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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-2245-2022

Date of decision:09.05.2022

JASPREET SINGH ALIAS NOOPI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Mitul Singh Rana, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed under Section 482 of Cr.P.C., for grant of default bail, under Section 167(2) of Cr.P.C., read with Section 43(D) of the Unlawful Activities (Prevention) Act, (in short “UAPA”) to the present bail petitioner.

2. In FIR No.140 of 04.07.2021, lodged at Police Station City-2 Khanna, District Khanna, offences constituted under Sections of 307, 332, 336, 379-B, 411, 34, 120-B, 473 of IPC, Section 25 of Arms Act, and, besides, under Section 4 of the Explosive Substances Act, besides Sections 16, 17, 18 of UAPA, are embodied.

3. The learned counsels appearing before this Court, do not hold any dispute, with respect to the factum, that in respect of offences carried in the IPC, there may not be any necessity for any prior sanction, being meted by the competent authority, hence for enabling the Court concerned, to then assume valid jurisdiction or take cognizance thereons, whereas, when the

apposite FIR, also embodies therein, besides the offences in the IPC, also offences, under the UAPA, thereupon, as mandated in a judgment made by the Hon'ble Apex Court in case titled as '*Fakhrey Alam V. The State Of Uttar Pradesh*', to which *Criminal Appeal No.319 of 2021*, is assigned, rather a dire statutory necessity is cast, upon the investigating officer concerned, to obtain the mandatorily enjoined prosecution sanction from the government concerned.

4. Moreover, the counsels appearing before this Court, do not also wrangle qua the factum, that when in the instant FIR offences, not only under the IPC, and, but also under the UAPA, besides under the Explosives Act, are embodied, thereupon, unless in respect of the UAPA offences hence prior sanction from the competent authority rather became obtained. Therefore any lack of the imperative sanction would result in the learned Court concerned, being barred from making valid assumptions of jurisdiction or taking cognizance in respect thereof, even if a conjoint charge-sheet, in respect of both IPC offences, and, also in respect of UAPA offences, becomes instituted before the learned Court concerned, by the investigating officer concerned, given hence the conjoint report being completely defective.

5. The learned State counsel, on instructions given to him, by ASI Jagdev Singh submits, that though the instant FIR became registered, on 04.07.2021, and, that a period of 90 days was to be computed therefrom, however the above tenure of 90 days elapsed, on 04.10.2021, but the investigating officer concerned, filed a report under Section 173 of Cr.P.C., before the learned Judge concerned, with a minimal delay of about 4 days, inasmuch as, his filing it, on 08.10.2021. The above delay was may be

condonable, as the total length or span of time, for a valid report with respect to UAPA offences, being filed is about 180 days, and, also was may be, irrespective of the fact, that the investigating officer concerned, did not move, an application hence asking for the requisite extension of time of about 90 days, beyond the period commencing on 04.10.2021, being meted to him, yet the afore non-askings cannot *prima-facie* be construed to be yet snatching the jurisdiction of the learned trial Judge concerned, to construe the afore minimal period of 4 days, to be a deemed extension of time, given it being *in tandem* with the total span of the extensions, as were askable, by the prosecutor rather beyond 04.10.2021 was a further period of 90 days.

6. Be that as it may, the investigating officer concerned, though was required to make a well constituted, and, legally befitting report, under Section 173 of Cr.P.C., to enable the learned trial Judge concerned, to assume valid jurisdiction, and, to take qua FIR (supra), valid cognizance, inasmuch as, he was required to obtain the mandatorily enjoined apposite sanction from the appropriate government, and, was also required to append it, with the apposite report, when as above stated, UAPA offences were also constituted therein, in report whereof the above prior sanction is imperative rather for all requisite purposes. However, the investigating officer concerned, chose to file rather a defective report under Section 173 of Cr.P.C., before the learned trial Judge concerned, inasmuch as, without his admittedly obtaining the mandatory prior thereto sanction, from the competent authority concerned, in respect of UAPA offences concerned, his rather taking to institute, a report under Section 173 Cr.P.C., before the Court concerned, with incorporations therein qua offences both under the IPC, and, also qua the offences under the UAPA. Consequently, the learned

trial Judge concerned, could not take any valid cognizance thereons nor could assume valid jurisdiction thereons, especially only qua UAPA offences. Conspicuously, the afore inherent defect barred him to do so.

7. However, the afore defect was curable, through a well constituted application for the requisite purpose(s), being filed before the learned trial Judge concerned, but it is stated at the bar, by the learned State counsel, that though the requisite application, rather for filing with a supplementary challan, the order of sanction, as made by the competent authority, rather became instituted, before the learned trial Judge concerned, but he submits, that a dis-affirmative order became made thereons. He further submits, that no challenge was made to the above dis-affirmative order, as, made on the public prosecutor's application. Therefore, the above declinings, of extension of time by the learned trial Magistrate concerned, to the public prosecutor's application rather confers, upon it, the requisite binding, and, conclusive binding effect. The further effect thereof, is that the assumption of jurisdiction, if any, or taking of cognizance qua UAPA offences by the learned trial Judge concerned, becomes completely barred and/or, is ousted, primarily in the wake of the above lack of prior sanction, being not obtained within the requisite period of time, from the competent authority by the public prosecutor concerned, especially vis-a-vis, and, only qua the UAPA offences concerned.

8. It is in the light of the above factual, that the present bail petitioner had claimed default bail, through his re-coursing the mandate of Section 167(2) of the Cr.P.C., mandate whereof is, as amply clear from a reading of Section 43(D) of UAPA Act, rather applicable even qua UAPA offences. The provisions of Section 43(D) are extracted hereinafter.

However, the afore asked for indulgence became declined to him, hence leading him to institute the instant petition before this Court.

“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.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to “the State Government” shall be construed as a reference to “the Central Government or

the State Government.”;

(ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government, as the case may be”; and

(b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing”

9. Conspicuously, it is in the light of the afore complete lack of jurisdiction in the learned trial Judge concerned, to assume cognizance or to assume jurisdiction upon UAPA offences, that the claim for default bail, rather whereons, an dis-affirmative order was made by the learned trial Judge concerned, rather becomes amenable for being allowed.

10. In consequence, the present petition is allowed, and, the present bail petitioner is ordered to be released from judicial custody. However, the granting of bail to the bail applicant-petitioner, is, subject to his furnishing personal, and, surety bonds in the sum of ₹ 2 lacs each, before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, also subject to his not tampering with prosecution evidence, and, also his not influencing prosecution witnesses, and, besides his appearing before the trial Court concerned, as and when directed to make his personal appearance unless validly exempted.

11. The above view is supported by paragraphs 12, and, 13 as carried in the verdict (supra), as made by the Hon'ble Apex Court, paragraphs whereof became extracted hereinafter.

“12. We need only emphasize what is already observed in Bikramjit Singh case (supra) that default bail under first proviso of [Section 167\(2\)](#) of the Cr.P.C. is a fundamental right and not merely a statutory right as it is, a procedure established by law under [Article 21](#) of the Constitution. Thus a fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to [Section 167\(2\)](#) of the Cr.P.C. are fulfilled.

13. In fact in the majority judgment of this Court it has been held that an oral application for grant of default bail would suffice [See. [Rakesh Kumar Paul vs. State of Assam](#)] (2017) 15 SCC 67. The consequences of the UAPA Act are drastic in punishment and in that context, it has been held not to be a mere statutory right but part of the procedure established by law under [Article 21](#) of the Constitution of India.”

12. Copy dasti.

(SURESHWAR THAKUR)
JUDGE

09.05.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No