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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
VIKRAM NATH; J., SANDEEP MEHTA; J.
SLP(Crl.) No(s). 11860 of 2025; APRIL 30, 2026
Md. ARIZ HASNAIN @ ARIZ HASNAIN *versus* **STATE OF JHARKHAND**

Code of Criminal Procedure, 1973; Section 167(2) read with Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 — Extension of time for investigation — Right to Default Bail — Mandatory requirement of production and notice to the accused - The Supreme Court set aside the orders extending the time for completing the investigation and granted default bail to the accused - held that the initial order extending the time to file the chargesheet was passed without procuring the presence of the accused (either physically or virtually) and without giving him an opportunity of being heard or raising objections - This constitutes a gross illegality that violates the fundamental rights of the accused under Article 21 of the Constitution of India – Supreme Court reiterated that the extension of time for completing an investigation is not an empty formality - Any direction to extend the period for filing a chargesheet encroaches upon personal liberty and must be preceded by due application of mind by recording justifiable, cogent, and valid reasons - Extension orders passed in an absolutely mechanical or perfunctory manner merely noting that "investigation is still pending" are legally unsustainable - Since the first extension order was declared illegal and arbitrary, the subsequent chargesheet filed after the expiry of the statutory period of 90 days could not defeat the right of the accused - The appellant's right to claim default bail stood crystallized upon the filing of his application under Section 167(2) CrPC before the chargesheet was submitted. *[Relied on Jigar v. State of Gujarat, (2023) 6 SCC 484; Paras 24 - 36]*

For Petitioner(s): Mr. Abhinav Sekkhri, Adv. Ms. Mehaak Jaggi, AOR Mr. Ragini Nagpal, Adv. Mr. Shailesh Poddar, Adv.

For Respondent(s): Mr. Rajiv Shankar Dvivedi Standing Counsel, Adv. Ms. Tulika Mukherjee, AOR Mr. Beenu Sharma, Adv. Mr. Venkat Narayan, Adv.

O R D E R

Mehta, J.

1. Heard.

2. Leave granted.

3. This appeal arises from the order dated 21st February, 2025 passed by the learned Single Judge of the High Court of Jharkhand at Ranchi[1] in Criminal M.P. No. 742 of 2024, whereby the petition preferred by the appellant, challenging the order dated 2nd February, 2024 rendered by the learned AJC XVIII cum Special Judge, ATS, Ranchi[2], extending the time period for submission of chargesheet, was dismissed. While dismissing the said petition, the High Court observed that since the chargesheet

[1] Hereinafter, referred to as "High Court".
[2] Hereinafter, referred to as "Special Judge" or "trial Court".

had already been filed within the extended period and hence, the petition for default bail had lost its efficacy.

BRIEF FACTS

4. The brief facts relevant and essential for disposal of the appeal are noted hereinbelow.

5. The appellant was arraigned as an accused in connection with FIR No. 13 of 2023 dated 7th November, 2023 registered at Police Station ATS, Ranchi for the offences punishable under Sections 124A, 153A, 120B of the Indian Penal Code, 1860[3] and Sections 18, 20, 38, and 39 of the Unlawful Activities (Prevention) Act, 1967[4].

6. The appellant claims that he was illegally detained on 4th November, 2023, i.e., even before the registration of the FIR which came to be registered on 7th November, 2023. The appellant was formally shown arrested in documents on the very same day. On 8th November, 2023, the appellant was remanded to judicial custody. The orders of remand were periodically extended and by order dated 18th January, 2024, the period of remand was extended till 5th February, 2024. The period of 90 days as prescribed under Section 167(2) of the Code of Criminal Procedure, 1973[5], was coming to an end on 5th February, 2024.

7. While the appellant was in judicial custody, the Investigating Officer moved an application dated 2nd February, 2024 before the learned Special Judge seeking an extension of 30 days to complete the investigation, which was allowed on the very same day and the time for filing the chargesheet was extended by a further period of 25 days from the date of completion of 90 days of custody as provided under Section 167(2) of the CrPC. It is the specific case of the appellant that all these actions were taken behind his back and without any intimation to him as he was in judicial custody.

8. The statutory period of 90 days expired on 5th February, 2024, without the chargesheet being filed. On that date, the appellant was produced before the learned Special Judge *via* video conferencing, and his judicial custody was further extended by 14 days.

9. Claiming to be completely unaware of the proceedings dated 2nd February, 2024, wherein the period for completion of investigation was extended, the appellant moved an application on 8th February, 2024 seeking default bail under Section 167(2) of the CrPC. Notice on the said application was issued to the Public Prosecutor and a reply was sought.

10. On 20th February, 2024, the learned Special Judge intimated the appellant of the order dated 2nd February, 2024, whereby the time for completion of the investigation had been extended and with reference thereto, the prayer for default bail was rejected *vide* order dated 20th February, 2024. Subsequently, on 28th February, 2024, upon an application being made by the investigating agency, the learned Special Judge granted a further extension of 25 days for concluding the investigation.

11. On 29th February, 2024, the appellant filed the subject Miscellaneous Petition No. 742 of 2024 before the High Court, assailing the order dated 2nd February, 2024,

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[3] Hereinafter, referred to as "IPC".
[4] Hereinafter, referred to as "UAPA".
[5] Hereinafter, referred to as "CrPC".

whereby the time for completion of the investigation had been extended. The contentions advanced and the relief sought for by the appellant in the said petition are enumerated below: -

i. The order dated 02.02.2024 suffers from manifest illegality as he was neither informed of the filing/ listing of the application, nor supplied a copy of it and nor heard at the time of passing of the order - which is mandated as per settled law interpreting Section 43-D(2) UAPA.

ii. The Ld. APP merely forwarded the application for extension of time without applying his mind and without submitting a report as mandated under Section 43-D(2) UAPA.

12. The appellant also preferred another Criminal Appeal (DB) No. 260 of 2024, challenging the order dated 20th February, 2024, whereby his application for default bail had been dismissed on the ground of extension of time to complete investigation granted on 2nd February, 2024.

13. Fourth and final extension to conclude investigation was further granted by the learned Special Judge on 19th April, 2024 for a period of 15 days.

14. During the pendency of the subject Miscellaneous Petition No. 742 of 2024 before the High Court, the chargesheet came to be filed against the appellant on 2nd May, 2024 for the offences punishable under Sections 153A and 120B of the IPC and Sections 16, 18, 20, 38 and 39 of the UAPA. The High Court, *vide* impugned order dated 21st February, 2025, proceeded to dismiss the said petition, observing that since the chargesheet had been submitted within the extended period, nothing survived for consideration in the matter.

15. Being aggrieved, the appellant has approached this Court by way of the instant appeal by special leave.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Learned counsel appearing for the appellant submitted that the impugned orders passed by the trial Court and the High Court are wholly unsustainable in facts and in law.

17. A pertinent argument was raised on behalf of the appellant that at the time when the first extension was granted by the learned Special Judge *vide* order dated 2nd February, 2024 the appellant was neither produced before the Court, either physically or through video conferencing, nor was he served with or otherwise notified of the application seeking extension.

18. Learned counsel further submitted that the order dated 2nd February, 2024 does not disclose any justifiable reasons or grounds for extension of time to conclude investigation. It was contended that the order dated 2nd February, 2024 merely records the bald submission of the learned APP that the investigation was pending, without reflecting any application of mind either to the progress of investigation or to the necessity for continued detention of the appellant.

19. It was further contended that the two subsequent extension orders reflect verbatim the same reasons as were recorded in the first order of extension dated 2nd February, 2024. It was, thus, contended that the extension to conclude the investigation beyond 90 days having been granted in a mechanical manner without intimating the appellant and without providing him an opportunity to raise objections,

the appellant gained the indefeasible right to be released on default bail under Section 167(2) of the CrPC.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. *Per contra*, Shri Rajiv Shankar Dwivedi, learned standing counsel for the State of Jharkhand, vehemently and fervently opposed the submissions advanced on behalf of the appellant and supported the impugned order, contending that the extension of time for completion of investigation had been validly granted in accordance with law and that the chargesheet had been filed within the extended period and thus the right to default bail under Section 167(2) of the CrPC did not survive.

ANALYSIS AND DISCUSSION

21. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned order and the material placed on record.

22. By order dated 9th March, 2026, Shri Dwivedi, was directed to respond as to whether, at the time of grant of extension of the period for completion of investigation, the appellant was produced before the learned Special Judge. The said order is reproduced hereinbelow for the sake of ready reference: -

"Learned counsel appearing for the respondent- State of Jharkhand, upon instructions, prays for and is granted two weeks' time to place on record whether, at the time when the extension was granted by the designated Court, the petitioner was produced, either virtually or physically, or not.

List the matter immediately after two weeks."

23. In compliance of the aforesaid order, Shri Dwivedi, has placed on record the copies of order sheets of the trial Court. A perusal of the order sheet dated 2nd February, 2024 recorded by the learned Special Judge reflects that the appellant was neither intimated of the application for extension of time filed by the public prosecutor nor was he provided any opportunity of hearing on the said prayer.

24. For the sake of convenience, the proceedings dated 2nd February, 2024, as recorded in the order sheet of the trial Court, are extracted hereinbelow for ready reference: -

"02.02.2024- Two separate (sic) petitions filed on behalf of Rohit Ranjan Singh, Dy SP, ATS, Ranchi for extension of period for completing the investigation against the accused namely Ariz Hasnain & Md Nasim @ Mohsin along with upto-date case diary and affidavit. The petition is duly forwarded by the Addl P.P of ATS.

Petitions filed by I.O. of this case has been duly pressed through the Addl P.P of ATS to extend judicial custody remand of accused persons named above beyond the period of 90 days for further 30 days. The Ld. Addl P.P of ATS submitted that the accused namely Ariz Hasnain & Md Nasim @ Mohsin were remanded in this case on 08.11.2023 & 09.11.2023 respectively and their 90 days period of judicial remand is going to expire. The Addl P.P. further submitted that the accused were in contact with people related to terrorist organization ISIS and investigation of the case need more time as it is not possible for the I.O. of ATS to complete the investigation of this case within the seeked period. Therefore the judicial remand in respect of the abovenamed accused persons is required to be extended from 90 days to further 30 days for smooth and proper investigation of the matter under provision of Section 43-D of the Unlawful Activities (Prohibition) Act 1967, as the power of extending the remand is vested with the court under the said provision.

Heard and perused the case record. It transpires (sic) that the FIR No. 13/2023 dated 07.11.2023 was registered u/s 124(A)/153(A) & 120B of IPC & Section 18/20/38/39 of U.A.P Act against the accused namely Ariz Hasnain, Nasim, Mashrat@ Khushi, Jishan Gull Aarif, Khalid, Aisha & other unknowns and investigation is in progress. The accused persons namely Ariz Hasnain & Md Nasim @ Mohsin were remanded in this case on 08.11.2023 & 09.11.2023 and their 90 days of judicial custody is going to complete on 05.02.2024 & 06.02.2024.

Under the facts and circumstances and considering the submission of the Ld Add P.P. that investigation is still pending and due to that reason, the prayer of I.O. is hereby allowed and the period for completing the investigation against the accused persons namely Ariz Hasnain & Md Nasim @Mohsin is extended for further 25 days from the date of completion of 90 days of judicial custody."

25. Shri Dwivedi was not in a position to dispute that the aforesaid proceedings do not reflect that the appellant had been intimated of the application for extension of time or that he was provided an opportunity to object to the same.

26. At this juncture, we may gainfully refer to the decision of this Court in ***Jigar v. State of Gujarat***[6], wherein the Court considered the scope and import of the requirement of notice and production of the accused at the stage of consideration of an application for extension of time for completion of investigation and observed as follows:-

"**41. Clause (*b*) of sub-section (2) of Section 167CrPC lays down that no Magistrate shall authorise the detention of the accused in the custody of the police unless the accused is produced before him in person. It also provides that judicial custody can be extended on the production of the accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law. This requirement is *sine qua non* for the exercise of the power to extend the judicial custody remand.** The reason is that the accused has a right to oppose the prayer for the extension of the remand.

42. When the Special Court exercises the power of granting extension under the proviso to sub-section (2) of Section 20 of the 2015 Act, it will necessarily lead to the extension of the judicial custody beyond the period of 90 days up to 180 days. **Therefore, even in terms of the requirement of clause (*b*) of subsection (2) of Section 167CrPC, it is mandatory to procure the presence of the accused before the Special Court when a prayer of the prosecution for the extension of time to complete investigation is considered**. In fact, the Constitution Bench of this Court in the first part of para 53(2)(*a*) in its decision in *Sanjay Dutt* [*Sanjay Dutt* v. *State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] holds so.

…

44. As noted earlier, the only modification made by the larger Bench in *Sanjay Dutt* [*Sanjay Dutt* v. *State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] to the decision in *Hitendra Vishnu Thakur* [*Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] is about the mode of service of notice of the application for extension. **In so many words, in para 53(2)(*a*) of the judgment, this Court in *Sanjay Dutt* [*Sanjay Dutt* v. *State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] held that it is mandatory to produce the accused at the time when the Court considers the application for extension and that the accused must be informed that the question of extension of the period of investigation is being considered.** The accused may not be entitled to get a copy of the report as a matter of right as it may contain details of the investigation carried out. But, if we

[6] (2023) 6 SCC 484.

accept the submission of the respondents that the accused has no say in the matter, the requirement of giving notice by producing the accused will become an empty and meaningless formality. Moreover, it will be against the mandate of clause (*b*) of the proviso to sub-section (2) of Section 167CrPC. It cannot be accepted that the accused is not entitled to raise any objection to the application for extension. The scope of the objections may be limited. The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of the proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted.

45. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by sub-section (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21. **The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.**"

(Emphasis Supplied)

27. It is also pertinent to note that the order dated 2nd February, 2024 passed by the learned Special Judge does not reflect application of mind whatsoever for extending the period for completion of investigation. A bald observation has been made in the said order to the effect that, considering the submission of the learned APP that the investigation was still pending, the prayer of the Investigating Officer was being allowed and the period for completion of the investigation was accordingly extended by another 25 days.

28. Under the provisions of Section 167(2) of the CrPC, a clear mandate exists restricting the custody of the accused for a period beyond 60 days or 90 days, as the case may be. If the investigation is not completed and chargesheet is not filed within the aforesaid period, it would give rise to an indefeasible right in favour of the accused to seek default bail. Hence, any direction to extend the period for filing of chargesheet encroaches upon the personal liberty of an individual arrested in connection with a cognizable offence and thus, any such direction must be preceded by due application of mind and by recording justifiable reasons.

29. It may be reiterated that the learned Special Judge neither provided any opportunity to the appellant to oppose the prayer for extension of time to file the chargesheet nor did it apply its judicial mind while allowing the prayer for extension of time. In an absolutely mechanical manner, the learned Special Judge recorded the prayer of the public prosecutor and casually extended the period for filing of chargesheet by 25 days. Hence, the order extending time to conclude investigation is

grossly illegal, arbitrary and violative of the fundamental right of liberty of the appellant as guaranteed under Article 21 of the Constitution of India.

30. It may be noted that in the proceedings dated 28th February, 2024, learned counsel representing the appellant in the trial Court was intimated of the second application for extension and arguments were heard. However, even in the said proceedings, while extending the period for completion of investigation, the learned Special Judge failed to assign any cogent or valid reason whatsoever. The extract of reasons recorded for extending the time to conclude the investigation is reproduced hereinbelow: -

"The accused persons namely Ariz. Hasnain & Md Nazim Mohsin were remanded in this case on 08.11.2023 & 09.11.2023 and vide order dated 02.02.2024 of this court extension for 25 days was granted to the 10 for investigation after completion of 90 days, and now 115 days is going to complete on 01.03.2024 & 02.03.2024 respectively for the accused persons.

Under the facts and circumstances and considering the submission of the Ld A.P.P that investigation is still pending and due to that reason, the prayer of I.O. is hereby allowed and the period for completing the investigation against the accused persons namely Ariz Hasnain & Md Nasim @ Mohsin is extended for further 25 days from the date of completion of 115 days of their judicial custody i.e. from 01.03.2024 for the accused Ariz Hasnain& 02.03.2024 for Md Nasim @Mohsin."

(Emphasis supplied)

31. Likewise, even in the subsequent orders dated 28th March, 2024 and 19th April, 2024, the reasons for extension of completion of investigation are verbatim similar to those as were set out in the order dated 2nd February, 2024.

32. Admittedly, much prior to the order dated 28th February, 2024 being passed on the second application for extension, the appellant had already moved the trial Court by way of an application for default bail. The said application was rejected on 20th February, 2024 by relying on the first order of extension dated 2nd February, 2024.

33. In view of these facts and circumstances, we are convinced that the order dated 2nd February, 2024 whereby, the prayer for extension of time made by the investigating agency was accepted and the time to conclude investigation was further extended by 25 days, was passed without providing any opportunity of hearing or effective representation to the appellant. Furthermore, the reasons for extension were virtually non-existent and totally perfunctory.

34. In this context, it would be apposite to again advert to observations of this Court in ***Jigar*** (supra), wherein this Court while dealing with a similar statutory scheme authoritatively held that the grant of extension is not a mere formality but must be preceded by due application of mind both by the Public Prosecutor and the Court. This Court, in paragraph 43, observed as follows: -

"43. The requirement of the report under the proviso added by sub-section (2) of Section 20 of the 2015 Act to clause (b) of sub-section (2) of Section 167CrPC is twofold. Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. **Therefore, the extension of time is not an empty formality. The Public Prosecutor has to apply his mind before he submits a report/an application for extension. The prosecution has to make out a case in terms of both the aforesaid requirements and the Court must apply its mind to the contents of the report before accepting the prayer for grant of extension.**" (Emphasis supplied)

35. Thus, the orders of extension, as referred to above, clearly reflect that the extensions were granted in a totally mechanical manner without assigning any justifiable reasons. This patent lacuna in the series of extensions coupled with the fact that the first extension granted *vide* order dated 2nd February, 2024, was, in itself, illegal and arbitrary as it was passed without notice and effective opportunity of raising objections to the appellant prior to the grant of such extension are fatal and renders the continued custody of the appellant beyond the period of 90 days illegal, entitling him to claim default bail.

36. It is not in dispute that the appellant had moved the trial Court seeking default bail well before the filing of chargesheet. In view of the fact that the order dated 2nd February, 2024 extending the time for completion of investigation has been held to be illegal, and since the chargesheet came to be filed well after the expiry of the statutory period of 90 days, the appellant's right to claim default bail stood crystallized upon the filing of the application under Section 167(2) of the CrPC and the appellant acquired an indefeasible right to be released on bail.

CONCLUSION

37. As an upshot of the aforesaid discussion, the impugned orders are declared to be bad in the eyes of law and are accordingly set aside.

38. The appellant shall be released on default bail under Section 167(2) of the CrPC upon furnishing bail bonds and sureties to the satisfaction of the trial Court. The trial Court shall be entitled to impose suitable conditions to secure the presence of the accused during the trial.

39. The appeal is allowed in these terms.

40. Pending application(s), if any, shall stand disposed of.

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