

11.05.2023
Court- 42
Item-309(m/l)

CRR/3180/2022

Jayeeta Das
-Vs-
The State of West Bengal

For the petitioner: Mr. Subhasish Roy, Adv.

For the State: Mr. Ranabir Roy Chowdhury, Adv.,
Mr. Mainak Gupta, Adv.

The order dated 7th April, 2022 passed by the learned Chief Judge, City Session Court, Calcutta in connection with S.T.F Police Station Case No.1 of 2022 under Sections 120B/121/121A/122/123/124A of the IPC corresponding to G.R (S) Case No.8 of 2022 together with the order dated 30th March, 2022 and all subsequent orders are assailed in the instant revision invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure as well as under Article 227 of the Constitution of India.

On the basis of a written complaint lodged by one Raju Debnath, attached to S.T.F Kolkata Police the above mentioned case was started. In the said complaint it was alleged that S.I R. Chhetri of Maidan P.S recovered an unclaimed bag containing some incriminating article and documents on 28th December, 2021 near Sahid Minar and the said bag and articles were seized by him. It is further stated that amongst the articles, there were poster of CPI

Maoist, one memory chip, some diaries containing mobile numbers and names of different persons, personal belongings etc. On 31st December, 2021 the defacto complainant obtained FSL record in respect of the seized memory chip contents of the memory chip were restricted in pen drives and on examination of the contents of the memory chip it was found that there were videos, audios and photos relating to covert activities of CPI Maoist consisting of imparting arms training speeches of leaders etc. Speeches were made in order to spread hatred to the sovereignty of the country and also to spread armed rebellion against democratically elected government of India. Accordingly, a case under Section 120B/121/121A/122/123/124A of the IPC was registered. During investigation the petitioner was arrest and she was produced before the learned Chief Metropolitan Magistrate, Calcutta on 30th March, 2022.

It is submitted on behalf of the petitioner that though the alleged offences complained of against the petitioner are schedule offences and the learned Chief Metropolitan Magistrate, Calcutta had no jurisdiction to deal with such offences, he without considering the material on record mechanically remanded the accused to police custody. The petitioner has also made allegation about irregularities in arrest and production of the accused by the police authority.

It is further stated that subsequently on 5th April, 2022 the Investigating Officer prayed for adding Section 16/18/18B/20/38/39 of the Unlawful Activities (Prevention) Act. Thereafter the learned Chief Metropolitan Magistrate, Calcutta

remanded the case to the court of the learned Chief Judge, City Session Court at Calcutta.

It is further stated by the petitioner that subsequently on 6th April, 2022 the record was placed before the learned Chief Judge, City Sessions Court and vide order dated 7th April, 2022 the learned Chief Judge, City Sessions Court allowed the prayer of the Investigating Agency and added Section 16/18/18B/20/38/39 of the UAP Act and further remanded the petitioner to police custody till 11th April, 2022. It is also submitted on behalf of the petitioner that the learned Chief Judge, City Sessions Court, Calcutta delegated his power to the learned Chief Metropolitan Magistrate, Calcutta to act as a remand court until and unless charge-sheet is submitted and further held that

“In case of taking the accused in remand, the remand Court, i.e. the learned court of CMM, Calcutta or CJM of any district has enough jurisdiction to pass such order” and allowed the prayer of the Investigating Agency.

The petitioner has assailed the said order dated 7th April, 2022 passed by the learned Chief Judge, City Sessions Court in GR (S) case No.8 of 2022.

The issues involved in the instant revision are as follows:

- i. Whether the court of sessions was entitled to entertain an application for extension of the period of remand in terms of the proviso to Section 43D(5) of the UAPA when no special court had been notified by the State of West

Bengal under Section 22(1) of the National Investigating Agency Act, 2008.

- ii. Whether the petitioner could have been remanded by the learned Magistrate after offences under UAPA had been added.

For proper appreciation of the abovementioned two issues it is necessary to record the following provisions of the NIA Act:-

Section 2(h) of the NIA Act reads as follows:-

“2. Definitions. – (h) ‘Special Court’ means [a Court of Sessions designated as Special Court] under Section 11 or, as the case may be, under section 22;”

Powers of the Special Court are adumbrated in Section 13. Section 13(1) of the Act reads as follows:-

“13. Jurisdiction of Special Courts. – (1) 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 was committed.”

Section 16 of the Act provides for the procedure and powers of the special court. Sub-section (1) of the said provision reads as follows:-

“16. Procedure and powers of Special Courts. – (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.”

Sections 11 & 22 of the said Act provide for setting up of special courts by the Central

Government and State Government respectively to try scheduled offences.

Sub-section (3) of Section 22 reads as follows:-

“22. Power of State Government to [designate Court of Session as] Special Courts. – (3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is [designated] 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 exercised 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.”

5. Unlawful Activities (Prevention) Act, 1967 is one of the enactments included in the schedule of the NIA Act.

Section 2(1)(d) of the UAPA defines ‘court’ as follows:-

“2. Definitions. – (1) In this Act, unless the context otherwise requires,- 4 (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 22] of the National Investigation Agency Act, 2008 (34 of 2008);”

Section 43D of the Act provides for a modified application of the Code of Criminal Procedure in the matter of dealing with cases under UAPA. Sub-section (2) of Section 43D of the Act reads as follows:-

“43D. Modified application of certain provisions of the Code. – (2) Section 167 of the Code shall apply in relation of 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."

The above-mentioned provisions clearly suggest that the special court constituted by the central government or the state government as the case may be under the NIA Act has exclusive jurisdiction to try offences under UAPA.

In view of Section 16 of the said Act, the special court cannot take cognizance of offence under UAP Act directly without the case being committed to it.

In terms of provision to sub Section (2) of Section 43D of the UAPA, the court is empowered to extend the period of detention pending investigation. On a report of the Public Prosecutor indicating

progress of investigation and specific reason for detention of the accused beyond 90 days but not more than 180 days.

Sub Section (3) of Section 22 of the NIA Act states that until a special court is designated by the State Government under sub Section(1), the jurisdiction conferred by the Act on a special court, notwithstanding anything contained in the Code shall be exercised by the court of sessions in which the schedule offence is committed and it shall have powers to follow the procedure provided under Chapter IV of the Act.

In **Bikarmjit Singh vs The State of Punjab** reported in **2022 10 SCC 616** the Hon'ble Supreme Court was called upon to decide whether the Magistrate had jurisdiction to remand the accused and extend the period of detention in terms of proviso to Section 43D(2) of the UAPA in the face of notification issued by the State of Punjab designating the special court under NIA Act. The Hon'ble Supreme Court held as follows:

“25. When these provisions are read along with Section 2(1)(d) and the provisos in 43-D(2) of the UAPA, the Scheme of the two Acts, which are to be read together, becomes crystal clear. Under the first proviso in Section 43u-D(2)(b), the 90 day period indicated by the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if “the Court” is satisfied with the report of the public prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days. “The Court”, when read with the extended definition contained in Section 2(1)(d) of the UAPA, now speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is

that for all offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence – albeit in a summary way if it thinks it fit to do so. On a conspectus of the abovementioned provisions, Section 13 read with Section 22(2)(ii) of the NIA Act, in particular, the argument of the learned counsel appearing on behalf of the State of Punjab based on Section 10 of the said Act has no legs to stand on since the Special Court has exclusive jurisdiction over every Scheduled Offence investigated by the investigating agency of the State.”

“14. In Naser Bin Abu Bakr Yafai vs. State of Maharashtra & Anr. , the Apex Court observed as follows:-

“56..... the principle enunciated by this Court in Bikramjit Singh would not apply to the present case since there existed no Special Courts in the State of Maharashtra designated under Section 22 of the NIA Act (since the investigation was being conducted by ATS, Nanded, which had the jurisdiction over the case.)”

15. What fell for decision in **Naser Bin Abu Bakr Yafai** (supra) is whether the mere registration of FIR by NIA would amount to commencement of investigation and prayer for extension of remand be required to be made before the designated Special Court and not the Chief Judicial Magistrate who was designated as a Court of remand for cases investigated by ATS. Validity of designation of

the Chief Judicial Magistrate as a Court of remand in cases involving UAPA even if investigated by ATS had not been challenged and did not fall for decision.

The issue of to whether the learned Magistrate has power to remand in spite of case involving UAPA, the Division Bench of this Court in **CRM (DB) 3590 of 2022** dated 1st December, 2022 held as here under.

26. *In the light of the aforesaid discussion, we hold as follows:-*

(i) Once offences under UAPA are added to a case, Magistrate is denuded of his power to remand in terms of Section 167 of the Code of Criminal Procedure (as amended in UAPA) beyond a period of 30 days;

(ii) Thereafter, the accused must be produced before the Special Court constituted under Section 11 or 22 of the NIA Act (as the case may be) for the purposes of remand as well as extension of the period of remand in terms of proviso to Section 43D(2) of the UAPA;

(iii) In the absence of a Special Court constituted as aforesaid, Court of Sessions shall exercise all powers and jurisdiction of the Special Court in terms of Section 22(3) of the NIA Act including the power to remand as well as the power to extend the period of remand in terms of proviso to Section 43D(2) of the Act.

In view of the above discussion the order dated 7th April, 2022 passed by the learned Chief Judge and all subsequent orders passed by the learned Chief Metropolitan Magistrate are illegal and inoperative and liable to be quashed.

For the reasons stated above the instant revision is allowed and the impugned order dated 7th April, 2022 passed by the learned Chief Judge, City Sessions Court and subsequent orders passed by

the learned Chief Metropolitan Magistrate, Calcutta are set aside.

The instant revision is accordingly allowed on contest however without cost.

(Bibek Chaudhuri, J.)