

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 16.12.2019

Judgment Pronounced on : 08-01-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal Nos. 775 and 799 of 2019

Rafi Ahmed

.. Appellant in Crl.A.
No. 775 of 2019/Accused 12

1. Munthasir

2. Mohideen Seeni Shahul Hameed

3. Faizul Sharief

.. Appellants in Crl.A.
No. 799 of 2019/
Accused 13, 15 & 16

Versus

The Deputy Superintendent of Police
National Investigation Agency
Cochin (Camp at Chennai)

.. Respondent in both
the appeals/Complainant

Appeals filed under Section 21 of The National Investigation Agency Act, 2008 (34 of 2008) against the Judgment dated 10.10.2019 passed in Crl.M.P. No. 380 of 2019 in R.C. No.06/2019/NIA/DLI on the file of the Special Judge (under National Investigation Agency Act, Cases (Sessions Court for Excusive Trial of Bomb Blast Cases, Poonamalee), Chennai.

For appellants : Mr. T. Mohan

for Mr. T.K.S. Gandhi in Crl.A. No. 775 of 2019

Mr. M. Radhakrishnan in Crl.A. No. 799 of 2019

For respondent : Mr. R. Karthikeyan

Special Public Prosecutor for NIA Cases
in both the appeals

COMMON JUDGMENT

R. Subbiah, J

The appellant in Criminal Appeal No. 775 of 2019 is arrayed as A-12, while the appellants in Criminal Appeal No. 799 of 2019 are arrayed as A13, A15 and A16 respectively in Crime No. 6 of 2019 on the file of the respondent herein.

2. The appellants have filed these appeals questioning the legality and/or correctness of the order dated 10.10.2019 passed in CrI.M.P. No. 380 of 2019 on the file of the learned Special Judge for NIA Cases at Poonamallee, Chennai. By the said order dated 10.10.2019, the learned Special Judge extended the period of detention of the appellants for another 90 days viz., from 90 days to 180 days, in order to provide an opportunity to the investigation officer to conduct the investigation effectively as provided under Section 43-D (2) (b) of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as The Act).

3. As both the Criminal Appeals arise out of the common order dated 10.10.2019 passed by the learned Special Judge for NIA Cases, Poonamallee, Chennai, they are taken up for hearing together and are disposed of by this common Judgment.

4. The background facts, which are necessary for disposal of these appeals, are narrated in brief hereunder.

5. The Union Government has received credible information that a group of Pro-ISIS and AlQuida organization variously called as "Wahadat-E-Islami", "Jarnaat Wahadat-ul-Islam-al-Jihadiya", "Jihadist Islamic Unit" and "Ansarallah" have formed to establish Islamic rule in India by resorting to violent Jihad. According to the information received, A. Hasan Ali Yunusmaricar @ Abu Dujana of Tamil Nadu, who is closely associated with ISIS, is actively recruiting individuals to strike terror in India. The information also disclosed that Syed Bukhari, who heads Wahadat-E-Islam Organization in Tamil Nadu, who is also the head of now underground Student Islamic Movement of India (SIMI) is a proscribed terrorist organization. As per the information received, Hasan Ali @ Abu Dujana and Syed Bukhari have entered into a conspiracy and plans are afoot to de-stabilize the democratic polity of India to establish Islamic rule in India by violent Jihad against the Government of India. On the basis of the information so received, the Ministry of Home Affairs (CTCR Division) Government of India, by an order passed in Order F.No.11011/34/ 2019 / NIA dated 08.07.2019 directed the National Investigation Agency to register first information report. Accordingly, in compliance with such directive issued by the Ministry of Home Affairs, Government of India, the respondent registered a First Information Report in RC No.16/2019/NIA/DLI on the file of National Investigation Agency Police Station, New Delhi on 09.07.2019 for the offences punishable under Sections 120-B, 121A and 122 of the Indian Penal Code read with Sections 17, 18, 18B, 38 and 39 of the Act.

6. According to the respondent, the appellants in these appeals were among the fourteen accused arrested and detained by the authorities of United Arab Emirates for their association with Pro-ISIS and Al-Quida organisation to establish Islamic Rule in India. Earlier, the appellants were taken into custody and enquired by the UAE authorities and during such custodial interrogation, the appellants have

admitted the formation of the group called Ansarulla, conduct of meetings at various places in UAE to strengthen their activities and for collection of funds. After custodial interrogation for about six months, the accused were deported to India during 12th and 14th July 2019 respectively.

7. On the basis of the information relating to deportation of the aforesaid persons to New Delhi, the National Investigation Agency arrested the appellants and others on various dates between 13.07.2019 and 15.07.2019 mostly from New Delhi. After arrest, on the basis of a petition filed by the investigation officer in this case, the accused were given police custody for 8 days from 19.09.2017 to 26.09.2017. On completion of the period of police custody, all the accused were produced before the Special Court and remanded to judicial custody. Subsequently also, the judicial custody of the appellants have been periodically extended from time to time. It is stated that during the course of interrogation of the accused, on the basis of the information provided by the appellants, 173 digital devices have been seized and they were sent for analysis to C-DAC, Trivandrum through the Special Court. Further, on the basis of the statement made by the appellants, their social media accounts were verified and in some cases, a request has been made to the service provider of the social media for preserving and providing certain data for investigation. The statements made by the appellants, according to the respondent, also disclosed the places where the meetings of the terrorist gang were conducted in United Arab Emirates including the details of the participants of the meeting. It is also submitted that the statements made by the appellants resulted in seizure of literature on violent jihad and terrorist organisation.

8. While so, the appellant in CrI.A. No. 775 of 2019 filed CrI.M.P. No. 323 of 2019 before the Special Court under Section 437 read with Section 439 of Code of Criminal Procedure for bail. According to the appellant, he was handed over to Indian NIA Authorities in Dubai on 12.07.2019 and as soon as he landed India, he was remanded to judicial custody on 15.07.2019. It is his case that he was innocent and he was not involved in the offences alleged against him. He was doing business in Dubai for more than 30 years and that he was falsely implicated. Opposing the petition seeking bail, a counter statement was filed by the respondent. The Special Court, after hearing the submission of both sides and on perusal of the materials placed, rendered a finding that the investigation in this case is going on and the report of analysis is awaited. The Special Court also noted that a petition under Section 43-D (2) (b) of the Act has been filed by the prosecution seeking further detention of the appellant in CrI.A. No. 775 of 2019 beyond 90 days and upto 180 days and the said petition is pending. Therefore, the Special Court, by order dated 09.10.2019 dismissed the application for bail filed by the appellant in CrI.A. No. 775 of 2019. Thereafter, the Special Public Prosecutor, invoking the provisions contained under Section 43-D (2) (b) of the Act has moved CrI.M.P. No.

380 of 2019 before the Special Court seeking to extend the period of detention of the accused 2 to 17, including the appellants herein, beyond the period of 90 days upto 180 days. The application was opposed by the appellants by filing a counter. However, the Special Court, by the order dated 10.10.2019 allowed the petition filed by the respondent herein and thereby extended the period of detention of the Accused 2 to 7 in custody upto one hundred and eighty days as provided under Section 43-D (2) (b) of the Act. Aggrieved by the same, the present Criminal Appeals are filed before this Court.

9. Mr. T. Mohan, learned counsel appearing for Mr. T.K.S. Gandhi, learned counsel for the appellant in CrI.A. No. 775 of 2019 would contend that earlier, in January 2019, the appellant was apprehended by Dubai Police and detained for nearly six months. According to the learned counsel for the appellant, such detention of the appellant could have been at the instance of the Indian Government based on unverified and unsubstantiated materials leading to unwarranted apprehensions. The Dubai police in fact interrogated the appellant, his family members and friends and after a thorough enquiry, satisfied that the appellant is innocent. However, the appellant was handed over to the Indian NIA Authorities in Dubai on 12.07.2019 and deported to India. Thus, even before deportation, the appellant was in the custody of the NIA officials at Dubai and later deported to India and handed over to officers of NIA, Chennai, who remanded him to judicial custody on 15.07.2019. Even during the custodial interrogation of the appellant, he denied having committed any offences alleged by the respondents. Even in the remand report dated 14.07.2019 and extension of remand report dated 04.10.2019, there is no whisper about the appellant connecting him to the offences alleged. The appellant was arrested only on the basis of apprehensions and on un-credible information. It is his contention that the appellant is not having any adverse antecedents either in Dubai or in India warranting his continued detention. Even though more than 135 days had expired after the arrest of the appellant on 12.07.2019, the investigation officer has not filed their final report pointing out any involvement of the appellant. In such a circumstances, the extension of the appellant's detention beyond the period of 90 days is not warranted. The appellant is groping in the dark as to why he was arrested, what are the incriminating materials made available against him or how the Special Court has arrived at a subjective satisfaction on the basis of the report of the respondent seeking further extension of the detention of the appellant. The Special Court has mechanically allowed the application filed by the respondent seeking extension of detention indicating the compelling necessity to detain the appellant beyond the period of 90 days and extending the detention of the appellant upto 180 days. Such extension of the detention of the appellant violates the fundamental rights guaranteed to the appellant under Article 21 of The Constitution of India.

10. The learned counsel for the appellant in Criminal Appeal No. 775 of 2019 would proceed to contend that earlier, on 28.08.2019, the appellant filed CrI.M.P. No. 323 of 2019 seeking bail and it was dismissed on 09.10.2019 on the ground that the respondent has filed an application dated 04.10.2019 under Section 43 D (2) (b) of the Act to extend the period of detention of the appellant beyond 90 days and up to 180 days. Thus, it is evident that only during the pendency of the petition filed by the appellant for bail in CrI.M.P. No. 323 of 2019 the respondent sought extension of time from 90 days to 180 days by filing a report dated 04.10.2019, in which report, there was no reference or allegations made as against the appellant herein. In the order dated 10.10.2019 of the Special Court, which is impugned in this appeal, the court below merely extracted the report of the Public Prosecutor filed on behalf of the respondent, the counter filed by the accused/appellant and in the penultimate paragraphs, it was merely stated that the Special Court is satisfied with the report of the Public Prosecutor and therefore extended the period of detention of the appellant upto 180 days. In the report filed on behalf of the respondent, it was merely stated that the respondent has to get certain information from Dubai Police. The fact remains that already the Dubai Police completed investigation and released the appellant by finding him not guilty of any of the offences. While so, such a report from Dubai Police is not at all necessary for extending the detention of the appellant. The Special Court also failed to verify the CD files of the respondent to ascertain whether there are any allegations made against the appellant culled out during the custodial interrogation.

11. The learned counsel for the appellant in CrI.A. No. 775 of 2019 invited the attention of this Court to Section 43-D (2) (b) of the Act, which reads as follows:-

"43D. Modification 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:--

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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 purpose 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."

12. By relying upon Section 43D (2) (b) of the Act, it is submitted by the learned counsel that the proviso to Section 43D (2) (b) of the Act is very clear that the period of detention may be extended to 180 days only if the statutory requirements are complied with by the prosecution. Thus, for extending the period of detention, the Court must satisfy itself with the report of the Public Prosecutor indicating the progress of the investigation and the specific reason for detention of the accused beyond ninety days. Thus, only if the statutory requirements are complied with by the prosecution, the Court can extend the detention up to 180 days. In the present case, the court below has not assigned any valid reason or compelling necessity that exists for granting time for further investigation. In this context, the learned counsel placed reliance on the decision of the Apex Court in Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotics Control Bureau and another reported in (2009) 7 Supreme Court Cases 631 wherein it was held that Section 167 does not envisage an extension of the period of detention of an accused in custody beyond the specified period. In Para No.10 and 12, it was held as follows:-

"10. It will be seen that Section 167 does not envisage an extension of the period of detention of an accused in custody beyond the specified period. The legislature, however, thought in its wisdom, that certain special categories or situations required that the investigation agencies should be given more time to investigate a matter and to file their complaint or charge-sheets and such provisions have been made under special statutes. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter called the "TADA") and the Act are two such special legislations.

11.

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

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

13. The question to be noticed at this stage is as to whether the two applications for extension that had been filed by the Public Prosecutor seeking an extension beyond 180 days met the necessary conditions. We find that the matter need not detain us as it is no longer res integra and is completely covered by the judgment of this Court in Hitendra Vishnu case. In this case, the Bench was dealing with the proviso inserted as clause (bb) in sub-section (4) of section 20 of TADA, which is in pari materia with the proviso to sub-section (4) of Section 36-A of the Act. This Court accepted the argument of the accused that an extension beyond 180 days could be granted but laid a rider that it could be so after certain conditions were satisfied."

13. Thus, the extension of the detention is subject to the satisfaction to be arrived at by the Special Court based on the report of the Public Prosecutor. In the present case, the report filed by the Public Prosecutor contains false or irrelevant particulars based on which the Special Court ought not to have extended the detention of the appellant. In this regard, the learned counsel also relied on the decision of the Division Bench of this Court in the case of Shakul Hammed vs. State by the Superintendent of Police, National Investigation Agency, Kochi reported in (2018) 4 Madras Law Journal (Crl) 546 wherein it was held that extension of judicial remand and extension of time for completing the investigation from 90 days to 180 days at a stretch is illegal. Thus, according to the learned counsel, the continued detention of the appellant is illegal and unlawful and the mechanical extension of detention granted by the Special Court in the impugned order has to be set aside.

14. The learned counsel for the appellant in Crl.A. No. 775 of 2019 invited the attention of this Court to Section 2 (m) of the Act morefully listed under first Schedule thereof to contend that the alleged terrorist organisation, with which the appellant was allegedly associated with, has not been included in the first Schedule and therefore also, the appellant is entitled for bail. In this context, the learned counsel relied on the decision of the Honourable Supreme Court in the case of Niranjana Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijaya and others reported in (1990) 4 Supreme Court Cases 76 to contend that a statute must be strictly followed and the Court has to arrive at a subjective satisfaction based on the incriminating materials made available against him by the prosecution. In the present case, according to the learned

counsel, there are no incriminating materials at all made available against the appellant warranting his prolonged detention and prayed for allowing Criminal Appeal No. 775 of 2019.

15. Mr. M. Radhakrishnan, learned counsel appearing for the appellants in CrI.A. No. 779 of 2019 submits that the order of the Special Court is bereft of material particulars and it has been passed without any application of mind. According to the learned counsel, as per Section 43 D (2) (b) of the Act, the detention of the appellant can never be extended beyond 30 days in the whole at a time, while so, extending the detention of the appellants from 90 days to 180 days at a stretch is contrary to Section 43 D (2) (b) of the Act. It is his contention that the Special Court has to arrive at a subjective satisfaction to extend the period of detention of the accused on the basis of the statement made in the report of the investigation officer, through the Public Prosecutor. The Public Prosecutor has to specify compelling reasons for extending the period of investigation by indicating the progress of the investigation. However, the detention of the accused can never be extended beyond 30 days in the whole at a time. Such detention can be extended upto a maximum period of 180 days only if the Public Prosecutor gives compelling reasons for the detention of the accused beyond 90 days. There is also a statutory mandate for the submission of report of the investigation officer specifying the compelling reason for extension of detention of the accused beyond 90 days. The Special Court, on the basis of such report, has to satisfy itself about the compelling reason for the extension of detention of the appellants beyond 90 days. In the instant case, there is no compelling reasons given in the report of the Special Public Prosecutor warranting the Special Court to extend the period of detention of the accused up to 180 days. To fortify this submission, the learned counsel relied on the decision of the Honourable Supreme Court in Sanjay Kumar Kedia @ Sanjay Kedia which was also relied on by the counsel for the appellant in CrI.A. No. 775 of 2019 to contend that filing of the report of the Public Prosecutor is not a mere formality but it is a vital report as the consequences of which affects the liberty of the accused and therefore it must be strictly complied with. The learned counsel for the appellants therefore prayed this Court to allow Criminal Appeal No. 799 of 2019.

16. Countering the submissions of the learned counsel appearing for the respective appellants in these appeals, Mr. R. Karthikeyan, learned Special Public Prosecutor appearing for the respondent submits that the appellants, after their arrest, were subjected to custodial interrogation and during such interrogation, they have admitted as to the formation of the group by name Ansarulla, a terrorist gang as defined under Section 2 (1) (m) of the Act. They have also admitted having conducted meetings at various places in United Arab Emirates to further their activities, collecting funds for their subversive purpose etc., The statement so made has led to recovery of 171 digital devices which were forwarded for analysis. The

appellants were earlier arrested by the UAE authorities and they were under detention for about six months until their deportation to India. The averment that the appellants were released by the UAE authorities after finding them not guilty is incorrect. They were deported to India after cancelling their Visas and this itself would indicate their involvement in unlawful activities. Since major transactions of the crime had happened in United Arab Emirates investigation is required to be conducted at UAE to find out the truth. Even though the authorities at UAE were requested through Mutual Legal Assistance Request in terms of Mutual Legal Assistance Treaty (in short MLAT) between India and UAE, for collection of evidence, the respondent is yet to receive any reply from the UAE authorities. Further, the investigation on the transactions made by the appellant through e-mail and social media platform like WhatsApp and Facebook is also under progress as per the MLAT made between India and USA. Thus, according to the learned Special Public Prosecutor, since the investigation into the various kinds of activities indulged in by the appellants will take some more time, the investigating agency is wholly justified in seeking to extend the detention of the appellants. This was also elaborately mentioned by the Special Public Prosecutor in his report submitted to the Special Court and having satisfied with such reasons assigned, the Special Court has extended the period of detention of the appellants beyond 90 days up to 180 days. Such extension sought for by the Special Public Prosecutor is only to enable the investigating agency to complete the investigation and to file a final report. The request made for extension is in tune with the provisions contained under Section 43-D (2) (b) of the Act.

17. The learned Special Public Prosecutor has also placed reliance on the decision of the Division Bench of this Court in Shakul Hameed case mentioned supra and submitted that in the said Judgment of the Division Bench, it has not been stated that the extension of detention of the accused is illegal, as contended by the learned counsel for the appellant. On the other hand, in the said Judgment, the Division Bench of this Court held that the use of the words "up to" determines the way in which the extension can be granted. "Up to" denotes the maximum time up to which extension of remand can be granted. The proviso to Section 43D (2) is unambiguously clear that no where, the said proviso indicate that power of extension of remand in a single stretch cannot be exercised. However, the Division Bench of this Court quashed the order of the Special Court only on the ground that the report of the Public Prosecutor does not satisfy the second limb of Section 43D (2) (b) of the Act. As against the Judgment of the Division Bench of this Court in Shakul Hameed case, an appeal has been filed before the Honourable Supreme Court of India. The Honourable Supreme Court in (State by the Superintendent of Police, National Investigation Agency, Kochi vs. Shakul Hameed) reported in (2019) 6 Supreme Court Cases 350 upheld the Judgment of the Division Bench of this Court with respect to the correctness of extension of period of remand up to 180 days, but set aside the Judgment of the Division Bench only in

so far as it relates to the finding that the report of the Special Public Prosecutor did not fulfil the second limb of Section 43D (2) (b) of the Act.

18. The learned Special Public Prosecutor also relied on the decision of the Division Bench of the Delhi High Court in the case of Syed Shajid Yousuf vs. National Investigation Agency reported in 2018 SCC Online Delhi 9329 which was also affirmed by the Honourable Supreme Court in Special Leave Petition (Criminal) Diary No. 38886 of 2018 on 04.01.2019. By relying on the above decision of the Division Bench of the Delhi High Court, the learned Special Public Prosecutor would contend that the detention of the appellants beyond the period of 90 days is to enable the prosecuting agency to effectively and fully complete the investigation and to file a final report. In the present case, the prosecuting agency has given elaborate account for non-completion of the investigation and the steps they have taken to get complete report as to the involvement of the appellant and the role played by them in accomplishing their task in a country out of India. The Special Court, being satisfied with the progress of the investigation and the need to complete it effectively, had rightly extended the period of detention beyond 90 days. The learned Special Public Prosecutor also submitted that even after extension of the period of detention, the accused were periodically produced before the Special Court for extension of their remand. The learned Special Public Prosecutor also indicated in his counter, the dates on which the accused were produced before the Court below for extension of their remand. In such view of the matter, the learned Special Public Prosecutor prayed this Court to dismiss the appeals filed by the appellants.

19. We have heard the counsel on either side and perused the materials placed on record, including the order passed by the Special Court extending the period of detention of the appellants beyond 90 days. On appreciation of the submissions made by the counsel on either side, the first question that arises for our consideration is whether the Special Court is subjectively satisfied with the report of the Public Prosecutor to extend the period of detention of the appellants beyond 90 days. In this context, the application submitted by the Special Public Prosecutor for NIA Cases, which was filed in the form of an application under Section 43 D (2) (b) of the Act in CrI.M.P. No. 380 of 2019, assumes significance for our consideration in this case and the relevant paragraphs are reproduced hereunder:-

"9. It is submitted the investigation is continued the facts disclosed by the accused while on custody needs further verification and in progress. The electronic gadgets seized from the accused and at the instance of the accused needs to be forensically analysed. In this regard, the electronic gadgets seized from accused were more than 173 items and forwarded to C-DAC, Thiruvananthapuram, through this Hon'ble Court. The

same needs to be analysed by the experts of C-DAC, Thiruvananthapuram and report is yet to be received. Out of the 173 gadgets forwarded for analysis the gadgets required on priority analysis has been prepared on the basis of the interrogation of the accused and the list of gadgets requiring priority forensic imaging and analysis also provided to C-DAC for early action. It is reliably understood that it will take some more time to get the analysis report from C-DAC. Thereafter, the accused will have to be taken into further NIA custody to verify the facts to be revealed from the forensic analysis of the digital devices seized in this case. The cyber forensic analysis reports of CDAC may disclose the conspiracy hatched by the accused as well as the involvement others, who have not been identified so far, since the conspiracy hatched in foreign country and the material are to be collected from foreign country. If the investigation is not allowed to continue beyond 90 days and the detention of the accused extended beyond 90 days, there is every possibility of prejudicing the investigation and the main conspirators will hide them self and may cause disappearance of evidence to be collected. Therefore, the remand period may be pleased to extend beyond the period of 90 days to 180 days.

10. It is submitted that investigation against the associates in UAE, who have not been arrested or arraigned as accused is under progress. Divan Mujipeer was identified recently and searches were conducted at his residential premises after obtaining search warrant under Section 93 of Cr.PC from this Honourable Court and articles relevant for the investigation seized. The interview and extraction of the social media accounts of the suspect Divan Mujipeer further disclosed about the details of many participants of the religious classes organised by Ansarulla Group in UAE besides the pro-jihadi material shared amongst members of the Terrorist gang. The facts disclosed during the interview of the above suspect are also being verified. Further, the investigation on the whereabouts of the associates who had left UAE on knowing about the arrest of A-4 to A-17 by UAE authorities is progressing and time needs to be granted, the lack of which may hamper the investigation besides the benefit of neutralization of the threat posed by the yet to be identified members of the terrorist gang, Ansarulla. If the remand period is not extended beyond 90 days to 180 days it may cause serious prejudice to the investigation and it may lead to the possibility of hampering the investigation.

11. It is submitted that the larger part of the criminal activities have been committed by the

accused while they were working in UAE. The NIA is conducting investigation abroad, on the role of accused and associates operating from outside India, in this case. In this regard, requests have been sent to the UAE authorities under Mutual Legal Assistance Treaty (MLAT) between Republic of India and the UAE seeking information and evidence regarding the accused persons (A-4 to A-17) arrested in the UAE and the reply is yet to be received from the requested country. Further, in September 2019, a team of NIA Officers, including the CIO, visited UAE for expediting the execution of the MLA request submitted to the UAE and the investigation abroad. A lot of information/evidence were collected and the official documents yet to receive from abroad it will take some more time for collecting those information. If the investigation is not allowed to continue below 90 days and the detention of accused extended beyond 90 days there is every possibility of causing disappearance of evidence against co-conspirators. Therefore, the remand period may be pleased to extend beyond the period of 9 days to 180 days."

20. The report of the Special Public Prosecutor filed before the Special Court, which we have extracted above, assign very many reasons to justify the detention of the appellants/accused beyond 90 days. It is evident that the investigating agency is anticipating a reply from the UAE authorities with respect to the evidence recorded by them during the detention of the appellants/accused so as to enable the investigating agency to proceed further in this case. In the report, reference was also made to the visit of NIA Officers to UAE during September 2019 and their attempts made to expedite the request submitted to the authorities abroad. In the report, reference was also made to the investigation being conducted to ascertain the whereabouts of the associates of the A-4 to A-17 who have left UAE on coming to know about their arrest. By citing the progress of the investigation so far conducted and the need to hasten the investigation to take it to a logical end, the investigation agency has sought for extending the period of detention of the accused, for otherwise it will cause them prejudice and will result in unnecessary intervention in the conduct of the investigation. The Special Court, taking note of the aforesaid reasons assigned by the Investigating Agency in the report filed through the Special Public Prosecutor, has arrived at a subjective satisfaction to extend the period of remand of the accused/appellants. However, according to the counsel for the appellants, the report filed by the investigation agency is bereft of any material particulars, based on which, the Special Court ought not to have extended the remand of the appellants/accused.

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21. Is there any parameter available to assess a report filed under Section 43-D (2) (b) of the Act to arrive at a

subjective satisfaction? The answer would be a emphatic 'No' as the subjective satisfaction to be arrived at by the Special Court varies and differs from case to case on the basis of the justifiability of the information furnished by the investigating agency. There cannot be any hard and fast rule or a straight jacket formula to be adopted as to what are all the information required to be furnished or what are all the ingredients necessary to be furnished in a report under Section 43-D (2) (b) of the Act, which would prompt the Special Court to arrive at a subjective satisfaction. In the instant case, the report filed by the Special Public Prosecutor made reference to the progress of the investigation, the further progress to be achieved through receipt of scientific information as well as the information from the authorities abroad inasmuch as most of the alleged criminal activities have been committed by the accused/appellants while they were abroad. Therefore, the subjective satisfaction to be arrived at by a Court is based on mental contentment and fulfilment of the justifiability reasons contained in the report under Section 43-D (b) (2) of the Act to extend the period of detention of the accused. Such a subjective satisfaction could be arrived at not only based on the report filed by the Special Public Prosecutor seeking extension of detention of the accused but also the justification assigned thereof. Therefore, whether the Special Court is justified in arriving at a subjective satisfaction can only be inferred by attendant facts and circumstances of the case, including the report of the Special Public Prosecutor seeking extension of detention. By applying the above tests to this case, we feel that the Special Court is wholly justified in accepting the report of the Special Public Prosecutor and to extend the detention of the appellants herein beyond the period of 90 days.

22. The learned counsel appearing for the respective appellants relied upon the decision of the Division Bench of this Court, in an identical case in Shakul Hammed vs. State by the Superintendent of Police, National Investigation Agency, Kochi reported in (2018) 4 Madras Law Journal (Crl) 546. In that case, the Division Bench of this Court, while holding that the detention of the appellant therein beyond the period of 90 days is valid, held that the report of the investigation officer filed through the Public Prosecutor does not disclose the compelling necessity to detain the accused beyond the period of 90 days and therefore granted bail to the accused/appellant therein. In other words, the Division Bench of this Court held that the reasons stated by the investigation officer, in the form of a report filed by the Public Prosecutor, is not in consonance with the requirements enunciated under Section 43-D (2) (b) of the Act and therefore, granted default bail to the respondent/accused therein. As against the decision of the Division Bench of this Court, the prosecution has preferred an appeal before the Honourable Supreme Court (State by the Superintendent of Police, National Investigation Agency, Kochi - 2019 6 SCC 350) and the Honourable Supreme Court did not concur with the views expressed by the Division Bench of this Court with regard to

the un-fulfilment of the requirement of Section 43-D (2) (b) of the Act by the investigating agency in the report. In other words, the Honourable Supreme Court held that the report of the Public Prosecutor clearly spells out the reasons to extend the detention of the accused beyond 90 days. Therefore, the Honourable Supreme Court has concluded in para No.18 of the Judgment that the judgment of the Division Bench of this Court cannot be concurred with. However, taking note of the fact that during the pendency of the appeal before the Supreme Court a charge sheet has been filed, but at the same time the accused was let out on bail on the basis of the Judgment of the Division Bench of this Court, liberty was given to the prosecution to apply for cancellation of bail, if any exigency arises in future. Therefore, the decision rendered by this Court in Shakul Hameed's case cannot be relied on by this Court in this case. Thus, the Honourable Supreme Court upheld the Judgment of the Division Bench of this Court in so far as it relates to the power of the Special Court to extend the remand of the accused up to 180 days at a stretch. The Honourable Supreme Court set aside a portion of the findings of the Division Bench of this Court in so far as it relates to the fulfilment of the second limb of Section 43D (2) (b) with respect to the report of the Public Prosecutor.

23. The learned Special Public Prosecutor appearing for the respondent placed heavy reliance on the decision of the Division Bench of the Delhi High Court in the case of Syed Shahid Yousuf mentioned supra. He also brought to our notice that the said decision of the Division Bench of the Delhi High Court was also affirmed by the Honourable Supreme Court in the order dated 04.01.2019 passed in Special Leave Petition (Criminal) Diary No. 38886 of 2018. In that case before the Division Bench of the Delhi High Court, the appellant was arrested by the National Investigating Agency on 24.10.2017 and when the appellant sought for statutory bail under Section 167 (2) of the Code of Criminal Procedure, it was rejected by the Special Court. In that case, the Division Bench of the Delhi High Court affirmed the acceptance of the report of the Public Prosecutor by the Special Court. The Division Bench also gone through the report of the Public Prosecutor seeking extension of time for completion of investigation inter alia detention of the accused beyond 90 days and concluded that the report contains several details with respect to the telephonic contacts the appellant therein made with his contacts in Pakistan, United Kingdom, UAE, Ireland etc., and that those aspects are required to be investigated. Therefore, the report of the investigating authority portraying a larger conspiracy as between the appellant therein and others and the Letters Rogatory (a formal request from a Court to a foreign Court seeking judicial assistance) (LR) sent to Pakistan and Saudi Arabia are considered to be genuine reasons by the Division Bench and upheld the extension of the detention of the appellant therein. In the present case also, as we have stated above, the report of the Special Public Prosecutor contains very intrinsic and intricate details with respect to the investigation so far conducted and the requirement of

additional time to complete the investigation against the appellants/accused. While so, the Special Court cannot step into the shoes of the investigation officer and examine the correctness or otherwise of the intricacies of the investigation at the stage of extending the detention of the appellants beyond 90 days and up to 180 days. So far as remand is concerned, even after extending the detention of the appellants, their remand was extended periodically. The details with respect to the remand of the appellants is also indicated in the counter affidavit of the respondent which can usefully be extracted here:-

"10.10.2019 - remand extended up to 24.10.2019
24.10.2019 - remand extended up to 07.11.2019
07.11.2019 - remand extended up to 21.11.2019
21.11.2019 - remand extended up to 05.12.2019
05.12.2019 - remand extended up to 19.12.2019"

24. We therefore hold that the acceptance of report of the Special Public Prosecutor by the Special Court to extend the period of detention of the appellants from 90 days to up to 180 days is valid and it needs no interference by us.

25. The next question that was urged by Mr. Radhakrishnan, learned counsel appearing for the appellants in Criminal Appeal No. 779 of 2019 is that the Special Court, by invoking Section 43-D (2) (b) cannot extend the period of detention of the appellants from 90 days to 180 days at a stretch and such an extension is illegal. According to the learned counsel, the detention/remand can be extended only to the maximum period of 30 days. In other words, it is his submission that the Special Court ought to have extended the detention of the appellants up to 30 days in different spells upto 180 days and not extending the detention upto 180 days in a single spell. We are not in agreement with the submission of the learned counsel for the appellants in CrI.A. No. 779 of 2019. The extension of detention under Section 43D (2) (b) of the Act is only for the purpose of completing the investigation and it has got nothing to do with the remand of the appellants. Therefore, by a single stretch, the detention of the appellants can be extended up to 180 days to enable the investigation officer to complete the investigation effectively. Moreover, this question is no longer res integra as the Division Bench of this Court, in the decision relied on by the learned counsel for the appellants themselves in Shakul Hammed vs. State by the Superintendent of Police, National Investigation Agency, Kochi reported in (2018) 4 Madras Law Journal (CrI) 546 the Division Bench of this Court has held that no where Section 43-D (2) of the Act indicate that power of extension of remand in a single stretch cannot be exercised. This portion of the Judgment of the Division Bench of this Court has also been upheld by the Honourable Supreme Court in (State by the Superintendent of Police, National Investigation Agency, Kochi vs. Shakul Hameed) reported in (2019) 6 Supreme Court Cases 350. At this juncture, useful reference can be made to the decision of the Division Bench of this Court mentioned supra, which reads as follows:-

"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 (cited 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 under Section 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 extend 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.

26. We are in agreement with the observations made by the Division Bench of this Court, which was also affirmed by the Honourable Supreme Court. We are also of the view that the proviso to Section 43-D (2) no where curtails or restricts the manner in which the extension of remand can be made by the Court but it depends upon the subjective satisfaction to be arrived at to extend the period of detention. In such view of the matter, we hold that the Special Court is fully justified in extending the period of remand of the appellants and we see no reason to interfere with the same.

27. In the result, both the Criminal Appeals fail and they are dismissed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

rsh

To

1. The Special Judge
Special Court for NIA Cases,
Poonamallee, Chennai
2. The Deputy Superintendnet of Police,
Union of India,
National Investigation Agency,
Kochi
3. The Superindent
Central Prison -2
Puzhal, Chennai.
4. The Special Public Prosecotr,
(NIA) Cases)

Copy To
The Section Officer,
Crl Section,
High Court, Madras.

+1cc to Mr.TSK.Gandhi, Advocate SR.No.1634

+1cc to Mr.R.Karthikeyan, Advocate SR.No.1634

Criminal Appeal Nos. 775 and 799 of 2019

RSI (CO)
GMY (14/02/2020)