as under:

"167.(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the ¹[nearest Judicial Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such

Magistrate.

(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 authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole."

17. Since the police were finding it very difficult to complete the investigation in 15 days, a pernicious practice came into vogue, whereby, the police started filing preliminary charge sheets before the expiry of 15 days from the date of first remand of the accused, so as to prevent his release from custody. This was noticed by the Law Commission and in its 41st report, the Law Commission made the following recommendations for suitable legislation.

"55. It seems to us that considering the scheme of these provisions, there is no warrant for the continued detention of a person beyond a period of fifteen days under section 167. Nor would section 344 be applicable, till a police report in the prescribed form has been filed and the court has taken cognizance of the case. The solution of the difficulty lies in the Legislature providing specifically for the contingency of a remand after the expiry of fifteen days by an appropriate provision which, while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual.

No doubt serious offences require a much longer time for investigation; but no one can contemplate an accused person being kept in custody for months awaiting the completion of the investigation and the filing of the police report. We would not have dealt with this matter at such length but for the fact brought to our notice that in some of the northern States, accused persons were being kept under remand for long periods extending over several months without any police report being filed in the courts. If section 344 is to be utilised in such cases, it would mean in effect, giving an unrestricted licence to the police and the direction of the magistrate could seldom be effectively exercised.

In view of the conflict of judicial opinion

on the question, it is desirable that the law should be clarified by providing in section 167, that if investigation is not completed within 15 days and the police are therefore unable to file the report under section 173, the Magistrate may in suitable cases remand the accused to custody for a term not exceeding fifteen days at a time. The law must, however, fix a maximum time-limit beyond which an accused person cannot be detained without a police report being filed before a magistrate competent to take cognizance of the offence.

.....

.....

We would therefore, recommend that the period during which a person can be remanded to custody at the stage of investigation should under no circumstances exceed sixty days."

This was accepted by the Parliament and in the 1973 Code (Act II of 1974), a total period of 60 days was fixed initially in Section 167 Cr.P.C. and the relevant provision read as follows:

"(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, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding 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 authorize detention of the accused person, otherwise than in custody of the Police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this Section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, 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 section shall be deemed to be so released under the provisions of Chapter XXXIII for the

purposes of that Chapter;"

18. Section 167(2) was amended by the Code of Criminal Procedure Amendment Act, 1978, whereby, the offences were classified into two categories and the period was made into 90/60 days, depending upon the gravity of the offence. Though there was no specific provision for bail in Section 167 of the old Code, the 1973 Code introduced special provisions for compulsory bail in order to ensure that the accused is not kept in detention beyond 60/90 days, if the investigation is not completed. In other words, these provisions were intended to exorcise the lethargy of the police and protect indefinite detention of an accused person during investigation.

19. Filing of the final report before the jurisdictional Court under Section 173(2) Cr.P.C., manifestly signals the completion of the investigation. This Court would like to explain this with an example. In a case under Section 302 IPC, if the Investigating Officer files the final report on the 89th day after the production of the accused before the Magistrate for first remand, the time period for statutory bail would stop running. The Magistrate may take cognizance of the offences disclosed in the final report even after the 100th day, but, that will not entail release of the accused on statutory bail. In other words, statutory bail is contingent on completion of investigation and filing of final report in the jurisdictional Court. Statutory bail is a penalty on the police for not doing their job expeditiously.

20. Section 5 of the 1973 Code reads as under:

"Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

21. The UAP Act is a special Act and Section 43-D(1) and (2) of the said Act reads as follows:

"*[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."

22. Under Section 43-D of the UAP Act read with Section 167 Cr.P.C., the maximum period of detention is 90 days, however, the proviso to Section 43(2) states that the period of 90 days can be extended to a period of 180 days, if the Court is satisfied that the report of the Public Prosecutor indicates the progress of the investigation and the specific reasons for the detention of the accused. Under the general law, the police is required to file the final report under Section 173(2) Cr.P.C. in the Court before the expiry of the 60/90 days period to prevent the accused from seeking statutory bail. However, under Section 43(2) of the UAP Act, the Parliament, in its wisdom, has empowered the Public Prosecutor to file a report seeking extension, since it is considered that the Public Prosecutor, being an Officer of the Court and a public functionary, would have unbiasedly assessed the necessity for seeking extension of time for completing the investigation. In the opinion of this Court, the filing of the Report by the Public Prosecutor within 90 days would initially stop the time period from running out and it is, of course, contingent to the Special Judge accepting

or rejecting the report. If the Special Judge rejects the Report, statutory bail to the accused is the only consequence. If the Report is accepted, the accused cannot claim statutory bail immediately after the expiry of the 90-day period.

23. In this case, the 90-day period was to expire on 08.07.2014 qua Thiruselvam [A1], Kaviarasan [A3] and Kalailingam [A4] and on 06.08.2014 qua Karthik [A5] and John Martin [A6] and much before the expiry of the said periods, the learned Public Prosecutor filed the report under Section 43-D (2)(b) of the UAP Act on 30.06.2014 itself and on 04.07.2014, a docket order has been passed on the said report by the Special Judge, Puducherry.

24. The learned counsel for the accused have no grievance with respect to the remand of the accused till 18.07.2014. It is their specific grievance that there was no proper order of remand on 18.07.2014, 14.08.2014 and 12.09.2014 and therefore, the accused would be entitled to statutory bail.

25. In Sayed Mohd. (supra) relied upon by the learned counsel for the accused, the 90-day period expired on 03.06.2012 and further custody of 90 days was sought by the prosecution. The Magistrate, by his order dated 02.06.2012, extended the period of investigation and the custody of the accused by another 90 days. This order was challenged by the accused in revision application and the Additional Sessions Court held that the Magistrate had no competence to extend the judicial custody of the accused and entertain cases of such nature. The Additional Sessions Judge held that the custody order passed by the Magistrate was illegal. This order was passed on 17.07.2012 and on the same day, the accused filed an application under Section 167(2) Cr.P.C. before the Chief Metropolitan Magistrate, seeking statutory bail. Only thereafter, on 18.07.2012, the State filed a fresh application for extension of remand. On these facts, the Supreme Court held as follows:

"25. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of

90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right, as has been commented upon by this Court in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.

26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise. "

26. In this case, from the beginning, the remand was by the Principal District and Sessions Judge (Special Court for NIA Cases, Puducherry) whose jurisdiction has not been questioned by

the accused. Thus, the facts in Sayed Mohd. (supra) differ from the facts obtaining in this case.

27. In Sanjay Kumar Kedia (supra) relied upon by the learned counsel for the accused, the remand extension application after 180 days was filed by the Intelligence Officer, Narcotic Control Bureau and the learned Public Prosecutor had not filed a report as required by Section 36-A(4) of the NDPS Act. Under those circumstances, the Supreme Court held that the remand application filed by the Investigating Officer cannot be treated as a report filed by the Public Prosecutor and statutory bail was granted to the accused therein.

28. At the risk of repetition, in this case, the report under Section 46-D(2) of the UAP Act has been filed by the Special Public Prosecutor of the NIA and not by the Investigating Officer. Further, the investigation was completed and charge sheet was filed on 30.09.2014, i.e., well within the extended period of 180 days from the first remand of the accused. Thereafter, the accused were remanded under Section 309 Cr.P.C.

29. Learned Public Prosecutor placed reliance upon a recent judgment of the Supreme Court in Rambeer Shokeen vs. State (NCT of Delhi) [(2018) 4 SCC 405], wherein, the facts are identical to the facts obtaining in this case. The Supreme Court, after considering the various judgments, including the judgment of the Constitution Bench in Sanjay Dutt (supra), has held as follows:

"22. After having analysed the facts and events as unfolded from 28-2-2017 until 8-3-2017, it is indisputable that on 28-2-2017, the Additional Public Prosecutor had filed report for extension of time to file charge-sheet against the appellant until 15-3-2017. The same was filed within time, before the expiry of 90 days from the date of initial arrest of the appellant in connection with the subject FIR. Realising this position, the appellant did not pursue his first application for statutory bail dated 28-2-2017. Instead, he was advised to file a fresh statutory bail application on 2-3-2017. Admittedly, on 2-3-2017, the report submitted by the Additional Public Prosecutor dated 28-2-2017 was still undecided. Therefore, no right can be said to have accrued to the appellant for grant of bail on the ground of default. In law, only upon rejection of the prayer for extension of time sought by the Additional Public Prosecutor, right in favour of the appellant for grant of statutory bail could have ignited. The mere fact

that 90 days' period from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on 2-3-2017, could not ineluctably entail in grant of statutory bail to the appellant. More so, when no decision was taken by the court on the report/application submitted by the Additional Public Prosecutor until 8-3-2017, on which date the supplementary charge-sheet against the appellant was filed in court. Considering the effect of filing of the supplementary charge-sheet against the appellant, coupled with the fact that his judicial custody was extended by the court of competent jurisdiction until the pendency of consideration of the report/application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the appellant could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become infeasible.

34. In the present case, however, the prayer for extension of period for filing charge-sheet was moved by the Additional Public Prosecutor before the statutory period had lapsed, but the same remained pending until 8-3-2017, when charge-sheet was filed in court. Until the said request was formally and expressly rejected by the competent court, in view of the exposition in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433], the court concerned could not have assumed jurisdiction to consider the prayer for grant of statutory bail of the appellant. The request made by the Additional Public Prosecutor was formally disposed of as infructuous on 8-3-2017, after filing of the charge-sheet against the appellant. That was not an order of rejection of the request of the Additional Public Prosecutor as such. The High Court has examined this aspect and, in our opinion, rightly answered the issue against the appellant for the reasons recorded in paras 75 to 77 of the impugned judgment, including by explicitly extending the time to file charge-sheet till 8-3-2017. We affirm the said view of the High Court. Therefore, even this decision relied upon by the appellant will be of no avail in the fact situation of the present case.

35. Taking overall view of the matter, therefore, it is noticed that the Additional Public Prosecutor had submitted his report to the court concerned for extending time until 15-3-2017, to file the charge-sheet. That report was submitted on 28-2-2017, before expiry of the initial statutory period of 90 days for filing of the charge-sheet against the appellant. That request was disposed of by the Special Court on 8-3-2017 as infructuous, after the charge-sheet against the appellant was submitted in court. Until 8-3-2017, the appellant was sent to judicial custody by the competent court pending consideration of request of the Additional Public Prosecutor for extension of time to file the charge-sheet. The court, in law, could not have considered the prayer for grant of statutory bail of the appellant until 8-3-2017, on which date the charge-sheet was already filed against the appellant in the court concerned. "

(emphasis supplied)

30. To recapitulate the facts, the 90-day period qua Thiruselvam [A1], Kaviarasan [A3] and Kalailingam [A4] was to expire on 08.07.2014 and qua Karthik [A5] and John Martin [A6], it was to expire on 06.08.2014 and in the meantime, the Special Public Prosecutor filed the report under the proviso to Section 43-D(2) of the UAP Act for extending the period upto 180 days on 30.06.2014, on which, docket order was passed on 04.07.2014. Only thereafter, the accused filed the petition for statutory bail on 11.07.2014, which was not entertained by the trial Court. The charge sheet was filed by the NIA against all the accused on 30.09.2014. Therefore, in the light of the recent judgment of the Supreme Court in Rambeer Shokeen (supra), which is binding on this Bench under Article 141 of the Constitution of India, this Court is unable to persuade itself to follow the order of this Court in Thangaraj (supra) for granting relief to the appellants.

31. Lastly, this Court proposes to address the arguments of the learned counsel for the accused relating to the observations made in the Habeas Corpus proceedings, extracted in para 12 above. While dismissing the Habeas Corpus Petitions, the Division Bench has recorded that the Special Judge had not passed any judicial order of remand, but had extended the remand by making endorsements in the remand warrant as and when the accused were produced before him. Having observed thus, the Division Bench dismissed the Habeas Corpus Petitions holding as under:

"73. In view of the above judgments of the Hon'ble Supreme Court, in the instant case, through the detention of the detenus between 18.07.2014 and 12.09.2014 was not by means of any valid order of remand, since on their subsequent production before the Special Court, there were valid orders of remand passed, the detention as of now, cannot be stated to be illegal and so they cannot be set at liberty."

32. The question is, will the accused be entitled to default bail on this ground? As explained above, default bail is a sort of a rap on the knuckles of the police for not completing the investigation and filing the final report within 90/60 days of first remand of the accused. For the failure of the Judge to pass a formal judicial order of extension of remand on the application of the prosecution, default bail is not the remedy. The maxim, Actus Curiae Neminem Gravabit - An act of the Court shall prejudice no one, cannot be ignored. Such a ground for bail cannot be founded either u/s 167(2) or u/s 437 Cr.P.C. This Court cannot hold that, failure of the Magistrate/Judge to pass judicial orders on extension of remand applications would entail default bail to the accused and thus invent an hitherto unknown new category of default bail.

33. In the light of the discussion made above, this Court does not find any irregularity in the impugned orders dated 21.08.2017 in CrI.M.P.Nos.1669 and 1670 of 2017 respectively.

In the result, these Appeals are dismissed as being devoid of merits.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gms
To

1. The Deputy Superintendent of Police
National Investigation Agency
Hyderabad (Camp at Puducherry)
2. The Special Judge for NIA Cases
Puducherry,
3. The Sub Inspector of Police,
Odiyan salai Police Station,
Puducherry.

4. The Judicial Magistrate,
Melur Madurai
5. The Chief Judicial Magistrate,
Madurai.
6. The Superintendent,
Central Prison, Madurai.
7. The Superintendent,
Central Prison, Palayamkottai.
8. The Inspector of Police,
Othakkadai Police Station
9. The Public Prosecutor,
High Court, Madras-104

Copy To
The Section Officer,
Criminal Section, High Court-104.

+2ccs to Mr.R.Karthikeyan, Advocate, S.R.No.39033, 39032
+2ccs to Mr.P.Pugalendhi, Advocate, S.R.No.38463
+2ccs to Mr.R.Sankarasubbu, Advocate, S.R.No.38464

Crl.A.Nos.550 and 577 of 2017

GMR(CO)
CS/28/06/18

सत्यमेव जयते

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