

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 38 OF 2024**

Zulfikar Ali Barodawala s/o Ali .. Appellants
Barodawala & ors

Versus

National Investigation Agency & Anr .. Respondents

WITH

CRIMINAL APPEAL NO. 107 OF 2024

Kadir Dastagir Pathan @ Abdul Kadir .. Appellant
Dastagir Pathan

Versus

National Investigation Agency & Anr .. Respondents

WITH

CRIMINAL APPEAL NO. 218 OF 2024

Zulfikar Ali Barodawala @ Lala Bhai .. Appellant

Versus

National Investigation Agency & Anr .. Respondents

WITH

CRIMINAL APPEAL NO. 202 OF 2024

Aakif Nachan Ateeque Nachan .. Appellant

Versus

National Investigation Agency & Anr .. Respondents

WITH

CRIMINAL APPEAL NO. 203 OF 2024

Zulfikar Ali Barodawala and anr .. Appellants

Versus

National Investigation Agency & Anr .. Respondents

WITH
CRIMINAL APPEAL NO. 204 OF 2024

Dr.Adnanali Sarkar s/o. Qamarali Sarkar .. Appellant

Versus

National Investigation Agency & Anr .. Respondents

WITH
CRIMINAL APPEAL NO. 1374 OF 2023

Kadir Dastagir Pathan @ Abdul Kadir .. Appellant
Dastagir Pathan

Versus

National Investigation Agency & Anr .. Respondents

...

Mr.Mubin Solkar with Ms.Tahera Qureshi, Mr.Tahir Hussain,
Mr.Anas Shaikh, Hemal Shah for the appellants.

Mr.Sandesh Patil with Mr.Chintan Shah for the respondent –
NIA.

Dr. A. A. Takalkar, APP for the State.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 14th JUNE, 2024

JUDGMENT:-

1 A group of Seven Appeals is listed before us, which
arises out of two distinct cases, being RC-02-2023/NIA/MUM
and RC-05/2023/NIA.

In the group of Appeals, two Appeals i.e. Appeal
No.38/2024 filed by three accused in R.C-02-2023/NIA/MUM
and Appeal No. 1374/2023 filed by Kadir Pathan and one

another, seek quashing of order dated 30/9/2023 and 16/10/2023 respectively passed by the Special Court under National Investigating Agency (NIA) thereby granting extension of 90 days and 21 days respectively to complete the investigation and file the charge-sheet.

The other five Appeals are filed by accused persons, challenging the order passed on the respective applications filed by them, rejecting the relief of default bail under Section 167(2) of Code of Criminal Procedure (for short 'Cr.P.C') and the remand applications.

We have heard Advocate Mubin Solkar for the appellants and Advocate Sandesh Patil along with Mr. Chintan Shah for the NIA.

As the respective counsel express their consensus over hearing the two Appeals, posing challenge to the order passed by the Special Court granting extension to complete the investigation, we have taken up Appeal No.38/2024 with Appeal No. 1374/2023 at their request.

2 Appeal No. 38/2024 is filed by four accused persons who are in judicial custody and what is assailed by them is order dated 30/9/2023 passed on Miscellaneous Application No. 1332/2023 filed before the Special Court under NIA, seeking extension of 90 days for investigation and for filing of charge-sheet.

The said application is allowed by the Special Judge in the following terms:-

(a) *The time for completion of investigation and filing of charge-sheet is herewith extended for further period of ninety days from today.*

(b) *Copy of the **Exhibit-3** i.e. the Comprehension Report of Spl. P.P not to be supplied to the accused in any format till completion of investigation.*

3 Mr.Solkar has contested the said order on two primary counts; firstly the order granting extension of 90 days for conclusion of investigation and filing of charge-sheet to NIA do not extend the detention of the accused beyond 90 days and the second ground which Mr.Solkar would urge, is about the non-supply of the report of the Special Public Prosecutor, which form the basis of the order dated 30/9/2023, as the Court has expressed satisfaction over the same and reached a conclusion that the time for completion of investigation deserve to be extended.

The learned counsel would invoke Section 43D(2)(b) of the Unlawful Activities (Prevention) Act, 1967, (for short 'UAP Act') and by relying upon the proviso, he would submit that when the time is extended to complete the investigation, upon the Court expressing its satisfaction with the report of the Public Prosecutor, indicating the progress of investigation and the specific reasons for detention of the accused beyond period of 90 days, it result into extension of the period of investigation and also the detention of the accused beyond period of 90 days, but

since the impugned order only extended the time for completion of investigation and filing of charge-sheet, there is no adherence to the provision.

By referring to the affidavit filed by NIA, accompanying the application for seeking extension of judicial custody remand of the accused for 14 days and the order passed thereon, accepting the remand report and extending the jail custody from time to time, Mr.Solkar has urged that this procedure is unknown in law, in light of the settled position of law laid down by the Apex Court in case of *Hitendra Vishnu Thakur and anr Vs. State of Maharashtra*,¹ and the decision in case of *Sanjay Kumar Kedia Vs Intelligence Officer, NCB and Anr.*² He would also invoke the principle of law laid down by the Apex Court in the latest decision of the Apex Court in case of *Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat*,³.

4 Per contra, Advocate Sandesh Patil has placed reliance upon the decision of the Apex Court in case of *State of Maharashtra Vs. Surendra Pundlik Gadling*,⁴ and repelling the contention advanced that there is no corresponding extension of period of detention, as there is no order of extending the period of detention, but there is only extension of the period for filing

1 (1994) 4 SCC 602

2 (2009) 17 SCC 631

3 (2023) 6 SCC 484

4 (2019) 5 SCC 178

charge-sheet, and on the ground that the extension is bad because the report of the Public Prosecutor was not supplied to the appellant, Mr.Patil would submit that there was a specific application filed for extension of detention of the jail custody, and the Miscellaneous Application which was granted by the learned Judge which is impugned in the present Appeal, has granted extension for completion of investigation and when this application is granted, subsequent application was filed seeking extension of the jail custody which is allowed from time to time.

As regards the report of the Public Prosecutor which is the quintessential requirement, when the power is to be exercised by the concerned Court, extending the period of 90 days, upto 180 days, Mr.Patil has submitted that as per the proviso inserted in Section 43D(2)(b) of UAPA, in the present case, the Special Public Prosecutor presented his report to the Court, which is reflective of the application of his mind at two stages; firstly, he has endorsed the application which is filed by the Investigating Officer for extension of time for completing the investigation and the time for detention, and it is not the case that he has only identified the Investigating Officer. Apart from this, Mr.Patil would submit that a report was furnished by the Public Prosecutor to the Court in a sealed envelope, which is a report contemplated under the proviso of Section 43D(2)(b), indicating the progress of investigation and the specific reasons for detention of the accused beyond period of 90 days.

However, Mr.Patil would specifically oppose the contention of Mr.Solkar that the accused was entitled for copy of the report, as the report contained the details of investigation and as per the well recognised principle of criminal law, unless the charge-sheet is filed, the accused is not entitled for the details of investigation, and since the report contained the necessary details for perusal of the Court necessitating the extension of the period for investigation and the specific reasons for detention of the accused, it is not revealed to him.

In the second matter i.e. Appeal No. 1374/2023, the Special Court has granted extension of 21 days to complete the investigation and filing of charge-sheet, based upon the Special report filed by the Spl. Public Prosecutor, who had reported about the need for extension of time as well as the specific reasons for detention of the accused by a further period of 21 days.

5 In order to appreciate the contention of Mr.Solkar, it is necessary to reproduce Section 43D(2) and the proviso appended thereto:

“43-D (1)

(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.”

6 The aforesaid provision has modified Section 167 of the Cr.P.C. in relation to a case involving an offence under UAPA and by virtue of the proviso, it is permissible to extend the period of 90 days for completion of investigation, if the investigation was not completed within the initial period prescribed and upon the Court being satisfied with the report of the Public Prosecutor, indicating the progress of investigation and the specific reasons for the detention of the accused beyond period of 90 days.

Section 167 of the Cr.P.C prescribe the procedure to be adopted when investigation cannot be completed in 24 hours and in terms of the said provision, whenever any person is arrested and detained in custody and it appears to the Investigating Officer that the investigation cannot be completed within 24 hours as fixed by Section 57 and there are grounds for believing that the accusation is well founded, then, such an accused shall be forthwith transmitted to the nearest Judicial Magistrate.

The Magistrate to whom the accused is forwarded shall authorize the detention of the accused in such custody, as he deems fit, for a term not exceeding 15 days in the whole. Sub-section (2) of Section 167 is appended with a proviso which reads thus :-

Provided that -

"(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage."

7 The Scheme contemplated under the Code make it imperative for production of an accused before the Magistrate, if the investigation cannot be completed in 24 hours and the Magistrate before whom the accused is produced is authorized to detain the accused, either in police custody or judicial custody, as he deems fit, and he may authorize the detention, otherwise than

in custody of police beyond 15 days, but his power is restricted in authorizing the detention for a period exceeding 90 days, where the investigation relates to an offence punishable with death, Imprisonment for life or imprisonment for a term not less than 10 years and 60 days where the investigation relates to any other offence.

The proviso appended to sub-section (2) to Section 167 mandate that on expiry of period of 90 days or 60 days, as the case may be, the accused shall be released on bail, if he is prepared to furnish bail.

In terms of clause (b) of the proviso, no Magistrate is authorised to detain the accused in custody of police, unless he is produced before him for the first time, and subsequently every time, till he remains in police custody, but once the accused is taken in judicial custody, the Magistrate is empowered to extend the detention on production of the accused, either in person or virtually. Worth it to note that this amendment has been inserted with effect from 13/12/2009.

8 From a cumulative reading of sub-section (1) and sub-section (2) of Section 167 of the Code, it is evidently clear that upon production of an accused before the Magistrate, he may authorize his police or judicial custody for the purpose of carrying out the investigation, but in an offence, which relate to clause (i), the detention shall not continue beyond 90 days and in

case of clause (ii) beyond 60 days, and even though the investigation is not completed, within this period, the accused will be entitled to be released on bail, which is commonly referred to as 'default bail' i.e. to be availed in default of the Investigating Officer in completing investigation and which has been construed as an indefeasible right of an accused.

The proviso appended to sub-section (2) of Section 167, though pertain to the authorization of the detention of the accused other than in custody of the police beyond the period of 15 days, it is co-related to the completion of investigation and on reading of sub-section (1) and (2), it is observed that sub-section (1) is a mandatory provision governing what Police Officer should do when a person is arrested and detained in custody, and it appears that the investigation cannot be completed within 24 hours. Sub-section (2) on the other hand adumbrate the power of remand available to the Magistrate and the manner in which such power should be exercised.

The provisions of sub-section (1) of Section 167 has to be read in conjunction with Section 57, which interdicts the police officer from keeping a person in custody without warrant for a period longer than 24 hours without his production before the Magistrate.

Section 309 of the Code is the power to postpone or adjourn any inquiry or trial. Sub-section (2) impose a restriction

on the Magistrate to remand an accused person to custody for a term exceeding 15 days at a time, though it is permissible for the Court, after taking cognizance of an offence or commencement of trial, to postpone or adjourn any inquiry or trial, from time to time, for reasons to be recorded on such terms as the Court deems fit and for such time, as it considers reasonable and in such a case, it may by a warrant, remand the accused, if in custody, but no Magistrate shall remand an accused to custody for a term exceeding 15 days at a time.

Sub-section (2) of Section 167 as well as proviso (1) of sub-section (2) of Section 309 relate to the power of remand of a Magistrate, and the Apex Court in case of *Chhaganti Satyanarayan Vs. State of Andhra Pradesh*⁵ in paragraph nos.16 and 17, has specifically observed as under :-

“16. As sub section (2) of Section 167 as well as proviso (1) of sub section (2) of section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words “15 days in the whole” occurring in sub-section (2) of Section 167 would be tantamount to the period of “15 days at a time” but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interest of the accused are not jeopardised by his being

5 (1986) 3 SCC 141

placed under police custody beyond the total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case.

17. Thus in the light of our discussion and conclusions reaches we do not find merit or force in the contention of the appellants' counsel that the words "for a term not exceeding 15 days in the whole" occurring in sub-section (2) of Section 167 should be so construed as to include also the period of custody of the accused from the time of arrest till the time of production before the magistrate. A magistrate can, therefore, authorise the detention of the accused for a maximum period of 15 days from the date of remand and place the accused either in police custody or in judicial custody during the period of 15 days' remand. It has, however, to be borne in mind that if an accused is remanded to police custody the maximum period during which he can be placed in police custody is only 15 days. Beyond that period no magistrate can authorise the detention of the accused in police custody.

9 In case of *Central Bureau of Investigation Vs Anupam J Kulkarni*⁶, the Apex Court has crystallised the position of law as below:-

"8 Having regard to the words "in such custody as such Magistrate thinks fit a term not exceeding fifteen days in the whole" occurring in Sub-section (2) of [Section 167](#) now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in *Dharam Pal's* case. Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary of fifteen days. To this extent the view taken in [Dharam Pal's](#) case is correct."

10 In the wake of the aforesaid, when the proviso contained in the UAPA in form of modified application is carefully perused, which contemplate that if it is not possible to

6 (1992) 3 SCC 141

complete the investigation within the prescribed period of 90 days, the Court may extend the “said period” upto 180 days, is clearly referable to the extension of initial period of 90 days upto 180 days, and this extension is on account of the fact that the investigation could not be completed within 90 days.

By virtue of the proviso to sub-section (2) of Section 167, if the investigation could not be completed within 90 days or 60 days, as the case may be, on its expiry, the accused person is entitled to be released on bail, but when this period to carry out investigation itself is extended, the detention of the accused also consequentially gets an extension.

11 It is not possible to contemplate a situation that the period to carry investigation gets extended, as the investigation is not complete, but the accused is entitled for being released on bail, as he is detained in judicial custody pending the investigation and to avoid any interference in the investigation. Therefore, when the period to complete investigation is extended by further period, as a consequence, even the detention of the accused person receive an extension, though in light of clause (b) of Section 167(2) proviso read with proviso appended to sub-section (2) of Section 309 of the Code, the Magistrate shall remand an accused person to custody for a term of 15 days at a time and not exceeding that period.

12 In view of the aforesaid statutory scheme, the submission of Mr.Solkar that if the time to complete investigation is extended, the impugned order in absence of extending the detention of the appellants is bad-in-law, do not deserve any consideration, and must be turned down, as after the period of completion of investigation is extended, the prosecution i.e. NIA from time to time has filed application seeking extension of judicial custody remand, restricting it to 14 days on each occasion. As the investigation was in progress, the Special Judge has extended the jail custody from time to time by passing order on the remand report.

13 Dealing with the objection as regards the report of the Public Prosecutor and that there is no application of mind on his part, on the previous date, i.e. 13/6/2024, we had directed Mr.Patil to produce the report on record in a sealed envelope and accordingly, during today's hearing, Mr.Patil had ensured the compliance in both the Appeals. The sealed envelope was opened by Mr.Patil and the reports were handed over to us and we must take a note, that the report was submitted by the Special Public Prosecutor Mr. Sandeep Sadavarte and even he is present in the Court and specifically stated, that these reports were submitted by him before the Special Judge.

14 In Appeal No. 38/2024, the report of the Special Public Prosecutor dated 25/9/2023, clearly record that on minute perusal of the case records, case diaries, evidences collected by

NIA and the documents including statement of witnesses, material evidences/articles etc, he has filed a report on progress of investigation, citing specific reasons for further extension of time for completion of investigation and for detention in custody of the six accused persons and requested extension of time in the interest of investigation of the case.

When we perused the report, we could notice the case of the NIA against the accused persons and also the investigation carried out till the date it make reference to the progress of investigation and reasons for detention of accused persons and extension of time for completion of investigation beyond 90 days upto 180 days, and in its background, it is prayed that the time for completion of investigation shall be extended along with extension of the detention of the accused persons in custody upto 180 days, in the interest of investigation of the case.

Similar report is tendered before us in Appeal No. 107/2022, under the signature of Special Public Prosecutor Sandeep Sadavarte dated 9/10/2023 requesting for extension of the time limit for completion of investigation and detention of accused in custody, being report filed under Section 43D(2)(b) of UAPA against one accused persons.

15 On perusal of the reports, we are satisfied that the Special Public Prosecutor has applied his mind to the report of the Investigating Officer and has presented it independently before

the Court, which on its due consideration, deemed it appropriate to exercise the power under the proviso of Section 43D of UAPA.

The Public Prosecutor, in his report, has narrated the background of the case registered against the accused persons and after an in-depth reference to the investigation carried out, projected before the learned Judge, the line of further investigation and the necessary details which are required to be obtained in support of the offence registered. The Public Prosecutor categorically reported that NIA is required to investigate and collect the details of the Associates and their nexus with the crime of the case and also gather the details of the other persons involved, by specifically focusing upon the larger conspiracy of committing terrorist act and for causing destruction of evidences.

A detail report submitted in Mumbai Case No. RC/05/2023 i.e. the second case before us also referred to certain other vital information and emphasized upon the need to investigate the subject crime further and it is in this background, expressing a high element of risk involved, if the accused persons were enlarged on bail, the set back that the investigation would suffer upon the release of accused on bail was also highlighted. The Public Prosecutor specifically made out a case for grant of extension of the time to complete the investigation, in the wake of the nature and magnitude of the criminal conspiracy in commission of the crime, as before filing of final report, a

comprehensive investigation was warranted, and in the circumstances narrated, it was prayed that the time to complete the investigation be extended and even their detention in custody should also be extended in the interest of ongoing investigation.

16 Worth it to note that when a report was submitted before the Special Court by the Sr. Public Prosecutor, a request was made to keep the report in a sealed cover, as it contained the details of the investigation undertaken and the further investigation to be carried out against the accused persons.

As per the earlier direction, the report was brought before us in an envelope which was opened by Mr.Sandesh Patil in presence of Mr.Sadavarte, the Public Prosecutor and that is how we have perused the report.

At this stage, Mr.Solkar made a request for making the reports available to him but we are of the clear view that the material contained therein at that stage, could not have been disclosed to the accused persons since investigation was not complete and though now it is informed that the charge-sheet is filed and the material is compiled in it, it is open for the appellants to prefer an appropriate application before the Special NIA Court for making this report available and such application can be duly considered by the Designated Court.

17 The provision in form of Section 43D of UAPA 1967, providing for modified application of certain provisions of

the Code and sub-section (2) thereof, provide for modified application of Section 167 of the Code in relation to the cases involving offences punishable under the Act, with the specific modification of the reference in sub-section (2), to be construed as ‘thirty days’, ninety days’ and ‘ninety days’ in place of “fifteen days” , “ninety days” and “sixty days”.

After this proviso, the proviso to be inserted and application to UAPA read as below:-

“Provided further that if it is not possible to complete the investigation with 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.”

18 In order to exercise the power available for extending the period of completion of investigation upto 180 days, it must be preceded by a report of the Public Prosecutor, indicating the progress of investigation and the specific reasons for the detention of the accused beyond the period of 90 days, if it was not possible to complete the investigation within the said period.

In *State of Maharashtra Vs. Surendra Pundlik Gadling* (supra), while testing whether the necessary ingredients of the proviso to Section 43D(2)(b) of the UAPA, was attained, the Apex Court highlighted its requirements to be as follows:-

“14.1 It has not been possible to complete the investigation within the period of 90 days.

14.2 *A report to be submitted by the Public Prosecutor.*

14.3 *Said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days.*

14.4 *Satisfaction of the Court in respect of the report of the Public Prosecutor.”*

19 Recording that on perusal of the report of the Public Prosecutor, which had highlighted the development and progress in the investigation and with the reasoning that the criminal conspiracy was stated to be spread over a number of cities which needed further investigation and financial details of the respondents, being still ascertained along with the investigation into telephonic interconnection between the respondents and the ‘other absconding and underground accused persons’, Their Lordships of the Apex Court refused to accept the plea advanced on behalf of the respondents that the material set out in the document does not meet with the requirement of the proviso, insofar as the reason for seeking extension for the period of investigation is concerned.

While dealing with the issue whether the document submitted itself, can be said to be a report of Public Prosecutor meeting with the requirement of the proviso to Section 43D(2) (b), and after making reference to the judgment in case of *Hitendra Thakur Vs. State of Maharashtra* (supra), it is observed that for a document to be treated as a report of the Public Prosecutor, which was a mandatory requirement stipulated in

Section 20(4)(b) of TADA, clear guidelines were provided and the necessity of having a report of the Public Prosecutor was highlighted in the following words :-

“25 A perusal of the aforesaid paragraph shows that the emphasis laid by this Court was on the legislature, in its wisdom, not leaving it to the IO to make an application for seeking an extension of time from the Court and, thus, requiring the investigating agency to submit itself to the scrutiny of the Public Prosecutor, in the first instance, and satisfying him about the progress of the investigation and furnishing reasons for seeking further custody of an accused. Otherwise, an accused could be kept in continued detention, during unnecessarily prolonged investigation, at the whims of the police. This Court also emphasized that the Public Prosecutor is not a part of the investigating agency, but is an independent statutory authority and thus, is expected to independently apply his mind to the request of the investigating agency, before submitting a report to the Court for extension of time with a view to enable the investigating agency to complete its investigation. Thus, “He is not merely a post office or a forwarding agency. A Public Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the Court under clause (bb) to seek extension of time.”

20 In the background of the fact that the case in hand, charge-sheet was filed within the extended period of 90 days and it was open to the respondent to seek bail from the competent court, the contention of the counsel for the respondent that if they are entitled to default bail, they should not be compelled to go through a rigors of applying for a regular bail post filing of the charge-sheet, was appreciated and taking note of the two documents, the first being the document purporting to be the application of the Investigating Officer, containing the reasons for extended period of investigation and the second document detailing the grounds in extenso, was held to be not a mere

reproduction of what was stated in the first document, it was held that it cannot be said that there was complete absence of application of mind by the Public Prosecutor.

Paragraph no.35 of the Law Report make pertinent observations which reads thus:-

“35 Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant/State has rightly contended that there is a material difference in the facts of the present case and those of Hitendra Vishnu Thakur case, inasmuch as the application in that case was in the form of an affidavit of the IO, whose signatures were identified by an endorsement of the public prosecutor. It is in those circumstances it was held that mere identification by the public prosecutor, of the deponent of the affidavit could not justify the application to be treated as a report of the public prosecutor. In the present case, the second document contains a clear endorsement of the public prosecutor in support of the averments made therein.

21 Recording that the Public Prosecutor has the option to agree or disagree with the reasons given by the Investigating Officer for seeking extension of time, but in the present case, the second document in the form of an application reflected scrutiny of the first document and thereafter detailed the grounds and expanded the reasons for requirement of further time to complete the investigation, the grounds furnished were classified in the category of ‘compelling reasons’.

22 It is trite position of law that the request of an Investigating Officer for extension of time is not a substitute for the report of the Public Prosecutor and the condition precedent for grant of extension u/s.43D(2)(b) of UAPA being the satisfaction expressed by the Court upon the report of the Public

Prosecutor indicating the progress of investigation, and the specific reasons for detention of the accused beyond the period of 90 days and it is only on this satisfaction being recorded, the period to complete the investigation can be extended upto 180 days.

When we have perused the reports of the Public Prosecutor in both the cases, we have particularly noted that the Public Prosecutor has indicated the progress of investigation and also set out the specific reasons for detention of the accused beyond the period of 90 days, or else, if the investigation was not completed within 90 days, he could not have been further detained and would have been entitled for a default bail.

23 This is one of those cases where there is a strict compliance of the proviso introduced while crafting the modified application of Section 167 of the Code to UAPA for granting extension for completion of investigation, on the Public Prosecutor indicating the progress of investigation and also the specific reasons for detention of the accused beyond the said period of 90 days.

Being satisfied that the grounds set out, made out a case for extension of time to complete the investigation beyond the period of ninety days, we are of the view that the appellants in Appeal No. 38/2024 and Appeal No. 1374/2023 are not entitled to the benefit of default bail.

As a result, both the Appeals are dismissed.

24 As a consequence, since we have upheld the order of extension passed by the Special Court on 30/9/2023 and 16/10/2023 in the two distinct cases, Appeal Nos. 107/2024, 218/2024, 202/2024, 203/2024 and 204/2024, which have raised challenge to the subsequent remand order, also fail and all the Appeals are dismissed.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)