

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3985 of 2024
with
CRAN 1 of 2024

Abdur Rakib Sarkar @ Habibullah @ Habib & Ors.
Vs
State of West Bengal.

For the Petitioners : Mr. Aarif Ali,
Mr. Mujahid Ahmed,
Mr. Giasul Islam.

For the State : Mr. Debasis Roy, Ld. P.P.,
Mr. Arijit Ganguly.

Judgment reserved on : 10.09.2025

Judgment delivered on : 23.09.2025

Shampa Dutt (Paul), J.:

1. This revision has been preferred praying for quashing and setting aside of the order dated 15.11.2022, extending the period of investigation 90 days to 180 days by virtue of Section 43D UAPA and order dated 27.12.2022 from rejecting the prayer for default bail under Section 167(2) of the Cr.P.C., in G.R. No. 3027 of 2022, passed by the learned Additional Chief Judicial Magistrate,

Barasat, in Shasan P.S. Case No. 159/2022, under Sections 120B/121/121A/125 of the Indian Penal Code and Sections 16/17/18/18B/19/20/38/39/40 of the UAPA.

2. The petitioners' case is that they have invoked their indefeasible right of default bail under Section 167(2) Cr.P.C. read with Section 43D UAPA in absence of valid extension order i.e. order dated 15.11.2022 and before filing the charge-sheet, hence they are entitled to be considered for their release on default bail.
3. It is further stated that the petitioners on 27.12.2022 had preferred an application for invoking the default bail under Section 167(2) of Code of Criminal Procedure read with 43D UAPA, on the ground that after completion of the statutory period of 90 days under Section 167(2) of Code of Criminal Procedure on 15.11.2022, neither the charge-sheet nor any application under Section 43D UAPA for further investigation were submitted by the prosecution, but the learned trial Court on the same day was pleased to reject the prayer for statutory bail of the petitioners in a whimsical and mechanical manner without assigning any reasons.
4. It is their further case that the statutory period of 90 days of petitioner no. 1 and 2 from the date of first remand i.e. 18.08.2022 was completed on 15.11.2022. After the remand dated 10.11.2022, the petitioners were produced through Video Conferencing on the following dates 24.11.2022, 08.12.2022 and 22.12.2022, before the learned Additional Chief Judicial Magistrate at Barasat,

however the impugned extension order passed on 15.11.2022 was not communicated to the petitioners.

5. It is their further case that the petitioners realized that there was neither charge-sheet, nor any extension order for completion of the investigation, therefore, keeping in view of the same, on 27.12.2022, the petitioners invoked their statutory right by way of filing the application under Section 167(2) of the Criminal Procedure Code read with Section 43D UAPA, seeking default bail, which was rejected by the learned Additional Chief Judicial Magistrate on the same day.
6. It is stated that after the 1st charge-sheet dated 12.02.2023, the prosecution submitted the 2nd supplementary, 3rd supplementary and 4th supplementary charge-sheet on the following dates, 13.04.2023, 24.04.2023 and 17.10.2023.
7. On 17.03.2023, the learned ACJM, was pleased to reject the bail application, under Section 437 of Code of Criminal Procedure filed by the petitioners observing the following:-

*“it is proposition of law that the right of statutory bail is not automatic, **unless availed of by the accused persons.** In this case, even after the charge-sheet was submitted, **the accused persons were sleeping tight over to avail their right.** Moreover, cognizance has already been taken by this Court, therefore, as per doctrine of factum valet this Court has no jurisdiction to delve into the merit of the cognizance taken by this Court”.*

8. The petitioners being aggrieved with the order dated 17.03.2023 preferred a petition under Section 439 of the Code of Criminal Procedure, being C.R.M.(DB) No. 1923 of 2023, wherein the Hon'ble Court on 05.07.2023, was pleased to reject the petition under Section 439 of the Cr.P.C. of the petitioners.
9. The petitioners' prayer for default bail in this case, arises after having received the complete copy of the charge-sheet. The petitioners came to know about the impugned extension order dated 15.11.2022, that was passed in absence of the petitioners, on oral/verbal request of the investigating officer, which renders the impugned extension order dated 15.11.2022, invalid and the petitioners are thus entitled to be admitted on default bail.
10. The petitioners challenge the order dated 15.11.2022 on the ground that they were neither produced physically or by VC nor were their lawyers heard, as they could not be present as they had no notice. Order was passed on a date not fixed by the Court. On 10.11.2022 when the petitioners were produced through VC, the next date was fixed on 24.11.2022.
11. The petitioners have relied upon the judgment of the Supreme Court in **Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat, reported in 2022 SCC OnLine SC 1290**, wherein the Court held:-

“41. The orders passed by the Special Court of extending the period of investigation are rendered illegal on account of the failure of the respondents to produce the accused before the Special Court either physically or virtually when the prayer for grant of

extension made by the Public Prosecutor was considered. It was the duty of the Special Court to ensure that this important procedural safeguard was followed. Moreover, the oral notice, as contemplated by this Court in the case of Sanjay Dutt, was also not given to the accused.

42. *Once we hold that the orders granting extension to complete investigation are illegal and stand vitiated, it follows that the appellants are entitled to default bail.”*

- 12.** The petitioners challenge the order of the learned ACJM, Barasat stating that the impugned extension order, extending the period from 90 days to 180 days for completion of the investigation, is in contravention to the mandatory provision prescribed under Sections 11 and 22 of the National Investigation Agency Act, 2008 (in short ‘NIA Act’). It is stated that after completion of 90 days, the period for further investigation may be extended either by the special Court constituted under Section 11 of the NIA or Section 22 of NIA, or in absence of any learned Special Court, the learned Court of Sessions under Section 22(3) NIA Act, hence, the time for completion of the investigation cannot be extended by the Magistrate Court.
- 13.** The petitioners’ also rely upon Para 35 in ***Pratik Bhowmik, In re, 2022 SCC OnLine Cal 4286, decided on December 1, 2022,*** wherein the Supreme Court held:-

“35. *In the light of the aforesaid discussion, we hold as follows :*

- (i) *Once offence 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) Therefore, the accused must be produced before the Special Court constituted under Section 11 and 22 of NIA Act (as the case may be) for the purpose of remand as well as extension of the period of remand in terms of provision under Section 43D(2) UAPA.*
- (iii) In the absence of a Special Court constituted as aforesaid, Court of Sessions shall exercise all power and jurisdiction of the Special Court in terms of Section 22(3) of the NIA Act including the power to remand as well power to extend the period of remand in terms of proviso to Section 43D(2) of the Act.”*

14. The petitioners have relied upon the following judgments:-

- i. Fakrey Alam vs. State of U.P. reported in 2021 SCC Online 532;*
- ii. Rakesh Kumar Paul vs. State of Assam reported in (2017) 15 SCC 67;*
- iii. Bikramjeet Singh vs. State of Punjab reported in (2020) 10 SCC 616;*
- iv. Union of India vs. K.A. Najeeb reported in (2021) 3 SCC 713;*
- v. State of Rajasthan vs. Mohinuddin Jamal Alvi & Anr. reported in (2016) 12 SCC 608;*

- vi. *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors. reported in (1994) 4 SCC 602;*
- vii. *Sanjay Dutt vs. State through CBI Bombay (II) reported in (1994) 5 SCC 410;*
- viii. *Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat reported in 2022 SCC Online SC 1290;*
- ix. *Aakif Ateeque Nachan vs. NIA, New Delhi Through Special P.P. order dated 05.01.2023 passed by High Court of Judicature at Rajasthan Bench Jaipur in D.B. Criminal Appeal No. 292/2022;*
- x. *Zeeshan Qamar vs. State of NCT Delhi reported in 2023/DHC/001361;*
- xi. *Neutral Citation No. 2024 AHC-LKO: 36750-DB. Mohammed Aleem @ Abdul Aleem & Anr.*

15. The petitioners have used a **supplementary affidavit** stating therein that petitioner nos. 2 and 1, prior to this instant petition had filed an application for bail under Section 439 Cr.P.C. being CRM(DB) 3720 of 2022 challenging their arrest whereby this Hon'ble High Court at Calcutta was pleased to reject the same vide its order dated 19.10.2022.
16. Being aggrieved with the order dated 19.10.2022 the petitioners challenged the same vide Special Leave to Appeal (Crl.) No. 12009/2022, which Hon'ble Supreme Court was also pleased to dismiss on 16.12.2022.

17. It is submitted that the instant petition has been preferred on the basis of different facts and circumstances. Vide the instant petition, the petitioners have challenged the extension order dated 15.11.2022 and default bail rejection order dated 27.12.2022, which are being first time challenged before this Hon'ble Court by way of the instant petition. However, for the fair and proper decision of this case, petitioners seek to bring these documents on record.
18. **The affidavit-in-opposition** filed by the investigating officer states therein that after the orders dated 15.11.2022 and 27.12.2022 under challenge were passed, they were considered by the High Court while passing its order dated 05.07.2022, while considering the petitioners' prayer for bail under Section 439 Cr.P.C.
19. It is further stated that previously also two of the petitioners preferred an application for bail before this Hon'ble Court, which was rejected by a Division Bench on 19.10.2022 and the SLP filed by the aforesaid two petitioners, was rejected by the Hon'ble Supreme Court.
20. It is stated that the petitioners' prayer for **discharge** was rejected by the trial Court on 09.05.2024, but the said order has not been challenged.
21. It is further stated that the order under challenge was affirmed on 10.09.2024.
22. In reply, the petitioners have stated that the Hon'ble Supreme Court in the order dated 03.01.2025 in Special Leave Petition (Crl.)

No. 17958/2024, arising out of impugned order dated 18.10.2024 in CRAN 1/2024 in CRR No. 3985/2024 passed by the High Court at Calcutta, declined to interfere with the impugned order dated 18.10.2024 in CRAN 1/2024 in CRR No. 3985/2024. The bail application of the petitioners in the nature of the revisional application being CRR/3985/2024 with the delay condonation application being CRAN/1/2024 was not interfered by the Supreme Court in the order dated 03.01.2025 in Special Leave Petition (Crl.) No. 17958/2024.

- 23.** It is reiterated that they are for the first time challenging both the impugned order dated 15.11.2022 and 27.12.2022, before this Hon'ble Court, by way of the present petition filed under Section 528 of BNSS corresponding Section 482 Cr.P.C., on different facts and circumstances.
- 24.** The petitioners admit that by way of the application under Section 439 of Cr.P.C. dated 16.03.2023, the petitioners had sought regular bail, raising objection on the impugned extension order dated 15.11.2022, which was rejected by the learned ACJM, Barasat, vide order dated 17.03.2023. Subsequently, it was upheld by the Hon'ble High Court vide its order dated 05.07.2023 passed in C.R.M. 1923 of 2023 filed by the petitioners under Section 439 Cr.P.C.
- 25.** Parties have filed their respective written notes.
- 26.** The petitioners have reiterated their case as stated in the revisional application.

- 27.** The State's case against the petitioners is that the petitioners are members of an organization namely, **"Al Qaida Barr-E-Sagir" or "Al Qaida in Indian Sub-Continent (AQIS)" [Global terror outfit]**.
- 28.** On being apprehended and searched incriminating radical literatures were found from the bag of the petitioner no. 1, Abdur Rakib Sarkar @ Habibullah @ Habib. On being questioned about the same, Petitioner no. 1/Accused No. 1 stated that he had collected those literatures from Senior Leaders of "Tanjim" (affiliated wing of Al Qaida) and was supposed to deliver them to Kazi Ahasan Ullah @ Hasan i.e. Petitioner No. 2/Accused No. 2 for the purpose of spreading them to their associates and like-minded vulnerable youths, so as to wage war against India.
- 29.** Four charge sheets were filed in this case dated 10.02.2023, 12.04.2023, 21.04.2023 and 16.10.2023.
- 30.** It is the further case of the State on the petitioners prayer for default bail, that the provision of default bail is provided under Section 167 CrPC. It is submitted that the said provision is applicable only during the pendency of the investigation. Once the charge-sheet is filed, the provision of Section 167 CrPC is no longer available to an accused since it is a pre-cognizance stage. This proposition was clarified by the Supreme Court in the landmark judgment passed in the case of **Sanjay Dutt vs State, (1994) 5 SCC 410**, wherein Court has observed:-

*“48... The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, **if already not availed of.** Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after filing of the challan. **The custody of the accused after the challan is filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure.** If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because section 167 ceases to apply....”*

The Court further observed that:-

"53 (2)(b). The indefeasible right of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The right of the accused to be released on

bail after filing on the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at the stage."

31. The learned Public Prosecutor further states that the aforesaid proposition is reiterated by this Hon'ble Court in the case of **"State v Mohd. Asrafat Bhat, (1996) 1 SCC 432"** whereby this Hon'ble Court has observed- "such right (right of default bail is enforceable only prior to the filing of the charge-sheet. But the accused did not avail himself of the right and charge-sheet in the meantime been filed, his right to obtain statutory bail under Section 167(2) proviso (a) or (b) has been extinguished.
32. It is then stated, that the Police have already filed four charge-sheets, and the investigation in the case stands completed. Consequently, the question of default does not arise, as the right to claim it, ceases to exist once a charge-sheet is filed.
33. **The prayer for bail of the petitioners was rejected by the High Court in CRM(DB) No. 1923 of 2023 vide an order dated 05.07.2023, after the orders under challenge were passed.**
34. **The orders dated 15.11.2022 later is as follows:-**

"Today is fixed for physical production of accused Mufakkir @ Hamidullah @ Raju Gazi @ Samed Ali Miah @ Talha S/O- Tabarruk Hossain form Bhopal Central Correctional Home, Madhyapradesh.

No intimation report received from Superintendent of Bhopal Central Correctional Home, Madhyapradesh.

Superintendent of Bhopal Central Correctional Home, Madhyapradesh is hereby directed to produce the accused Mufakkir @ Hamidullah @ Raju Gazi @ Samed Ali Miah @ Talha S/O- Tabarruk Hossain on the next date positively.

Let a copy of this order sheet be forwarded to the Superintendent of Bhopal Central Correctional Home, Madhyapradesh for information and necessary action.

CD is produced.

I/O is present on dock and submitted two consecutive prayer one for prayer for intimation regarding the accused Mufakkir @ Hamidullah @ Raju Gazi @ Samed Ali Miah @ Talha S/O-Tabarruk Hossain who is now in police custody of STF, Kolkata Police as per order passed by the CMM Court, Calcutta in connection with STF Case No. 18/22 dated 14.07.22 U/S 120B/419/467/468/471 IPC r/w section 13/14 Foreigners Act and 16/17/18/20 of UA(P) Act and he will be produced before the Ld. Court on 16.11.22 and another for extension of further investigation period of 90 days in terms of section 43D of the UA(P) Act through Ld APP.

Perused.

The prayer of I.O. in regard to extension of further investigation period of 90 days in terms of section 43D of the UA(P) Act is considered and allowed.....

***Sd/-
ACJM, Barasat***

35. Section 43D of the UAPA lays down:-

“43D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(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.”

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government.”;

(ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government, as the case may be”; and

(b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under

Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

36. The Supreme Court in *Union of India rep. by the Inspector of Police National Investigation Agency Chennai Branch vs Barakathullah ETC., In Criminal Appeal Nos. 2715-2719 of 2024 (@ SLP (Crl.) Nos. 14036-14040 of 2023)*, decided 22, May, 2024, the Court held:-

“10. Since all offences alleged against the respondents are covered under Chapter IV and VI of the UAPA, the rigors and restrictions of sub-section (5) of Section 43D would apply to the facts of this case. It may be noted that this Court in case of National Investigation Agency vs. Zahoor Ahmad Shah Watali (supra), had an occasion to deal with the sub-section (5) of Section 43D and in similar fact situation, after comparing the similar provisions under the Special enactments such as TADA, MCOCA, NDPS as also the earlier decisions of this court, had held as under:

“23.By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.....”

11. It was further observed: -

“24. A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.

25. From the analysis of the impugned judgment [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185] , it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency

were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is *prima facie* true or otherwise.

That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.”

26.

27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.”

12. The ratio of the said judgment has been consistently followed by this Court in many cases, and recently in *Gurwinder Singh vs. State of Punjab and Another* (supra), in which this court has culled out following guidelines from *Watali's Case*:

“34. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

- Meaning of ‘Prima facie true’ [para 23] : On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.*
- Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared [para 23] : Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.*
- Reasoning, necessary but no detailed evaluation of evidence [para 24] : The exercise to be undertaken by the Court at this stage--of*

giving reasons for grant or non-grant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. • Record a finding on broad probabilities, not based on proof beyond doubt [para 24]:“The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.” • Duration of the limitation under Section 43D(5) [para 26] : The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

- Material on record must be analysed as a ‘whole’; no piecemeal analysis [para 27] : The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.*

- Contents of documents to be presumed as true [para 27] : The Court must look at the contents of the document and take such document into account as it is.*

- Admissibility of documents relied upon by Prosecution cannot be questioned [para 27] : The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence..... In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.”*

37. The contention of the petitioners relating to the order dated 15.11.2022 is that they did not get a right of hearing and the learned Magistrate was wrong in extending the time for investigation on prayer of the I.O. through the learned Public

Prosecutor beyond 90 days when charge-sheet was not filed within the statutory period and as such the petitioners were entitled to default bail.

38. Section 43D provides for certain modification of Section 167 Cr.P.C, which is applicable to an offence punishable under the UAPA Act.

39. Section 43D, UAPA does not modify Section 167 (2)(b) of the Cr.P.C., which provides:-

“[Section 167(2)(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.]”

40. As it appears from the record and order dated 15.11.2022 that all the accused persons whose detention was authorised, were not produced before the Magistrate, **though some of the accused persons in the said case were before the Court on the said date.** This is prima facie a violation of the said provisions but the said fact was before the High Court when order dated 05.07.2023 was passed rejecting prayer for default bail.

41. The Magistrate while authorising detention of the accused persons should have at least ensured their presence through VC, which appears to be, violation of the mandatory provisions.

42. Section 43D, UAPA, 2nd proviso provides for extension of the period of investigation beyond 90 days on being satisfied with the report

of the Public Prosecutor, and prima facie there is no provision for hearing the defence in this case, other than considering a prayer for default bail, if the right is invoked.

43. The next point raised by the petitioners is that the Magistrate did not have the power to extend the period of investigation as the offences alleged under the Act (UAPA) are triable by the Special Courts constituted as per Section 11 of the National Investigation Agency Act, 2008.
44. Section 13 of the NIA Act, provides for **trial by the Special Court.** Section 167 Cr.P.C. empowers a Magistrate to consider the prayer for extension of time for investigation, and Section 43D of the UAPA provides that Section 167 Cr.P.C. shall apply to cases involving an offence punishable under the Act (UAPA).
45. On filing of charge-sheet, the Special Court on taking cognizance under Section 16 of the NIA Act, 2008, proceeds to conduct trial.
46. Vide the order under challenge dated 27.12.2022, the petitioners' prayer for default bail was rejected by the learned ACJM.
47. After the rejection of the prayer for default bail of the accused persons by the High Court vide order dated 05.07.2023, the petitioners are at liberty to pray for regular bail, if there are **new grounds or changed circumstances, but once the prayer for default bail has been rejected by a Bench of this High Court, (order dated 05.07.2023), the prayer for default bail cannot be reconsidered by this Court being a Co-ordinate Bench.**

48. It further appears that the High Court vide an order dated 15.05.2023 in CRM(DB) 1923 of 2023, observed that on charge-sheet being submitted, cognizance was taken and case was fixed for consideration of charge.
49. The Court then proceeded to consider the petitioners' prayer for statutory bail made prior to submission of charge-sheet.
50. Finally on 05.07.2023, the Court rejected the said prayer for statutory/default bail.
51. This Court being a Co-ordinate Bench is not in a position to consider the prayer for default bail afresh. The guidelines of the Supreme Court as laid down at para 48 and 53 in ***Sanjay Dutta (supra)*** were duly followed, as the prayer for statutory bail made before the submission of charge-sheet, was duly considered by the High Court and the said prayer for statutory bail, stood rejected on 05.07.2023.
52. The right of the petitioners now lies by way of a prayer for regular bail but only if there is changed circumstances or new grounds. As such, as the prayer for default bail, by the petitioners challenging the orders dated 15.11.2022 and 27.12.2022 has already been adjudicated vide the High Court in its order dated 05.07.2023, **the revisional application being CRR 3985 of 2024 stands dismissed.**
53. There will be no order as to costs.
54. Connected application, if any, stands disposed of.
55. Interim order, if any, stands vacated.

- 56.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)