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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010369002026**

\+ **W.P.(CRL) 2408/2026**

HURBA PETRO AND OTHERS .....Petitioner

Through: Ms. Nithya Ramakrishnan, Sr. Adv. with Mr. Nitin Saluja, Mr. Shivani Luthra Lohiya, Mr. Anubhav Singh, Ms. Garima Singh, Mr. Pranya Madan, Mr. Utsav Singh, Advs.

versus

UNION OF INDIA AND OTHERS .....Respondent

Through: Mr. Rahul Tyagi, SPP for NIA with Mr. Jatin, Ms. Priya Rai, Mr. Shubham Goyal, Mr. Avinash Kumar Singh, Mr. Priyansh Raj Singh, Advs.
Mr. Vedansh Anand and Mr. Shivam Kumar, GP for UOI

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

O R D E R

% 31.08.2026

1. This hearing has been done through hybrid mode.

2. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, “BNSS”) has been filed by the six petitioners, challenging the order dated 04.06.2026 passed by the learned Additional Sessions Judge-03/Special Judge (NIA Court), Patiala House Courts, New Delhi in ***RC No. 07/2026/NIA/DLI*** titled ***NIA v. Mathew Aaron Van Dyke & Ors***.

BRIEF FACTS:

3. The aforesaid RC arises out of FIR No. RC-07/2026/NIA/DLI dated

13.03.2026 registered at Police Station NIA, New Delhi under Section 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, "UAPA"). The FIR was registered pursuant to an order dated 13.03.2026 issued by the Ministry of Home Affairs, Government of India, directing the National Investigation Agency (hereinafter, "NIA") to investigate the matter.

4. The petitioners are stated to be Ukrainian nationals and were holding Ukrainian passports and Indian tourist visas. As per the FIR, information had been received regarding the involvement of certain individuals in an alleged drone attack on a civilian aircraft in Myanmar. It was further alleged that 14 Ukrainian nationals had entered India on tourist visas, travelled to Mizoram without the requisite Restricted Area Permit/Protected Area Permit and thereafter illegally entered Myanmar, where they were allegedly to conduct training relating to drone warfare, drone operations, assembly and jamming technology for Myanmar-based Ethnic Armed Groups.

5. On 13.03.2026, the petitioners were arrested by the NIA at Lucknow and Delhi airports. They were thereafter produced before the competent Court on 14.03.2026 and were initially remanded to police custody. The police custody was subsequently extended from time to time and ultimately continued for a total period of 24 days, up to 06.04.2026.

6. On 06.04.2026, the petitioners were remanded to judicial custody for a period of 30 days. The period of investigation and detention was thereafter further extended on 06.05.2026 till 04.06.2026.

7. On 03.06.2026, the NIA moved an application under Section 43-D(2)(b) of the UAPA read with Section 187 of the BNSS seeking extension of the period of investigation and, consequently, the detention of the petitioners beyond 90 days, up to the maximum permissible period of 180

days.

8. The petitioners opposed the said application. It was contended, *inter alia*, that the statutory parameters under Section 43-D(2)(b) of the UAPA had not been satisfied, that no specific reasons had been disclosed for continued detention of the petitioners, that the NIA had not explained why the investigation could not be completed within the initial period of 90 days; and that the grounds relied upon by the NIA were substantially similar to those advanced in the earlier remand applications.

9. The learned Special Judge, vide order dated 04.06.2026, considered the application moved by the NIA. The Court referred to Section 43-D(2)(b) of the UAPA and noted that extension beyond 90 days was discretionary and could be granted upon satisfaction regarding the report of the Public Prosecutor indicating the progress of investigation and the specific reasons for continued detention of the accused.

10. The learned Special Judge also considered the objection of the petitioners that the application for extension ought to be deferred until 10.06.2026, when the period of 90 days would expire. The learned Special Judge held that there was no requirement in law to defer an application for extension until the 90th day and proceeded to consider the application on 04.06.2026 itself.

11. Consequently, vide the impugned order dated 04.06.2026, the learned Special Judge allowed the application filed by the NIA and extended the period of investigation and detention of the petitioners beyond 90 days and up to 180 days under Section 43-D(2)(b) of the UAPA read with Section 187 of the BNSS.

12. Aggrieved by the said order, the petitioners initially approached this

Court by way of an appeal under Section 21 of the National Investigation Agency Act, 2008 (hereinafter, "NIA Act"), contending that the impugned order had the effect of postponing their right to default bail and was, therefore, amenable to appellate jurisdiction.

13. The said appeal was considered by a Division Bench of this Court in ***Petro and Others v. Union of India and Others, 2026:dhc:6261-DB***. The Division Bench considered the question of maintainability of an appeal against an order granting extension of the period of investigation under Section 43-D(2)(b) of the UAPA.

14. The Division Bench, held that an order granting extension of time for investigation under Section 43-D(2)(b) of the UAPA is an interlocutory order and is, therefore, not appealable under Section 21 of the NIA Act. The Division Bench, however, noted that such an order would remain amenable to judicial review in exercise of the inherent jurisdiction of this Court under Section 482 Cr.P.C./Section 528 BNSS.

15. In view thereof, the Division Bench disposed of the appeal with a direction that the same be renumbered as a petition under Section 482 Cr.P.C./Section 528 BNSS and be placed before the concerned Roster Bench. The present petition is accordingly being considered in exercise of the inherent jurisdiction of this Court under Section 528 of the BNSS, challenging the order dated 04.06.2026 whereby the detention of the petitioners has been extended beyond the initial period of 90 days and up to 180 days.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

16. Learned counsel for the Petitioners submits that the impugned order is liable to be set aside as the learned Special Judge has failed to apply the statutory safeguards governing extension of detention beyond the initial

period of 90 days. It is submitted that Section 43-D(2)(b) of the UAPA does not contemplate an automatic or routine extension merely because the investigation remains pending. The power to extend the period beyond 90 days is an exceptional power and can be exercised only upon satisfaction of the two conjunctive requirements, namely:

(i) the report of the Public Prosecutor must indicate the progress of the investigation.

(ii) It must disclose specific reasons for the detention of the accused beyond the period of 90 days. These are not matters of form but conditions precedent for exercise of the power.

17. The distinction between the requirement of further time for investigation and the requirement of further detention of the accused is fundamental. The Supreme Court in ***Hitendra Vishnu Thakur v. State of Maharashtra***, *(1994) 4 SCC 602*, has emphasised that the legislative intent is to ensure expeditious investigation and not permit an accused to remain in continued detention during an unnecessarily prolonged investigation; the investigating agency must satisfy the Public Prosecutor regarding the progress of investigation and furnish reasons for seeking further custody.

18. It is submitted that the aforesaid requirement has not been satisfied in the present case. The reasons relied upon by the NIA, namely, that the investigation involves a deep-rooted conspiracy, that it is at a crucial stage, and that analysis of electronic devices, bank accounts and financial records is pending, do not disclose any specific reason why the Petitioners themselves are required to remain in custody beyond 90 days. There is no individualised

reason recorded *qua* any of the six Petitioners as to why his continued detention is necessary for completion of any particular investigative step. The Supreme Court in ***Jigar @ Jimmy v. State of Gujarat***, *(2023) 6 SCC 484, h*as underscored that the Public Prosecutor's report must satisfy both requirements and that the Court is required to consider the report with a view to determining whether the statutory requirements for extension have actually been fulfilled. The requirement is thus not merely that the investigation is incomplete what has to be demonstrated is why the investigation cannot be completed within the statutory period and, separately, why the accused needs to remain detained beyond that period.

19. Learned counsel further submits that the defect is aggravated by the fact that the NIA has been relying upon substantially the same grounds in the successive remand applications filed since the arrest of the Petitioners. The grounds of conspiracy, tracing of Indian and foreign entities, examination of electronic devices, analysis of bank accounts and ascertaining the respective roles of the accused have been repeatedly advanced to secure further custody. A ground which has already been repeatedly invoked for obtaining remand cannot, without anything further, constitute a specific reason for extending detention beyond the statutory period of 90 days. If the very same circumstances were sufficient to justify the earlier remands, the prosecution was required to demonstrate what fresh progress had been made during those periods and what specific investigative necessity now required the Petitioners to remain in custody for another 90 days. Mere alteration in the description of the investigation cannot convert a general or omnibus ground into a specific

statutory justification. The requirement of the law is precisely to prevent continued detention merely at the convenience of the investigating agency. The principle stated in ***Hitendra Vishnu Thakur (supra)*** is that the investigation is expected to be completed with utmost promptitude and that continued detention cannot be permitted during unnecessary prolonged investigation at the whim of the investigating agency.

20. It is further submitted that even assuming that the Court was satisfied that some further period was required for completion of investigation, there has been a complete failure to apply judicial mind to the quantum of extension. Section 43-D(2)(b) does not mandate that, once an extension is found permissible, the accused must automatically be detained for the entire remaining period of 90 days. The expression employed by the statute is that the period may be extended "up to" 180 days. Thus, the statutory provision prescribes **a** maximum outer limit and not an automatic entitlement to the prosecution for the balance period. The Court was consequently required to consider what additional period, if any, was actually warranted on the material before it. In the present case, however, the learned Special Judge has mechanically granted the entire remaining period, taking the Petitioners straight from 90 days to the maximum permissible 180 days, without examining whether the investigation required 10 days, 30 days, 60 days or any other shorter period. This is particularly significant where the liberty of the Petitioners is at stake under Article 21. The approach adopted by the learned Special Judge effectively treats the statutory maximum as the statutory norm, whereas the scheme of Section 43-D(2)(b) makes the initial

90-day period the rule and extension beyond it the exception. In ***Syed Shahid Yousuf v. National Investigation Agency***, the Delhi High Court itself records a situation where, despite a request for extension up to 180 days, the Special Court had extended the period only by a limited period, demonstrating that the statutory power is capable of being exercised in a calibrated manner rather than mechanically granting the maximum period.

21. Learned counsel submits that the approach of the learned Special Judge is contrary to the safeguards recognised in ***Ravinder v. State of Haryana,*** *2023 SCC OnLine P&H 398*2. Though rendered in the context of Section 36A(4) of the NDPS Act, the statutory formulation considered therein is materially similar, requiring both the progress of investigation and specific reasons for detention. The Court held that these are conditions precedent and conditions sine qua non**,** that the two conditions are co-existent, and that non-satisfaction of even one of them disentitles the prosecution from seeking extension. Significantly, the Court distinguished the statutory right to default bail from regular bail and reiterated that default bail is a statutory and indefeasible right. In the present case, the Public Prosecutor's report and the impugned order, even when read together, do not disclose any specific reason explaining why the Petitioners' detention, as opposed to the continuation of the investigation, was necessary. The distinction is crucial because an investigation may continue without the accused remaining incarcerated. The decision in ***Ravinder (supra)*** is particularly instructive in this regard: where neither the Public Prosecutor's report nor the order of the Special Court disclosed why detention was required to continue, the statutory conditions

were held not to have been satisfied.

22. It is submitted that, at the stage of default bail, the merits or seriousness of the allegations constituting the underlying offence are not determinative of the Petitioners' entitlement. The question is not whether the allegations against the Petitioners are serious, whether the alleged conspiracy has transnational ramifications, or whether the investigation concerns an offence under the UAPA. The relevant question is whether the prosecution has validly crossed the statutory threshold permitting detention beyond 90 days. Once that statutory extension is found unsustainable, the consequence under the law relating to default bail follows. The Supreme Court in ***Hitendra Vishnu Thakur (supra)***recognised the importance of the outer statutory period and the accused's right to seek release upon failure of the prosecution to complete the investigation within the permissible period. The same principle was reiterated in ***Ravinder (supra)***, where the Court expressly recognised that default bail operates on a different pedestal from regular bail and constitutes a statutory and indefeasible right.

23. Learned counsel further submits that the Petitioners' objection before the learned Special Judge could not have been treated as, or disposed of as, a premature application for default bail. The Petitioners had specifically submitted that the extension application did not satisfy the statutory requirements and, without prejudice, that if the Court was nevertheless inclined to grant some extension, the same ought not to pre-empt the Petitioners' statutory right which would crystallise upon expiry of 90 days on 10.06.2026.

24. Lastly, learned counsel submits that the impugned order suffers from a further fundamental infirmity inasmuch as it records satisfaction regarding the fact that the investigation is incomplete, but does not record an independent and specific satisfaction as to why the continued detention of each of the Petitioners is necessary. The six Petitioners have been dealt with as one composite group, despite the statutory requirement relating to "*the detention of the accused*". The material relied upon by the NIA analysis of devices, bank accounts, financial records, immigration records and other documentary or electronic material, does not, on the face of it, demonstrate any continuing necessity for the physical detention of the Petitioners.

<u>SUBMISSIONS OF BEHALF OF THE RESPONDENTS:</u>

25. Learned counsel appearing on behalf of the Respondents opposes the present petition and submits that the impugned order dated 04.06.2026 has been passed after due consideration of the report of the learned Public Prosecutor, the case diaries and the material collected during investigation. It is submitted that the statutory requirements contained in the second proviso to Section 43-D(2)(b) of the UAPA stood duly satisfied.

26. It is submitted that the report of the learned Public Prosecutor indicated the progress of investigation and disclosed the reasons necessitating further time for completion of the investigation and continued detention of the petitioners. The learned Special Judge, after independently considering the said material, recorded his satisfaction that the investigation could not be completed within the initial period of 90 days and that further time was required.

27. Learned counsel submits that the petitioners' contention that the reasons

for extension were vague or repetitive is without merit. The investigation concerns allegations having transnational dimensions and requires examination of electronic devices, financial transactions and other material, besides investigation into the alleged larger conspiracy and the role of the persons involved. Merely because certain aspects of the investigation had also been referred to in earlier remand applications does not render the need for their continued investigation non-existent.

28. It is further submitted that Section 43-D(2)(b) of the UAPA expressly empowers the Special Court to extend the period of investigation up to 180 days upon satisfaction of the statutory conditions. There is no requirement under the provision that the Court must necessarily grant the extension in smaller stages. Once the learned Special Judge was satisfied, on the basis of the report of the Public Prosecutor and the material placed before the Court, that further time was required, the grant of extension up to the statutory maximum cannot be termed mechanical merely on that ground.

29. Learned counsel further submits that the requirements of the provision are that the report of the Public Prosecutor must indicate the progress of investigation and the specific reasons for detention beyond the period of 90 days. Both requirements were considered by the learned Special Judge. The sufficiency of the investigation or the correctness of every investigative step cannot be reassessed in a petition under Section 528 BNSS as if this Court were conducting a detailed scrutiny of the investigation.

30. Reliance is placed on the principles recognised in ***State of Maharashtra v. Surendra Pundlik Gadling*** and ***Zeeshan Qamar v. State (NCT of Delhi),*** *(2019) 5 SCC 178,* wherein it has been held that the Special Court is required to satisfy itself regarding the progress of investigation and

the specific reasons for continued detention on the basis of the report of the Public Prosecutor. Where such satisfaction is arrived at after consideration of the relevant material, the order extending the period of investigation does not warrant interference.

31. Learned counsel further submits that the petitioners cannot claim that their right to default bail had crystallised. The application seeking extension was moved and considered before the expiry of the statutory period of 90 days. The petitioners' objections to the application for extension cannot, by themselves, defeat the jurisdiction of the Special Court to consider and allow the application before the expiry of the statutory period.

32. It is submitted that the reliance placed by the petitioners on ***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence***, *(2021) 2 SCC 485* is misplaced. The principles governing default bail cannot be invoked in the abstract where, prior to the expiry of the statutory period, a valid order extending the period of investigation has been passed in accordance with Section 43-D(2)(b) of the UAPA.

33. Learned counsel submits that the contention that the reasons for continued detention ought to have been separately and individually recorded in respect of each petitioner also cannot be accepted in the facts of the present case. The investigation concerns an alleged conspiracy involving several persons, and the role of each petitioner is part of the investigation being carried out by the NIA. The fact that the petitioners are alleged to be connected with a common set of transactions and events does not preclude the Court from passing a composite order where the statutory requirements are found to exist.

34. It is, therefore, submitted that the impugned order does not suffer from

any illegality, perversity or non-application of mind warranting interference in exercise of the inherent jurisdiction of this Court under Section 528 BNSS. The present petition is accordingly liable to be dismissed.

ANALYSIS AND FINDINGS:

35. This court has heard the learned counsel for the petitioners and the learned Special Public Prosecutor for the NIA and perused the material placed on record.

36. The principal challenge of the petitioners is to the order dated 04.06.2026 whereby the learned Special Judge extended the period for completion of investigation and the consequential detention of the petitioners beyond 90 days and up to 180 days under the second proviso to Section 43-D(2)(b) of the UAPA. The petitioners contend that the statutory requirements of indicating the progress of investigation and the specific reasons for continued detention were not satisfied and that the extension was mechanically granted for the maximum permissible period.

37. Section 43-D(2)(b) of the UAPA undoubtedly requires the Court to be satisfied, on the basis of the report of the Public Prosecutor, regarding the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days. The two requirements are required to be considered by the Special Court before an extension is granted. However, the scope of examination by this Court is whether the statutory requirements were substantially complied with and whether the Special Court had applied its mind to the material placed before it.

38. In the present case, the impugned order records that the petitioners were given notice of the application seeking extension and their objections were considered by the learned Special Judge. The learned Special Judge thereafter

examined the report of the learned Public Prosecutor placed in a sealed cover, the application and the case diaries, and recorded satisfaction that the investigation had not been completed and that further time was required for its completion. The Court further recorded that the report contained the progress of investigation and the reasons for seeking further detention and that the material in the case diaries corroborated the same. The application was consequently allowed after consideration of the material placed before the Court.

39. The contention that the reasons for extension were identical to those relied upon in the earlier remand applications also does not persuade this Court to interfere with the impugned order. The learned Special Judge has specifically recorded that the material placed before the Court was not a mechanical reproduction of the earlier applications and that fresh facts and evidence collected during investigation were available for consideration. Whether the petitioners ultimately have any criminal liability is not the issue at this stage. The consideration is confined to whether, in view of the progress of investigation and the material placed before the Special Court, further time was required for completion of the investigation.

40. The material relied upon by the investigating agency also indicates that the investigation involved examination of digital devices, pending forensic reports, scrutiny of extracted electronic data, investigation into certain financial transactions, and field investigation concerning additional entities. The investigating agency also asserted that several persons connected with the investigation were yet to be traced and examined. These were matters which the learned Special Judge was entitled to consider while examining the request for extension of time.

41. In **Jigar v. State of Gujarat, 2022 SCC OnLine SC 1352**, the Supreme Court emphasised that the requirement under the analogous provision is twofold: the report of the Public Prosecutor must indicate the progress of investigation and disclose specific reasons for continued detention, and the Court is required to apply its mind to the contents of the report before granting an extension. The requirement is therefore not an empty formality. The said principles, however, cannot be understood to mean that the details contained in a confidential report or the case diary must necessarily be reproduced in the order itself.

42. Further, the Delhi High Court in ***Zeeshan Qamar (supra)*** has held that while considering a report seeking extension, the Special Court must consider the progress of investigation and the reasons for further detention, but the report of the Public Prosecutor and the case diaries are not required to be furnished to the accused, nor is the Court required to disclose the detailed course of investigation in its order where such disclosure may affect the investigation. The judgment further recognises that the Special Court is required to satisfy itself from the material placed before it that further investigation is warranted. The relevant paragraphs of the aforesaid judgement are reproduced herein below:

> *"33. The Special Court thus would be required to take into consideration the submission on behalf of the accused while examining the Public Prosecutor's report regarding the progress of investigation, as well as the specific reasons for seeking further detention and whether from the investigation carried out till that date, there is sufficient material to form a reasonable belief that prima facie an offence under UAPA is made out*

against the accused or not, the last being for the reason, if prima facie, no offence under UAPA is made out, the Special Court would have no jurisdiction to entertain the remand of the accused, much less, extend the same. ***Needless to note that at this stage, the learned Special Court would not be required to give reasons in his order as to how a a prima facie offence under UAPA is made out, for the reason, that the same will entail disclosure of the investigation already carried out and to be carried out. However, the Special Court would be required to satisfy itself about this requirement. Thus, even without being supplied with the copy of the Public Prosecutor's report, if the accused is heard on the relevant facts which go to the root of granting extension of time for continued investigation, the same will be fa a meaningful notice.*** *With these safeguards provided to the accused at the time of extension of the period of remand beyond 90 days, we find no merit in the contention of learned counsels for the appellants that for a meaningful notice, the report of the Public Prosecutor is required to be provided to the accused at the stage of grant of extension of remand for continued investigation.*

34. Issue 1 is thus answered in the negative and it is held that the report of c the Public Prosecutor cannot be furnished to the accused at the time of extension of remand for a further period of 90 days under proviso to sub-section (2)(b) of Section 43-D of the UAPA."

43. The submission that the learned Special Judge ought to have granted a

shorter extension instead of permitting the investigation to continue up to the maximum period of 180 days also does not, by itself, render the impugned order illegal. The statute permits extension up to 180 days, subject to the satisfaction of the Special Court regarding the requirements prescribed under Section 43-D(2)(b) of the UAPA. In the present case, the learned Special Judge, upon consideration of the report of the Public Prosecutor, the case diaries and the objections raised by the petitioners, recorded its satisfaction that the investigation was incomplete and that further time was required. The mere fact that the maximum permissible period was granted cannot, in the absence of any demonstrable perversity or violation of the statutory requirements, justify interference in exercise of the inherent jurisdiction of this Court.

44. The petitioners have also questioned the consideration of their claim to default bail before the expiry of the initial period of 90 days. The impugned order records that the petitioners had notice of the extension proceedings and had raised objections thereto, including their assertion concerning the consequences of non-completion of investigation upon expiry of the statutory period. The learned Special Judge held that an application seeking extension was not required to be deferred until the 90th day merely to await the accrual of a claim for default bail. The application for extension was considered and allowed before expiry of the statutory period. Consequently, the petitioners cannot claim default bail merely on the basis that the initial period of 90 days subsequently expired.

45. It is settled that the right to default bail arises upon fulfilment of the statutory conditions. Where a valid order extending the period for completion of investigation has been passed before the expiry of the prescribed period, no

indefeasible right to default bail arises merely because the charge-sheet has not been filed within the initial period of 90 days. The petitioners' challenge, therefore, ultimately depends upon establishing that the order of extension itself was contrary to the statutory requirements. For the reasons recorded above, no such infirmity has been demonstrated.

46. This Court is also unable to accept the submission that separate and elaborate reasons were required to be recorded in the impugned order in respect of each of the petitioners. The learned Special Judge was dealing with a common application arising from the same RC and considered the report of the Public Prosecutor and the case diaries before recording satisfaction regarding the necessity of further investigation and extension of detention. At this stage, this Court does not find any material to conclude that the discretion exercised by the learned Special Judge was arbitrary or suffered from non-application of mind.

47. In view of the foregoing discussion, this Court finds no illegality, perversity or jurisdictional error in the impugned order dated 04.06.2026 warranting interference under Section 528 of the BNSS.

48. The petition is, accordingly, dismissed. Pending application(s), if any, stands disposed of.

49. A copy of this order be sent to the learned Trial Court for necessary information and compliance.

50. The order be uploaded on the website *forthwith.*

MADHU JAIN, J

AUGUST 31, 2026/*P*