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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3493/2021 and CRL. M.A. 20845/2021 (Stay)**

NATIONAL INVESTIGATION AGENCY Petitioner
Through: Mr. Gautam Narayan, SPP for
NIA with Ms. Asmita Singh,
Advocate.

versus

OWAIS AHMAD DAR & ORS. Respondents
Through: Ms. Sowjhanya Shankaran and
Mr. Siddharth Satija, Advocates
for R-1.
Mr. Simon Benjamin and Mr. Bilal
Ikram, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

% **ORDER**
25.03.2022

The present criminal miscellaneous petition has been listed before this Division Bench in terms of the order passed by the learned Single Judge of this Court on 24.03.2022 by holding that “*since an order rejecting the remand is a final order, hence only an appeal would lie before the Hon'ble Division Bench in terms of the mandate of the provisions of Section 21 of the National Investigation Agency Act, 2008.*”

The Registry is directed to re-number the present petition as an appeal in terms of the provisions of Section 21 of the National Investigation Agency Act, 2008.

Crl. A. /2022 (to be numbered)

Issue notice.

Ms. Sowjhanya Shankaran and Mr. Simon Benjamin, learned counsel appearing on behalf of respondent Nos.1 and 3 accept notice respectively.

With the consent of learned counsel appearing on behalf of the parties, the appeal is heard finally and disposed of with the following order.

Mr. Gautam Narayan, learned Special Public Prosecutor appearing on behalf of the NIA states that *vide* the impugned order dated 27.11.2021, the learned Principal District & Sessions Judge/Special Court (NIA), Patiala House Courts, New Delhi, was pleased to reject their application seeking police custody remand of the respondents herein for a period of 14 days on the ground that in terms of the decision of the Hon'ble Supreme Court in **Gautam Navlakha vs. NIA** reported as **2021 SCC OnLine SC 382**, it was axiomatic that since the NIA had been granted police custody during the first 30 days, no further police custody remand can be granted after the expiry of the first 30 days from the first remand, particularly in terms of para 140, which reads as follows:-

“140. We would think that the position under Section 167 as applicable in cases under UAPA is as follows:—

Undoubtedly, the period of 30 days is permissible by way of police custody. This Court will proceed on the basis that the legislature is aware of the existing law when it brings the changes in the law. In other words, this Court had laid down in Anupam Kulkarni (supra), inter alia, that under Section 167 which provides for 15 days as the maximum period of police custody, the custody of an accused with the police can be given only

during the first 15 days from the date of the remand by the Magistrate. Beyond 15 days, the remand can only be given to judicial custody. Ordinarily, since the period of 15 days has been increased to 30 days, the effect would be that in cases falling under UAPA applying the principle declared in (1992) 3 SCC 141, the investigating officer in a case under UAPA, can get police custody for a maximum period of 30 days but it must be within the first 30 days of the remand. In this regard, the number of days alone is increased for granting remand to police custody. The principle that it should be the first 30 days has not been altered in cases under UAPA.

As far as the second proviso in Section 43(D)(2)(b) is concerned, it does bring about an alteration of the law in Anupam Kulkarni (supra). It is contemplated that a person who is remanded to judicial custody and NIA has not been given police custody during the first 30 days, on reasons being given and also on explaining the delay, Court may grant police custody. The proviso brings about the change in the law to the extent that if a person is in judicial custody on the basis of the remand, then on reasons given, explaining the delay, it is open to the Court to give police custody even beyond 30 days from the date of the first remand. We may notice that Section 49(2) of Prevention of Terrorism Act is pari materia which has been interpreted by this Court in (2004) 6 SCC 672 : AIR 2004 SC 3946 and the decision does not advance the case of Appellant though that was a case where the police custody was sought of a person in judicial custody but beyond 30 days.

In this regard, it would appear that the appellant had surrendered on 14.04.2020. He was not in judicial custody. He was produced with a remand report seeking police custody on 15.04.2020. Treating this as a remand sought within the first 30 days, a remand is

ordered for a period of 7 days initially. There is no dispute that the period was police custody. We may notice that an accused under UAPA may be sent to judicial custody, police custody or granted bail. If the argument that the police custody can be sought at any time and it is not limited to cases where there is judicial custody, it will go against the clear terms of the proviso and even a person who is bailed out can after 30 days be remanded to police custody. This is untenable. The case of the appellant that the police custody granted on 15.04.2020 was permissible and consistent with his case does not appear to be correct.”

Mr. Gautam Narayan, learned Special Public Prosecutor appearing on behalf of the NIA has candidly urged that, the position of law enunciated in the impugned order dated 27.11.2021 cannot be faulted with in terms of the dictum of the Hon’ble Supreme Court in ***Gautam Navlakha*** (*supra*). In other words, it is categorically urged on behalf of the NIA that the relief prayed for by them before the Special Court, NIA was denied strictly in accordance with ratio of the decision of the Hon’ble Supreme Court in ***Gautam Navlakha*** (*supra*).

In that view of the matter, the present appeal being covered against the NIA, in terms of the dictum of the Hon’ble Supreme Court in ***Gautam Navlakha*** (*supra*), the same is devoid of merit and is accordingly dismissed.

Before we part with the order, it would, however, be relevant to record that Mr. Gautam Narayan, learned Special Public Prosecutor appearing on behalf of the NIA has urged, albeit, in vain that the decision rendered by the Hon’ble Supreme Court in ***Gautam Navlakha*** (*supra*) ‘requires reconsideration’.

We find ourselves unable to agree with the aforestated submission since we are bound by the decision of the Hon'ble Supreme Court even if it could be said to be *obiter dicta*. The last submission made on behalf of the NIA is governed by the principle of *stare decisis* and the same is accordingly rejected.

Pending application being CrI. M.A. 20845/2021 also stands disposed of accordingly.

Copy of the order be given *dasti* to learned counsel appearing on behalf of the parties, through electronic mail.

SIDDHARTH MRIDUL, J.

RAJNISH BHATNAGAR, J.

MARCH 25, 2022/‘AA’

[Click here to check corrigendum, if any](#)