

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19259-2019 (O&M)

Date of decision: 30.10.2019

Bikramjit Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Jagtar Singh, Advocate
for the petitioner.

Mr. H.S. Grewal, Addl. AG, Punjab.

Mr. D.S. Pheruman, Advocate and
Mr. R.K. Kapoor, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for releasing the petitioner on bail as per provisions of Section 167 (2)(a)(i)(ii) of the Code of Criminal Procedure (for short 'Cr.P.C.'), during pendency of the trial, in FIR No.121 dated 18.11.2018 under Sections 302, 307, 452, 341, 427, 34 of the Indian Penal Code, 1860 (for short 'IPC'), Section 25 of Arms Act, 1959, Sections 3, 4, 5 & 6 of Explosive Substances Act, 1908 and Sections 13, 16, 18 & 18B of Unlawful Activities (Prevention) Act, 1967 (for short 'UAP Act'), registered at Police

Station Rajasansi, District Amritsar.

Brief facts of the prosecution version, as per the FIR registered on the statement of one Arjan Singh, are that on 18.11.2018, he was present in Nirankari Bhawan, where a Satsang was going on and about 200 persons were present. The complainant was doing the duty of Security Guard on the main gate, when two young boys came on a motorcycle. One boy took out a pistol and told the complainant to stand near the washroom. The second boy went inside and threw a grenade in the Satsang Hall and thereafter, both of them ran away. Due to grenade explosion, 22 persons were seriously injured and later on, three persons died and others suffered multiple grievous injuries.

Learned senior counsel for the petitioner submits that the petitioner along with one co-accused Avtar was later on arrested on 21.11.2018 and he was produced before the Illaqa Magistrate for the purpose of extension of his judicial remand on 22.11.2018 and therefore, a period of 90 days was to expire on 19.02.2019. It is further submitted that in the meantime, on an application moved by the Public Prosecutor on 12.02.2019, seeking extension of time for presentation of challan, the Illaqa Magistrate, on 13.02.2019, passed the following orders: -

“Keeping in view the facts mentioned in the present application sensitivity of the matter and recovery made so far, I am of the considered view that thorough investigation is required in the present case and thus application stands allowed and period of investigation is extended to 180 days.”

Learned senior counsel for the petitioner further submits that the

aforesaid order was challenged by the petitioner and co-accused Avtar before the Court of Additional Sessions Judge by way of filing a criminal revision petition and this order was set aside by the revisional Court on a technical ground that the Illaqa Magistrate has no jurisdiction to entertain the application for extension of period of investigation, as per notification of the Govt. of Punjab dated 10.06.2014, which reads as under: -

“In exercise of power conferred under sub section (1) of section 22 of National Investigation Agency, 2008 (Central Act No.34 of 2008), and all other powers enabling him in this behalf, the Governor of Punjab, with the concurrence of Hon’ble Chief Justice of the High Court of Punjab & Haryana, Chandigarh is pleased to constitute the Courts of Sessions Judge and the First Additional Sessions Judge (for the area falling within their respective jurisdiction), at each district headquarter in the State, to be the “Special Courts” for the trial of offences as specified in the Schedule appended to the aforesaid Act, which was investigated by the state police.”

The revisional Court held that since the trial in the present FIR is to be conducted by a Special Court, the Illaqa Magistrate has no jurisdiction to extend the period under Section 167 (2) Cr.P.C. It is a matter of record that neither the State nor the complainant challenged this order dated 13.02.2019, vide which the Illaqa Magistrate extended the period beyond 90 days i.e. upto 180 days, to submit the report under Section 173 Cr.P.C. In the meantime, the petitioner filed an application for grant of default bail, which was declined by

the Illaqa Magistrate vide order dated 25.02.2019, observing that since the period of presentation of challan/completion of investigation stands extended upto 180 days vide order dated 13.02.2019, therefore, the application for default bail under Section 167 (2) Cr.P.C. is premature and is liable to be dismissed.

Thereafter, the petitioner filed a criminal revision petition before the Additional Sessions Judge/Exclusive Court, Amritsar for setting aside the order dated 25.02.2019 passed by the Illaqa Magistrate, declining him to grant default bail. The Additional Sessions Judge/Exclusive Court, vide order dated 11.04.2019, dismissed the revision petition, by making the following observations: -

“After hearing learned counsel for revision petitioner and learned P.P. for the State, I am of the view that admittedly in the present FIR No.121 dated 18.11.2011, revisionist Avtar Singh was arrested on 24.11.2018 and Bikramjit Singh was arrested on 22.11.2018. Whereas, period of 90 days from the date of arrest of revisionist Avtar Singh was completed on 19.2.2019 and period of 90 days qua Bikramjit Singh revisionist was completed on 21.2.2019. However, prosecution moved an application seeking extension of time from 90 days to 180 days before Illaqa Magistrate and in view of section 43-D(2) Unlawful Activities(Prevention) Act, 1967, time was granted by Illaqa Magistrate. Since the same could have only been granted by special designated court, so the said order was challenged by

way of revision in this court and revision was accepted and order of Ilaqa Magistrate was set aside.

*Though, said order was set aside, but immediately thereafter prosecution has filed police report under Section 173(2) Cr.P.C., however, it is alleged by learned counsel for revision petitioner that since, to prosecute the revisionists under unlawful activities act, no sanction is obtained from competent authority, so it is not a report or complete challan as provided under Section 173(2)Cr.P.C. In this regard, he has relied upon judgments of Hon'ble Apex Court, wherein it is held that prosecution agency not taking sanction of Director General of Police, so designated court has no jurisdiction to take cognizance of offence without prior sanction, which is to be obtained by prosecution agency. However, in the present case, beside the offences committed under Unlawful Activities(Prevention) Act, 1967, accused has also been sent to face trial for committing offences under Sections 302,307,452,341,427,34 IPC, Section 25/54/59 of Arms Act and Sections 3,4,5 & 6 Explosive Act, wherein no sanction is required to prosecute them. Therefore, the facts of the present case are different from the facts of the case law referred. Moreover, in the case law referred by learned P.P. for the State titled as '**Hitender Vishnu Thakur Vs. State of Maharashtra**' **1999(4) SCC 602**, the Hon'ble Apex Court of India at page*

No.30 in para No.65 has held, sanction is not strictly speaking a part of the investigation and this legal position was conceded by Mr.Tulsi the learned Additional Solicitor General also relieving us of the need to refer to the settled law on this subject. In the absence of sanction, there was no bar to file the charge sheet and then to produce the sanction of the competent authority subsequently with the permission of the court.

Meaning thereby, when sanction is not a part of investigation, so police report submitted under section 173 Cr.P.c. in no manner can be said to be incomplete. Rather sanction can be obtained in due course by the investigating agency and submitted the same under Section 173(8) Cr.P.C. with the permission of the Court.

Therefore in view of the above conferred judgment of Hon'ble Apex Court of India and that this legal preposition has not been discussed in case law referred by learned counsel for revision petitioner. So, the judgment referred by learned counsel for revisionists is of no avail to him.

No doubt, vide gazette notification issued by Government of Punjab on 10.6.2014, the Session Judge and First Additional Sessions Judge at each District Head Quarters in the State are designated as special court for the trial of offences of unlawful activities act. However, as per the local arrangement, all the cases pertaining to unlawful activities act are dealt in by this

*court. So, being a special court, this court is competent to directly receive the challan or police report under section 173 Cr.P.C. Since the challan has already been presented and in the judgment titled as "**Abdul Aziz PV and others Vs. National Investigation Agency**", 2015(1) RCR(Criminal)239, it has been held that merely because certain facets of the matter called for further investigation, it does not deem such report anything other than a final report, revisionists are not entitled to statutory bail under Section 167(2) Cr.P.C.*

*Further the Hon'ble Bombay High Court in case titled as "**Afzal Ibrahim Jarrywala Vs. State of Maharashtra**", 2003(3)RCR(Criminal)393 has held, right to bail accrued to the accused, but not availed of. Charge sheet submitted. Accused lost his right to bail under Section 167(2)Cr.P.C. after submission of charge sheet. Similar view has been taken by Hon'ble Orrisa High Court in case titled as, "**Pratima Nayak Vs. State of Orrisa**", 2011(4)RCR(Criminal) 421. However, both the Hon'ble High Courts of Bombay and Orrisa have relied upon Hon'ble Supreme Court of India.*

Since challan has already been presented, so revision petitioner have lost their right for bail by way of default under Section 167(2) Cr.P.C. Therefore, there is no reason to interfere in the order of Ilaqa Magistrate passed under section 167(2) Cr.P.C. so this revision petition fails and is dismissed."

Learned senior counsel for the petitioner has argued that once the order dated 13.02.2019 passed by the Illaqa Magistrate, extending the period for completing the investigation/presentation of challan, stands set aside by the revisional Court vide order dated 25.03.2019, the petitioner is entitled to default bail under Section 167 (2) Cr.P.C.

Learned senior counsel for the petitioner has relied upon **Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014 (3) RCR (Crl.) 534**, to submit that in such circumstances, the Hon'ble Supreme Court has granted the concession of default bail, as the charge-sheet was not filed within a period of 90 days. It is further argued that the Illaqa Magistrate has wrongly declined the concession of default bail vide impugned order dated 25.02.2019 and the petitioner is entitled to bail.

Learned senior counsel for the petitioner has further argued that even submission of challan/report under Section 173 (2) Cr.P.C. directly before the Special Court is illegal. It is next argued that no sanction has been obtained by the prosecution under the provisions of UAP Act (as amended in the year 2008) and without sanction, the Special Court has no jurisdiction to take cognizance of the offence. Learned senior counsel has relied upon **Ram Bhai Vs. State of Gujarat, 1997 (4) RCR (Crl.) 11** to submit that since the Special Court has no jurisdiction to take cognizance without prior sanction of the competent authority, therefore, incomplete challan was presented and the petitioner is entitled to default bail under Section 167 (2) Cr.P.C.

In reply, learned State counsel, assisted by learned counsel for the complainant, has however opposed the prayer for bail. It is argued that

challan/report under Section 173 Cr.P.C. was submitted before the trial Court on 26.03.2019 and therefore, subsequent thereto, there was no occasion for the petitioner to apply for bail before the Special Court and the same was rightly dismissed vide order dated 11.04.2019. It is further argued that though the appeal has not been filed challenging the order dated 25.03.2019 passed by the Additional Sessions Judge/Exclusive Court, holding that the Illaqa Magistrate was having no jurisdiction to entertain an application for extension of period of investigation, however, the said order is not sustainable as the same is passed on the basis of a notification dated 10.06.2014, which pertains to the trial by a Special Court.

Learned State counsel has further argued that till the investigation is pending and the report under Section 173 Cr.P.C. is not submitted, the trial Court cannot commit the case to the Court of Sessions/Special Court and therefore, for all intents and purposes, powers to extend the period of investigation, would lie with the Illaqa Magistrate and while passing the order dated 25.03.2019, Additional Sessions Judge/Exclusive Court has made an incorrect interpretation of the notification dated 10.06.2014 and therefore, the order dated 25.03.2019 is legally not sustainable. It is next argued that on the date i.e. 26.03.2019, when the challan was presented, no application of the petitioner was pending as the application before the Exclusive Court was filed on the same day i.e. 26.03.2019 and was dismissed on 11.04.2019 and therefore, in view of Constitution Bench judgment of the Hon'ble Supreme Court in **Sanjay Dutt Vs. State through CBI (Bombay), (1994) 5 SCC 410**, the right to seek

default bail does not survive. The operative part of the judgment reads as under: -

“We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4) (bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filled because Section 167 Cr. P.C. ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in section 20(4) (bb), both of them should be considered together. It is obvious that no bail can be

given of the even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provisions on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. The State of Punjab, Ram Narayan Singh v. The State of Delhi and Others, and A.K. Gopalan v. The Government of India.)”

Learned State counsel has also argued that the Hon'ble Supreme Court has again taken the similar view in **State of M.P. Vs. Rustom and Others, 1995 Supp. (3) Supreme Court Cases 221** and **Mustak Ahmed Isak Vs. State of Maharashtra, 2009 (7) SCC 480**. It is further submitted that as per proviso to Section 43 (d) UAP Act, the Court is competent to extend the period of 90 days to a period of 180 days.

Learned State counsel has next argued that the order dated 25.03.2019, setting aside the order dated 13.02.2019 passed by the Illaqa

Magistrate, extending the time upto 180 days is per-se illegal, as the same has not been passed, in accordance with law.

Learned counsel for the complainant has also opposed the prayer for bail on the ground that as per provisions of Section 43 (d) of UAP Act (as amended in the year 2008), the time can be extended upto a period of 180 days, on an application filed by the Public Prosecutor, explaining the reason that it is not possible to complete the investigation within a period of 90 days. It is argued that the Illaqa Magistrate has extended the period and immediately thereafter, challan was presented. Learned counsel has further argued that since the challan stands presented before the Special Court, the right of the petitioner to seek default bail stands extinguished in view of the judgment of the Hon'ble Supreme Court in **Sanjay Dutt's** case (supra).

It is relevant to refer to the following relevant provisions: -

Section 167 Cr.P.C.

“167. Procedure when investigation cannot be completed in twenty four hours. (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 57, 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 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, authorise 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 authorise the detention of the accused person, otherwise than in the 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 authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) 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) 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;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

Provided further that in case of woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) Notwithstanding anything contained in sub- section (1) or sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on

whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the

custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.”

Section 2 (j) Cr.P.C. defines local jurisdiction and the same reads as under: -

“local jurisdiction”, in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may

exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State or any part of the State, as the State Government may, by notification specify.”

Further, Section 11 Cr.P.C. defines the Courts of Judicial Magistrates 1st Class and 2nd Class, as the State Government may notify in accordance with the procedure given therein.

Section 2 (c) and (d) of UAP Act defines “**Code**” and “**Court**” and the same reads as under: -

*2(c) “**Code**” means the Code of Criminal Procedure, 1973 (2 of 1974);*

*(d) “**Court**” means a criminal court having jurisdiction, under the Code, to try offences under this Act and includes a special court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 (34 of 2008).”*

Section 2 (b) and (h) of the National Investigation Agency Act, 2008 (for short ‘NIA Act’) defines the “**Code**” and “**Special Court**”: -

*2 (b) “**Code**” means the Code of Criminal Procedure, 1973 (2 of 1974).*

*(h) “**Special Court**” means a Special Court constituted under section 11 or, as the case may be, under section 22.”*

In the light of aforesaid definitions, a Magistrate, in whose jurisdiction, the offence is committed, as the power under Section 167 Cr.P.C. to authorise further detention of the accused in custody, for a period not exceeding 15 days and as per proviso (a)(i); upto a period of 90 days,

when the investigation relates to an offence punishable to death or imprisonment for life or for a term not less than 10 years, can extend the period of 90 days as provided in Section 167 Cr.P.C. to 180 days, in exercise of power under Section 43 (d) of UAP Act, which reads as under: -

“(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 eight 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.”

In Section 6 of NIA Act, it is provided that investigation of scheduled offences may be carried out by the agency wither on the recommendation of the State Government to Central Government or by the Central Government in exercise of its suo motu powers, while directing the agency to investigate the case. Sub-Section (6) of Section 6 of NIA Act provides that once the investigation is transferred to an agency, the State Government and the police officer of the State Government shall not proceed with the investigation, whereas under sub-section 7, it is provided that till the agency takes over the investigation, the officer-in-charge of the police station will continue with the investigation.

Section 13 of NIA Act explains jurisdiction of the Special Courts and sub-Section (1) of Section 13 reads as under: -

“Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it is committed.”

As per Section 22 of NIA Act, the State Government is empowered to constitute Special Courts. Sub-sections (2) & (3) reads as under: -

“(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence

punishable under this Act, notwithstanding anything contained in the Code, be exercise by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.”

A joint interpretation of Section 167 (2) Cr.P.C. read with Section 43 (d) UAP Act, Section 6, 13 & 22 of NIA Act would show that in case the investigation is being carried out by the State police, the Magistrate will have power under Section 167 (2) Cr.P.C. read with Section 43 (d) of UAP Act to extend the period of investigation upto 180 days and then, commit the case to the Court of Sessions as per provisions of Section 209 Cr.P.C., whereas in case the investigation is conducted by the agency under the NIA Act, the power shall be exercised by the Special Court and challan will be presented by the agency before the Special Court.

The revisional Court, while passing the order dated 25.03.2019, relied upon a notification of the Govt. of Punjab dated 10.06.2014, in which while exercising the power under Section 22 (1) of NIA Act, the Sessions Judge and the first Additional Sessions Judge in the State at each district headquarter is designated as Special Courts for the trial of offences, as

specified in the Schedule appended to the aforesaid Act, which was investigated by the State Police, therefore, interpretation of this notification by the revisional Court that the Magistrate has no jurisdiction to extend the period upto 180 days in a case, where the investigation was conducted by the State police and for all intents and purposes, till submission of challan, the accused were produced before the Magistrate, even for extension of original period of 90 days as per Section 167 (2) (a)(i) Cr.P.C., the Magistrate was competent to extend the period of upto 180 days in exercise of powers under Section 43 (d) of UAP Act.

It is not case of the petitioner that the investigation was conducted by the agency under Section 6 of the NIA Act and till committal of the case to the Court of Sessions, as per Section 22 (3) of NIA Act, it cannot be said that the Magistrate has no power and therefore, the order dated 25.03.2019 suffers from illegal infirmity.

The arguments raised by learned senior counsel for the petitioner that the petitioner is entitled to default bail under Section 167 (2) Cr.P.C., in view of judgment of the Hon'ble Supreme Court in **Sanjay Dutt's** case (supra), is not available, once the challan was presented by the prosecution on 25.03.2019, as the application was filed by the petitioner on the next day i.e. 26.03.2019.

The Judge, Exclusive Court has recorded a well reasoned finding that mere fact that sanction has not been granted so far, is no ground to grant concession of bail, as it is rightly held that besides the offence committed under the UAP Act, the accused is also facing the trial for committing the

offence under Sections 302, 307, 452, 341, 427, 34 IPC read with Section 25/54/59 of Arms Act and Sections 3, 4, 5 & 6 of Explosive Act, for which no sanction is required to prosecute the petitioner.

For the reasons recorded above and in view of judgment of the Hon’ble Supreme Court in **Hitendra Vishnu Thakur Vs. State of Maharashtra, 1994 (3) RCR (Crl.) 156**, finding no merit in the present petition, the same is dismissed.

30.10.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No