

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.411 OF 2023

Md. Mehrajuddin S/o Abdul Hai Ansari,
Age-42 years, Occu:Business,
R/o-Hyder Bagh, Nanded – 431604,
Presently lodged in Nanded
Central Prison, Nanded.

...APPELLANT

VERSUS

The State of Maharashtra,
Through A.T.S. Kala Chowki
Police Station, Mumbai.

...RESPONDENT

WITH

CRIMINAL APPEAL NO.410 OF 2023

Mohammad Javed S/o Mohammad Shabbir Ali,
Age-35 years, Occu:nil,
R/o-Komti Galli, Parbhani – 431 401,
Presently lodged in Nanded
Central Prison, Nanded.

...APPELLANT

VERSUS

The State of Maharashtra,
Through A.T.S. Kala Chowki
Police Station, Mumbai.

...RESPONDENT

WITH

CRIMINAL APPEAL NO.412 OF 2023

Mohammad Abed Ali S/o
Mohammad Maheboob Ali,
Age-40 years, Occu:Nil,
R/o-Umar Colony, Nanded – 431604,
Presently lodged in Nanded
Central Prison, Nanded.

...APPELLANT

VERSUS

The State of Maharashtra,
Through A.T.S. Kala Chowki
Police Station, Mumbai.

...RESPONDENT

WITH

CRIMINAL APPEAL NO.413 OF 2023

Mohammad Abdul Karim
S/o Mohammad Abdul Halim,
Age-35 years, Occu:Nil,
R/o-Momin Pura, Parbhani – 431401,
Presently lodged in Nanded
Central Prison, Nanded.

...APPELLANT

VERSUS

The State of Maharashtra,
Through A.T.S. Kala Chowki
Police Station, Mumbai.

...RESPONDENT

WITH

CRIMINAL APPEAL NO.414 OF 2023

Abdul Salam S/o Abdul Qayyum,
Age-34 years, Occu:Nil,
R/o-Hyder Bagh, Nanded – 431604,
Presently lodged in Nanded
Central Prison, Nanded.

...APPELLANT

VERSUS

The State of Maharashtra,
Through A.T.S. Kala Chowki
Police Station, Mumbai.

...RESPONDENT**WITH****CRIMINAL APPEAL NO.415 OF 2023**

Mohammad Nisar Mohd. Abdul Rashid,
Age-41 years, Occu:Nil,
R/o-Zakir Husain Nagar,
Parbhani – 431401,
Presently lodged in Nanded
Central Prison, Nanded.

...APPELLANT**VERSUS**

The State of Maharashtra,
Through A.T.S. Kala Chowki
Police Station, Mumbai.

...RESPONDENT

...

Mr. Sheikh Mohammad Rasiq Sheikh M.A. Advocate and Mr.
Mohammad Ibraheem K.M. Bilal Shaikh Advocate for
Appellants in all the Appeals.
Mr. A.M. Phule, A.P.P. for Respondent-State in all the Appeals.

...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING JUDGMENT : 17th JULY 2023

DATE OF PRONOUNCING JUDGMENT : 15th SEPTEMBER 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. All these Appeals have been filed by the respective appellants – accused to challenge the order dated 8th February 2023 passed by the learned Additional Sessions Judge-2, Nanded thereby rejecting the bail application filed under Section 167(2) (a)(i) of the Code of Criminal Procedure by the appellants.

2. At the outset, it appears to be the confusion in the mind of the learned Advocate for the appellants that the case involves the National Investigation Agency Act (for short “the N.I.A. Act”) and therefore, it is said that the Appeals are filed under Section 21 of the N.I.A. Act. We would like to say that an offence vide Crime No.22 of 2022 came to be registered with Kala Chowki Police Station, Mumbai for the offence punishable under Section 121-A, 153-A, 109, 120-B of the Indian Penal Code and Section 13(1)(b) of the Unlawful Activities (Prevention) Act (for short “the UAPA”). The said First Information Report (for short “the FIR”) was filed by one ASI Balaji Chandel and it has been handed over for investigation to be carried out by Anti Terrorism Squad (for short “ATS”), Nagpur Camp, Nanded.

3. The appellants have contended that Maharashtra ATS officials had abruptly picked up the appellants i.e. accused Nos.1 to 5 on 22nd September 2022 and accused No.6 on 26th September 2022, respectively. Since then, they are in custody, initially in Police custody and thereafter in the Magisterial custody. In the FIR it has been contended that ASI Chandel had received confidential information that the organization by name 'Popular Front of India' and members of the said organization had organized a public programme for delivering speeches on various subjects and which were stated to be against the Union of India. It was apprehended that the law and order situation would be disturbed, as request was made in the speech to the people that they should be ready for martyred for their religion. Various meetings were organized at Nanded, Parbhani and it was stated that in the speech delivered in those programmes the atmosphere was tried to be created for the insurgency between two religions. Anti-national speeches were also delivered and all those details have been given in the FIR. With these allegations the FIR has been lodged.

4. After arrest of the appellants i.e. original accused Nos.1

to 5 on 22nd September 2022, they were produced before the Chief Judicial Magistrate. In spite of opposition to the remand, they were remanded to the custody till 30th September 2022. Original accused No.6 then surrendered himself before the Magistrate on 26th September 2022. Accused No.6 was remanded in custody till 30th September 2022. Thereafter the judicial custody was granted till 7th October 2022. On 15th December 2022 the prosecution (ATS) through the Investigating Officer filed an application for extension of time for filing the charge-sheet beyond 90 days. The learned Additional Sessions Judge, Nanded extended the said time in spite of opposition by the appellants. Being aggrieved by the said order dated 19th December 2022, the appellants filed application for statutory bail under Section 167 of the Code of Criminal Procedure on 4th January 2023. The said application came to be rejected on 8th February 2023, hence the present Appeals.

5. Heard learned Advocate Mr. Sheikh Mohammad Rasiq Sheikh M.A. and learned Advocate Mr. Mohammad Ibraheem K.M. Bilal Shaikh appearing for the Appellants and learned APP Mr. A.M. Phule appearing for the respondent – State.

6. It has been vehemently submitted on behalf of the appellants that the appellants are innocent. They have been falsely implicated. Essential ingredients of the offences are not attracted at all. While rejecting the application by order dated 8th February 2023 (hereinafter the said order is referred to as "impugned order") the mandatory provisions of the N.I.A. Act, particularly Section 6 of the said Act were not followed at all. Steps enumerated in Section 6 of the N.I.A. Act are mandatory and when those were not followed at all, the extension of time to file charge-sheet ought not to have been allowed. Maharashtra ATS has no authority or jurisdiction to investigate scheduled offences without following the mandatory provisions of the N.I.A. Act. No doubt the said machinery can also investigate but Section 10 of the N.I.A. Act cannot be interpreted in isolation of the scheme of the N.I.A. Act. The learned trial Judge had not considered the fact that the accused persons were not produced before him when the application for extension of time for filing charge-sheet was filed. Mere issuance of the notice is not sufficient.

7. Learned Advocate for the appellants has relied on **Jigar @**

Jimmy Pravinchandra Adatiya vs. State of Gujarat, (2023)

6 SCC 484. Learned Advocate has specifically drawn our attention to Paragraph Nos. 29, 31, 34 of the decision in ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra) and submitted that the Public Prosecutor who had filed the application for extension of time to file charge-sheet has also not taken care to satisfy himself as to whether there was really necessity for extension of time to file charge-sheet, what was the progress that was made in the investigation. Proper application of mind has to be reflected in the application itself. Therefore, on two counts i.e. for not producing the accused before the Court at time of application for extension of time and also on the count of non application of mind by the Public Prosecutor in filing application for extension of time to file charge-sheet, the present impugned order will have to be declared as illegal and the appellants deserve to be released on default bail. Learned Advocate further relied on the decision in ***Darshan Subhash Nandagawali vs. State of Maharashtra*** in Criminal Appeal No.43 of 2023 decided by this Court, Bench at Nagpur on 6th June 2023, wherein the same grounds were considered. Further reliance has been placed on the Single Bench decision of Kerala High Court in ***T.J. Justin vs. State of Kerala and others***, in Criminal MC

No. 4508 of 2023, wherein also the Judgment in ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra) by the Hon'ble Supreme Court was relied.

8. Further reliance has been placed by the learned Advocate for the appellants on ***Bikramjit Singh vs. the State of Punjab, (2020) 10 SCC 616***, wherein it has been observed that " A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed." In ***Bikramjit Singh*** (supra), it has been further observed that, " We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India,

which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.” Therefore, the learned Advocate for the appellants has submitted that a statutory right had accrued to the appellants to be released on bail and therefore, the learned trial Court ought to have allowed the bail application.

9. The further limb of the submissions of the learned Advocate for the appellants was that as per the Notification issued by the Union of India on 12th December 2019, the Central Government in consultation with the Hon’ble the Chief Justice of High Court, Bombay, designated the Court of Sessions at City Civil Court, Bombay (Court No.26), as the Special Court for the purpose of sub-section (1) of Section 11 of the N.I.A. Act for the trial of the scheduled offences investigated by the National Investigation Agency and therefore, the Court at Nanded had no authority to grant extension of time to file charge-sheet. On that count also the application ought to have been allowed.

10. Learned APP has strongly opposed the Appeals and submitted that at no earlier point of time whenever the appellants were produced before the concerned Courts had

raised the point of jurisdiction and as regards the production of the accused at the time of application seeking extension of time to file charge-sheet is concerned, learned APP relies on the decision in ***Qamar Ghani Usmani vs. the State of Gujarat, AIR 2023 SC 1901***, wherein after taking into consideration the decision in ***Sanjay Dutt vs. State through CBI, Bombay, (1994) 5 SCC 410*** and ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra), it was held that the application by the investigating agency for extension of time in filing charge-sheet can be entertained and granted upon the notice to be issued to the accused or to keep him present before the Court. The purpose is to bring it to the knowledge of the accused that such an extension of time is sought. In the present case at the time of application for extension of time, notice was given to the accused persons through their Advocate and his submissions were also heard, therefore, there is sufficient compliance as contemplated under the law. Now, it will not lie in the mouth of the accused persons to say that they were not heard. Learned APP is relying on the affidavit of Mr. Abhay Ramrao Panhekar, the Assistant Commissioner of Police, ATS, Nagpur, having additional charge of Aurangabad region. Mr. Panhekar, the Assistant Commissioner of Police has clearly stated that each and every

time opportunity was given to the appellants to oppose the applications. He has further submitted that the matter is under investigation by ATS and the learned Registrar (Inspection-I) of this Court by letter dated 21st July 2016 to the Principal Secretary and R.L.A., Law and Judicial Department, Government of Maharashtra submitted that the Hon'ble the Chief Justice of the High Court, Bombay has given directions to designate the Courts of Chief Judicial Magistrate and the Court of Sessions Judges / Additional Sessions Judges at Thane, Akola and Nanded for the production of accused and to try the cases investigated by ATS from the units of Thane, Akola and Nanded. Then the Notification was issued by the State Government on 26th August 2016 according the jurisdiction. Thereupon, the learned Principal District Judge, Nanded by order dated 20th September 2016 designated District Judge-1 and Additional Sessions Judge, Nanded to be the Judge of the Special Court to try the cases investigated by the ATS, pertaining to Nanded, Parbhani, Latur and Hingoli jurisdiction. Therefore, the said Court / Special Judge has every jurisdiction to try the present case and deal with the remands. The time for filing the charge-sheet is properly and legally extended and therefore, on the day when the application under Section 167(2) of the Code of Criminal Procedure was filed

by the present appellants, the said extension being legal the accused had no statutory right to be released on default bail. The application is, therefore, rightly rejected.

11. Here, the fact that is emerging is that the FIR came to be lodged with ATS Squad which has its office at Kala Chowki, Mumbai and it has been declared as Police Station by Notification dated 17th November 2004. The jurisdiction for investigation to ATS, Government of Maharashtra (of which Police Station is Kala Chowki) is entire State of Maharashtra. Reference to this can be found in the Notification issued by the Government of Maharashtra on 26th August 2016 appended with the affidavit of Mr. Panhekar, who is the Investigating Officer in this case. After the crime was registered vide Crime No.22 of 2022, it came to be registered for the offence punishable under Sections 121-A, 153-A, 120-B, 109, 116, 201 of the Indian Penal Code and Section 13(1)(B) of the UAPA. At this stage itself we would like to say that though the offence was registered under the UAPA, the investigation was never handed over to National Investigation Agency. The affidavit does not say it in specific words, yet there is no contrary document produced by the appellants on record to show that investigation was at any point of time, handed over to the National Investigation Agency.

12. Objection is now raised that there is no compliance of Section 6 of the N.I.A. Act. We do not agree with the said submissions. Section 6 of the N.I.A. Act lays down procedure for investigation of scheduled offences. No doubt the scheduled offences covers offences under the UAPA also, yet, Section 6(1) of the N.I.A. Act prescribes that the copy of the FIR should be sent to the State Government and thereafter the State Government, under sub-section (2) of Section 6 of the N.I.A. Act, should forward it to the Central Government. Sub-section (3) of Section 6 of the N.I.A. Act deals with, as to what the Central Government should do and sub-section (4) of Section 6 of the N.I.A. Act says that if the Central Government is of the opinion that the said offence is fit to be investigated by the National Investigation Agency, then it would direct the Agency to investigate the same. Here, in this case the Central Government has not taken any decision to handover the investigation to the National Investigation Agency. Without any proof, we cannot come to the conclusion that the Government of Maharashtra would not have complied with Section 6(2) of the N.I.A. Act. Merely because the offence under the UAPA is scheduled offence, the investigation will not automatically go to National Investigation Agency. It will be carried out by the National

Investigation Agency only after the decision is taken by the Central Government under sub-section (4) of Section 6 of the N.I.A. Act. Section 10 of the N.I.A. Act prescribes that nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any scheduled offence or other offences. Hence, we do not find any substance in the point raised by the appellants that the learned Special Judge under the UAPA had not considered that there was no mandatory fulfillment of Section 6 of the N.I.A. Act.

13. We will directly go to the point of jurisdiction, as from the above discussion it is clear that the State Government agency has powers to investigate the offences under the UAPA. The UAPA had come into force with effect from 30th December 1967 and there were amendments in the year 2004, 2008, 2013 and it appears that lastly in the year 2019. There was no specific provision for establishment of Special Courts when the Act came into force and therefore, the Second Schedule of the Code of Criminal Procedure would have been made applicable which go according to the quantum of punishment prescribed. The provision of Section 11 of the Cr.P.C. together with definition of "Court" in Section 2(1)(d) of the UAPA is therefore, required to be considered. Of course with the amendment with effect from

14th August 2019, the Court includes a criminal Court having jurisdiction under Section 22 of the N.I.A. Act, but it is in addition because the word used is "or". As aforesaid, ATS Office was declared as "Police Station", which had jurisdiction over entire Maharashtra and therefore, requirement for designating the Courts at Thane, Akola and Nanded for the production of accused and trial of cases investigated by ATS Squad / sub-squad arose. The powers have then been conferred by the State Government under Section 11 with Section 185 of the Code of Criminal Procedure to learned Chief Judicial Magistrate and District and Sessions Court at Thane, Akola and Nanded by Notification dated 26th August 2016. The area coming under these Courts is also prescribed and as regards the Court at Nanded is concerned, the jurisdiction is Nanded, Parbhani, Latur and Hingoli Districts. The Court that was prescribed, was the District and Sessions Court, Nanded and therefore, the learned Principal District Judge, Nanded by office order dated 20th September 2016 designated District Judge-1 and Additional Sessions Judge, Nanded to be the Judge of the Special Court to try the cases investigated by ATS. Therefore, the Court at Nanded has jurisdiction to try and entertain the case under the

UAPA which is investigated by the ATS. We do not find any fault in the same.

14. Now coming to the fact that the application that was filed, was under Section 167(2) of the Code of Criminal Procedure, we cannot enter into the merits of the case. It is to be seen, as to whether the said right stood accrued after the statutory period to the appellants or not. For that purpose, it is to be noted that accused Nos.1 to 5 came to be arrested on 22nd September 2022 and accused No.6 came to be arrested on 26th September 2022. The documents have been produced on record to show that upon the arrest, appellants – accused Nos. 1 to 5 were produced before the learned Chief Judicial Magistrate, Nanded and by order dated 22nd September 2022 Police custody was granted till 30th September 2022. Even as regards accused No.6, who came to be arrested on 26th September 2022, he was also remanded in Police custody till 30th September 2022. It appears that on 30th September 2022 Police custody was extended till 7th October 2022. But on 7th October 2022 the appellants were remanded to Magisterial custody till 22nd October 2022. Thereafter an application was given by the Special Prosecutor, Nanded on 15th December 2022 for extension of 60 days to file the charge-sheet. It was mentioned that the period to file charge-sheet

would end by 20th December 2022 and the extension was sought beyond that period i.e. starting from 20th December 2022. Notice of the said report / application was given to the appellants and their Advocate was heard and thereafter the extension was granted for 60 days by order dated 19th December 2022. However, it appears that application under Section 167(2) of the Code of Criminal Procedure was filed on behalf of the accused-appellants on 4th January 2023 for various reasons as set out in the said application. That application came to be rejected on 8th February 2023 by the learned Special Judge. Thereafter, again Special Public Prosecutor filed an application for extension of time by 30 days to file charge-sheet, on 6th February 2023. Similar application was also given by the Investigating Officer which is said to be through the Special Public Prosecutor and by order dated 10th February 2023, the said period was extended by 30 days, thereby total extension of 180 days was granted. It has been informed by the learned APP that the charge-sheet has been filed on 17th March 2023 and it is within the extended period.

15. One of the main point on which the appellants are harping upon, is that they were not got produced by the learned Special

Judge, when the extension of time to file charge-sheet was granted on 19th December 2022 as well as on 10th February 2023 and therefore they want to rely on the decision in ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra). Whereas the prosecution contends that on both the occasions notice was issued to the accused persons through their Advocate and the learned Advocate representing them was heard. Here, it is to be noted that the appellants have not challenged the extension of time that was granted by order dated 19th December 2022 by the learned Special Judge. The impugned order dated 8th February 2023 makes a specific mention that notice of report which was dealt with in order dated 19th December 2022, was served on the accused persons and the order dated 10th February 2023 also specifically mentions that the notice was served to the accused persons through their Advocate. Para No.2 of the order dated 10th February 2023 passed by the learned Special Judge gives the objection taken on behalf of the accused. The prosecution is relying on ***Qamar Ghani Usmani*** (supra). Here it is to be noted that in ***Qamar Ghani Usmani*** (supra) there is reference to the Judgment of ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra). The decisions in ***Hitendra Vishnu Thakur and others vs. State of Maharashtra, (1994) 4 SCC 602,***

Sanjay Dutt (supra) and ***Sayed Mohd. Ahmed Kazmi vs. State, (2012) 12 SCC 1*** were also taken into consideration. The relevant Paragraphs from ***Qamar Ghani Usmani*** (supra) are reproduced here:

“ 6.1 The short question which is posed for the consideration of this Court is whether in the facts and circumstances of the case, the appellant shall be entitled to the statutory/default bail under Section 167(2) of the Cr.PC on the ground that at the time when the extension of time for completing the investigation was prayed by the investigating agency and granted by the Trial Court the accused was not kept present?

6.2. Learned counsel appearing on behalf of the appellant – accused has heavily relied upon the decisions of this Court in the cases of Hitendra Vishnu Thakur (supra); Sanjay Dutt (supra); Sayed Mohd. Ahmed Kazmi (supra) and on the recent decision of this Court in the case of Jigar (supra).

6.2.1. In the case of Hitendra Vishnu Thakur (supra), this Court observed and held that when a report is submitted by the Public Prosecutor to the Designated Court for grant of extension, its notice should be issued to the accused before granting such an extension so that the accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him.

6.2.2. However, thereafter, the decision of this Court in the case of Hitendra Vishnu Thakur (supra) fell for consideration before this Court in the case of Sanjay Dutt (supra) and the view taken by this Court in the case of Hitendra Vishnu Thakur (supra) as above, has not been accepted by the Constitution Bench of this Court and it is observed and held in the case of Sanjay Dutt (supra) that a notice to the accused is not required to be given by the Designated

Court before it grants any extension for completing the investigation. Meaning thereby, the accused is to be kept present before the Court when it grants any extension for completing the investigation. The view taken by this Court in the case of Hitendra Vishnu Thakur (supra) that a notice is to be given to the accused so that he can oppose the extension has not been accepted by the Constitution Bench of this Court in the case of Sanjay Dutt (supra). As such under the Scheme of Cr.P.C. and on the report submitted by the Investigating Agency, prayer for extension of time for completing investigation is subject to the satisfaction of the concerned Court whether to grant further extension or not. The Court is to be satisfied on the grounds on which the extension is sought.

6.2.3. Now so far as the reliance placed upon the decision of this Court in the case of Sayed Mohd. Ahmed Kazmi (supra) by learned counsel appearing on behalf of the appellant is concerned, at the outset, it is required to be noted that the said decision shall not be applicable to the facts of the case on hand. In the case before this Court, in fact, the extension granted by the learned Chief Metropolitan Magistrate was challenged on the ground that the learned Chief Metropolitan Magistrate had no competence to extend the judicial custody of the accused. The learned Additional Sessions Judge accepted the same. However, thereafter, a fresh extension was sought which was beyond the period prescribed under Section 167 of the Cr.PC and therefore, this Court observed and held that extension for period of investigation from retrospective effect shall not be permissible.

6.3 Similarly, even the decision of this Court in the case of Rambeer Shokeen (supra) relied upon by learned Solicitor General shall also not be applicable to the facts of the case on hand. In the case of Rambeer Shokeen (supra) pending application by the Investigating Agency for extension of time for completing the investigation, the accused made an application for

statutory/default bail and to that this Court observed and held that the application filed by the Investigating Agency for extension of time for completing the investigation which was prayed in time kept pending ought to be decided first by the Court.

6.4 Thus, sum and substance of law laid-down by this Court in the cases of Sanjay Dutt (supra) and Jigar (supra) are that while considering the application by the Investigating Agency for extension of time for completing the investigation beyond the period prescribed under Section 167(2) of the Cr.PC the accused is to be given notice and/or is to be kept present before the Court, so that, the accused had knowledge that the extension is sought and granted.” (emphasis supplied)

16. In ***Qamar Ghani Usmani*** (supra), the Hon’ble Supreme Court, in Para No.6.4 above, has explained the law laid down in ***Sanjay Dutt*** (supra) as well as ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra) and the purpose, for insisting upon notice or to keep the accused present, has been stated that the accused should get the knowledge regarding extension sought and granted. Therefore, in view of the point of law explained as above, we do not find any substance in the point raised now by the appellants that the extension of time is illegal as they were not got produced by the Special Judge. Notice was given regarding the reports / applications and the learned Advocate representing the appellants had opposed the same. Here it is to

be noted that after the extension was granted by order dated 19th December 2022, the application under Section 167(2) of the Code of Criminal Procedure was filed by the appellants on 4th January 2023 and as aforesaid, the said order dated 19th December 2022 was not challenged immediately. Even in the present Appeals, when those were filed on 8th March 2023, there was no such prayer challenging the extension order dated 19th December 2022 but the prayer clause came to be amended in view of the leave granted by this Court as per order dated 21st June 2023 and therefore, the said application filed on 4th January 2023 under Section 167(2) of the Code of Criminal Procedure was premature. The said application came to be decided on 8th February 2023. The further extension of time to file charge-sheet was sought by application / report dated 6th February 2023, which came to be granted on 10th February 2023. When leave to amend was granted, it can be seen that the said amendment is not happily worded. There is no specific challenge to the order dated 10th February 2023 thereby granting extension to file charge-sheet by 30 days and now the charge-sheet has been filed within the prescribed / extended period. Therefore, it cannot be said that an indefeasible right under Section 167(2) of

the Code of Criminal Procedure accrued to the appellants at any point of time.

17. The decision in **Bikramjit Singh vs. the State of Punjab** (supra) is definitely binding on this Court. The right that will accrue to the accused persons if the schedule is not followed by the investigating agency, would definitely related to the fundamental right granted to the accused persons. However, to approve the said right those conditions will have to be fulfilled. The circumstances stated or grounds raised in the application by the appellants are not sufficient to hold that the investigating agency has failed in filing the charge-sheet within the stipulated period. The extension was sought well within time and opportunity was given to the accused persons to defend.

18. Another ground on which the appellants are harping upon is that the the report of the Special Public Prosecutor seeking extension of time to file charge-sheet, is nothing but copy-paste of the report by the Investigating Officer and it does not reflect the application of mind. Here, we would like to say that if the report of the Investigating Officer is in detail covering every aspects, then its reproduction by the Special Public Prosecutor cannot be taken as copy-paste and non-application of mind. The

report covers as to what progress has been made in the investigation and what investigation still remains. Therefore, we do not find any substance in this point also.

19. As regards impugned order dated 8th February 2023 is concerned, it is to be noted that the application under Section 167(2) of the Code of Criminal Procedure contain such grounds that the extension has been illegally given and the points raised by the accused are not considered etc. In fact those points could not have been agitated before the same Judge who had granted the extension of time. He could not have sat as an appellate Court on his own order and therefore, immediate challenge to that order granting extension of time to file charge-sheet, dated 19th December 2022 was necessary for the appellants but they kept quiet. In ***Qamar Ghani Usmani*** (supra) two extensions granted by the Special Court were not challenged and at the time when the default bail application was made, there was already an extension and even thereafter also there was second extension. Of course in that case it was in presence of the accused and under those set of facts, the Hon'ble Supreme Court rejected the contentions of the accused therein and held that the accused was not entitled to be released on statutory / default bail. Here in the present case also there is similar situation. As

aforesaid, though the challenge to extension order dated 19th December 2022 is made, it was after the leave that was granted by this Court by order dated 21st June 2023. But still there is no challenge to the extension order dated 10th February 2023. Hence we arrive at a conclusion that the impugned orders dated 8th February 2023 as well as dated 19th December 2022 do not suffer from any illegality. No statutory or indefeasible right arose in favour of the appellants – accused under Section 167(2) of the Code of Criminal Procedure. There is no merit in the present Appeals and the same deserve to be dismissed.

20. All the Appeals are dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE