

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-40907-2020 (O&M)
Date of Decision:- 8.2.2021

Amir Hussain Wani and others ... Petitioners

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Manbir Singh Basra, Advocate, for the petitioners.

Mr. H.S.Multani, AAG, Punjab.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioners have approached this Court seeking grant of regular bail with the aid of Section 167(2) Cr.P.C. as their application for their release in terms of Section 167(2) Cr.P.C. has been declined by the trial Court vide order dated 24.11.2020.
2. The FIR in question i.e. FIR No.116, dated 11.06.2020, Police Station Sadar, Pathankot, under Sections 13, 17, 18, 18(b) 20 of Unlawful

Activities (Prevention) Act, was lodged against the accused with the allegations that the accused had entered into a conspiracy for taking weapons and explosive substances from Amritsar to Anantnag (J&K). Consequently the petitioners were booked for offences under Sections 13, 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, Section 25 of Arms Act as well as Sections 3, 4 and 5 of Explosive Substances Amendment Act.

3. While petitioners No.1 and 2 namely Amir Hussain Wani and Wasim Hussain Bhatt were arrested on 11.6.2020, petitioner No.3 Javed Ahmed Bhatt was apprehended on the next day i.e. on 12.6.2020. Ordinarily the investigating agency was expected to complete its investigation and to file a report under Section 173 Cr.P.C. within a period of 90 days which in case of petitioners No.1 and 2 would have expired on 10.9.2020 and in case of petitioner No.3 would have expired on 11.9.2020.
4. However, the Illaqa Magistrate in a purported exercise of powers under Section 43-D(2) of Unlawful Activities Act, extended the period of investigation from 90 days to 180 days vide order dated 7.9.2020 (Annexure P-3).
5. Learned counsel for the petitioners has submitted that it is a case registered for offence under Sections 13, 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, which as per the schedule to National Investigation Agency Act, 2008, are “scheduled offences” which can be investigated by National Investigation Agency and

which in any case are to be tried by a Special Court constituted under provisions of National Investigation Agency Act, 2008.

6. Learned counsel has submitted that since Special Courts have been constituted in the State of Punjab vide notification dated 10.6.2014 No. S.O.141/C.A.34/2008/S.22/2014, therefore, the Magistrate in any case could not have assumed jurisdiction to extend the period of investigation in terms of Section 43-D(2)(b) of the Unlawful Activities (Prevention) Act from 90 days to 180 days and that it is only the Special Court which could have extended the said period, whether or not investigation was conducted by National Investigation Agency. Learned counsel in order to hammer forth his aforesaid submission places reliance upon a recent judgment of Hon'ble Supreme Court Bikramjit Singh Vs. State of Punjab 2020(1) SCC (Criminal) 85. The relevant paragraphs of the said judgment read as follows:

“24. Section 13(1) of the NIA Act, which again begins with a non-obstante clause which is notwithstanding anything contained in the Code, read with Section 22(2)(ii), states that every scheduled offence that is investigated by the investigation agency of the State Government is to be tried exclusively by the Special Court within whose local jurisdiction it was committed.

25.

26. This Scheme has been completely done away with by the 2008 Act as all scheduled offences i.e. all offences under the UAPA,

whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. In the absence of any designated Court by notification issued by either the Central Government or the State Government, the fall back is upon the Court of Sessions alone. Thus, under the aforesaid Scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrates jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, the Court being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself.
.....”

7. Learned State counsel has not been able to dispute the legal position set forth in the aforestated judgment to the effect that it is Special Court only which is competent to exercise powers under Section 43(D)(2)(b). Since the Illaqa Magistrate was not competent to extend the period as has been ordered vide order dated 7.9.2020, therefore, this Court is left with no option but to hold that the challan which was presented on 27.11.2020 was presented beyond the period of 90 days without there being any valid extension of the said period. The petitioners had moved an application on 17.11.2020 seeking their release in terms of Section 167(2) Cr.P.C. which was dismissed on 24.11.2020. Keeping in view the aforestated position especially in light of ratio of judgment of Hon’ble Supreme Court, order dated 24.11.2020 declining the application for release of the petitioners in terms of Section 167(2) Cr.P.C. cannot sustain and is hereby set aside.

The petition, as such, is accepted and the petitioners are ordered to be released on bail in terms of Section 167(2) Cr.P.C. subject to their furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

February 8, 2021

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No