

CRA (DB) 301 of 2024

In Re: - An appeal under section 21(2) of National Investigation Agency, Act 2008 in connection with **Petrapole P.S.** Case No. 27 / 2023 dated 26.3.2023 under Sections 120B, 121,121A,123 of IPC and Sections 16,18,18B, 20 of the UAPA and Section 14 of Foreigner's Act, 1946
And

In the matter of: Md. Tariqul Islam

Mr. Mujahid Ahmed
Mr. Giasul Islam ... for the petitioner

Mr. Debasish Roy, Ld. P.P.
...for the State

1. Appellant contends he is entitled to statutory bail. Petitioner had been arrested in connection to the present case involving offences under Sections 121 and 121A of the Indian Penal Code and Sections 16, 18, 18B and 20 of the UAPA Act on 27.3.2023. Prior to expiry of the statutory period, that is, ninety days under Section 43D(2) of UAPA the prosecutor made a prayer for extension of statutory period which came to be allowed by order dated 16.6.2023 for further period of 90 days till 16.9.2023. Learned lawyer argues extension was illegal and application for statutory bail which was filed on 17.07.2023 was illegally refused.

2. It is settled law during the extended period of statutory detention, an application for statutory bail is not maintainable¹. However, it is strenuously argued the extension order is illegal. But no challenge had been thrown to the said order for more than one and half years. Belatedly the issue has been raked up and that too after charge sheet had been filed and cognizance taken thereon in 20.09.2023.

¹ *M. Ravindran v. Directorate of Revenue Intelligence*, (2021) 2 SCC 485

3. In *Qamar Ghani Usmani vs State of Gujarat*², the Apex court refused to entertain challenge to extension order after charge sheet was filed and cognizance taken thereon. Accordingly, the challenge thrown to the extension order after one and half years is impermissible in view of subsequent developments.

4. Needless to mention no application for statutory bail was filed after expiry of the extended period of detention, that is, 16.9.2023 till cognizance was taken on the charge sheet on 20.9.2023. Accordingly, no indefeasible right to statutory bail had accrued in favour of the petitioner.

5. In such view of the matter, we are of the considered opinion petitioner is not entitled to statutory bail.

6. On merits we note petitioner is a foreign national and was arrested at the immigration counter while trying to flee to Bangladesh. Incriminating materials disclosing involvement of the petitioner in the alleged offences were seized. In such view of the matter we are of the opinion a prima facie case against the petitioner is made out and he is not entitled to bail in view of restrictions under Section 43D(5) of UAPA. There is every possibility he shall abscond if released on bail.

7. Accordingly, we are not inclined to grant bail to the petitioner.

8. The appeal is, thus, dismissed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

² 2023 SCC OnLine SC 380