

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrIA(D) No. 40/2022

Reserved on: 18.05.2026
Pronounced on: 30.05.2026
Uploaded on: 30.05.2026

**Whether the operative part or full
Judgment is pronounced: Full**

Riyaz Ahmad Hajam & Another ...Appellant(s)

Through: Mr. Aazim Pandith, Advocate

Vs.

Union Territory through SHO Police Station ...Respondent(s)
Uri District Baramulla

Through: Mr. Mohsin S. Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Sanjay Parihar-J

- 1.** This appeal, in terms of Section 21 of the NIA Act, calls in question the orders dated 27.05.2022 and 14.12.2021 passed by the Court of Additional Sessions Judge, Baramulla, Special Court for NIA/UAPA, whereby the prayer of the appellants for grant of default bail came to be rejected, and seeks setting aside of the said orders with a consequential direction for enlargement of the appellants on bail.
- 2.** The appellants contend that the trial court has misread the relevant statutory provisions and erroneously declined their request for grant of

default bail, despite the lapse on the part of the respondent in not filing the charge-sheet within the prescribed statutory period.

- 3.** The facts giving rise to the case in hand are that, on 18th June 2021, a Maruti Swift car bearing registration No.JK01AP-0040 was intercepted within the precincts of Police Station Uri. During the search of the vehicle, two magazines of Chinese pistols, ten live rounds of Chinese pistols, five grenades, five packets of contraband heroin and cash amounting to Rs. 3 lakhs were recovered. At the relevant time, the vehicle was occupied by three persons, namely, Sajad Anzar Shah, Sharafat Khan and Shahid Hussain. This recovery led to the registration of FIR No. 63/2021 under Sections 7/25 of the Arms Act, Sections 8/21/29 of the NDPS Act, and Sections 18 and 23 of the UA(P) Act.
- 4.** On the basis of the disclosures made during investigation, other co-accused including appellant Riyaz Ahmad Hajam and Adil Bashir, were implicated, pursuant to which five Chinese grenades, two Chinese pistols, two pistol magazines, ten live rounds, two cheques worth Rs.1 lakh (Rs.50,000 each) and a scooty bearing Registration No. JK01AA-1827 were recovered. During further investigation, four more persons, including petitioner Faiz Ahmad Khan, were arrested and, from their possession, four packets of heroin, cash amounting to Rs.16 lakh and a Canter truck were also seized.
- 5.** The investigation revealed that the recovered contraband had been procured for use in narco-terror activities and that the proceeds realized from its sale were intended to be utilized for carrying out terrorist activities. It was in this background that the appellants, along with the co-accused, came to be arrested.

- 6.** During the course of investigation, the Investigating Officer obtained an extension of 15 days' judicial remand beyond the statutory period of 180 days from the trial court by invoking Section 36A of the NDPS Act, whereafter the first charge-sheet came to be filed on 27.12.2021 against the appellants and the co-accused under Sections 8/21 and 29 of the NDPS Act. Subsequently, a supplementary charge-sheet under Sections 8/21/ 29 of the NDPS Act came to be filed against the co-accused on 29.12.2021 and thereafter the second supplementary charge-sheet was filed against all the accused on 12th March 2022 for offences under Sections 17, 18, 23 and 39 of the ULA(P) Act and Sections 7/25 of the Arms Act.
- 7.** The appellants, along with two other applicants, filed an application on 27th December 2021 seeking default bail primarily on the ground that the charge-sheet against them, insofar as offences under Sections 17, 18, 23 and 39 of the ULA(P) Act were concerned, had not been filed within the statutory period of 180 days from the date of their custody up to 15th December 2021, nor even within the extended period of 15 days ending on 29th December 2021. On that basis, they claimed entitlement to bail by default.
- 8.** The trial court, however, proceeded on the premise that since investigation against the appellants pertained to offences under the NDPS Act, Arms Act and the ULA(P) Act, the Investigating Officer had initially availed the statutory period of 180 days and was required to file the charge-sheet by 15.12.2021, being the date on which the maximum permissible period of investigation in custody under the ULA(P) Act expired. Instead, the Investigating Officer sought extension of time under Section 36A of the NDPS Act for a further period of 15

days, which came to be granted by the trial court. According to the appellants, such extension ought not to have been granted as the same had been sought on mala fide grounds, and that the Investigating Officer had adopted the device of filing supplementary charge-sheets only to justify presentation of the charge-sheet relating to offences under the ULA(P) Act on 12.03.2021 after obtaining sanction belatedly.

9. Learned counsel for the appellants, while reiterating the issues raised before the trial court, urged that two questions of law arise for consideration, namely: (i) whether the charge-sheet presented by the prosecution on 27th December 2021 only for offences under Sections 8/21 and 29 of the NDPS Act, and not for offences under the ULA(P) Act, could be treated as a complete charge-sheet within the meaning of Section 173 of the Code and whether the same had been filed merely to defeat the appellants' right to statutory/default bail; and (ii) where a case is registered under two special enactments prescribing different statutory periods for completion of investigation, whether it could be left to the discretion of the investigating agency to seek extension under one statute alone and whether, the ULA(P) Act being the later enactment, would have an overriding effect.

10. Learned counsel for the appellants vehemently contended that the Investigating Officer had never sought extension specifically under the provisions of the ULA(P) Act and, therefore, the statutory period prescribed in respect of those offences had expired prior to the filing of the challan on 12.03.2022. It was further argued that the report submitted by the Public Prosecutor, on the basis whereof extension of remand had been sought on 13.12.2021, neither disclosed genuine reasons warranting continued detention nor reflected sufficient progress

in investigation, particularly when, within the said period of 180 days, the investigation had substantially concluded inasmuch as recoveries had already been effected, the accused had been apprehended and the offences allegedly stood made out against them. It was also contended that the extension sought on 13.12.2021 by invoking Section 36A of the NDPS Act was itself unwarranted because the recoveries had already been effected, samples had been drawn and forwarded for forensic examination and, therefore, nothing substantial remained to be investigated so as to justify extension of remand under Section 36A of the NDPS Act. According to the appellants, since they had been charged under two special enactments, the period prescribed for investigation under both statutes ought to run concurrently.

11. It was also contended that the Public Prosecutor's report dated 13.12.2021 did not disclose any independent application of mind so as to justify extension of the period of investigation and that the extension had been granted in complete disregard of the law laid down by the Supreme Court in *Hitendra Vishnu Thakur v. State of Maharashtra*, AIR 1994 SC 2623, It was argued that once the extension order dated 14.12.2021 is held to be nonest in the eyes of law, the maximum permissible period for filing of the charge-sheet would necessarily stand confined to the un-extended statutory period, thereby entitling the appellants to default bail.

12. It was further argued that the investigating agency cannot be permitted to continue investigation merely with the object of defeating the appellants' indefeasible right to default bail, as no such principle is contemplated under Section 173 Cr.P.C. It was submitted that investigation pertains to the entire transaction in respect of which the

information is furnished, and not merely to one of the offences alleged to have been committed in the course of the same transaction.

13. Relying upon *Arshad Ahmad Alliye vs. UT of J&K and another*, CRM No. 653/2019, decided on 24th June 2021, the respondents urged that the issue already stands settled by this Court by holding that extension of custody of an accused beyond 180 days in terms of Section 36A of the NDPS Act is permissible, both legislations being special enactments providing for constitution of Special Courts, particularly when the accused therein had also been heard at the time of extension.

14. Per contra, learned counsel for the appellants contested the respondents' claim as well as the reliance placed upon *Arshad Ahmad Alliye* (supra) on the ground that, in the said case, Section 48 of the UA(P) Act was neither brought into question nor did the Court examine the interplay between Section 43D of the UA(P) Act and Section 36A of the NDPS Act. According to the appellants, the issue in that case was confined to the permissibility of extension of remand beyond 180 days by taking recourse to Section 36A of the NDPS Act. It was further submitted that, in *Arshad Ahmad Alliye*, the accused were initially booked under the NDPS Act and were remanded to custody from time to time, and only thereafter were offences under the UA(P) Act added; whereas, in the present case, the offences under the UA(P) Act were attributed to the appellants from the very inception.

15. We have heard learned counsel for the parties at length and perused the record of the case.

16. Admittedly, the first charge-sheet against the appellants for offences under the NDPS Act was filed on 27.12.2021, and prior thereto, by order dated 14.12.2021, the Trial Court had already extended the period

of investigation by another fifteen days by invoking Section 36A of the NDPS Act. The appellants contended that such extension, granted on the basis of the Public Prosecutor's report dated 13.12.2021, lacked genuine and compelling reasons, as according to them the investigation already stood substantially completed and nothing further remained to be recovered or investigated except the sanction for prosecution under the Unlawful Activities (Prevention) Act. It was thus argued that, since no sanction had been obtained and the statutory period of custody expired on 26.05.2022, the filing of the charge-sheet on 27.05.2022 violated the prescribed statutory period, thereby entitling the appellants to default bail.

17. The impugned order dated 14.12.2021 reveals that the extension was granted on the application filed by the Investigating Officer under Section 36A of the NDPS Act seeking further extension of custody and judicial remand. In the said application, it was specifically stated that expert opinion regarding the mobile phones recovered from the appellants was still awaited from CERT, New Delhi; that the custody of two additional accused persons residing in Punjab was yet to be secured as their involvement had surfaced during investigation; and that the case file was required to be forwarded to the Government for obtaining sanction. On these grounds, the Investigating Officer sought extension of time for completion of investigation, which the Trial Court allowed by invoking Section 36A of the NDPS Act.

18. The contention raised by the appellants that there existed no reasonable basis for extending the investigation period appears to be belied by the record, as the prosecution had disclosed specific and tangible reasons justifying further investigation, including apprehension of additional

accused and procurement of expert opinion concerning the seized mobile devices. Section 36A expressly empowers the Special Court to extend the custody of an accused beyond 180 days, up to one year, upon a report of the Public Prosecutor indicating the progress of investigation and furnishing specific reasons necessitating continued detention beyond the initial statutory period. It is also significant that Section 43-D of the ULA(P) Act similarly prescribes a statutory period of 180 days for completion of investigation. In this context, we find that a single bench of this court in **CRM(M) No. 653/2019 Arshad Ahmad Alliye**, had considered the question whether the Sessions Court was competent to extend the investigation period beyond 180 days by taking recourse to Section 36A of the NDPS Act had observed that:-

“The impugned order granting extension in custody of the petitioner beyond 180 days has been passed, it becomes clear that in the said application a detailed account with regard to progress of investigation has been given by the Investigating Officer. The application also spells out the reasons as to why extension in custody of the accused was required.

The learned Additional Sessions Judge, Jammu, has, after taking note of the progress of investigation as indicated in the application of the Investigating Agency and after perusal of the case diary, recorded the reasons for extending custody of the accused including that of the petitioner beyond the period of 180 days. The order has been passed in presence of the accused including the petitioner and, as such, a separate notice was not required to be issued to the petitioner. Thus, I do not find any infirmity or illegality in the impugned order passed by the learned Additional Sessions Judge, Jammu, and the same does not call for any interference by this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure or in exercise of its revisional jurisdiction.”

19.In case of *Fakhry Alam vs. State of U.P., reported as 2021 (2) Crimes*

(SC) 171, it was held as under:-

“If we look at the scenario in the present case in that conspectus, the charge sheet under the provisions of law as originally filed on 04.09.2017 were required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAPA Act. However, no charge sheet was filed even within 180 days under the UAPA Act, but post filing of the application for default bail, it was filed after 211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAPA Act had elapsed. We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr.P.C beyond which default bail will be admissible, i.e, the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances.”

20. In the case at hand, the Special Court at Baramulla, i.e., the trial court herein, had been constituted for the trial of cases under the Unlawful Activities (Prevention) Act for the districts of Baramulla, Bandipora, and Kupwara. The said court, being also a Court of Sessions for the Sessions Division Baramulla, was competent, until constitution of a Special Court in terms of Section 36A of the NDPS Act, to exercise jurisdiction for extending the custody of the accused beyond 180 days, subject to fulfilment of the conditions stipulated in the proviso to sub-section (4) of Section 36A of the NDPS Act. Therefore, the argument advanced by learned counsel for the appellants that the trial court lacked jurisdiction and has erroneously invoked Section 36A of the NDPS Act is wholly misconceived and without any merits.

21. Much reliance has been placed by appellants on the judgment of the Delhi High Court in *Chitra Ramkrishna v. CBI, 2022 SCC Online Del 3124*, to contend that investigation cannot be fragmented so as to permit

filing of piecemeal reports before the Court, as Section 173 CrPC does not envisage piecemeal investigation or the filing of an incomplete charge-sheet. In the said case, the CBI had filed a charge-sheet on 21.04.2022 in relation to offences under Sections 31D and 32 of the Prevention of Corruption Act read with Section 120-B IPC. The Delhi High Court found that the charge-sheet did not encompass all offences arising out of the FIR and held that the investigating agency could not selectively complete investigation qua certain offences, file a charge-sheet in respect thereof, and keep investigation pending regarding the remaining offences, only to later submit a supplementary report so as to defeat the accused's right to statutory/default bail.

22.In *Bhikamchand Jain 2013 3 SCC 77*, it has been clearly laid down that the filing of the charge-sheet within the prescribed statutory period constitutes sufficient compliance with the mandate of Section 173 CrPC. Consequently, an accused cannot claim statutory or default bail under Section 167(2) CrPC merely on the ground that cognizance of the offence had not been taken prior to the expiry of 180 days. The accused continues to remain in valid judicial custody under the authority of the Magistrate until such time as the competent court takes cognizance of the offence and assumes jurisdiction for further remand. Therefore, the view taken by the High Court that an accused cannot be remanded beyond 180 days under Section 167 CrPC unless cognizance has been taken is legally unsustainable. In *Serious Fraud Investigation Office v. Rahul Modi, AIR 2022 Supreme Court 902*, there it was held that an accused is not entitled to statutory/default bail under Section 167(2) CrPC merely because cognizance was not taken by the court within 60 days or 90 days. What is material is whether the charge-sheet/complaint

was filed within the prescribed period of investigation. Once the investigation is completed and the final report/complaint is filed within time, the right to default bail does not survive, even if cognizance is taken later.

23.In the present case, the appellants are not only charged with offences under Sections 8/21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, but are also accused of offences punishable under Sections 17, 18, 23 and 39 of the Unlawful Activities (Prevention) Act read with Sections 7/25 of the Arms Act. Section 43D (2) of the UAPA specifically provides that where the investigation cannot be completed within a period of 90 days, the Court may, upon being satisfied with the report of the Public Prosecutor indicating the progress of investigation and the specific reasons necessitating continued detention, extend the period of investigation up to 180 days. Thus, the statute itself contemplates an enlarged period for completion of investigation in offences falling under the UAPA.

24.Further, Section 48 of the UAPA gives the Act an overriding effect over any inconsistent provision contained in any other enactment. The appellants sought to contend that since Section 43D (2) was introduced through the Amendment Act of 2008, being a later enactment, it would prevail over Section 36A of the NDPS Act, which was introduced through the Amendment Act of 2001. However, the respondents rightly argued that both enactments are special statutes operating in distinct but overlapping fields and, therefore, must be interpreted harmoniously so as to give full effect to the legislative intent underlying each provision, rather than construing one in a manner that defeats or dilutes the operation of the other.

25.The Apex Court, in a catena of decisions, has consistently held that while resolving a conflict between two non-obstante clauses contained in different statutes, especially where both enactments occupy the same field and each purport to override other laws, the issue must be determined with reference to the object, purpose, and scheme of the respective legislations. The settled principle is that the later enactment or amendment ordinarily prevails over the earlier one, particularly when the legislative intent indicates an overriding effect.

26.Upon consideration of the rival submissions and the material placed on record, this Court is of the considered view that the appellants have failed to establish any indefeasible right to statutory/default bail under Section 167(2) Cr.P.C. read with Section 43D of the UAPA. The record demonstrates that, prior to expiry of the statutory period, the prosecution had sought extension of time under Section 36A of the NDPS Act by placing before the learned trial Court specific reasons necessitating further investigation, including procurement of expert opinion from CERT, New Delhi, apprehension of additional accused persons and obtaining requisite sanction under the UAPA. The learned trial Court, upon due consideration of the material placed before it, validly extended the period of investigation by order dated 14.12.2021.

27.It is also not possible to accept the contention of the appellants that the initial charge-sheet dated 27.12.2021 was an incomplete or piecemeal report filed merely to defeat their right to default bail. The said charge-sheet was admittedly filed within the legally extended period and contained the material collected during investigation qua offences under the NDPS Act. Mere pendency of sanction under Section 45 of the UAPA did not render the charge-sheet incomplete in law, particularly

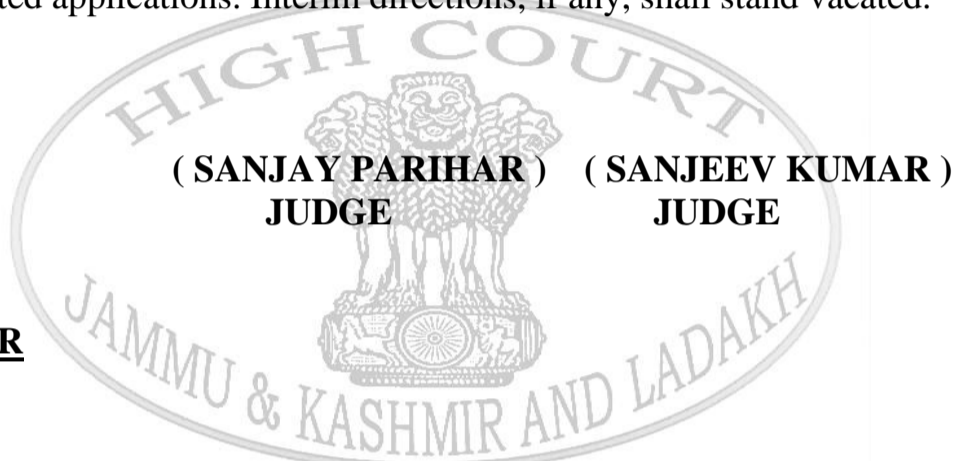
when the investigating agency expressly reserved liberty to conduct further investigation and thereafter filed a supplementary charge-sheet under Section 173(8) Cr.P.C. upon receipt of sanction. Such a course is permissible in law and cannot, in the facts of the present case, be construed as a device to circumvent the statutory protection available to the accused.

28. The reliance placed by the appellants upon *Fakhry Alam* (supra) is misplaced, as the factual matrix therein was materially distinguishable. In the present case, the prosecution had already filed the principal charge-sheet within the extended statutory period, whereas in *Fakhry Alam* (supra) no charge-sheet qua UAPA offences had been filed within the permissible period of 180 days. On the contrary, the principle laid down by the Supreme Court in *Serious Fraud Investigation Office v. Rahul Modi* (supra) squarely applies to the facts of the present case, namely that once a valid charge-sheet is filed within the prescribed or legally extended period, the right to default bail stands extinguished irrespective of whether cognizance has been taken thereafter, whereas reliance on *Chitra Ramakrishnan's* case is uncalled for.

29. This Court is further of the opinion that the provisions of the NDPS Act and the UAPA law, though both special enactments, operate in distinct legislative fields and are required to be harmoniously construed. The mere existence of Section 48 of the UAPA does not *ipso facto* render Section 36A of the NDPS Act inapplicable in a case involving allegations of narco-terror financing where offences under both enactments are attracted. The learned trial Court, being vested with jurisdiction as a Sessions Court and also designated as a Special Court

for UAPA matters, was fully competent to extend the period of investigation in terms of Section 36A of the NDPS Act.

30.In view of the foregoing discussion, this Court finds no illegality, perversity or jurisdictional error in the orders dated 14.12.2021 and 27.05.2022 passed by the learned trial Court warranting interference in exercise of appellate jurisdiction under Section 21 of the NIA Act. The appeal, being devoid of merit, is accordingly *dismissed* along with all connected applications. Interim directions, if any, shall stand vacated.



SRINAGAR
30.05.2026
Shabroz

Whether the Judgment is speaking? **Yes**

Whether the Judgment is reportable? **Yes**