2023/DHC/001361

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 2nd December, 2022

Decided on: 24th February, 2023

\+ **CRL.A. 405/2021**

ZEESHAN QAMAR ..... Appellant

Represented by: Ms.Shahrukh Alam, Ms. Rashmi Singh, Mr. Ahmad Ibrahim, Mr. Shantanu, Advocates.

versus

STATE OF NCT DELHI ..... Respondent

Represented by: Mr.S.V.Raju, ASG with Mr. A. Venkatesh Rao, Mr. Ankit Bhatia, Mr. Harsh Paul Singh & Ms. Madhumita Kesavan, Advocates.

\+ **CRL.A. 207/2021**

MUSHAB ANWAR ..... Appellant

Represented by: Mr. Jawahar Raja, Ms. Varsha Sharma and Mr.Archit Krishna, Advocates.

Versus

NATIONAL INVESTIGATION AGENCY ..... Respondent

Represented by: Mr. Vikramjit Banerjee, ASG with Mr. Akshai Malik, SPP, Mr. Khawar Saleem and Ms.Prachi Nirwan, Advocates with Inspector Ajay Singh, NIA.

+ **CRL.A. 208/2021**

MUSHAB ANWAR ..... Appellant

Represented by: Mr. Jawahar Raja, Ms. Varsha Sharma and Mr.Archit Krishna, Advocates.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent

Represented by: Mr. Vikramjit Banerjee, ASG with Mr. Akshai Malik, SPP, Mr. Khawar Saleem and Ms.Prachi Nirwan, Advocates with Inspector Ajay Singh, NIA.

+ **CRL.A. 214/2021**

DR. RAHEES RASHEED ..... Appellant

Represented by: Md. Irshad Hanif, Mr. Mohit Kumar and Mr. Rizwan Ahmad, Advocates.

versus

NATIONAL INVESTIGATING AGENCY ..... Respondent

Represented by: Mr. Vikramjit Banerjee, ASG with Mr. Akshai Malik, SPP, Mr. Khawar Saleem and Ms.Prachi Nirwan, Advocates with Inspector Ajay Singh, NIA.

+ **CRL.A. 2/2022**

MIZHA SIDDEEQUE & ANR. ..... Appellant

Represented by: Mr. Ashok Aggarwal, Mr. Dhruv Sharma and Ms.Aditi Saraswat, Advocates.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent

Represented by: Mr. Vikramjit Banerjee, ASG with Mr. Akshai Malik, SPP, Mr. Khawar

Saleem and Ms.Prachi Nirwan, Advocates with Inspector Ajay Singh, NIA.

\+ **CRL.A. 59/2022**

MOHD. MANAN DAR@MANAN ..... Appellant
Represented by: Ms. Tara Narula, Ms. Tamanna Pankaj, Ms. Priya V. and Ms.Priya Sahil, Advocates.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent
Represented by: Sh. Gautam Narayan, SPP with Ms. Asmita Singh, Advocate for NIA.

\+ **CRL.A. 79/2022**

HANAN GULZAR DAR ..... Appellant
Represented by: Ms. Tara Narula, Ms. Tamanna Pankaj, Ms. Priya V. and Ms.Priya Sahil, Advocates.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent
Represented by: Sh. Gautam Narayan, SPP with Ms. Asmita Singh, Advocate for NIA.

\+ **CRL.A. 80/2022**

ZAMIN ADIL BHAT ..... Appellant
Represented by: Ms. Tara Narula, Ms. Tamanna Pankaj, Ms. Priya V. and Ms.Priya Sahil, Advocates.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent
Represented by: Sh. Gautam Narayan, SPP with Ms. Asmita Singh, Advocate for NIA.

\+ **CRL.A. 89/2022**

HARIS NISAR LANGOO ..... Appellant

Represented by: Ms. Tara Narula, Ms. Tamanna Pankaj, Ms. Priya V. and Ms.Priya Sahil, Advocates.

versus

NATIONAL INVESTIGATION AGENCY ..... Respondent

Represented by: Sh. Gautam Narayan, SPP with Ms. Asmita Singh, Advocate for NIA.

\+ **CRL.M.C. 1479/2021**

DR. RAHEES RASHEED ..... Petitioner

Represented by: Md. Irshad Hanif, Mr. Mohit Kumar and Mr. Rizwan Ahmad, Advocates.

versus

NATIONAL INVESTIGATING AGENCY ..... Respondent

Represented by: Mr. Vikramjit Banerjee, ASG with Mr. Akshai Malik, SPP, Mr. Khawar Saleem and Ms.Prachi Nirwan, Advocates with Inspector Ajay Singh, NIA.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J.

1. These appeals raise common issues regarding the validity of extension of the period of detention beyond 90 days under Section 43D(2)(b) of the Unlawful Activities (Prevention) Act, 1967 (in short, 'UAPA'). By Crl.A. 405/2021, appellant Zeeshan Qamar challenges the order dated 9th December, 2021 passed by the Trial Court, whereby the learned Special Judge extended the period of investigation and judicial custody of Zeeshan Qamar till 11th February 2022. By Crl.A. 207/2021 and Crl.M.C. 1479/2021, appellant Mushab Anwar and petitioner Dr. Rahees

Rasheed respectively challenge the order dated 10th June, 2021 passed by the Trial Court in RC-05/2021/NIA/DLI extending appellant's judicial custody and period of investigation. Petitioner Dr. Rahees Rasheed also challenges the order of Trial Court dated 16th June, 2021, which extends petitioner's judicial custody and period of investigation. By Crl.A. 208/2021 and Crl.A. 214/2021, appellants Mushab Anwar and Dr. Rahees Rasheed respectively, challenge the order dated 16th June, 2021 whereby the period of detention and investigation was extended from 90 days to 180 days and the application for default bail under Section 167 (2) of Code of Criminal Procedure, 1973 ('Cr.P.C.') read with 43D(2)(b) UAPA was rejected by the Trial Court, and the appellants were sent to judicial custody for 30 days till 16th July 2021. By Crl.A. 2/2022, appellants Mizha Siddeeque and Shifa Haris challenge order of Trial Court dated 11th November, 2021, extending the period of detention and investigation to 180 days and also the order dated 29th November, 2021 rejecting the application of appellants seeking statutory bail under Section 167 (2) Cr.P.C. read with Section 43D (2) (b) UAPA. By Crl.A. 59/2022, Crl.A. 79/2022, Crl.A. 80/2022 and Crl.A. 89/2022, appellants Mohd. Manan Dar @ Manan, Hanan Gulzar Dar, Zamin Adil Bhat and Haris Nisar Langoo respectively challenge the order dated 17th January 2022 of the Trial Court whereby the period of detention and investigation was extended for a period of 90 days to 180 days.

2. <u>Contentions on behalf of the appellants:</u>

2.1. Ms. Shahrukh Alam, learned counsel for appellant Zeeshan Qamar contended that extension of period of detention beyond a period of 90 days can be done only if the Trial Court is satisfied with the Public Prosecutor's

report indicating the progress of investigation and specific reasons for detention of accused beyond a period of 90 days and such extension can be granted only where it is not possible to complete the investigation within the initial period of 90 days. It was contended that the phrase "not possible" has to be interpreted as "impossible" with an element of finality and the prosecution must establish a higher threshold to obtain extension of period of investigation. Further, Section 43D (2) UAPA refers to Section 167 Cr.P.C. as the genesis for period of investigation and consequent remand. It was contended that from a perusal of said Sections, only upon the satisfaction of the Magistrate of the existence of adequate grounds can such extension be granted. Based on the data available on the NIA website, it is contended that in almost all UAPA cases an extension of period was sought beyond 90 days which has been granted by the Court. Learned counsel for the appellant relied upon the decision of Privy Council reported as (1926) AC 497 *Hirji Mulji & Ors. vs. Cheong Yue Steamship Co. Ltd.* to impress that the doctrine of impossibility relates to special exceptions as the justice demands and not in every case. Reference was made to Advanced Law Lexicon, Black's Law Dictionary and illustration (a) to Section 11 of the Indian Evidence Act to illustrate the meaning of "impossible". Reliance was further placed on the decision of Hon'ble Supreme Court in (2020) SCC OnLine SC 529 *S.Kasi vs. State* to contend that non-filing of charge-sheet within the prescribed period even due to the reason of lockdown, which was observed to be akin to the proclamation of emergency, should not take away the right of an accused to pray for grant of default bail since the fundamental right of a citizen continues to be protected. Attention of this Court was also drawn to Section 65 of the Delhi Police Act, 1978 as per

which an accused can be released even when the investigation is under progress by imposing reasonable directions on such accused and in case, if such accused resists, refuses or fails to comply with any such direction, strict penalty may be imposed. It was further contended that Section 167 (2) of Cr.P.C. is integrally linked to the constitutional commitment under Article 21 of the Constitution of India and hence, the said provision must be interpreted in a manner which serves this purpose. Reliance was placed on the decisions of the Hon'ble Supreme Court in (2017) 15 SCC 67 *Rakesh Kumar Paul vs. State of Assam* and (2022) SCC OnLine SC 825 *Satender Kumar Antil vs. CBI & Anr.* Reliance was also placed on the decision of Punjab & Haryana High Court in CRR 1780/2021 (O&M) *Jaswinder Singh vs. State of Haryana* wherein it was held that even in Narcotics Drugs and Psychotropic Substances ('NDPS') cases extensions ought to be given in the rarest of rare cases. Reliance was also placed on the decision cited as (2021) 3 SCC 713 *Union of India vs. K.A. Najeeb*, (2021) SCC OnLine SC 261 *Lt. Col. Nitisha & Ors. vs. Union of India & Ors.,* (2020) 3 SCC 637 *Anuradha Bhasin vs. Union of India.* Learned counsel for the appellant contended that the application seeking extension of remand essentially focuses on the gravity of the offence much less the specific reasons for seeking such extension of remand. It was further contended that the said application seeking extension of remand is vitiated *inter alia* on the grounds that it fails the test of proportionality, it is extremely broad and generic in nature and it also fails to meet the specific requirements of the proviso to Section 43D (2) UAPA. It was further contended that the said application also goes against the decision of the Hon'ble Supreme Court reported as (1994) 4 SCC 602 *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra*

& Ors. and also that conditions can always be imposed on the accused in terms of Section 65 of the Delhi Police Act.

2.2. Mr.Jawahar Raja, learned counsel for appellant Mushab Anwar contended that the impugned order was passed on the basis of gravity of offence and not on the satisfaction of the Public Prosecutor's report and consequently, the extension so granted was illegal and without jurisdiction. It was further contended that even if it is assumed that the impugned order was based on the report of the Public Prosecutor, the same would still be unsustainable as the report was not supplied to the accused. It was further contended that the Special Court is mandated to extend the period of detention of the accused beyond 90 days only upon satisfaction on Public Prosecutor's report and such report should indicate the progress of investigation as also the specific reasons for detention of the accused. Reliance was placed on the decision in *Hitendra Vishnu Thakur* (supra) to contend that the Public Prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting such report to the Court and should not act merely as a post office or a forwarding agency. Reliance was further placed on the decision of Hon'ble Supreme Court in (1994) 5 SCC 410 *Sanjay Dutt vs. State through CBI* to contend that Section 20(4)(bb) of Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which is *pari materia* to Section 43D (2) of UAPA, required notice to be given to the accused before granting extension of remand which need not be necessarily a written notice but merely production of accused in the Court was considered sufficient for that purpose. Reliance was placed on the decision in (1996) 1 SCC 44 *Devendrapal Singh vs. Govt. of NCT of Delhi* wherein both the above-noted

decisions in <u>*Hitendra Vishnu Thakur*</u> (supra) and <u>*Sanjay Dutt*</u> (supra) were noted by the Hon'ble Supreme Court and it was opined that an order granting extension passed by the Special Court of TADA without any Public Prosecutor's report and without producing and informing the appellant that question of extension of remand was being considered, was rendered erroneous and unsustainable. It was further contended that right to file for default bail is not extinguished on the filing of the charge-sheet and for this purpose reliance was placed on the decision in (2021) 2 SCC 485 <u>*M Ravindran vs. Directorate of Intelligence.*</u> It was further contended that as per Section 44 of UAPA, certain matters have been listed by the Legislature which are not to be disclosed and the same do not include Public Prosecutor's report. Further, no such prohibition has been canvassed under Section 43D (2) of UAPA either. Special Court cannot be permitted to read into the provisions, any prohibition which has consciously been omitted, and deprive the accused of the document on the basis of which his custody is extended without filing of the charge-sheet.

2.3. Learned counsel for appellant Dr. Rahees Rasheed adopted the arguments put forth by counsel for appellant Mushab Anwar.

2.4. Ms.Tara Narula, learned counsel for the appellants Mohd. Manan Dar @ Manan, Hanan Gulzar Dar, Zamin Adil Bhat and Haris Nisar Langoo contended that the provision *pari materia* to Section 43D(2) of UAPA under TADA and POTA used the word "*shall*" which has been diluted to "*may*" under UAPA and therefore, greater emphasis has been placed on the adjudication by the Court. It was contended that even at the stage of arrest/remand, the accused is provided with the copy of FIR or the remand application or the remand report, as the case may be, and therefore, it would

be nothing unusual if the Public Prosecutor's report is provided to the accused. Attention of this Court was drawn to Clause-7 of the Delhi High Court Rules where it has been mentioned that for seeking longer custody of the accused, stronger grounds should be brought on record and thus, the threshold for seeking extension of remand is extremely high. Reliance was placed on the Lok Sabha debates pertaining to the introduction of Unlawful Activities (Prevention) Amendment Bill, 2008 wherein the then Minister of Home Affairs suggested that the Bill was being presented pursuant to a fair balance of all views without compromising the ability of the agency to prosecute the offence and without disregarding fundamental basic human rights and the proviso was being introduced as an exceptional situation "only if report indicated progress of investigation". Learned counsel for the appellant relied upon the judgment in *Hitendra Vishnu Thakur* (supra) and contended that the Court must apply its mind if the offence is made out in the first place and if not, no extension should be granted; if UAPA is attracted, then investigation shall be concluded within a period of 90 days and only if the investigation is not complete, the Public Prosecutor shall scrutinize and apply a threshold of impossibility; if the Public Prosecutor finds delay in investigation, he may not seek for extension; the Public Prosecutor's report is then to be scrutinized by the Court and the Court shall hear the accused on such report after giving him due notice; and such reasons must be independently given and not as a blanket generic reason. Learned counsel further relied upon the decision of Hon'ble Supreme Court in (1981) 4 SCC 173 *K.P. Varghese vs. Income Tax Officers, Ernakulam & Anr.* and contended that where plain literal interpretation of a statutory provision produced a manifestly absurd and unjust result which could never

have been intended by the Legislature, the Court may modify the language used by the Legislature or even make changes to achieve the obvious intention of the Legislature and produce a rational construction. Thus, in the present case, the Court should adopt a fair and reasonable construction if the plain interpretation was causing injustice which the Legislature could not have intended as is evident from the Lok Sabha debates. It was further contended that the Public Prosecutor's report is not like a case diary and in fact Section 173(6) of Cr.P.C. allowed exclusion of certain part of charge-sheet if such part was not essential to be disclosed in the interest of justice and therefore, complete prohibition on disclosure of the Public Prosecutor's report would not be necessary as it would also render the issuance of "notice" meaningless. It was further contended that specific reasons for detention of each accused should be brought on record and it cannot be a general copy paste effort on behalf of the Court without application of its judicial mind.

2.5. Mr.Ashok Aggarwal, learned counsel for Mizha Siddeeque and Shifa Haris contended that a bare perusal of the impugned order of the Trial Court makes it clear that the Public Prosecutor's report did not contain any specific reason to extend the judicial custody of the appellants for the purpose of investigation beyond the period of 90 days and therefore, the appellants are entitled to be released on default bail under Section 167 (2) Cr.P.C. read with Section 43D (2) UAPA. It was further contended that the Trial Court failed to provide copy of the Public Prosecutor's report to the appellant upon which the impugned order was based, thereby failing to comply with the mandatory requirements as laid down in ***Hitendra Vishnu Thakur*** (supra). It was further contended that unlike the case diary which is

an original record maintained contemporaneously with the investigation, the Public Prosecutor's report is a derivative document based on the case diary and therefore, the same should be provided to the appellant. The only way, Public Prosecutor's report would be kept back was by invoking privilege under Section 123 of the Indian Evidence Act. Reliance was placed on the decision in 1981 (Supp.) SCC 87 *S.P. Gupta vs. Union of India & Anr.* to contend that the said judgment makes it clear that it is essential to provide the detenu with a copy of the Public Prosecutor's report so as to enable him to effectively defend his right to life and liberty guaranteed under Article 21 of the Constitution. The Legislature while enacting Section 43D(2)(b) of UAPA did not bar the supply of the Public Prosecutor's report to the accused and in the absence of any express bar with respect to the same, such a report could not have been kept back from the accused. It was further contended that once the indefeasible right to default bail has accrued to the appellant, the same cannot be frustrated by the prosecution on any pretext as laid down in (2020) 10 SCC 616 *Bikramjit Singh vs. State of Punjab*. It was further submitted that mere listing of steps taken for further investigation including the fact that FSL reports are awaited or that the investigation of electronic record is pending cannot be a ground for extension of time of investigation and detention of accused in terms of Section 43D (2) (b) UAPA and reliance was placed on the decision (2009) 17 SCC 631 *Sanjay Kumar Kedia vs. Intelligence Officer, NCB & Anr*.

3. Contentions on behalf of the respondents:

3.1. Countering the above noted contentions, Mr.S.V.Raju, learned Additional Solicitor General appearing on behalf of State of NCT of Delhi submitted that the accused has no right to claim the Public Prosecutor's

report and the same need not be supplied to the accused. Learned ASG contended that a bare reading of Section 167 Cr.P.C. discloses that there is nothing in the provision to suggest that there would be any periodic time mechanism unlike Section 309 Cr.P.C. that would require an application of mind for ordering judicial custody beyond 15 days. The learned ASG agreed that remand was a judicial function but contended that the nature of the judicial function would differ depending on the stage of the matter. Relying upon the judgment of Hon'ble Supreme Court in (1978) 1 SCC 118 *Gurcharan Singh vs. State* it was contended that during the initial investigation of a case, in order to confine a person in detention, there should only be reasonable grounds for believing that the accused is guilty of an offence however, after submission of charge-sheet, the Court has an opportunity to form a clearer opinion as to whether there are reasonable grounds for believing whether the accused is guilty or not for the alleged offence and thus, it was submitted that the extension of detention of the accused either under Section 43D (2) UAPA would simply be refused if grounds for bail are not made out, since there was a perceptible overlap between grounds for bail and grounds for extension. Emphasis was laid on the fact that provision of Section 167 Cr.P.C. on which Section 43D (2) of UAPA was based focused on detention of the accused. It was further contended that the phraseology "further investigation" utilized for the assessment and scope of Section 43D (2) of UAPA is a misnomer since that phrase is used for investigation post filing of the charge-sheet as per Section 173(8) Cr.P.C. The learned ASG drew attention of this Court to Second proviso to Section 43D (2) of UAPA which conferred power to the police to request for police custody of a person in judicial custody. He contended that

the decision in (1992) 3 SCC 141 *CBI vs. Anupam J. Kulkarni* was rendered at naught by the said proviso and the Court in (2021) SCC OnLine SC 382 *Gautam Navlakha vs. NIA*, had noticed this as well, where the Hon'ble Supreme Court adverted to this issue and referring to its earlier decision in (2004) 6 SCC 672 *Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat*, observed that the Court while addressing an issue of Section 49 (2) (b) of POTA which was *pari materia* to the UAPA provision in question, rejected the contention of the appellant and held that the application for police custody can be made as per the proviso by filing an affidavit by the investigating officer which provided sufficient safeguard. Learned ASG reiterated that the second proviso in Section 43D (2) of UAPA would not have been necessary in case Section 167 Cr.P.C. allowed additional periods for remand and it was axiomatic that these provisos and Special Acts were an exception to Section 167 Cr.P.C. Learned ASG drew attention to the decision of the Hon'ble Supreme Court in (2022) SCC OnLine SC 1290 *Jigar vs. State of Gujarat*, where in the context of the Gujarat Control of Terrorism & Organised Crime Act, 2015, the Hon'ble Supreme Court noted that as regards the Public Prosecutor's report, the accused may not be entitled to know the contents of the report but he is entitled to oppose the grant of extension of time on the grounds available to him in law. Learned ASG then relied upon the decision of the Constitution Bench of the Hon'ble Supreme Court in (1989) 3 SCC 202 *I.J. Rao, Assistant Collector of Customs & Ors. vs. Bibhuti Bhushan Bagh*, where in a situation relating to Customs Act, the Supreme Court rejected the contention that the persons from whose possession goods were seized, should be entitled to know how investigation against him is proceeding and the material connecting him at

that stage. In (1993) Supp 4 SCC 260 *Union of India vs. W. N. Chadha*, the Hon'ble Supreme Court held that the accused cannot claim any right of prior notice or an opportunity of being heard in case of his arrest or search or seizure connected with the crime unless provided under law. This was in the context of issuing letter rogatory and whether prior notice ought to have been given to him at that stage. Attention was further drawn to the decision of the High Court of Madras (Division Bench) in (2022) SCC OnLine Madras 4771 *T. Keeniston Fernando & Anr. vs. State*, where in a matter relating to UAPA, the Court rejected the petitioner's contention that copy of the Public Prosecutor's report should have been served on the accused and they ought to have been heard. Learned ASG further placed reliance on the decision of the Hon'ble Supreme Court in (2009) 7 SCC 480 *Mustaq Ahmed Mohammed Isak & Ors. vs. State of Maharashtra*, where the Hon'ble Supreme Court in the context of MCOCA held that Section 167 (2) Cr.P.C. itself indicates that power of remand has to be exercised from time to time and therefore, rejected the contention that there was no provision for granting extension piecemeal for the extended period. Learned ASG then relied upon the decision of the High Court of Madras in (2018) SCC OnLine Mad 9881 *Mubarak vs. Union of India*, where the Division Bench of the Hon'ble High Court of Madras has held that "*extension of remand is clearly allowed for different periods rather than a single stretch since Section 43D (2) (b) employs the terms "upto" for extending the period of remand from 90 to 180 days."* In the appeal filed against this decision of High Court of Madras before the Hon'ble Supreme Court, the Apex Court in (2019) 6 SCC 252 *Union of India vs. Mubarak* did not differ on this issue and additionally

laid down the necessary ingredients of proviso to Section 43D(2) (b) of UAPA.

3.2. Mr. Gautam Narayan, learned Spl.P.P. appearing for NIA submitted that extension of the period of detention by Court under enactments like UAPA, MCOCA, POTA, TADA and NDPS can be granted only pursuant to the Public Prosecutor's report indicating satisfaction with the progress of investigation and specific reason for continued detention. The same however, is subject to the satisfaction of the Court based on the report of the Public Prosecutor. The Legislature had used the word "shall" under TADA and POTA, while the proviso to Section 43D (2) of UAPA uses the word "may" which therefore, is a diluted provision and allows for more flexibility for the Court to decide even in favour of the accused. To buttress his contention reliance was placed on the decision in *Hitendra Vishnu Thakur* (supra) wherein it was held that the court had to independently apply its mind to the Public Prosecutor's report to decide whether extension is to be granted or not. It was contended that firstly, the use of word "may"; secondly, the issuance of notice to the accused; thirdly, by independent application of mind by the Public Prosecutor and fourthly, by application of mind by the Court, supplying of copy of the Public Prosecutor's report would not be necessary specially when Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra) extended the privilege to grant of notice only and not to supply of the report. Learned counsel further placed reliance on the decision in (2019) 16 SCC 707 *Saquib Abdul Hamid Nachan vs. State of Maharashtra* to contend that Public Prosecutor's report is not the final word on the subject, rather is subject to scrutiny by application of judicial mind by the Court. Reliance was also placed on the decision in *Sanjay Dutt*

(supra) wherein the Supreme Court after relying upon *Hitendra Vishnu Thakur* (supra) affirmed the requirement of issuance of notice to the accused but also noted that the production of accused at the time of the consideration of application of extension will constitute sufficient notice of the application, as opposed to a written notice. It was submitted that the supply of the Public Prosecutor's report to the accused is not a pre-requisite of a valid notice, as the said report is a synopsis of the progress of investigation from the case diary, and the case diaries cannot be supplied to the accused under Section 172(3) Cr.P.C., and therefore, providing copy of the Public Prosecutor's report would tantamount to doing something indirectly, which cannot be done directly and contrary to the provision of Section 172(3) Cr.P.C. Reliance was placed on (2018) 250 DLT 283 *Syed Shahid Yousuf vs. NIA*. It was thus contended that it is the duty of the Court to balance the integrity of investigation on one hand and liberty of the accused on the other hand and hence, there is no need to supply the unredacted or redacted copies of the Public Prosecutor's report to the accused at the stage of seeking extension of period of investigation and the consequential remands. Further, reliance was further placed on the decisions in (2021) SCC OnLine Del 2500 *Shifa-ur-Rehman vs. State (NCT of Delhi)* and (2014) SCC OnLine Del 3966 *Syed Maqbool vs. NIA* to contend that the accused can oppose the application seeking extension of period of investigation by placing on record facts within his knowledge. It was also held that the details of investigation cannot be exposed to the accused if the charge-sheet has not been filed and as the Public Prosecutor's report is made at a stage when the investigation is incomplete, providing the same can adversely affect, frustrate or impede the investigation.

3.3. Mr.Gautam Narayan, learned Spl.P.P. further contended that the parameter used for extension of period of completing the investigation was “not possible” and the same cannot be equated with “impossibility”, for there are various situations where procuring electronic evidences takes a longer time due to data crunching and follow up and therefore, it is not a case of impossibility but a case that it could not be completed within the time initially allotted. It was submitted by the learned counsel for NIA that if an application for extension is not granted/allowed by the Court, in terms of the decisions in *Sanjay Dutt* (supra) and *Hitendra Vishnu Thakur* (supra) even for availing default bail, the accused would be required to apply for bail and furnish bail bonds even though it is an indefeasible right, and to buttress this argument reliance was placed on the decision reported as (2001) 5 SCC 453 *Uday Mohanlal Acharya vs. State of Maharashtra* wherein the Hon’ble Supreme Court held that the accused would be released if he furnishes bail in exercise of his indefeasible right, but if he fails to furnish the bail and the challan is filed then the right of the accused would stand extinguished. Learned counsel contended that an accused would not be entitled to bail even if the period of remand permissible under the provision under Section 167(2) has expired, until and unless, an application for bail is made and the bail bond is furnished. It was submitted that the plain language of the provision under Section 167(2) must be relied upon, and it does not require any further interpretation or construction, as laid down by the Supreme Court in (2019) 5 SCC 178 *State of Maharashtra vs. Surendra Pundlik Gadling & Ors*. It was further contended that the four requirements for proviso to Section 43D (2) (b) of UAPA are; firstly, it was not possible to complete the investigation within 90 days; secondly, report

to be submitted by the Public Prosecutor; thirdly, the said report indicates the progress of investigation and specific reasons for retention of accused beyond 90 days; and fourthly, satisfaction of the Court in respect of the said report as laid down in the decision of (2019) 6 SCC 350 *State vs. Shakul Hameed*. It was contended by learned counsel that as per Section 167 (2) Cr.P.C., the provision related to police custody since it mandated a term not exceeding 15 days in the whole and the proviso dealt with custody beyond police custody. It was contended that the 15 days restriction is only for police custody and judicial custody can be granted as a whole without giving truncated remands. Attention of this Court was drawn to the decision in (1986) 3 SCC 141 *Chaganti Satya Narayan vs. State of A.P.* and (1994) SCC OnLine Del 91 *Rakesh Kumar vs. State* and it was contended that the accused must be produced before the Magistrate after every 15 days in context of IPC offences as also incorporated in para-10 in Chapter-XI Part-B of the Delhi High Court Rules relating to remands to police custody. It was contended that the Special Court is not proscribed from granting extension of 90 days in one go after the initial detention of 90 days. It was submitted that there is no provision in UAPA or any other law which would render the decision of remanding the accused for 90 days as illegal, although as a rule of prudence, the detention should be granted for short intervals of 30 days at a time so as to keep a track on the progress of investigation. It was submitted that it would be fit to grant extension only upon being satisfied that such extension is necessary and that the period extended should be commensurate with the time required for completing the aspects of investigation as highlighted in the Public Prosecutor's report.

3.4. Mr.Vikramjeet Banerjee, learned ASG and Mr.Akshai Malik, Spl. PP appearing for NIA relied upon the judgment cited as (2005) 2 SCC 409 *Prakash Kumar vs. State of Gujarat*, wherein the Hon'ble Supreme Court dealing with provisions of TADA observed that the purpose and objective of such extraordinary laws is to deal with extraordinary situations by providing special procedure and departing from the ordinary procedural laws for the sole reason that the prevalent ordinary laws are inadequate and do not sufficiently and effectively deal with the offenders indulging in terrorist activities. Learned counsels further relied upon the judgment in (2003) 2 SCC 577 *Nasiruddin & Ors. vs. Sita Ram Agarwal* wherein on the point of interpretation of statutes, Hon'ble Supreme Court observed that the Court's jurisdiction can only be invoked when any statute is ambiguous and it is not within the domain of the Court to enlarge the scope of any legislation when the statute in fact is plain and unambiguous. The real intention of the legislation must be gathered from the language used as well as the intention of the Legislature must be found out from the scheme of the Act. And when negative words are used in any provision, the Courts will presume that the intention of the Legislature was that the provision is mandatory in nature. Learned counsels for NIA contended that Section 43D (2) of UAPA does not curtail or restrict the manner in which the extension of remand can be made by the Court and all of it depends upon the subjective satisfaction to be arrived at by the Special Court and in this regard, reliance was placed on the decision reported as MANU/TN/2041/2020 *Rafi Ahmad vs. Deputy Superintendent of Police, NIA Cochin*. Learned counsels further contended that supplying of the Public Prosecutor's report to the accused is not a pre-requisite of a valid notice and that production of accused at the time of

consideration of application for extension of period of investigation will constitute sufficient notice of the application as opposed to a written notice, for which reliance was placed on the decision in *Hitendra Vishnu Thakur* (supra) and *Sanjay Dutt* (supra). It was further contended that when an application seeking extension of period of remand in terms of Section 43D (2) of UAPA is filed, various materials/evidences have to be placed before the Special Court for indicating the progress of investigation as also the reasons for extension of remand. This material would disclose the trajectory of investigation as also names of suspected persons whom the investigating agency wishes to interrogate or arrest, which if disclosed to the accused would provide an easy escape route from the clutches of law. Even the Special Judge of the Designated Court is not required to descriptively pen down the objective facts of the investigation as the same would expose the investigating agency to a severe handicap for the similar reasons. Reliance in this regard was placed on the decision in *Syed Maqbool* (supra) and *T. Keeniston Fernando & Anr.* (supra)

4. **Issues:**

Before dealing the appeals on merits, the following common legal issues based on the contentions of the parties are required to be dealt with:-

i. Whether at the time of extension of time for a further period beyond 90 days' remand by the learned Special Judge under Section 43(D)(2) UAPA, the report furnished by the Public Prosecutor is required to be supplied to the accused?

ii. Whether at the time of extension of the remand for a further period beyond 90 days based on the Public Prosecutor's Report, the Court should satisfy three requirements i.e. what is the progress of the

investigation carried out, whether any further investigation is required to be done and whether continued detention of the accused for further investigation is necessary?

iii. Whether the learned Special Court can grant extension of remand of further 90 days beyond an initial period of 90 days in one go or the said remand should be granted as per the requirement of investigation in a truncated manner so as to oversee the progress in investigation?

5. **Background to the enactment:**

5.1. Section 43D(2) of UAPA reads as under:-

> *"43D. Modified application of certain provisions of the Code--*
> *(2) 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),—*
> *(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".*

5.2. The legislative precursors to Section 43D(2)(b) of UAPA are Section 36(A)(4) of the NDPS Act, Section 20(4) of TADA, Section 21(2) of MCOCA and Section 49(2)(b) of POTA with the Exceptions that Section

43D(2)(b) of UAPA and Section 36(A)(4) of the NDPS Act use the word "may" in relation to the power of the Court to extend the period of detention of the accused, whereas, Section 20(4) of TADA, Section 21(2) of MCOCA and Section 49(2)(b) of POTA use the word "shall".

5.3. Acknowledging the supervision of the Designated Court in serious offences, Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra) held that an onerous duty is cast on the Designated Courts to take extra care to scrutinize the material on record and apply their mind to the evidence and documents available with the investigating agency before charge-sheeting an accused for an offence under TADA. It was held that the stringent provisions of the Act coupled with the enhanced punishment prescribed for the offences under the Act make the task of the Designated Court even more onerous because graver the offence, greater care should be taken to see that the offence falls strictly within the four corners of the Act before a charge is framed against an accused person. If the Designated Court, without finding any prima facie case on the basis of material on record proceeds to charge an accused under the provisions of TADA merely on the statement of the investigating agency, it acts as a post office of the investigating agency and does more harm to meet the challenge arising out of the terrorist activities rather than deterring terrorist activities. It is in the light of these facts that the Hon'ble Supreme Court administered the word of caution to the Designated Courts regarding invoking of the provisions of TADA merely because investigating officer, at some stage of investigation, chooses to add an offence under the said provisions of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise.

5.4. Thus, the Designated Courts should always carefully consider the material available on record and apply their mind to ascertain whether on the material collected by the investigating agency, provisions of UAPA are even prima facie attracted or not. This is all the more essential for the reason that in case the provision of UAPA itself is prima facie not attracted, the Designated Court has no jurisdiction to either grant the remand or extend the remand as contemplated under Section 43D(2)(b) of UAPA.

5.5. Hon'ble Supreme Court in the decision reported as (2017) 15 SCC 67 *Rakesh Kumar Paul vs. State of Assam* noted the legislative history of Section 167 Cr.P.C. as under:-

> *"10. The Code of Criminal Procedure enacted in 1898 contained Section 167 which laid down the procedure to be followed in the event the investigation into an offence is not completed within twenty-four hours. What is significant is that the legislative expectation was that the investigation would ordinarily be completed within twenty-four hours. Incidentally, this legislative expectation continues till today. Whatever be the anxiety of the Legislature in 1898, there can be no gainsaying that investigation into an offence deserves an early closure, one way or the other. Therefore, when Section 167 was enacted in the Code of Criminal Procedure, 1898 it was premised on the conclusion of investigations within twenty-four hours or within 15 days on the outside, regardless of the nature of the offence or the punishment. Section 167 of the Code of Criminal Procedure, 1898 reads as follows:*
>
> > *"167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation if he is not below the rank of Sub-Inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorise detention in the custody of the police.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-Divisional Magistrate, he shall forward a copy of his order, with his reasons for making it to the Magistrate to whom he is immediately subordinate."

11. Unfortunately, all laws tend to be misused whenever opportunity knocks, and Section 167 of the Code of Criminal Procedure, 1898 was no exception. Since there was a practical difficulty in completing investigations within the 15-day time-limit, the prosecution often took recourse to the provisions of Section 344 of the Code of Criminal Procedure, 1898 and filed a preliminary or incomplete report before the Magistrate to keep the accused in custody. The Law Commission of India noted this in its 41st Report (after carefully studying several earlier Reports) and proposed to increase the time-limit for completion of investigations to 60 days, acknowledging that:

"14.19. ...such an extension may result in the maximum period becoming the rule in every case as a matter of routine; but we trust that proper supervision by the superior courts will prevent that."

The view expressed by the Law Commission of India and its proposal is as follows:

"14.19. Section 167.—Section 167 provides for remands. The total period for which an arrested person may be remanded to custody—police or judicial—is 15 days. The assumption is that the investigation must be completed within 15 days, and the final report under Section 173 sent to court by then. In actual practice, however, this has frequently been found unworkable. Quite often, a complicated investigation cannot be completed within 15 days, and if the offence is serious, the police naturally insist that the accused

be kept in custody. A practice of doubtful legal validity has therefore grown up. The police file before a Magistrate a preliminary or "incomplete" report, and the Magistrate, purporting to act under Section 344, adjourns the proceedings and remands the accused to custody. In the Fourteenth Report, the Law Commission doubted if such an order could be made under Section 344, as that section is intended to operate only after a Magistrate has taken cognizance of an offence, which can be properly done only after a final report under Section 173 has been received, and not while the investigation is still proceeding. We are of the same view, and to us also it appears proper that the law should be clarified in this respect. The use of Section 344 for a remand beyond the statutory period fixed under Section 167 can lead to serious abuse, as an arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner. It is, therefore, desirable, as was observed in the Fourteenth Report, that some time-limit should be placed on the power of the police to obtain a remand, while the investigation is still going on; and if the present time-limit of 15 days is too short, it would be better to fix a longer period rather than countenance a practice which violates the spirit of the legal safeguard. Like the earlier Law Commission, <u>we feel that 15 days is perhaps too short, and we propose therefore to follow the recommendation in the Fourteenth Report that the maximum period under Section 167 should be fixed at 60 days</u>. We are aware of the danger that such an extension may result in the maximum period becoming the rule in every case as a matter of routine; but we trust that proper supervision by the superior courts will prevent that.

XXX XXX XXX

12. The recommendations of the Law Commission of India were carefully examined and then accepted. The basic considerations for acceptance, as mentioned in the Statement of Objects and Reasons dated 7-11-1970 for introducing the (new) Code of Criminal Procedure, 1973 were:

"3. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations—

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) <u>every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and</u>

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal courts."

13. Accordingly, Section 167 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was enacted as follows, with the recommended time-limit and again regardless of the nature of the offence or the punishment:

"167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of Sub-Inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, <u>beyond the period of fifteen days if he is satisfied that adequate grounds exists for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail</u>; and

every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

XXX XXX XXX

14. A few years later in 1978, a need was felt to amend Section 167 Cr.P.C. by not only extending the period for completing investigation but also relating that period to the offence. Therefore, a shift was proposed to grant an aggregate period of 90 days for completing the investigation in cases relating to offences punishable with death, imprisonment for life or "imprisonment for not less than ten years or more" and up to 60 days in any other case, as stated in the Notes on Clauses accompanying the Statement of Objects and Reasons dated 9-5-1978 for amending the statute. What is of significance (for our purposes) is the use of the words "imprisonment for not less than ten years or more". In our opinion, the use of the words "or more" gives a clear indication that the period of 90 days was relatable to an offence punishable with a minimum imprisonment for a period of not less than ten years, if not more. The Notes on Clauses reads as follows:

"Clause 13.— Section 167 is being amended to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 90 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for not less than ten years or more and up to 60 days in any other case. These amendments are intended to remove difficulties which have been actually experienced in relation to the investigation of offences of a serious nature.

A new sub-section is being inserted empowering an Executive Magistrate…."

15. When Section 167 Cr.P.C. was enacted, it was perhaps felt that the words "or more" were superfluous (as indeed we believe that they are in the context of the use of the words "not less than") and Section 167 came to read:

"167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of Sub-Inspector, shall forthwith transmit to the nearest Judicial Magistrate

a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

XXX XXX XXX

16. Generally speaking therefore, it could be said that the legislative intent is and always has been to complete the investigation into an offence within twenty-four hours, failing which within 15 days (Cr.P.C. of 1898). The period of 15 days was later extended to 60 days (Cr.P.C. of 1973) and eventually it was extended to 90 days if the investigation was relatable to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. In respect of all other offences, the period of 60 days remained unchanged".

(Emphasis supplied)

5.6. A perusal of the various amendments brought to Section 167 of the Cr.P.C. thus reveals that though initially the investigation was envisaged to

be completed within 24 hours, however, the same was extended to 15 days and then to 60 days, which was further extended to a period of 90 days for offences punishable with not less than 10 years of imprisonment by the amendment brought in the year 1978 to the Cr.P.C. Since at the stage of investigation, the accused is in detention without any trial, the outer limit of the time has been provided to ensure expeditious conclusion of the investigation and during the said period, if necessary, to remand the accused to custody.

5.7. Even in jurisdictions outside India, there is specific emphasis on ensuring a limited period for pre-charge detention, however for 'terror' offences, time period for pre-trial detention and investigation has been extended. In the United Kingdom, Section 23(7) of the Terrorism Act, 2006 stipulates that an accused in a terror offence can be detained in police custody upto 28 days as compared to 96 hours in case of other offences. Further, as per the Prosecution of Offences (Custody Time Limit) Regulation, 1987, the maximum period to which an accused can be remanded to custody between committal of accused for trial and arraignment is 112 days. This period is further extendable at the discretion of the Court if the prosecution can show, it had acted with due diligence and expedition in terms of Section 22(3) of the Prosecution of Offences Act, 1985.

5.8 It is thus evident that all legislative amendments have emphasized on the expeditious completion of investigation and keeping in view the complexities of investigation required to be carried, extended the time for completion of investigation. Further the time for investigation of serious

offences like under NDPS Act, TADA, POTA, UAPA etc. was permitted to be extended by the Courts considering the challenges in such investigations.

6. **Issue No. I - Whether report of the Public Prosecutor is required to be furnished to accused?**

6.1. A criminal prosecution is conducted by the State as an offence is committed against the society at large and thus, in terms of Section 24 Cr.P.C., Public Prosecutors and Additional Public Prosecutors/Special Public Prosecutors are appointed to conduct the prosecution on behalf of the State. A Public Prosecutor is required to carry out the said function fairly, impartially, objectively and within the framework of the provisions of the law. A Public Prosecutor has, at all times, to ensure that the accused is tried fairly. He should consider the legitimate interest and possible concern of the witnesses and victims. He is supposed to refuse evidence reasonably believed to have been obtained through recourse to unlawful methods. His acts are always to protect the public interest. [See *(2010) 6 SCC 1 Manu Sharma vs. State (N.C.T. of Delhi), (2013) 5 SCC 277 Deepak Aggarwal vs. Keshav Kaushik & Ors.].*

6.2. Interpreting the provision of Section 167 Cr.P.C. as modified under Sub-Section 4 of Section 20 of TADA and the role of the Public Prosecutor, Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra) held as under:

> *"21. Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on*

the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating prosecuting agency and once such an application is made, the court should issue a notice to the Public Prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'. Similarly, when a report is submitted by the Public Prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the Public Prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the Public Prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party. We must as already noticed reiterate that the objection to the grant of bail to an accused on account of the 'default' of the

prosecution to complete the investigation and file the challan within the maximum period prescribed under clause (b) of sub-section (4) of Section 20 TADA or within the extended period as envisaged by clause (bb) has to be limited to cases where either the factual basis for invoking the 'default' clause is not available or the period for completion of investigation has been extended under clause (bb) and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution.

XXX XXX XXX

23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the Public Prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is In tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the Public Prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The Public Prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A Public Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the

court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the Public Prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The Public Prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on 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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the Public Prosecutor. The report of the Public Prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the Public Prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the Public Prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the Public Prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the Public Prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an

extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the Public Prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the Public Prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the Public Prosecutor and emphasized that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the Public Prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the Public Prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an

accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.

(Emphasis supplied)

6.3. Clarifying the law laid down by the two Judges' Bench of the Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra) the Constitution Bench in *Sanjay Dutt* (supra), held that the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-Section (4) of Section 20 of TADA Act stands satisfied by the production of the accused before the Designated Court.

6.4. Emphasizing on the need of an independent application of mind by the Public Prosecutors, Hon'ble Supreme Court in *Surendra Pundlik Gadling* (supra), held that the mandatory requirement of a Public Prosecutor's report under Section 20(4)(bb) of TADA by the Legislature was to not leave to the I.O. to make an application for seeking extension of time from the Court, thereby, requiring the investigating agency to submit itself to the scrutiny of the Public Prosecutor, in the first instance and satisfying him about the progress of investigation and furnishing reasons for seeking further custody of an accused. The Public Prosecutor is not a part of investigating agency but an independent statutory authority and thus, is expected to independently apply his mind to the request of the investigating agency, before submitting a report to the Court for extension of time with a view to enable the investigating agency to complete its investigation. Therefore, if the Public Prosecutor finds that the investigation has not progressed in the proper manner or that there has been unnecessary,

deliberate or avoidable delay in completing the investigation, he may refuse to submit any report to the Court under clause (bb) to seek extension of time.

6.5. As held by the Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra), a Public Prosecutor is an important officer of the State Government and not a part of the investigating agency. He is an independent statutory authority and is expected to independently apply his mind to the request of the agency before submitting a report to the Court for extension of time with a view to enable the investigating agency to complete the investigation. Public Prosecutor is not merely a post office or a forwarding agency of the investigating officer and in case, he finds that extension of time is being sought without any progress in investigation in a proper manner with unnecessary, deliberate or avoidable delays, he may refuse to endorse the request of the investigating agency.

6.6. Thus, keeping in view the position of a Public Prosecutor, which is an independent statutory authority, Section 43D(2)(b) of UAPA provides that the request of the police officer seeking extension of time has to be first scrutinized by the Public Prosecutor, who on being satisfied that the investigation has progressed in a proper manner and that further investigation is required to be carried out, seek extension of time beyond the period of 90 days which would be further scrutinized by the learned Special Court. Needless to note, the said independent application of mind has to be borne out from the Public Prosecutor's report. Therefore, to satisfy the requirement of a continued detention of the accused for the investigation still to be carried out, a two tier mechanism has been provided by the proviso to Section 43D(2)(b) UAPA.

6.7. Learned Additional Solicitor General submitted that Section 167 Cr.P.C. does not provide for filing of the charge sheet but only of completion of investigation and thus filing of the charge sheet cannot be taken as a *sine qua non* for completion of investigation. This Court is not agreeable to the contention raised, for the reason, even though Section 167 Cr.P.C. talks about completion of investigation and not filing of the charge sheet, Section 173 Cr.P.C. not only provides that every investigation shall be completed without unnecessary delay but also provides that as soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of an offence on a police report, the report in the form prescribed by the State Government giving the necessary details as envisaged under Section 173(2) Cr.P.C. Thus, filing of the charge sheet being the physical manifestation of the completion of investigation, it is only on the filing of the charge sheet, can the Court form an opinion that the investigation is complete and not on the mere statements of the investigating officer or the Public Prosecutor that the investigation is complete without filing of the charge sheet.

6.8. The issue whether the report of the Public Prosecutor is required to be provided to the accused while seeking extension of time for continued investigation came up for consideration before this Court in the decision reported as (2018) 250 DLT 283 *Syed Shahid Yousuf Vs. National Investigating Agency*, wherein, the Division Bench of this Court, dealing with the contention of the appellant therein that without supply of the report of the Public Prosecutor, no sufficient notice was given to the appellant therein, held that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso

to Section 167 Cr.P.C., the accused cannot ask to see the reports of the Public Prosecutor. It was held that these reports like the case diaries maintained under Section 174 Cr.P.C., are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation.

6.9. Following the decision of the Division Bench in *Syed Shahid Yousuf* (supra), two Single Judges of this Court in (2020) SCC Online Del 882 *Ishrat Jahan vs. State* and (2021) SCC Online Del 2500 *Shifa-ur-Rehman* (supra) held that at this stage, the accused is not entitled to the copies of the Public Prosecutor's report.

6.10. Learned counsels for the appellants have strenuously argued that the report of the Public Prosecutor is a report by an independent officer as held by the Hon'ble Supreme Court and cannot be treated as case diaries under Section 174 Cr.P.C. This Court is of the opinion that even if a Public Prosecutor's report is not akin to case diaries maintained under Section 174 Cr.P.C., which is written by the investigating officer, however, the Public Prosecutor's report has to be based on the material available in the case diaries which would show progress of the investigation carried out and the requirement for further investigation and the continued detention of the accused for the said purpose.

6.11. It is trite law that before filing of the charge sheet when the investigation is in progress, the material collected during the course of investigation cannot be revealed to the accused as the same may impede the progress of investigation, *inter alia* inclusion of further accused, recoveries etc. Thus, even if the Public Prosecutor's report is not akin to case diaries written by the investigating officer, the same has to be based on the material

already collected and required to be further collected during investigation as reflected in the case diaries. The Public Prosecutor though required to form an independent opinion, the same cannot be extraneous to the investigation already carried out and required to be further carried out.

6.12. As noted above, in para 21 of *Hitendra Vishnu Thakur* (supra) Hon'ble Supreme Court clarified that when a report is submitted by the Public Prosecutor to the Designated Court for grant of extension of time under Clause (bb), its notice should be issued to the accused before granting such extension so that the accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. Though neither provided under Clause (b) nor under Clause (bb) of Sub-Section 4 of Section 20 TADA, the issuance of a notice must be read in interest of both the accused and the prosecution, as well as for doing complete justice between the parties. This was held to be a requirement of the principles of natural justice and would accord fair play and action which the Courts have always encouraged and insisted upon. Further eliciting the nature of notice envisaged under *Hitendra Vishnu Thakur* (supra), the Constitution Bench of the Hon'ble Supreme Court in the decision reported as *Sanjay Dutt,* (supra) concluded in para 53(2)(a) as under:-

> *"53....*
> *(2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the Judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein.*

Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose".

6.13. Learned counsels for the appellants have strenuously argued that even if no "show cause notice" seeking a reply of the accused on the various grounds raised in the Public Prosecutor's report is issued, the notice issued to the accused, has to be meaningful. There is no denial to the fact that once an accused is produced to inform him about the extension of period for completion of the continued investigation based on the Public Prosecutor's report, the accused cannot be a silent spectator. Though, he would have no right to know the progress in investigation, however, he would be at liberty to point out to the Special Court such material which is exculpatory to the accused and has not been collected by the investigation or that despite continued custody, no inquiry was made from the accused; the nature of allegations against him on the basis of FIR/grounds of arrest as informed at the time of arrest are such that the investigation could have been completed in said time period; or that even on the allegations against the accused, there are no reason to believe that an offence under UAPA has been committed by him.

6.14. The Special Court thus would thus 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 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 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.

6.15. Issue No.I is thus answered in the negative and it is held that the report of 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 43D of UAPA.

7. **Issue No. II** - **Necessary requirements to extend the period of remand:**

7.1. Hon'ble Supreme Court in *Surendra Pundlik Gadling* (supra) held that on a report/application submitted by the Public Prosecutor for extension of time in terms of proviso to Section 43D(2)(b) of UAPA, the Special

Court is required to ensure that following ingredients of the said provisions are complied with;

(i) It has not been possible to complete the investigation within the period of 90 days;

(ii) Report to be submitted by the Public Prosecutor;

(iii) Said report indicates the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days and;

(iv) Satisfaction of the Court in respect of the report of the Public Prosecutor.

7.2. Thus, before an order is passed by the Special Court while exercising the power under proviso to Section 43D(2)(b) UAPA, it has to satisfy itself that all the above four ingredients are complied with.

7.3. Ms.Shahrukh Alam, learned counsel appearing for the appellant in Crl.A. 405/2021, has vehemently contended that the words 'not possible' in the proviso should meet the threshold of 'impossibility'. It is contended that the doctrine of impossibility relates to special exceptions, which justice demands and not to every case as held in *Hirji Mulji* (supra). Learned counsel has placed on record cases under UAPA listed on the website of NIA, out of which, in all the 92 cases, the final report was filed beyond the period of 90 days. It was thus contended that availability of extension of time results in a lax and delayed investigation and thus, the necessary ingredient that it was "not possible" to conclude the investigation within the period of 90 days should reach the level of 'impossibility' to complete the investigation in the period of 90 days. Mere difficulty or improbability in completing the investigation in the period of 90 days cannot enure to the

benefit of investigating agency to seek extension of time for remand of the accused. It was further contended that 'adequacy' is a concept which takes meaning from its context and, in the context of a duty, the same has to be construed as per the needs of the person to whom the duty is owed. Further the proportionality test laid down by the Hon'ble Supreme Court in the decision reported as (2019) 10 SCC 1 *K.S.Puttaswamy Vs. Union of India*, requires that the action/restriction must be; (a) in pursuance of a legitimate aim, (b) must bear a rational nexus to achieve the legitimate aim, (c) must be the least restrictive way of achieving the aim, and (d) must be proportionate. It was further contended that this interpretation is in terms of the legitimate expectation that the investigation should be completed as expeditiously as possible. She further contends that protection of personal liberty under Article 21 of the Constitution of India is sacrosanct.

7.4. We are not in agreement with the contention of the learned counsel for the appellant Zeeshan Qamar that the words "not possible" in the proviso to Section 43D(2)(b) are to be read as "impossible". Impossibility contemplates that in no way or manner, the investigation can be progressed. If it is impossible to progress the investigation, then, there would be no fruitful purpose even in granting extension. Hence, the words "not possible" cannot be raised to the level of "impossibility". Dealing with a similar provision of extension of period of remand under the NDPS Act, the test laid down by the Hon'ble Supreme Court in *Sanjay Kumar Kedia* (supra) is that there should be compelling reasons which require an extension of custody for completion of investigation beyond 180 days. Hon'ble Supreme Court in *Surendra Pundlik Gadling* (supra) also held that

there should be no unnecessary, deliberate or avoidable delay in completing the investigation.

7.5. The term used in the proviso to Section 43D(2)(b) of UAPA is "not possible". It is well settled principle of interpretation that when the literal meaning of a statute is clear and unambiguous, some other word cannot be read into the statute. Constitution Bench of the Hon'ble Supreme Court in the decision reported as (2001) 7 SCC 71 Dadi Jagannadham vs. Jammulu Ramulu held:

> *13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the Legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the Legislature. Undoubtedly if there is a defect or an omission in the words used by the Legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the Legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.*

7.6. Further, in the decision reported as (2003) 2 SCC 577, Nasiruddin v. Sita Ram Agarwal, Hon'ble Supreme Court held:

> *"37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the Legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at*

a finding as to whether the statute is directory or mandatory. But the intention of the Legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the Legislature was that the provisions are mandatory in character."

7.7. In *Jaswinder Singh* (supra), Punjab and Haryana High Court laid down the test of rarest of rare case. It was held that the period of 180 days for completion of investigation for an offence under NDPS Act was sufficient and adequate and only in very rarest of rare occasions that a situation should arise, to avoid filing of purportedly defective reports by the investigating officer concerned, that the Public Prosecutor concerned, within the ambit of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, takes to institute an application for extension of time for completion of investigations or for ensuring that the report of the FSL concerned becomes appended with the apposite report. This Court is in clear conformity with the view expressed by the Punjab and Haryana High Court as the period of 180 days under the proviso to Sub-Section 4 of Section 36A of the NDPS Act is sufficient to conclude the investigation, and further period should be granted in rarest of rare cases. However, under Section 43D(2)(b) UAPA, the initial period prescribed is 90 days and not 180 days and only on the conditions prescribed under the proviso, if the investigation is not complete within 90 days, that a further extension of 90 days can be granted. There is no gainsaying that offences relating to terrorism are hatched in secrecy with multiple accused involved, entailing unearthing of serious technological evidence, hence it may take longer time for the investigating agency to collect relevant and admissible evidence to prove the same. Hence, the test of rarest of rare case as laid down by the Punjab and Haryana High Court in

Jaswinder Singh (supra) under the provisions of NDPS Act will not apply to a case for investigation of an offence under UAPA.

7.8. Dealing with this issue, Hon'ble Supreme Court in Hitendra Vishnu Thakur (supra) held that the Legislature expects that investigation must be completed with utmost promptitude, but where it becomes necessary to seek some more time for completion of investigation, the investigating agency must submit itself to the scrutiny of the Public Prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. It was further held that no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed. Hon'ble Supreme Court on the facts also held that strictly speaking, sanction is not a part of the investigation and there is no bar to file a charge sheet in the absence of a sanction and then produce the sanction of the competent authority subsequently with the permission of the Court. It was held that the Designated Court can grant extension of time under clause (bb) on the report of the Public Prosecutor for completion of investigation and filing of the challan thereafter and for no other purpose. The Legislature has limited the ground on which extension should be granted and the Designated Court could not add to those grounds. Since on its plain reading, clause (bb) could be invoked only if the investigation was not complete, the Public Prosecutor could not be permitted to seek extension of time under the said clause for "administrative difficulties" or obtaining sanction or the like grounds, if investigation was already complete. It was held that if extension of time was granted on grounds other than the completion of investigation, it would defeat the legislative intent clearly manifested in clauses (b) and (bb) of the

proviso to Section 20 (4) TADA. The grant of extension under clause (bb) on grounds extraneous thereto cannot be permitted at the whims of the investigating agency.

7.9. Thus, the essential requirements in the Public Prosecutor's report, based whereupon, the Public Prosecutor forms the opinion so as to facilitate the Special Court to form an opinion that extension of further remand is necessary are; the progress of investigation; that the investigation was carried out with utmost promptitude without any unnecessary, deliberate or avoidable delay and a continued investigation is essential for filing a meaningful charge sheet for which the detention of the accused is essential. Therefore, the Public Prosecutor's report must indicate the progress of investigation carried out, that there was no unnecessary, deliberate or avoidable delay and what further investigation is required to be carried out by the State to file a proper charge sheet.

7.10. As regards the requirement; "whether continued detention of the accused for further investigation is necessary", Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra) also noted that report of the Public Prosecutor should not only show the progress of the investigation carried out and the further investigation required to be carried, but also disclose justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. It was further emphasized by the Hon'ble Supreme Court that no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and for no other purpose.

7.11. Dealing with the difference in custody of an accused before filing of the charge sheet under Section 167 Cr.P.C. and after filing of the charge

sheet, Hon'ble Supreme Court in the decision reported as (2001) 5 SCC 453 Uday Mohanlal Acharya Vs. State of Maharashtra held as under:-

> *"5……*
> *The extended period of 90 days was brought into the Criminal Procedure Code by an amendment as it was found that in several cases of serious nature it was not possible to conclude the investigation. This provision of Section 167 is in fact supplementary to Section 57, in consonance with the principle that the accused is entitled to demand that justice is not delayed. The object of requiring the accused to be produced before a Magistrate is to enable the Magistrate to see that remand is necessary and also to enable the accused to make a representation which he may wish to make. The power under Section 167 is given to detain a person in custody while the police goes on with the investigation and before the Magistrate starts the enquiry. Section 167, therefore, is the provision which authorises the Magistrate permitting detention of an accused in custody and prescribing the maximum period for which such detention could be ordered. Having prescribed the maximum period, as stated above, what would be the consequences thereafter has been indicated in the proviso to sub-section (2) of Section 167. The proviso is unambiguous and clear and stipulates that the accused shall be released on bail if he is prepared to and does furnish the bail which has been termed by judicial pronouncement to be "compulsive bail" and such bail would be deemed to be a bail under Chapter 33. The right of an accused to be released on bail after expiry of the maximum period of detention provided under Section 167 can be denied only when an accused does not furnish bail, as is apparent from Explanation I to the said section. The proviso to sub-section (2) of Section 167 is a beneficial provision for curing the mischief of indefinitely prolonging the investigation and thereby affecting the liberty of a citizen. Section 167 occurs in Chapter 12 dealing with the powers of the police to investigate in a criminal offence which starts with lodging of information in cognizable cases under Section 154, and ultimately culminating in submission of a report on completion of investigation under Section 173. Soon after completion of investigation the officer-in-charge of the police station has to forward to the Magistrate, empowered to take cognizance of the offence, a report in the prescribed form*

and once such report is filed before the Magistrate which is commonly termed as "challan" then the custody of the accused is no longer required to be dealt with under Section 167 of the Code, but under Section 209. On submission of the challan under Section 173 in a case instituted on a police report or otherwise, when it appears to the Magistrate that the offence is exclusively triable by the Court of Session, the moment the accused is brought before the Magistrate or he himself appears then the Magistrate commits the case to the Court of Session and subject to the provisions of the Code relating to bail, remand the accused to custody until such commitment has been made. The procedure for commitment to the Court of Session as provided in Section 209 of the present Code is radically different from the commitment proceedings under the 1898 Code. No enquiry is contemplated by the Magistrate under the present scheme. All that the Magistrate is required to do is to grant copies, prepare the records, notify the Public Prosecutor and formally commit the case to the Court of Session. Section 209(b) provides that the Magistrate shall remand the accused to custody subject to the provisions of the Code relating to bail, necessarily, therefore, subject to the provisions in Sections 436, 437 and 439. Thus, under clause (b) of Section 209 the committing Magistrate has the power to remand the accused to custody during and until the conclusion of the trial, subject to the provisions relating to bail. When the committing Magistrate passes an order of commitment and the accused, at the stage is found to be on bail, the committing Magistrate has the power to cancel the bail and commit him to custody, if he considers it necessary to do so. But such a cancellation would be in accordance with sub-section (5) of Section 437 of the Code and there must be proper grounds for cancellation and not that the Magistrate would cancel the bail ipso facto on a challan being filed and the accused being produced for the purpose of passing an order of committal. Any order a Magistrate passes under Section 209(b) to remand an accused to custody would also obviously be subject to the provisions of the Code relating to bail. In a case where the committing Magistrate while passing an order of committal remands the accused to custody in exercise of power under Section 209(b), the power of the learned Sessions Judge under sub-section (2) of Section 309 is not whittled down in any manner at any time after commencement of trial, but ordinarily

> *if the committing Magistrate has already passed an order remanding the accused to custody while passing an order of commitment no further order is required to be passed by the Sessions Judge in exercise of power under sub-section (2) of Section 309. Bearing in mind the aforesaid scheme in the Code of Criminal Procedure we would now examine the point in issue".*
>
> *(Emphasis supplied)*

7.12. Therefore, the essential requirements to be seen by the learned Special Court at the stage of extension of remand of the accused for further period to complete the investigation under the proviso to Sub-Section 2(b) to Section 43D of the UAPA are;

(i) Reasons evidencing the personal satisfaction of the Public Prosecutor as regards the progress of investigation made based on the investigation carried out,

(ii) Reasons indicating why the investigation could not be completed within the period of 90 days; and

(iii) Further investigation required to be carried out for which, extended period of time is necessary.

All these three essential ingredients must form part of the Public Prosecutor's report, based whereon the satisfaction to extend the period of remand has to be exercised by the Special Court.

8. **Issue No. III** – **Whether the period of remand should be extended in one go?**

8.1. One of the very serious grievances of the appellants before this Court is that even on the Public Prosecutor's report, extension for a further period of 90 days is granted in one go. Chart from the website of the N.I.A. has been placed on record to show that in almost all the cases, where extension was sought, 90 days extension was granted in one go and thus, even if the

investigating agency can complete the investigation in a further period of less than 90 days, they have the leisure of completing the same in 90 days. We find merit in the contention of the learned counsels for the appellants on this count.

8.2. Hon'ble Supreme Court in the decision reported as Chaganti Satyanarayan (supra) dealing with the words '15 days in the whole' held that the 15 days was a maximum period of police custody from the date of remand. However, there is nothing in the provision to note that the remand cannot be granted for lesser number of days and in a truncated manner. It was held that the remand to the police custody has to commensurate with the requirement of a case not exceeding 15 days in the whole. Hon'ble Supreme Court held:-

> *"16. As sub-section (2) of Section 167 as well as proviso (1) of sub-section (2) of Section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words "15 days in the whole" occurring in sub-section (2) of Section 167 would be tantamount to a period of "15 days at a time" but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The Legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total*

> *period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case".*
>
> *(Emphasis supplied)*

8.3. Similar view was expressed by the Hon'ble Supreme Court in the decision reported as (2009) 7 SCC 480 *Mustaq Ahmed Mohammed Isak and Others Vs. State of Maharashtra*, wherein, it was held as under:-

> *"15. There is nothing in the language of second proviso inserted in Section 167(2) of the Code by Section 21(2) of the Act to indicate that the power of extension can be exercised only once as contended by the appellants. Para 30 of Hitendra Thakur case [(1994) 4 SCC 602: 1994 SCC (Cri) 1087] on which the appellants place reliance did not deal with the present issue i.e. whether the power can be exercised more than once under the proviso. In this context, we cannot lose sight of Section 167(2) of the Code. Section 167 of Code and Section 21 of the MCOC Act deal with power of remand. The provisions of Section 21 of the MCOC Act must be read in the light of Section 167 of the Code. Section 167(2) of the Code itself indicates that power of remand has to be exercised from time to time and this clearly dispels any doubt as regard the true effect of the second proviso added in Section 167(2) of the Code by Section 21(2) of the MCOC Act, 1999. The only possible interpretation of the said proviso is that the Special Court can exercise power under the said proviso from time to time, however, the total period for filing charge-sheet/challan cannot exceed 180 days".*
>
> *(Emphasis supplied)*

8.4. As noted above, the Law Commission of India in its 41st report on the proposal to increase the time limit for completion of investigation to 60 days acknowledged that such an extension may result in the maximum period becoming a rule in every case as a matter of routine, however, was confident due to the trust that proper supervision by the superior courts will prevent the said abuse. Thus, an onerous duty is cast on the Special Court to not only ensure that the essential requirement of the proviso to Section 43D(2)(b) of UAPA are adhered to, but also that unwarranted and unnecessary

delay in filing the charge sheet and the continued detention of the accused does not take place by extension of time.

8.5. As noted above, a bare reading of the provision of Section 167 Cr.P.C. and the modified provision under Section 43D(2)(b) UAPA uses the word 'in whole', thus, even if there is no bar to grant an extension for a further period of 90 days in one go, while granting the extension of time, it is incumbent on the learned Special Court to see as to how much further time is reasonably required to complete the investigation. If on the facts of a given case, further investigation can be completed within a period of 30 days or 45 days, the Special Court will not grant an extension of 90 days, but for the said 30 or 45 days, subject to the right of the prosecution to seek further extension if so necessary as per the provision. This course will also ensure that the investigating agency does not procrastinate, be tardy and take it leisurely for the next few days and file the charge sheet at the end nearing the 90th day, and will also have to justify the requirement of further time period required for completing the investigation. Needless to note that whenever extension is granted by the Special Court upto the total of further period of 90 days, the same has to be based on the fresh report of the Public Prosecutor. Such an approach will strike an equitable balance between the right of accused from not suffering meaningless continued detention without investigation and the right of the investigating agency to conclude the investigation fairly, covering all facets.

8.6. The view taken by us finds favour even in the decision of the Division Bench of this Court in *Syed Shahid Yousuf* (supra), wherein, it was held as under:-

"28. The above amended provision contemplates extension of the period of detention up to 180 days where it is not possible for the NIA to complete the investigation within a period of 90 days. For this the Court has to be satisfied, on a perusal of the report of the PP indicating the progress of the investigation, that it cannot be completed within 90 days and that it is necessary therefore to extend the detention beyond 90 days and for a period not beyond 180 days. In other words, the proviso to Section 167(2)(a)(ii) Cr.P.C. (as amended by Section 43D UAPA) envisages the report of the PP being presented before the Court explaining the progress of the investigation. This report should make out a case that it is not possible to complete the investigation within 90 days. This report should indicate the specific reasons why the detention of the accused beyond 90 days is necessary.
29. In effect, although the permission of the Court is sought for extending the period of detention and not for extension of the period of investigation, <u>the Court by allowing an application seeking permission for extension of the period of investigation, for whatever period it thinks fit</u>, is in fact allowing the prayer for extension of the custody of the detenue by that period".

(Emphasis supplied)

8.7. The third issue is thus answered as; whenever a report of the Public Prosecutor is presented for seeking extension of time for investigation beyond 90 days, the Special Court will apply its mind to find out the reasonable time required to complete the investigation and extend the period of custody for such period; subject to the right of the investigating agency to seek further extension of remand based on a fresh report of the Public Prosecutor, upto a maximum of 90 days.

9. **<u>Crl.A. 405/2021</u>**

9.1. Appellant Zeeshan Qamar was arrested on 14th September, 2021 in FIR No. 243/2021 dated 10th September, 2021, under Section 120B IPC at PS: Special Cell. Accordingly, his 90 days period of remand was to expire on 13th December, 2021. On 08th December, 2021, an application was

moved on behalf of the respondent State, seeking extension of period of detention and investigation from 90 days to 180 days, which was allowed by the learned Trial Court vide its order dated 09th December, 2021 which has been impugned by the appellant in Crl.A. 405/2021 *inter alia* on the grounds that the proviso to Section 43D (2)(b) of UAPA requires the prosecution to establish "impossibility" of completing the investigation within 90 days in order to enable them to seek extension of period of investigation, which is materially different from "adequate reasons" under Section 167(2) Cr.P.C. The statute requires a threshold of impossibility to complete the investigation within the initial period of 90 days, which again is materially different from the inability or mere fact of non-completion of investigation within the prescribed period of 90 days. As a matter of fact, on paper, the investigation seems to have not progressed at all and the grounds for extension are in fact same as those in police and judicial remand applications. The application and report of Public Prosecutor relies heavily on the gravity of offence and the conspiracy, which grounds are extraneous for extending the period of pre-charge arrest. Three of the ten grounds mentioned in the application relate to sanctions, for which reliance was placed on the judgment in ***Hitendra Vishnu Thakur*** (supra) wherein it was noted that sanction is not a part of the investigation and extension can only be sought if the investigation was not complete and the same could not be sought on the grounds of 'administrative difficulties' or 'sanctions' or like grounds. While passing the impugned order, the learned Trial Court relied upon the report of the Public Prosecutor and also noted that as per the learned Public Prosecutor voluminous data of mobile phones was yet to be analyzed along with requisite sanctions under Section 45 UAPA, Section 7

of Explosive Substance Act and Section 39 of the Arms Act, and accordingly, remanded the accused to further custody by extending the period of detention and investigation to 180 days. Application seeking default bail was moved on behalf of the appellant on 16th December, 2021 and was dismissed by the learned Trial Court vide order dated 18th December, 2021.

9.2. Copy of the application cum report of the Public Prosecutor seeking extension of period of investigation for 90 days with effect from 13th December, 2021 forms part of the appeal as Annexure P5. Para 1 to 13 of the Public Prosecutor's report shows the investigation carried out till then and specific reasons due to which the investigation of the case was pending were enumerated as under:-

> *"A. Accused Usaidur Rehman is evading arrest. Efforts are being made to trace and arrest him. His LOC has also been issued. Being main conspirator, his interrogation and confrontation with the other arrested accused persons is very much necessary.*
> *B. The data from the phones of accused persons was retrieved which is voluminous. The same is being analyzed which is a time-consuming process.*
> *C. Being the joint operation of ISI and Underworld, both have used their main assets available in India which are now arrested in the present case. Therefore, CDRs of arrested accused persons are being analyzed minutely. Contacts & their location in other states are being checked/verified which is a time-consuming process and requires field verification.*
> *D. Certified CDRs CAFs and Location Charts are awaited from the different service providers.*
> *E. Examination report of remnants of IEDs and Grenades deposited in FSL is awaited.*
> *F· Examination report of Arms and Ammunition deposited in FSL is awaited.*
> *G. Sanction u/s 45 Unlawful Activities (Prevention) Act is to be taken.*
> *H. Sanction u/s 7 Explosive Substances Act is to be taken.*

I. Sanction u/s 39 Arms Act is to be taken.
J. To identify and trace other members connected to this module".

9.3. Thus, the essential component of informing the Special Court about the progress of the investigation carried out, showing that there was no laxity or inordinate delay, was placed and also that further investigation was required for which continued custody of the appellant Zeeshan was essential. Even though the requirement in terms of the examination report of the IEDs, Grenades deposited with the FSL and the sanction under Section 45 of UAPA, Section 7 of the Explosive Substances Act and Section 39 of the Arms Act cannot be the reasons for grant of extension of remand period, however, the fact that the main accused was evading arrest and on arrest, confrontation and interaction was necessary, besides retrieval of the data and analysis of the phones and identification and tracing of other connected members, were sufficient reasons to form an opinion for the learned Special Court for extension of time of investigation for a period of 90 days. Therefore, we find no ground to interfere with the impugned order of the learned Special Court granting extension of time for investigation and remand, leading to continued detention of the appellant Zeeshan Qamar.

9.4. Crl.A. 405/2021 is accordingly dismissed.

10. **Crl.A. Nos. 207/20121, 208/2021, 214/2021 & Crl.M.C. 1479/2021**

10.1. In compliance of order dated 04th March, 2021 issued by the Ministry of Home Affairs, Government of India, the National Investigation Agency at New Delhi *suo moto* registered FIR No. RC-05/2021/NIA/DLI dated 05th March, 2021 under Sections 17/18/18B/20/38/40 UAPA and Sections 120B/121/121A IPC at PS: NIA, Delhi. In furtherance of this FIR,

appellants Mushab Anwar and Dr. Rahees Rasheed were arrested on 15th March, 2021 from their residential premises. Remand period of 90 days of the appellants Mushab Anwar and Dr. Rahees Rasheed was to expire on 12th June, 2021. On 10th June, 2021, applications were filed on behalf of the NIA seeking extension of period of investigation and detention for a further period of 90 days, on which date the Presiding Judge of the Designated Court was on leave and the matter was sent to the Court, which allowed the application moved on behalf of NIA vide order dated 10th June, 2021, extending the period of investigation and detention. Appellants Mushab Anwar and Dr. Rahees Rasheed were remanded to judicial custody till 16th June, 2021.

10.2. The order dated 10th June, 2021 has been impugned by the appellants Mushab Anwar and Dr. Rahees Rasheed in Crl.A.207/2021 and Crl.M.C.1479/2021 respectively *inter alia* on the grounds that the impugned order was based on the submissions and application on behalf of the prosecution, and not on the report of the Public Prosecutor which is contrary to the mandate under Section 43D (2) (b) UAPA. Further, the impugned order does not record the "satisfaction of the Court" over the report of the Public Prosecutor. Meanwhile, the appellants moved an application seeking default bail on 16th June, 2021. Thereafter, vide order dated 16th June, 2021, the learned Trial Court held that since the period of investigation had already been extended beyond 90 days vide order dated 10th June, 2021, the request for statutory bail under Section 167(2) Cr.P.C. does not survive, and accordingly, application for extension of period of investigation and detention was allowed and the appellants were remanded to judicial custody for a period of 30 days. The appellants Mushab Anwar and Dr. Rahees

Rasheed also challenge the order dated 16th June, 2021 by way of Crl.A. 208/2021 and Crl.A.214/2021 respectively, on the grounds that the Trial Court committed a serious error in extending the period of detention from 90 days to 180 days in one go and in terms of the provisions of UAPA, custody could only be granted for a period of 30 days at a stretch. The period of 180 days was to expire on 10th September, 2021, however, the charge sheet against the appellants was filed on 08th September, 2021.

10.3. As noted above, the prosecution filed two applications before the learned Special Judge which were listed before the learned Link Judge as the learned Special Judge was on leave; first for extension of judicial custody remand for a further period of 30 days, and the second application for extension of the period of investigation and also the detention for 90 days in respect of the appellants Mushab Anwar and Dr. Rahees Rasheed beyond the period of 90 days to 180 days along with the Public Prosecutor's report. It may be noted that the 90 days custody period of the appellants Mushab Anwar and Dr.Rahees Rasheed was coming to end on 12th June, 2021. Vide the order dated 10th June, 2021 impugned in Crl.A. 207/2021 and Crl.M.C. 1479/2021, the learned Special Judge-Link Judge held as under:-

> *"An application for extension of judicial custody remand of accused namely Mohammed Ameen Kathodi @ Abu Yahya, Mushab Anwar and Rahees Rasheed for a further period of 30 days filed on behalf of NIA.*
>
> *Another application for extension of investigation period and also the detention petition for 90 days in respect of all the three accused beyond the period of 90 days to 180 days along with PP report filed on behalf of NIA.*
>
> *The record of this case is not before me and even otherwise, Ld. Counsels for the accused persons have submitted that they have only been supplied copy of the aforesaid applications today*

itself and therefore, they need to file reply to these applications. The 90 days period for investigation of this case is stated to be expiring on 12.06.2021.

In view of the submissions made on the application for judicial custody remand of accused persons for a period of 30 days and for extension of period of investigation beyond 90 days and the fact that the reply to these applications is not on record, at this stage, it will not be possible to extend the period of investigation for a longer period, however, considering the gravity of the offence and the submissions on the application for extension of judicial custody remand of aforesaid accused persons, I deem it appropriate that the period of judicial custody of aforesaid accused persons and the period of investigation be extended till next date of hearing when these applications shall be argued before the court concerned.

Considering these facts and circumstances, judicial custody remand of accused namely Mohammed Ameen Kathodi @ Abu Yahya, Mushab anwar and Rahees Rasheed is extended till 16.06.2021 and the period of investigation is also extended till next date of hearing.

Sh.Jawahar Raja, Ld. Counsel for accused Mushab Anwar submits that he has not been supplied copy of PP report. The said prayer is declined as it cannot be supplied to the counsel for the accused as per law.

Put up for reply and arguments on aforesaid applications on 16.06.2021 before the court concerned."

10.4. Taking various contentions, both the appellants Mushab Anwar and Dr.Rahees Rasheed filed applications under Section 167(2) Cr.P.C. for default bail on 15th June, 2021, wherein, specific pleas taken were, *inter alia*, that the report of the Public Prosecutor was not supplied, there was no satisfaction of the Designated Court on the report of the Public Prosecutor and the Court should specify the reasons based on the said report for extension of the period of remand. The learned Special Judge dismissed the same vide impugned order dated 16th June, 2021 as under:-

"1. The NIA in compliance to Order No.F.No.11011/17/2021/NIA dated 04.03.2021 issued by the Ministry of Home Affairs, Government of India, New Delhi registered a case (Suo-motu) vide FIR No. RC05/2021/NIA/DLI dated 05.03.2021 u/s 120B, 121 & 121A of IPC and Sections 17, 18, 18B, 20, 38 & 40 of UA(P) Act, 1967.
2. The accused persons in this case were arrested on 15.03.2021 and were remanded to custody from time to time till 10.06.2021. The custody period of 90 days from the arrest of the accused persons was completing on 12.06.2021 and, therefore, an application for extension of period of detention and investigation from 90 days to 180 days was moved on 10.06.2021.
3. Separately, an application was also moved for extension of judicial custody remand of the accused persons for a period of days on 10.06.2021. The Public Prosecutor Report (PP Report) dated 09.06.2021 u/s 43D(2)(b) of the UA(P) Act, 1967 read with Section 167 of the Code of Criminal Procedure, 1973 was also filed.
4. The accused persons were produced before the Ld. Special Judge, NIA (Link Court) on 10.06.2021 and the Ld. Special Judge, NIA (Link Court) vide order dated 10.06.2021 extended the judicial custody remand and period of investigation till 16.06.2021.
5. Pursuant to the above order, the accused persons have been produced before this Court.
6. Accused Mushab Anwar and Dr. Rahees Rasheed filed reply and objection to the application for extension of detention period beyond the period of 90 days and also extension of investigation period beyond the period of 90 days.
7. Accused Mushab Anwar in his reply has submitted that the period of detention and investigation can be extended only on the specific reasons for detention of the accused beyond the said period of 90 days. It has been submitted that the Ld. Special Judge, NIA (Link Court) vide order dated 10.06.2021 has wrongly denied the supply of copy of the PP Report. The accused stated that in the absence of supply of copy of the PP Report, the period of investigation and detention should not have been extended. It has further been submitted that the accused is innocent and has been implicated falsely.
8. Accused Dr. Rahees Rasheed in his objection has also submitted that he belongs to an educated and respectable family with high morals and ethics and he has never been involved in any criminal activities. It has further been submitted that rather he is doing

community service and is a law abiding citizen and a true Muslim. It has further been submitted that the accused has been implicated falsely. The accused stated that he is a doctor by profession and running a Dental Clinic and has roots in the society. The accused has further submitted that he is the sole bread earner of his family and the submissions made by the NIA are devoid of merit and are malafide, misleading and deserve to be dismissed.

9. Accused Dr. Rahees Rasheed has also moved an application for statutory bail u/s 167(2) Cr.P.C. on the ground that since the chargesheet has not been filed before the expiry of 90 days from the date of arrest, therefore, the accused is entitled to be released on bail. It has further been submitted that merely by virtue of an interim order dated 10.06.2021, whereby the period of investigation and detention has been extended till 16.06.2021, the statutory right of the accused cannot be denied. It has further been submitted that the interim order passed by the Ld. Special Judge, NIA (Link Court) is without jurisdiction and without any authority of law. It has further been submitted that to extend the period upto 180 days beyond 90 days, there must be (i) report of the Public Prosecutor indicating the progress of the investigation, (ii) satisfaction of the designated court with the report of the Public Prosecutor and (iii) the court should record specific reasons based on the said report and the consequent satisfaction of the court.

10. Similarly, accused Mushab Anwar has also sought bail on the ground that 90 days u/s 167 Cr.P.C. have already expired and the NIA has not supplied copy of the PP Report to the accused and, therefore, the accused is entitled to bail under proviso (a) (i) to Section 167(2) read with Section 43D(2)(b) of the UA(P) Act. It has further been submitted that the application being moved by the NIA does not reflect any progress in the investigation nor does it reflect the future course of investigation to be conducted.

11. Ms. Kanchan, Ld. Sr. PP for the NIA has submitted that they had moved an application for extension of investigation period and detention period from 90 days to 180 days on 10.06.2021 itself and the Ld. Special Judge, NIA (Link Court) has extended the remand period only after going through the record and applying the judicial mind and, therefore, there is no ground for statutory bail or default bail. Ms. Kanchan, Ld. Sr. PP for the NIA has further submitted that in the application being moved, there are specific grounds for the extension of remand. Ms. Uma, SP/CIO, NIA has submitted that specific grounds have been mentioned in the PP Report for

extension of the remand and it would hamper the investigation, if copy of the PP Report is supplied to the accused persons.

12. Sh. Mohd. Irshad Hanif, Ld. Counsel for accused Dr. Rahees Rasheed has submitted that in order dated 10.06.2021 passed by the Ld. Special Judge, NIA (Link Court), it has nowhere been reflected that the special report as required u/s 43D of the UAPA, 1967 has been filed by the NIA and subsequently since the application for extension of detention period from 90 days to 180 days has not been disposed of, therefore, the accused is entitled to statutory bail.

13. Sh. Jawahar Raja, Ld. Counsel for accused Mushab Anwar has submitted that though the fact of filing the PP Report is reflected in the order dated 10.06.2021, however, there is nothing in the order which could reflect that the remand has been extended on the basis of the PP Report. It has further been submitted that the practice of non supplying the PP Report is violative to the right under the Constitution. It has further been submitted that even the UA(P)A, 1967 does not say that the PP Report is not to be supplied. It has further been submitted that even otherwise the grounds for extension of remand in the application being moved by the NIA are totally vague and actually there are no grounds for extension of the remand. It has further been submitted that the detention of even a single day after 90 days, without extension of remand on the basis of the Public Prosecutor Report, is illegal and, therefore, the accused is entitled to be admitted to bail. It has further been submitted that the observation made by the Hon'ble High Court in Syed Shahid Yousuf Vs. NIA, 2018 SCC OnLine Del 9329 that the prosecutors report is like the case diary is obiter dicta and a passing observation. Ld. Counsel has placed reliance on Sanjay Dutt Vs. State through CBI, (1994) 5 SCC 410. Ld. Counsel has submitted that in the facts and circumstances, his client is entitled to be admitted to bail and the detention period cannot be extended from 90 days to 180 days.

14. Sh. Mohd. Irshad Hanif, Ld. Counsel for accused Dr. Rahees Rasheed has adopted the arguments as advanced by Sh. Jawahar Raja, Ld. Counsel for accused Mushab Anwar. Sh. Mohd. Irshad Hanif, Ld. Counsel for accused Dr. Rahees Rasheed has submitted that his client may also be admitted to statutory bail.

15. Section 43D prescribes modified application of certain provisions of the Cr.P.C. Section 43D(2) provides as under:

> *"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 subsection (2), (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:"

16. The accused persons in this case were arrested on 15.03.2021 and 90 days period expired on 12.06.2021. On 10.06.2021 when the accused persons were produced along with the application for extension of judicial custody remand for 30 days, an application for extension of period of investigation and detention from 90 days to 180 days was also moved. Along with the application, the PP Report as required under proviso to Section 43D(2) was also filed. The extension of investigation and detention period was sought on the ground that during the course of investigation, the accused persons had disclosed certain facts which need to be checked and verified on ground to unearth the larger conspiracy of furthering the cause of ISIS in India. It has further been submitted that the digital data of the electronic exhibits seized from the premises of the accused persons and some other suspects is highly voluminous (around 2 TB) and the detailed scrutiny of the same needs more time for the purpose of collecting evidence. It has further been submitted that the handwriting sample of the accused was sent to the forensic laboratory for analysis and the expert opinion and the examination report is still awaited. The NIA has stated that the investigation of the case is quite voluminous and scattered in different districts of Kerala, Karnataka, Uttar Pradesh, Delhi and J&K as well as abroad and, therefore, more time is needed for unearthing the deeprooted conspiracy having Pan Indian and trans-National linkages. It has further been submitted that certain facts, which came during the investigation done are as follows:

a) Financial transactions/identity documents (Passports/Aadhar/Bank accounts etc.) to be verified from the

concerned Banks/Departments for unearthing the flow of fund and deep rooted conspiracy;
b) From the scrutiny of digital data, it has come on record that accused persons used SIM cards with fake names, those persons are to be identified and their relation with accused persons is to be verified;
c) The mobile numbers – CDRs/IMEIs/CAFs of accused persons and their associates are being obtained and analyzed.
Interconnectivity amongst them is being explored;
d) The house owners where accused/suspected persons were residing on rent are to be examined. Their association with accused persons is to be explored;
e) Mohammed Ameen Kathodi @ Abu Yahya, Mus'Hab Anwar and Rahees Rasheed were raising, receiving and transferring funds through online Mobile banking applications.
The source and destination of the funding needs to be explored;
f) Incriminating content viz. Jihadi literature, chats retrieved from the digital devices of accused persons are being highlighted/segregated/marked so that the relevant pages can be translated to English from Malyalam through authorized translators; and
g) Places visited by accused persons to meet their ISIS associates need to be identified/pointed out.

17. It has further been submitted on behalf of the NIA that the dissemination and assimilation of the data/investigation proceedings for unearthing the larger conspiracy and other incriminating facts need more time. It has further been submitted that Covid19 pandemic has aggravated the overall situation and the lockdown in the entire country has restrained the movement of the investigation team in other parts of the country restricting the smooth investigation.

18. In the PP Report filed in a sealed cover, the detail of the investigation conducted so far has been given. It has been submitted that more time is required for completion of the investigation in respect of the accused persons and other suspects mentioned in the application for extension of time and, therefore, the detention period may be extended.

19. The accused persons have opposed the extension of period of detention and investigation predominantly on the fact that the grounds mentioned in the application of extension of the judicial custody remand are vague and in the absence of the PP Report

being not supplied to them, the period of investigation should not have been extended and cannot be further extended.

20. Sh. Jawahar Raja, Ld. Counsel for accused Mushab Anwar has submitted that the observation made by the Hon'ble High Court of Delhi in Syed Shahid Yousuf Vs. NIA, Crl. Appl. No. 426/2018 & Crl. M.A. No. 7469/2018, DOD 31.05.2018 that the prosecutors report is like the case diary is obiter dicta and a passing observation. It has further been submitted that the PP Report should have been supplied to enable the accused persons counter the averments made by the NIA.

21. In Syed Shahid Yousuf (Supra), the question as to supply of the PP Report was raised and it was opposed by the Ld. ASG on the ground that copy of the PP report is akin to production of a case diary and under the scheme of Cr.P.C., it cannot be supplied to the accused during the course of investigation. The Hon'ble High Court after taking submissions of the defence and State, inter alia, held as under:

> *"42. As regards providing the Appellant with copies of the reports of the PP, the Court is inclined to agree with the learned ASG that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso to section 167 Cr.P.C., the Appellant cannot ask to see the reports of the PP. Those reports, like the case diary maintained under section 174 Cr.P.C., are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation."*

22. I consider that submission of Sh. Jawahar Raja, Ld. Counsel for accused Mushab Anwar is not sustainable on the face of it, and in view of the specific finding given by the Hon'ble High Court of Delhi, the copy of the PP Report could not have been supplied to the accused persons. Furthermore, the Ld. Special Judge, NIA (Link Court) vide order dated 10.06.2021 has specifically mentioned the filing of the PP Report and only after application of judicial mind, extended the period of custody and investigation till 16.06.2021. Rather, the Ld. Special Judge, NIA (Link Court) has acted in a very judicious manner by affording the accused persons an opportunity of filing reply/objection to the application for extension of the period of investigation and detention. In any case, since the period of investigation has been extended beyond the period of 90 days vide order dated 10.06.2021, then this Court does not have any

> *jurisdiction to sit in appeal/revision over the order dated 10.06.2021. Since the period of investigation has been extended vide a judicial order, the request of statutory bail u/s 167(2) Cr.P.C. does not survive at all. Accordingly, the applications moved on behalf of accused Dr. Rahees Rasheed and Mushab Anwar u/s 167(2) Cr.P.C. for grant of statutory bail are dismissed in view of the fact that the period of investigation and detention has been passed vide a judicial order before the expiry of 90 days.*
>
> *23. In view of the application being moved by the NIA and the PP Report, which includes specific grounds for extension of the period of detention and investigation from 90 days to 180 days, the application of the NIA is allowed and the period of detention and investigation is extended from 90 days to 180 days.*
>
> *24. In view of the discussions made hereinabove, the application moved by the NIA for extension of judicial custody remand of the above accused persons for the period of 30 days is also allowed. The accused persons are remanded to judicial custody till 16.07.2021. They be produced on 16.07.2021.*
>
> *25. The PP Report dated 09.06.2021 u/s 43D(2)(b) of the UA(P) Act, 1967 read with Section 167 of the Code of Criminal Procedure, 1973 filed by the NIA be kept in a sealed cover.*
>
> *26. Copy of the order be supplied to the NIA and Ld. Defence Counsel through e-mode".*

10.5. As noted above, in the impugned order dated 10th June, 2021, there was no application of mind by the learned Link Judge extending the remand beyond the period of 90 days based on the Public Prosecutor's report, rather, the matter was kept for arguments on 16th June, 2021. The order dated 10th June, 2021 extending the remand and period of investigation till 16th June, 2021 i.e. beyond the initial period of 90 days which came to an end on 12th June, 2021, notes the grounds for extension as: i) gravity of offence; ii) submissions on applications for extension of judicial custody remand and the period of investigation; iii) reply to the applications not being on record. Thus, there is no application of the three essential requirements as envisaged by the Hon'ble Supreme Court in <u>*Surendra Pundlik Gandling*</u> (supra) and as

also noted in para 7.13 above, based on the Public Prosecutor's report. Further the applications for default bail were filed on 15th June, 2021 before the order dated 16th June, 2021 was passed. Thus, the detention of the appellants Mushab Anwar and Dr.Rahees Rasheed beyond 12th June, 2021 was contrary to the law as noted above.

10.6. In the impugned order dated 16th June, 2021, though the learned Special Judge noted the reasons reflected in the application and the Public Prosecutor's report, however, the grounds on which the two applications for statutory default bail under Section 167(2) Cr.P.C. were dismissed by the learned Special Court were that (i) vide order dated 10th June, 2021, the learned Special Judge, NIA, Link Court has specifically mentioned the filing of the Public Prosecutor's report and only after application of judicial mind, extended the period of custody and investigation till 16th June, 2021; and (ii) since the period of investigation has been extended beyond the period of 90 days vide order dated 10th June, 2021, the learned Special Judge had no jurisdiction to sit in appeal/revision over the order dated 10th June, 2021. Hence, the request of the statutory bail under Section 167(2) Cr.P.C. does not survive.

10.7. As the extension of judicial remand beyond the period of 90 days was not based on the satisfaction of the Public Prosecutor's report as is evident from the reading of the order dated 10th June, 2021 of the learned Special Judge-Link, the accused Mushab Anwar and Dr.Rahees Rasheed got a vested right to seek default bail for which necessary application was filed on 15th June, 2021. The learned Special Judge vide the impugned order dated 16th June, 2021, further erred in coming to the conclusion that it was sitting in appeal/revision over the order dated 10th June, 2021, as the Link

Special Judge had not extended the remand for period of 90 days and had extended the period of detention and investigation till 16th June, 2021 only and on application of mind on the Public Prosecutor's report, the further detention and investigation could have been granted subject to the earlier order dated 10th June, 2021 being in accordance with the law. Both the impugned orders thus suffer from gross illegality in terms of the law as discussed above.

10.8. Appellants Mushab Anwar and Dr.Rahees Rasheed are thus entitled to default bail under Section 167(2) Cr.P.C. Consequently, appellants Mushab Anwar and Dr.Rahees Rasheed are directed to be released on bail on their furnishing a personal bond in the sum of ₹1 lakh each with two surety bonds each of the like amount, subject to the satisfaction of the learned Trial Court, out of which, one of the surety would be their family member and in case of change of residential addresses and/or mobile phone numbers, the same will be intimated to the learned Special Court by way of affidavit(s). Further, the appellants will drop the PIN of the mobile phone numbers used by them, so as to show their locations and will report to the investigating officer of NIA on the first Monday of every month.

10.9. Crl.A. Nos. 207/20121, 208/2021, 214/2021 & Crl.M.C. 1479/2021 are thus disposed of.

11. **Crl.A. No. 2/2022**

11.1. Appellants Mizha Siddeeque and Shifa Haris were arrested on 17th August, 2021 in RC/05/2021/NIA/DLI dated 05th March, 2021. The remand period of 90 days of the said appellants was to expire on 14th November, 2021, prior to which, on 11th November, 2021, NIA filed an application seeking extension of period of investigation to 180 days, which was allowed

vide order of learned Trial Court dated 11th November, 2021 upon the report of the Public Prosecutor, extending the period of investigation for a further period of 90 days and the appellants were remanded to judicial custody till 29th November, 2021. On 25th November, 2021, the appellants moved applications seeking default bail under Section 167(2) Cr.P.C. read with Section 43D(2)(b) of UAPA which was rejected by the learned Trial Court vide order dated 29th November, 2021. Therefore, by way of Crl.A.2/2022, appellants Mizha Siddeeque and Shifa Haris seek to challenge the said orders of the Trial Court dated 11th November, 2021 and 29th November, 2021 *inter alia* on the ground that the said orders fail to point out the reasons requiring the presence of the appellants in judicial custody or that the Court had independently applied its mind. The period of investigation of 180 days was due to expire on 12th February, 2022; however, charge-sheet was filed by the NIA on 28th January 2022.

11.2. Before the statutory period of 90 days was to expire on 14th November, 2021, the learned Special Judge vide the impugned order dated 11th November, 2021 extended the period of investigation and remand of the two appellants Mizha Siddeeque and Shifa Haris, after supplying the copy of the application and seeking a reply thereof, and taking into account the Public Prosecutor's report which had been filed in a sealed cover. The learned Special Judge noted that the Public Prosecutor's report reveals the progress of investigation in detail and the Public Prosecutor also submitted specific reasons for the purpose of seeking extension of period of investigation and detention from 90 days to 180 days. It was noted that the field investigation regarding transfer of funds was not complete and that the detention of the accused persons was required for the same. It was also

noted that partial data received from the FSL was under scrutiny and analysis, and on receipt of the further data, scrutiny and analysis thereof was required to be done. The application of the appellants seeking statutory bail was thus dismissed vide the order dated 29th November, 2021 on the ground, valid order of extension of remand was passed by the learned Trial Court on 11th November, 2021 having arrived at a satisfaction based on the Public Prosecutor's record/report.

11.3. The report of the Public Prosecutor was e-filed in a password protected document, and a physical copy of the Public Prosecutor's report was handed over to this Court in a sealed cover on 10th February, 2023. On perusal of the same, this Court finds that the grounds in nutshell on which extension of period of investigation and the continued detention was sought were:

(i) That the digital devices seized from the appellants were sent to CFSL, Chandigarh and CERT-In, New Delhi for forensic analysis, however, the extracted data being highly voluminous is still under scrutiny and would require time for completion.

(ii) That investigation qua use of different online portals and social media applications via which the accused persons were in contact with each other and used to share news and incriminating material is still pending.

(iii) That investigation qua other persons named by the accused persons in their statements as also search of premises of the suspected persons is still required to be carried out which might unearth a larger conspiracy.

(iv) That scrutiny of incriminating documents and other material recovered from the accused persons is still pending.

(v) That sanction under Section 45 of UAPA is still required to be obtained.

11.4. Even though receipt of sanction was not a valid ground for extension of remand, however, the grounds as noted in sub-paras (i) to (iv) of para 11.3 are valid grounds. Having complied with all the necessary requirements as envisaged under Section 46D(2)(b) of UAPA, report of the Public Prosecutor giving progress of investigation and the reasons for the continued detention of the accused for further investigation and the learned Special Judge having applied his independent mind, we find no error in the two impugned orders.

11.5. Crl.A. No. 2/2022 is accordingly dismissed.

12. **Crl.A. Nos. 59/2022, 79/2022, 80/2022 & 89/2022**

12.1. Vide RC/29/2021/NIA/DLI dated 10th October, 2021 under Sections 120B/121A/122/123 IPC and Sections 18/18A/18B/20/38/39 UAPA at PS: NIA, Delhi, appellant Hanan Gulzar Dar was arrested on 20th October, 2021 while, the appellants Mohd. Manan Dar @ Manan, Zamin Adil Bhat and Haris Nisar Langoo were arrested on 22nd October, 2021. Accordingly, the remand period of 90 days as per Section 167 Cr.P.C. was due to expire on 17th January, 2022 for appellant Hanan Gulzar Dar and on 19th January, 2022 for appellants Mohd. Manan Dar @ Manan, Zamin Adil Bhat and Haris Nisar Langoo. However, applications seeking extension of period of investigation and detention of all the four appellants were moved on 14th January, 2022, which were allowed by learned Trial Court vide order dated 17th January, 2022. The learned Special Court noted that based on the report of the Public Prosecutor, the facts of the case being serious in nature touching upon the integrity of the nation, the case requires an in-depth

investigation, and owing to the restrictions on account of Covid-19 pandemic, the investigating agency may also be facing difficulties and thus, the judicial custody of the appellants were extended for a period of 90 days at one go.

12.2. The order dated 17th January, 2022 has been impugned by the appellants Mohd. Manan Dar @ Manan, Hanan Gulzar Dar, Zamin Adil Bhat and Haris Nisar Langoo in Crl.A.59/2022, Crl.A.79/2022, Crl.A.80/2022 and Crl.A.89/2022 *inter alia* on the grounds that the said order was passed in a mechanical manner without any application of mind and without giving reasons justifying the continued detention of the appellants. None of the reasons mentioned by the investigating agency was plausible for which investigation could be extended and that too directly for a period of 90 days. Although as per the NIA, the FSL report of the data extracted from the mobile phone of the appellants was awaited, however, it was submitted that the same is an "administrative work" and does not constitute "compelling reason" for extending the period of investigation to 180 days. The UAPA establishes a higher threshold of "impossibility" being a special statute which is materially different from inability or non-completion of investigation and it is for the prosecution to bring on record specific reasons for seeking continued incarceration and not merely state the reasons for further investigation. The Public Prosecutor is required to independently apply his mind for seeking extension and not do a mere formality acting on the request of the investigating agency. Extension of 90 days is an outer limit and the same cannot be granted at one stretch especially when the investigating agency has failed to show any progress in the investigation. Applications seeking default bail were moved on behalf

of the appellants on 20th January, 2022, which applications are still pending. The period of 180 days was to expire on 16th April, 2022 for appellant Hanan Gulzar Dar, and on 18thApril, 2022 for appellants Mohd. Manan Dar @ Manan, Zamin Adil Bhat and Haris Nisar Langoo, however, the chargesheet in the matter was filed by the NIA on 08th April, 2022.

12.3. Vide the impugned order dated 17th January, 2022, the learned Special Judge after noting the contentions of the learned counsels for the appellants and co-accused as also the learned Public Prosecutor for the NIA arrived at the following satisfaction:-

> *"32. I have considered the arguments advanced by learned counsel for the accused persons and Ld. PP for the NIA.*
> *33. I have also seen the Public Prosecutor Report and the material on record.*
> *34. In the Public Prosecutor Report, the Ld. PP has specifically given the details of the investigation conducted so far by the CIO. Ld. PP has also given the specific reasons for detention of accused persons beyond the period of 90 (jays and has also culled out the grounds showing the necessity to extend the detention period of accused persons for the collection and analysis of the evidence as well as for completion of the investigation.*
> *35. The case of the NIA is that some of the suspects associated with the arrested accused persons are still at large and they are being tracked by the NIA to bring to light and expose the gamut, extent and spread of the conspiracy. NIA has also stated that during investigation, it was revealed that the recent spate of terror attacks and killings was a part of larger conspiracy of banned terror organisations i.e. Lashkar-e-Toiba and its terror offshoots like TRF, PAFF, MGH etc in association with Pakistani Inter Service Intelligence (IS) to create terror among the people at large and to threaten the sovereignty and integrity of the country. It has also been stated that the NIA is in the process of verifying the inputs to ascertain the antecedents of the accused persons. In view of the nature of the conspiracy and the specific details being provided in the Public Prosecutor Report, the NIA has sought extension of the period of detention and investigation.*

36. Section 43D(2) of UA (P) Act provides that the court upon being satisfied with the report of Public Prosecutor, indicating the progress of the investigation and specific reasons for the detention of the accused, may extend the period up to 180 days.

37. The notice of the aforesaid applications was duly given to the accused persons. The accused persons have been given sufficient opportunity to present their case before the court. It is a settled proposition that the copy of the Public Prosecution Report cannot be supplied to the accused as held in Shifa-Ur Rehman (supra).

38. In Shifa-Ur Rehman (supra), it was inter alia held that the accused is not entitled to demand the Public Prosecution Report regarding the progress of the investigation which is req1,1ired to be considered by the court. It was further inter alia held that the said report is made at the stage when the investigation is incomplete and providing the same, may in certain cases adversely affect, frustrate or impede the investigation by the Investigation Agency.

39. In Syed Shaid Yousuf vs. NIA in Crl. A. 426/18 decided on 31.05.2018, it was inter alia held as under:

> *"42. As regards providing the appellant with copies of the reports of the PP, the Court is inclined to agree with the learned ASG that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso to section 167 Cr.PC, the appellant cannot ask to see the reports of the PP. Those reports, like the case diary maintained 4nder section 174 Cr.PC, are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation."*

40. It is a settled proposition that period of investigation and detention can be extended subject to following conditions:-

> *"1. It is not been possible for the Investigating Agency to complete the investigation within the period of 99 days.*
> *2. The Public Prosecutor report must indicate the progress of investigation and the specific reasons for the detention of the accused beyond the period of 90 days.*
> *3. The satisfaction of the court with the report of the Public Prosecutor."*

41. Reliance can be placed upon State of Maharashtra vs. Surendra Pundlik Gandling 2019 (5) SC 178.
42. In the present case, the NIA has made out the case that it was not possible to complete the investigation within the period of 90 days. Ld. PP has filed the Public Prosecutor Report indicating the progress of the investigation and the specific reasons for detention of the accused beyond the period of 90 days. Ld. Defence counsel have not been able to make out any case for denial of the period of detention and investigation from 90 days to 180 days. It is pertinent to mention that the facts of the case are extremely serious in nature touching upon the integrity of the Nation. Such cases require in-depth investigation. It has also be borne in mind that in the present time, when the movement is curtailed on account of covid pandemic, the NIA may be facing difficulty in completing the investigation. Thus, on the basis of the Public Prosecutor Report and the submissions made by the NIA and learned defence counsel, the court records its satisfaction in respect of the report of the Public Prosecutor. Hence, the period of the detention of the aforesaid accused persons can be extended beyond the period from 90 days up to 180 days. In view of the facts and circumstances of the case, both the aforesaid applications are allowed. The detention of the aforesaid accused persons namely Kamran Ashraf Reshi, Hanan Gulzar Dar, Suhail Ahmad Thokar, Rayid Bashir, Adil Ahmad War, Mohd. Manan Dar @ Manan,Zamin Adil 5hat, Hariis Nisar Langoo, Rouf Ahmad Bhat, Hilal Ahmed Dar, Saqib Bashir Lone and Sobiya Aziz @ Mariyam-Al-Kashmiri, for the purpose of investigation is extended from the period of 90 days to 180 days.
43. Applications are disposed off accordingly.
44. Copy of the Public Prosecutor Report be kept in a sealed envelop".

12.4. As is evident from the order, the learned Special Judge perused the Public Prosecutor's report which indicated the progress of investigation and the specific reasons why the detention of the appellant was required beyond the period of 90 days. Though the learned Special Judge noted the gravity of the offences, but the same was not the main factor for extension of time as the Court also noted that some more suspects associated with the accused persons are still at large and are required to be tracked by NIA to bring to

light and expose the gamut, extent and spread of the conspiracy. The process of verification of the inputs to ascertain the antecedents of the accused persons of their being involved in the banned organization was also in process. Thus, based on the material placed in the form of Public Prosecutor's report and submissions made by NIA and the learned defence counsel, learned Special Judge arrived at a satisfaction and extended the remand for a further period of 90 days.

12.5. Since the report of the Public Prosecutor was not on record, learned counsel for NIA placed on record the copy of the Public Prosecutor's report as well as relevant extract of the subject case diaries. We have perused the same and *inter alia* find the following reasons given in Public Prosecutor's report:-

(i) That investigation qua the new names revealed in the disclosure statement of the accused persons would take some more time.

(ii) That forensic data of seized mobile phones is yet to be received from CERT-In and because of its volume, analysis and scrutiny of the said data would take some more time to unearth a larger conspiracy.

(iii) That the geographical spread of the conspiracy requires field investigation which is yet to be completed and would take more time.

(iv) That Covid-19 pandemic was on the rise and investigating team faced issues in completing the investigation within 90 days.

(v) That sanction under Section 45 of UAPA is still required to be obtained.

12.6. Having gone through the Public Prosecutor's report and the impugned order passed by the learned Special Court, we find that there was material before the learned Special Court showing the investigation already

carried out and that further field investigation as also the investigation qua the new names revealed and the analysis of the forensic data retrieved was required to be carried out as narrated in sub-paras (i), (ii) and (iii) of para 12.5 even if sub-paras (iv) and (v) are not relevant for consideration for extension of the period of investigation and the continued detention.

12.7. After arguments were concluded, Ms.Tara Narula, Advocate informed this Court that Mohd. Manan Dar has been granted regular bail which fact was affirmed by the learned Spl.P.P. Therefore Crl.A. 59/2022 is disposed of as infructuous.

12.8. In view of the discussion aforesaid, Crl.A. Nos. 79/2022, 80/2022 & 89/2022 are dismissed.

13. **Conclusions:**

In terms of the discussion aforesaid, we hereby conclude;

13.1. As regards issue No. I, the report of Public Prosecutor is not required to be provided to the accused at the stage of grant of extension of remand for continued investigation. However, when the accused is produced to inform him about the extension of period of investigation based on Public Prosecutor's report, the accused cannot be a silent spectator and the Special Court would be required to take into consideration, submissions on behalf of the accused, while examining Public Prosecutor's report regarding progress of investigation, and the reasons for seeking further detention, for continued investigation. The Special Court would also be required to satisfy itself, from the investigation carried out that there is sufficient material to form a reasonable belief that prima facie an offence under UAPA is made out, though no reasons in this regard will be required to be reflected in the order as the same would entail disclosure of the investigation carried out.

13.2. As regards the issue No. II, "the essential requirements to be seen by the Special Court while extending the period of remand of the accused for further period to complete the investigation under the proviso to Sub-Section 2(b) to Section 43D of the UAPA are;

(i) Reasons evidencing the personal satisfaction of the Public Prosecutor as regards the progress of investigation made based on the investigation carried out,

(ii) Reasons indicating why the investigation could not be completed within the period of 90 days; and

(iii) Further investigation required to be carried out for which, extended period of time is necessary.

All these three essential ingredients must form part of the Public Prosecutor's report, based on which the Special Court would arrive at the satisfaction to extend the period of remand".

13.3. As regards the issue No. III; "whenever a report of the Public Prosecutor is presented for seeking extension of time for investigation beyond 90 days, the Special Court will apply its mind to find out the reasonable time required to complete the investigation and extend the period of custody for such period upto 90 days; subject to the right of the investigating agency to seek further extension of remand if remand for less than 90 days is granted, based on a fresh report of the Public Prosecutor, upto a maximum of 90 days".

13.4. Accordingly, Crl.A. Nos. 405/2021, 2/2022, 79/2022, 80/2022 and 89/2022 are dismissed. Crl.A. Nos.207/2021, 208/2021, 214/2021 and Crl.M.C.1479/2021 are disposed of. Crl.A. No.59/2022 is disposed of as infructuous.

13.5. We place on record our appreciation for the assistance rendered by Mr.S.V. Raju, Mr.Vikramjit Banerjee, learned ASGs, Mr.Gautam Narayan, Mr.Akshai Malik, Special Public Prosecutors, Ms.Shahrukh Alam, Mr.Jawahar Raja, Mr.Ashok Aggarwal, Md.Irshad Hanif and Ms.Tara Narula, Advocates.

13.6. Copy of the judgment be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

FEBRUARY 24, 2023/akb

HIGH COURT OF DELHI
सत्यमेव जयते