

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. 3524 of 2023

Sukhlal Soren @ Suklal Soren & Ors.

V/s.

State of West Bengal & Ors.

For the Petitioners: Mr.Kaushik Gupta, Adv.,
Ms. Srimoyee Mukherjee, Adv.,

For the State: Mr. Neguive Ahmed, Adv.,
Ms. Amita Gaur, Adv.,

Heard on: 08.01.2024

Date: 24.01.2024

SUVRA GHOSH, J. :-

- 1.The petitioners have assailed the orders passed by the Learned Additional Sessions Judge, 6th Court, Paschim Medinipur on 9th August, 2023, 17th August, 2023 and 28th August, 2023 in connection with sessions trial no. 11(9) of 2011 under sections 121/121A/122/124A/302 read with section 120B of the Indian Penal Code, section 16 (1) (a)/16(1)(b)/18/38/39 of The Unlawful Activities (Prevention) Act, 1967 under section 3/4 of the Explosive Substances Act and under section 25(I) (b) of the Arms Act.

2. Written complaint was lodged against the petitioners and others before Binpur Police Station which was registered as Binpur Police Station case no.12 dated 15th February, 2010 under sections 147/ 148 /149 / 186/302/333/353/326/307/120B/121/121A/122/122A/124A/435/ 436 /427/379 of the Indian Penal Code, under sections 25/27//35 of the Arms Act, under section 3/4 of the Explosive Substances Act and under section 9(B) of the Explosives Act. Investigation was taken up by the CID, West Bengal and the petitioners were arrested and produced before the Learned Additional Chief Judicial Magistrate, Jhargram who remanded the petitioners/accused to custody from time to time. The Investigating Officer filed an application before the Magistrate seeking addition of section 16(1) (a)/16(1)(b)/18/20/38/39 of the UAPA which was allowed by an order passed on 3rd May, 2010. Charge sheet was submitted by the Investigating Officer on 21st May, 2010 and the Learned ACJM took cognizance of offences under the Indian Penal Code. The Learned ACJM refrained from taking cognizance of the offence under the UAPA for want of proper sanction from the competent authority. Such sanction was subsequently granted by the State Government following which supplementary charge sheets submitted by the Investigating Officer were taken cognizance of. The case was committed to the Learned Sessions Judge, Pashchim Medinipur by the Learned ACJM and the Learned Sessions Judge took cognizance by an order passed on 9th September, 2011 and transferred the case to the Learned Additional Sessions Judge, 6th Court, Paschim Medinipur for disposal, by an order passed on 24th November, 2011.

3. Learned counsel for the petitioners has submitted that since the offences alleged under the UAPA fall within the category of scheduled offences under section 2(g) of The National Investigation Agency Act, 2008, the Learned ACJM had no authority to deal with the matter or remand the accused-petitioners to custody. The accused ought to have been produced before the Special Court and in absence of a Special Court, the Court of Sessions who has been authorised to exercise all powers and jurisdiction of the Special Court in terms of section 22(3) of the NIA Act. The Learned Sessions Judge erred in law in transferring the case to the Learned Additional Sessions Judge for trial since such delegation of power is not sanctioned by the NIA Act. Such grievance was ventilated by the petitioners before the Learned ADJ who, by the orders impugned, turned down the prayer of the petitioners. Admittedly trial of the case is on the verge of conclusion and argument is being heard.

4. Learned counsel has placed reliance on the authorities in *Bikramjeet Singh v/s. State of Punjab* reported in (2020) 10 SCC 616, a judgment of an Hon'ble Division Bench of this Court passed on 1st December, 2022 in CRM (DB) 3590/2022 and a judgment of a coordinate Bench of this Court dated 11th May, 2023 in CRR 3180 of 2022.

5. Learned counsel for the State has placed reliance on the authority in *Naser Bin Abu Bakr Yafai v/s State of Maharashtra* and another reported in (2022) 2 SCC (Cri) 527 and has submitted that since there

is no designated Special Court for trial of offences under the UAPA, the Court of Sessions is the Court of first instance and is empowered to take cognizance without the case being committed to it and try any case involving any scheduled offence. The Court of Sessions includes a Court presided over by the Additional Sessions Judge or the Assistant Sessions Judge who are vested with the jurisdiction of the Court of Sessions in respect of the cases made over to them. Therefore the Additional Sessions Judge is competent to try a case under the UAPA.

6. The orders of remand made by the ACJM can at best be termed as an irregularity entitling the accused to seek bail and shall not vitiate the ongoing trial. Legality of the investigation has not been challenged by the accused and it is also not their case that they have suffered prejudice or miscarriage of justice on account of such remand orders. The matter is at the argument stage before the Learned ADJ.

7. The authorities relied upon by the petitioners deal with the remand of an accused under section 43D of the UAPA and grant of default bail.

8. I have considered the rival contention of the parties, material on record and the law on the point.

9. The interpretation of the expression “district judge” as laid down in Article 236 (a) of The Constitution of India includes judge of a city civil court, additional district judge, joint district judge, assistant district

judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge. Section 9(3) of the Code of Criminal Procedure also envisages that the High Court may appoint additional sessions judges and assistant sessions judges to exercise jurisdiction in a Court of sessions. Therefore it is crystal clear that a sessions judge includes an additional sessions judge and an assistant sessions judge. In absence of a designated special court in the district under section 22(1) of The National Investigation Agency Act, 2008, the jurisdiction conferred by this Act on a special Court shall be exercised by the Court of sessions of the division in which such offence has been committed, under section 22(3) of the Act. Therefore transfer of the case by the Learned Sessions Judge to the Learned Additional Sessions Judge for trial cannot be considered to be without jurisdiction. The Sessions Judge was well within his authority in transferring the matter to the learned additional Sessions Judge, 6th Court, Paschim Medinipur for trial.

10. It is a fact that even after taking cognizance of offence under the UAPA, the learned ACJM remanded the accused petitioners to custody on several occasions. It is settled law that once offences under the UAPA are added to a case, the Magistrate is denuded of his power to remand in terms of section 167 of the Code beyond a period of thirty days. The accused should be produced before the Special Court/Court of sessions

for the purpose of remand as well as extension of the period to remand in terms of the proviso to section 43 D (2) of the UAPA.

11. In the case in hand, the matter was committed to the Court of learned Sessions Judge, Paschim Medinipur who took cognizance of the same.

12. At this juncture, section 465 of the Code of Criminal Procedure is necessary to be set out:

“Finding or sentence when reversible by reason of error, omission or irregularity.- (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

13. The primary consideration, therefore, is whether failure of justice has been occasioned on account of the orders passed by the learned ACJM. Though the sessions Court is vested with the power of remand, the learned ACJM took it upon himself to remand the accused petitioners before committing the case of the Court of Sessions. Such orders of remand can at best be termed as an irregularity on the part of the learned ACJM. Since cognizance was subsequently taken by the Court of sessions, the initial orders passed by the ACJM do not strike at the root of the case and trial of the case cannot be said to be vitiated by such act. It is not the case of the petitioners that they are prejudiced by the orders passed by the Learned ACJM or failure of justice has been occasioned. Investigation of the case is also not under challenge and it is not the case of the petitioners that illegality in the investigation has brought about a miscarriage of justice.

14. The authorities relied upon by the petitioners deal with the power of the magistrate to remand in terms of section 167 of the Code beyond the period of thirty days. In the present case evidence has been concluded and the trial is on the verge of completion. In view of cognizance being taken by the Court of Sessions and the matter being tried by the Court of competent jurisdiction, the entire trial cannot be vitiated on the ground of initial irregularities which have been subsequently regularised upon taking cognizance by the Court of sessions.

15. In the light of the observation made hereinabove, this Court is inclined to hold that there is no illegality in the orders impugned and the revisional application, being devoid of any merit is liable to be dismissed.
16. However, the petitioners shall be at liberty to raise this issue before the learned trial court at the time of argument/final hearing of the matter.
17. Accordingly, C.R.R. 3524 of 2023 is dismissed.
18. There shall however be no order as to costs.
19. Urgent certified website photocopies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)