

2024 LiveLaw (SC) 10

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
VIKRAM NATH; J., RAJESH BINDAL; J.**

JANUARY 03, 2024

CRIMINAL APPEAL NO. 43 OF 2024 (ARISING OUT OF SLP(CRL.) NO. 2503 OF 2021)

STATE OF NCT OF DELHI *versus* RAJ KUMAR @ LOVEPREET @ LOVELY

Unlawful Activities (Prevention) Act, 1967; Section 43D(2)(b) - Code of Criminal Procedure, 1973; Section 167(2) - Default Bail - Terrorism cases should not to be taken lightly. (Para 13)

(Arising out of impugned final judgment and order dated 11-02-2021 in CRLMC No. 2312/2020 passed by the High Court of Delhi at New Delhi)

For Petitioner(s) Mr. S.V. Raju, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mrs. Sairica Raju, Adv. Mr. Ashutosh Ghade, Adv. Mr. Guntur Pramod Kumar, Adv.

For Respondent(s) Ms. Supriya Juneja, AOR

J U D G M E N T

VIKRAM NATH, J.

Leave granted.

2. The State of NCT of Delhi¹ is in appeal assailing the correctness of the order dated 11.02.2021 passed by the High Court of Delhi granting default bail to the respondent under section 167(2) of the Code of Criminal Procedure, 1973².

3. Relevant facts for appropriate application of this controversy are briefly stated here under:

3.1. A First Information Report³ No.154 of 2020 was registered on 16.06.2020 with Police Station, Special Cell, New Delhi against the respondent for offences under Sections 13/18/20 of the Unlawful Activities (Prevention) Act, 1967⁴, Sections 201/120-B of the Indian Penal Code, 1860⁵, Sections 25/54/59 of the Arms Act, 1959⁶. Pursuant to the said FIR, the respondent was arrested on 18.06.2020.

3.2. He was initially remanded to Police Custody for a period of three days and thereafter to Judicial Custody and has since been in Mandoli Jail, New Delhi. The period of 90 days expired on 15th September, 2020. Before the expiry of the said period on the request of the Investigating Officer⁷, the time for investigation was extended by order dated 11.09.2020 for a further period of two months till 11.11.2020. The investigation was not complete till 11.11.2020 and no Police report under section 173(2) CrPC was filed.

3.3. Before the expiry of the extended period of investigation which was valid until 11.11.2020, the Public Prosecutor moved another application dated 07.11.2020 requesting for further extension of time for investigation for a period of 30 days as per the provisions

¹ GNCTD

² CrPC

³ FIR

⁴ UAPA

⁵ IPC

⁶ The Arms Act

⁷ IO

contained in section 43D (2) (b) of UAPA. The reasons given for moving the said application were manifold which are noted as follows:

- i) Sanction under section 45(2) of UAPA was awaited from GNCTD.
- ii) FSL results of arms recovered from accused persons were also awaited; and iii) Sanction under section 39 of the Arms Act was to be obtained.

3.4. The said application was allowed by the Trial Court on 10.11.2020 and the period of investigation was further extended till 30.11.2020. In the said order of 10.11.2020, although all the reasons mentioned in the application dated 07.11.2020 seeking extension of the period of investigation were mentioned but in the operative portion, the Trial Court noted that the extension had been sought on the ground of obtaining mandatory sanction which was still pending before the GNCT Delhi and had accordingly granted the extension till 30.11.2020. The investigation has since been completed and Police report under section 173(2) CrPC was submitted on 26.11.2020 before the expiry of the period of extension for concluding the investigation up to 30.11.2020.

3.5. The respondent moved an application on 11.11.2020 itself under section 167 of the CrPC for release on bail. The said application was rejected by the Trial Court vide order dated 17.11.2020. Aggrieved by the same, the respondent preferred a petition under section 482 CrPC for setting aside the order dated 11.09.2020 and 10.11.2020 which was registered as Crl. M.C. No.2312 of 2020. This petition has since been allowed by the impugned order giving rise to the present appeal.

4. Having heard learned counsel for the parties, we are of the view that the High Court committed an error in allowing the petition and granting default bail to the respondent. In this connection, the High Court had relied upon the judgment in the case of **Hitendra Vishnu Thakur and others vs. The State of Maharashtra and others**⁸ wherein this Court was dealing with the provisions of section 20(4) (bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987⁹ and had observed that the period for granting extension of investigation could not be extended in a casual manner for reasons other than those mentioned in the above noted provision which stated that it could be for completion of investigation only.

5. Reliance placed upon the said judgment in the case of **Hitendra Vishnu Thakur** (supra) by the Delhi High Court was misplaced. It was a case relating to TADA, whereas the present case related to UAPA. The provisions under UAPA section 43D(2)(b) are different and give other reasons also for extension of time for investigation. Section 43D(2) reads as under:

“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.

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),-

⁸ (1994) 4 SCC 602

⁹ TADA

(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.

xxxxxx ”

6. From a perusal of the above provision i.e. 43 D(2)(b), the extension for investigation could be granted up to a maximum period of 180 days for the following reasons:

- Completion of the investigation;
- Progress in the investigation was explained; and
- Specific reasons for detention beyond a period of 90 days.

7. Provisions of section 43D(2)(b) were considered by this Court in the case of **State of Maharashtra vs. Surendra Pundlik Gadling and others**¹⁰. In the said case, the FSL report was awaited and it also required the detention of the accused wherein financial details of the respondent were still being ascertained in view of the huge conspiracy spreading over a number of cities were being investigated. The High Court failed to take into consideration the above judgment of 2019 relating to UAPA. It had relied upon a judgment of 1994 relating to provisions of TADA.

8. The High Court also committed an error in recording a finding that sanction had already been received prior to the date of making the application for extension in November 2020. The recording of the said fact is not correct. The Public Prosecutor in the application had clearly mentioned that the sanction under section 45(1) of UAPA had been obtained from Government of India, Ministry of Home Affairs and was attached with the case file. However, the sanction under section 45(2) of UAPA was awaited from GNCT Delhi and that the sanction under section 39 of the Arms Act was to be obtained after the results from the FSL was received.

9. We are, therefore, of the view that the reason mentioned in the impugned order that the application had been filed for extension without any valid basis as the sanction had already been granted, was not correct.

10. The High Court also fell in error in not taking into consideration the reasons given under section 43D(2) (b) were clearly made out and explained in the extension letter dated 07.11.2020 giving the details of the progress of the investigation as also the reasons for detaining the respondent. The Public Prosecutor had mentioned in the request that major investigation of the case had been completed and the draft chargesheet had been prepared. However, for want of remaining sanctions and FSL report some more time was required for completing the investigation.

¹⁰ (2019)5 SCC 178

11. Insofar as the reasons for detention are concerned, it was mentioned that during the course of investigation one Mr. Gurtej Singh had been arrested who had links with Pakistan based terrorists and had been planning to go to Pakistan for weapons training along with his associate respondent No.2 Rajkumar alias Lovely and others.

12. The High Court also failed to consider that after completing the investigation, Police report under section 173(2) CrPC had already been submitted prior to 30.11.2020 which was the last date of the extended period.

13. One more aspect to be considered is the nature of offence which involved terrorist activities having not only Pan India impact but also impact on other enemy States. The matter should not have been taken so lightly.

14. Accordingly, the appeal is allowed. The impugned order passed by the High Court is set aside. The respondent No.2 be taken into custody forthwith, if not already in custody.

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