

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2021

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.2693 OF 2021
CONNCTED WITH
CRIMINAL PETITION NO.2699 OF 2021

IN CRL.P.NO.2693/2021

BETWEEN

1. MOHAMMED SHARIQ
S/O. HASIM ABDUL MAJEED,
AGED ABOUT 22 YEARS,
RESIDENT OF SOPPUG GUDDE,
MARKET ROAD, A.K. COLONY,
AZAD HOUSE, THEERTHAHALLI,
SHIVAMOGGA - 577 432,
2. SADATH HUSSAIN
S/O. UMMAR SAHEB,
AGED ABOUT 50 YEARS,
RESIDENT OF AKBAR MANZIL,
MARKET ROAD, A.K. COLONY,
AZAD HOUSE, THEERTHAHALLI,
SHIVAMOGGA - 577 432.

... PETITIONERS

(BY SRI MOHAMMED SULTAN BEARY, ADVOCATE
FOR SMT. SUMAN HEGDE, ADVOCATE)

AND

STATE OF KARNATAKA
BY MANGALORE EAST POLICE STATION,
MANGALORE,

REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

... RESPONDENT

(BY SRI V.S. HEGDE, S.P.P-II, A/W SRI THEJESH P., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONERS ON BAIL IN CRIME NO.104/2020 OF MANGALORE EAST POLICE STATION, MANGALURU CITY, FOR THE OFFENCE PUNISHABLE UNDER SECTION 153A OF IPC AND SECTIONS 3 AND 5 OF THE KARNATAKA OPEN PLACE (PREVENTION OF DISFIGUREMENT) ACT.

IN CRL.P.NO.2699/2021

BETWEEN

1. MOHAMMED SHARIQ
S/O. HASIM ABDUL MAJEED,
AGED ABOUT 22 YEARS,
RESIDENT OF SOPPUG GUDDE,
MARKET ROAD, A.K. COLONY,
AZAD HOUSE, THEERTHAHALLI,
SHIVAMOGGA – 577 432,
2. SADATH HUSSAIN
S/O. UMMAR SAHEB,
AGED ABOUT 50 YEARS,
RESIDENT OF AKBAR MANZIL,
MARKET ROAD, A.K. COLONY,
AZAD HOUSE, THEERTHAHALLI,
SHIVAMOGGA – 577 432.

... PETITIONERS

(BY SRI MOHAMMED SULTAN BEARY, ADVOCATE FOR
SMT. SUMAN HEGDE, ADVOCATE)

AND

STATE OF KARNATAKA
BY MANGALORE NORTH POLICE STATION,
MANGALORE,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

... RESPONDENT

(BY SRI V.S. HEGDE, S.P.P-II, & SRI THEJESH P., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONERS ON BAIL IN CRIME NO.89/2020 REGISTERED BY MANGALURU NORTH POLICE STATION, D.K. DISTRICT, MANGALURU CITY, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 3 AND 5 OF THE KARNATAKA OPEN PLACE (PREVENTION OF DISFIGUREMENT) ACT.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR FURTHER HEARING ON 28.06.2021 AND COMING ON FOR PRONOUNCEMENT THROUGH VIDEO CONFERENCING THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

CrI.P.No.2693/2021 is filed by petitioner Nos.1 and 2 - accused Nos.1 and 3 under Section 439 of Cr.P.C., for granting regular bail in Crime No.104/2020 registered by the Mangalore East Post Station for the offence punishable under Section 153A of IPC and Sections 3 and 5 of the Karnataka Open Places (Prevention of Disfigurement) Act,

1951 (for short 'KOPD Act') pending on the file of VI J.M.F.C. Court, D.K., Mangaluru.

CrI.P.No.2699/2021 is filed by the same petitioners / accused Nos.1 and 3 under Section 439 of Cr.P.C., for granting bail in Crime No.89/2020 registered by Mangalore North Police Station for the offence punishable under Section 153A of IPC and Sections 3 and 5 of the KOPD Act and subsequently, in both the cases the Police inserted Section 153A of IPC and Sections 13 and 39 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UA(P) Act').

2. Heard the arguments of learned counsel for the petitioners and learned SPP-II for the respondent – State.

3. The case of the prosecution in Crime No.104/2020 registered by the Mangaluru East Police Station is that the complainant - Sudheer Kumar filed a complaint to the Police on 27.11.2020 at 7.30 p.m., alleging that he is residing in plot No.207 at Ventura Apartment, Mangaluru. That on 26.11.2020 at about 10.00

p.m., he came to the apartment and on 27.11.2020 at about 6.45 a.m., he found some unknown persons wrote some words on the compound wall using black spray paint stating **"Do Not Force Us to Invite Lashkar-E-Taiba and Taliban to Deal with Sanghis and Manvedis # Lashkar Zindabad"** and stated that some unknown culprits had disfigured the compound wali. After registering of the case by the Police under Section 153A of IPC and Sections 3 and 5 of the KOPD Act and during the investigation, the Police have arrested both the petitioners on 3.12.2020. Accused No.1 is said to have been taken into the Police custody and subsequently, he was remanded to judicial custody.

4. The fact of the case in Crime No.89/2020 is that one Devaraj, Chief Administrative Officer of the District Court, Mangaluru filed a complaint on 28.11.2020 before Mangaluru North Police Station alleging that some unknown culprits made a writing on the wall of the Out-Post Police Station situated in the premises of District

Court, Mangaluru as "**GUSTAK E RASOOL KI EK HI SAJA SAR TAN SAY JUDA**" and the case was registered under the KOPD Act and during the investigation, it was revealed that the petitioner in Crime No.104/2020 is the accused in this case also. Hence, they added Section 153A of IPC and also Sections 13 and 39 of UA(P) Act.

5. Learned counsel for the petitioners has contended that the petitioners are innocent of the alleged offences and they have been falsely implicated in the case. Accused No.2-Maaz Muneer Ahmed got surrendered himself before the Police on 1.12.2020. As per the direction of Police, accused No.2 approached the Circuit House, Mangaluru at around 11 a.m., along with his sister and father and the Police took the accused to their custody. Then they visited Thirthahalli, Shivamogga District and raided the Commercial Complex/Shops run by accused No.3 on 2.12.2020 around 4.30 p.m. to 4.45 p.m., and five Police personnel arrested accused No.3. The Police asked the accused to call his relative one Aneesa

Fathima who lives in Mutthinakoppa which is around 40 kms away from Thirthahalli and asked the accused to enquire about the whereabouts of accused No.1. Earlier to the incident, accused No.3 had informed to his wife that he is visiting Axis Bank ATM to draw cash of Rs.20,000/-. The Police took custody of Asim Abdul Majid who is the resident of Sappugudde, AK Colony, Thirthahalli from his shop and also Mohammed Asgar who is the resident of Seebinakere, Thirthahalli from Kohinoor Kids Wear where he works as an employee. After their pleading, they have been left by the Police. Thereafter, the Police searched accused No.1 by visiting the house of accused No.3 at Shivamogga and arrested. Then they arrested accused No.2 at Tarikere. Learned counsel further submits that though the alleged offences are non-bailable, the same are not punishable either with death or imprisonment of life and subsequent to the registering of the case under Section 153A of IPC, the Police added Sections 13 and 39 of UA(P) Act and in spite of completion of 180 days still the charge-sheet is yet to be filed. Even though the Magistrate having no power,

he had extended the time under UA(P) Act which is illegal. Once, the Police invoked UA(P) Act, the Special Court has power to extend the time for filing the charge-sheet. The case was registered against unknown persons and these petitioners have been falsely implicated. Accused No.3 is the uncle of accused No.1. There is no overt act attributed against accused No.3 except giving some money for fleeing away from his house. Learned counsel further contended that as per Section 43D(2) of UA(P) Act, though the Special Court has power to extend time but, the Magistrate had illegally extended time for filing the charge-sheet. Thereby, the accused is entitled for default bail under Section 167(2) of Cr.P.C. Hence, prayed for granting bail.

6. In support of his arguments, learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in the case of **Om Prakash Singh vs. Union of India (UOI) and others** in Civil Appeal No.5655 of 2010 (Arising out of Special Leave Petition (C) No.21998 of 2009) dated 20.07.2010 and judgment of the

Division Bench of this Court in the case of **Syed Ismail Afaz vs The State of Karnataka** dated 8.07.2019.

7. Learned counsel for the petitioners also relied upon the judgments of Hon'ble Supreme Court in the cases of **M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intel** in Crl.A.No.699/2020 (arising out of S.L.P.(Crl.)No.2333 of 2020) dated 26.10.2020; **Bikramjit Singh vs. The State of Punjab** in Crl.A.No.667/2020 (Special Leave Petition (Crl.) No.2933 of 2020) dated 12.10.2020; **Uday Mohanlal Acharya vs State of Maharashtra** in Appeal (Crl.) 394/2001 dated 29.03.2001; **Hitendra Vishnu Thakur vs. State of Maharashtra** reported in **1994 AIR 2623 dated 12.07.1994** and **Sanjay Datt vs State (II)** reported in **1994 SCC (5) 410 dated 9.9.1994**.

8. Learned counsel also submits that the co-accused have already granted bail by the learned Sessions Judge and on the ground of parity, these petitioners are also entitled for bail.

9. Per contra, learned SPP-II opposed the bail petitions and also filed common written objections and contended that accused No.1 was arrested on 5.12.2020. In view of his connection with the terrorist organisation, Sections 13 and 39 of UA(P) Act is invoked. The Assistant Commissioner of Police is investigating the matter. Accused No.1 is the main accused who had interacted with banned organisation and written on the compound wall of the apartment on 26.11.2020 with the slogan "**Do Not Force Us to Invite Lashkar-E-Taiba and Taliban to Deal with Sanghis and Manvedis # Lashkar Zindabad**" and "**GUSTAK E RASOOL KI EK HI SAJA SAR TAN SAY JUDA**". Accused No.3 extended the monetary help to abscond from the case in order to derail the investigation. Both the petitioners are influenced by the terrorist activities of Lashkar-E-Taiba ISIS and Mujahideen organisation and indulged in islamization. Petitioner No.1 has got a destructive mind set with an intention to cause threat to National Security through his

activity of islamisation and zihad. Both the petitioners are actively propagated and indulged with the banned organisation. Another accused Arapath Ali who has influenced these petitioners and paid money is still absconding. Mobile phone, Laptop, Tab, memory card which belongs to the accused are seized and sent to Forensic Lab and expert opinion is awaited. The laptop and mobile phone belongs to the accused contains 1000 photographs and videos. During the investigation, some footage stored in DVRs are also been recovered and footages are sent to forensic lab and it requires some more time to retrieve the same from the mobile phone in view of invoking Sections 13 and 39 of UA(P) Act. The accused are not entitled for bail in view of Sections 43D(5) and 46 of the UA(P) Act. Hence, prayed for dismissing the petitions.

10. Upon hearing the arguments of learned counsel for the petitioners and learned SPP – II, the points that arise for my consideration are:

"(i) Whether the Magistrate/JMFC has no jurisdiction to extend time for filing the charge-sheet beyond 90 days as per Section 43D(2) of UA(P) Act except the Special Court established under Section 11 of UA(P) Act, and thereby, he is entitled for bail under Section 167(2) of Cr.P.C.?"

(ii) Whether only Special Court is having power to extend time for more than 90 days as per Section 43D of UA(P) Act beyond 90 days in view of Sections 11 and 21 of the National Investigation Agency Act ?"

11. Learned SPP-II has relied upon the judgments of the Hon'ble Supreme Court in the case of **State of Kerala and Others vs. Rajesh and others** reported in (2020) 12 SCC 122 and in the case of **National Investigation Agency vs. Zahoor Ahmad Shah Watali** reported in **(2019) 5 SCC**.

12. Perusal of the record reveals that Crime No.104/2020 was registered by Mangaluru East Police Station previously only for the offence punishable under

Section 153A of IPC and Sections 3 and 5 of UA(P) Act and after registering the case, the very reading of the writing on the compound wall of the complainant is **"Do Not Force Us to Invite Lashkar-E-Taiba and Taliban to Deal with Sanghis and Manvedis # Lashkar Zindabad"**. On the very same day, there was writing on the wall of the Out-Post Police Station which is situated in District Court, Mangaluru where it is written as **"GUSTAK E RASOOL KI EK HI SAJA SAR TAN SAY JUDA"**. The Mangaluru North Police registered a case in Crime No.89/2020 against unknown persons. During the investigation, the Police arrested accused No.1 and also accused No.3. Accused No.2 though arrested and was remanded to the judicial custody and subsequently, the learned IV Additional District and Sessions Judge, Mangaluru granted bail to accused No.2 in Crl.Misc.Nos.110/2021 and 111/2021. With regard to granting bail to accused No.2, the State is said to be preparing for filing an appeal for cancellation of bail. The writings on the compound wall of the complaint in Crime

No.104/2020 which was written in English as "**Do Not Force Us to Invite Lashkar-E-Taiba and Taliban to Deal with Sanghis and Manvedis # Lashkar Zindabad**" which goes to show that there was an open challenge given to Sanghis and Manvedis. Learned SPP-II has stated that "Sanghis means RSS Group and Manvedis means the person who follows Manusmriti, who are Hindus. Though the case was registered against unknown persons and mentioned as unknown culprits but the words written is having some impact on the State which is nothing but giving an open challenge to the State and waging war by taking the help of Lashkar-E-Taiba and Taliban. The investigation is still under progress. The cell phone, tab and laptop of the accused are seized, sent to FSL and the report is awaited. It is alleged that the accused after writing the same on the compound wall, clicked the photograph and has uploaded in social media and he had a connection with terrorists and banned organisation. The Police further investigated the matter and waiting for filing the charge-sheet. In another case in

crime No.89/2020 where the English words written on the compound wall of the Out-Post Police Station situated in the premises of the District Court as "**GUSTAK E RASOOL KI EK HI SAJA SAR TAN SAY JUDA**" it means "**The only punishment to the one who brings blemish to the name of Paigambar is to cut and remove the head from his body**". It is also an open challenge to the Police that if anybody defame the name of Rasool, their head will be removed from the body. Therefore, the contents of the writings cannot be taken as lightly that it is just a disfigurement on the wall! as per Sections 3 and 5 of the KOPD Act, but, it is a very serious issue. Therefore, the Police invoked Sections 13 and 39 of UA(P) Act and the investigation is still under progress.

13. It is already completed 90 days as on March 2021 and the learned Magistrate has extended the time for filing the charge-sheet beyond 90 days by invoking Section 43D(2)(b) of UA(P) Act. Admittedly, in one case, the Police have already filed the charge-sheet and cognizance

has been taken and in another case, charge-sheet is yet to be filed. Looking to the facts of the case, it is very serious offence giving open challenge to the patriotism of the nation and waging war against the State by giving threat to the sect of people of the Country and giving warning to call Lashkar-E-Taiba and banned organisation reveals that there is a *prima facie* connection with the petitioners in the terrorist group. Petitioners have already deleted the *whatsapp* messages and there is material to show that they are having connection with terrorist group.

14. Section 13 of the UA(P) Act reads as under:

"13. Punishment for unlawful activities -

(1) Whoever-

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after

the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorised in this behalf by the Government of India."

15. Section 39 of the UA(P) Act reads as under:

"39. Offence relating to support given to a terrorist organisation –

(1) A person commits the offence relating to support given to a terrorist organisation, -

(a) who, with intention to further the activity of a terrorist organisation, -

(i) invites support for the terrorist organisation, and

(ii) the support is not or is not restricted to provide money or

other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is -

(i) to support the terrorist organisation, or

(ii) to further the activity of the terrorist organisation, or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a

term not exceeding ten years, or with fine, or with both."

16. As per the proviso to Section 43D(5) of the UA(P) Act defines as under:

43D(5). Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused persons shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

17. On bare reading of the proviso to Section 43D(5) clearly defines that the accused shall not be entitled to be released on bail only that there are reasonable grounds for believing that the accusation

against such person is *prima facie* true. It shows it is reverse burden on the accused to show that the accusation is false. Once the investigation is pending and by looking to the writings in both the places, it is nothing but giving warning and also danger to the integrity of the nation and also insulting the feelings and patriotism of the citizens of this nation. Therefore, on merits, the petitioners are not entitled for bail.

18. The another contention of the learned counsel for the petitioners is that the Magistrate has no power to extend the period of 90 days for filing the charge-sheet as per Section 43D(2) of UA(P) Act and only the Special Court constituted under Sections 11 and 21 of the National Investigation Agency Act has power to extend the time beyond 90 days. Therefore, the petitioners are entitled for default bail under Section 167(2) of Cr.P.C., In this regard, learned counsel has relied upon the judgment of Hon'ble Supreme Court in the case of ***M.Ravindran vs. The Intelligence Officer, Directorate of Revenue***

Intel in CrI.A.No.699/2020 (arising out of S.L.P. (Criminal) No.2333/2020) where the Hon'ble Supreme Court has held that if the charge-sheet is not filed within the prescribed time under Limitation under Section 167 of Cr.P.C., the accused is entitled for default bail. The Hon'ble Supreme Court has referred Section 32A of the NDPS Act and extending of 180 days to one year as per Section 36A(4) of the NDPS Act, since the NDPS case is triable by the Special Court. The another judgment in the case of **Bikramjit Singh** stated supra, the Hon'ble Supreme Court also referred that the offences are triable by the Special Court for the offence under UA(P) Act. The Hon'ble Supreme Court has clarified the provisions of Sections 2(o) and 2(p) of UA(P) Act and the definition of "Court" in Section 2(1)(d) of UA(P) Act. The relevant paragraph reads as under:

"13. The UAPA deals with "unlawful activity" and "unlawful association, and interdicts both unlawful activity and unlawful association as defined under Sections 2(o) and 2(p). It further defines what are terrorist acts, terrorist

gangs and terrorists organisations under Section 2(k), 2(1) and 2(m) and proscribes each of these in offences which are than fleshed out under its provisions. What is important from our point of view in this case is the definition of "Court" in Section 2(1)(d) of UAPA which is as follows:

"2. Definitions.-(1) *In this Act, unless the context otherwise requires,-*

xxx xxx xxx

(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008.

xxxxx.

15. When we come to the NIA Act, the Preamble of the said Act indicates the thrust of the provisions of that Act as follows:

"An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity

of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto."

Under Section 2(g) "Scheduled Offence" is defined as follows:

"2. Definitions. - (1) *In this Act, unless the context otherwise requires,-*

xxx xxx xxx

(g) "Scheduled Offence" means an offence specified in the Schedule"

Section 2(h) defines "Special Court" as follows:

"2. Definitions.-(1) *In this Act, unless the context otherwise requires,-*

xxx xxx xxx

(h) "Special Court" means a Special Court constituted under section 11 or, as the case may be, under section 22".

19. As per Section 13 of the NIA Act, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it is committed.

20. Learned SPP-II has contended that there is no Special Court established by the State Government for the offences punishable under UA(P) Act shown as Scheduled offences. As per Section 2(d) of the UA(P) Act, it is referred that the criminal court having jurisdiction, under the Code, to try offences under the Act which means the offences punishable under UA(P) Act is also triable by the regular criminal Court having jurisdiction. The provision further defines and includes Special Court constituted under Section 11 or Section 22 of the NIA Act. Therefore, merely the Police invoked the provisions of UA(P) Act until the Government writes a letter to the Central Government for taking up the investigation by the NIA and in turn, the Central Government by its order authorizing the NIA to investigate the offences, the NIA Act will not be applicable

and the Special Court established under the NIA Act need not be tried the case even though if the Scheduled offences are under the NIA Act. Therefore, the contention of learned counsel is not acceptable and the offences punishable under the UA(P) Act shall be tried only by the Special Court.

21. Learned SPP-II has also submitted that there is no Notification issued by the State Government for establishing the Special Court for the offences under the UA(P) Act. But the Special Court is established for the offences investigated by the NIA Act. Therefore, even though the Scheduled offences under the UA(P) Act shall be investigated in NIA and until it is referred to the NIA to investigate the matter, the Special Court will not take the cognizance.

22. Learned SPP-II has relied upon the judgment of Hon'ble Supreme Court in the case of ***National Investigation Agency vs. Zahoor Ahmad Shah Watali*** reported in **(2019) 5 SCC 1** in respect of the case on

merits. Learned counsel has relied upon the judgment in the case of **State of Kerala and Others** stated supra in respect of Section 37 of NDPS Act which is also on merits of the case.

23. Learned counsel for the petitioners has relied upon the judgment of the Division Bench of this Court in **Crl.A.No.97/2018 dated 8.7.2019** wherein, the Division Bench of this Court in a similar circumstance, has elaborately discussed as under:

"19. So far as the contentions of the appellants that the offence is relatable to the offence as narrated in UA(P) Act is concerned, on facts, it could be seen that the accused are also charged of other offences as narrated in the schedule to the NIA Act namely Section 121A of Indian Penal Code. Therefore, it cannot be said that it is only the Court as narrated under the UA(P) Act that would have jurisdiction. Since one of the offences as narrated is a scheduled offence, the Special Court would have jurisdiction to try the same.

20. It is further relevant to notice that Section 2(h) of the National Investigation Agency Act defines Special Court as follows:

"Special Court" means a Special Court constituted under Section 11 or, as the case may be, under Section 22;"

Section 2(1)(d) of the Unlawful Activities (Prevention) Act, 1967 defines a Court as follows:-

"Court means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a special court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 (34 of 2008;]"

Therefore, under the UA(P) Act, the Court means a Criminal Court having jurisdiction under the Code to try offences under the Act and it also includes a Special court constituted under Section 11 or Section 21 of NIA Act. Therefore, the Court as constituted under the

UA(P) Act would include those class of Courts. Therefore, the contention of the appellant's counsel cannot be sustained.

20. Therefore, we hold that the appeal being devoid of merit, requires to be rejected. The Special Court would have the jurisdiction to try the offences provided they are scheduled offences to the NIA. The Agency that conducts the investigation does not determine the jurisdiction of the Special Court. The jurisdiction of the Special Court is determined by the nature of the offences and not as to who conducts the investigation.

21. For all the aforesaid reasons, we do not find any merit in this appeal. Consequently, the appeal is dismissed."

24. Learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in the case of **Bikramjit Singh** stated supra wherein in a similar case, the Hon'ble Supreme Court has granted bail and the Special Court constituted under the NIA Act has power to extend the remand, once the Special Court constituted

under the NIA Act and granted default bail to the accused. The same was challenged before the High Court and High Court has set aside the same and again the Hon'ble Supreme Court has held that the accused is entitled for statutory bail in default of non filing of the charge-sheet within the time. At paragraph 17 of the judgment, the Hon'ble Supreme Court has mentioned the establishment of the Special Court by the Government of Punjab under NIA Act. At paragraph 20, it is held as under:

"20. When these provisions are read along with Section 2(1)(d) and the provisos in 43-D(2) of the UAPA, the Scheme of the two Acts, which are to be read together, becomes crystal clear. Under the first proviso in Section 43-D(2)(b), the 90 day period indicated by the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if "the Court" is satisfied with the report of the public prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days. "The Court", when read with the extended definition contained in Section 2(1)(d) of the UAPA, now

speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is that for all offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence – albeit in a summary way if it thinks it fit to do so. On a conspectus of the abovementioned provisions, Section 13 read with Section 22(2)(ii) of the NIA Act, in particular, the argument of the learned counsel appearing on behalf of the State of Punjab based on Section 10 of the said Act has no legs to stand on since the Special Court has exclusive jurisdiction over every Scheduled

Offence investigated by the investigating agency of the State.”

25. On perusal of the principles laid down by the Hon'ble Supreme Court, even though the State Government has not established any Special Court for trying the offences under the UA(P) Act, but in view of the enactment, the National Investigation Agency Act, 2008 Section 22, the State Government constituted the Special Court for triable of the offences under any or all the enactments specified under the Schedule. The Schedule to the NIA Act as per Section 2(1)(g) the "Scheduled Offence" means an offence specified in the Schedule, wherein, at Sl.No.2 of the Schedule, the UA(P) Act is mentioned. Therefore, once the offences are mentioned by the Police which is punishable under the UA(P) Act automatically the investigation shall have to be taken either by the National Investigation Agency on the request of the State Government as per Section 6 of the NIA Act and automatically the Special Court gets jurisdiction to try the offences and take the cognizance without committal of the

case. The UA(P) Act brought in the year 1967 whereas, the NIA Act was enacted in the year 2008. There is specifically mentioned under the Scheduled offences under the UA(P) Act as scheduled offences to be investigated by NIA. Once the Police invoked the UA(P) Act against the accused automatically the file has to be transferred to the Special Court established under the NIA Act. Therefore, I am of the view that the learned JMFC has no power to extend the detention or custody for more than 90 days or 180 days as per Section 43D(2) of UA(P) Act and the accused has already moved an application for default bail before the Magistrate and in view of the establishment of Special Court under the NIA Act, the scheduled offences shall be transferred to the Special Court and the Special Court alone has to extend the limitation of detention or judicial custody but not the Magistrate. In view of the offence under the UA(P) Act invoked by the Police, the Magistrate shall have to refer or commit the matter to the Special Court but cannot extend the time limit more than 90 days in one case. The charge-sheet came to be filed

within 180 days. Once the UA(P) Act is invoked, the learned Magistrate has no power to extend beyond 90 days and only the Special Court has power to extend the detention beyond 90 days as per the judgment of the Hon'ble Supreme Court in the case of **Bikramjit Singh** stated supra. Hence, the points raised above are answered accordingly. Therefore, the petitioners are entitled for default bail under Section 167(2) of Cr.P.C., which is indefeasible right accrued for the petitioners-accused. Therefore, they shall be released on bail. Hence, I pass the following

ORDER

Accordingly, Criminal Petitions are **allowed**.

The jurisdictional Magistrate is directed to release the petitioners-accused No.1 and 3 on bail in Crime No. 104/2020 of Mangalore East Police Station, Mangaluru City pending on the file of the VI JMFC, D.K. Mangaluru and in Crime No.89/2020 of Mangaluru North Police Station, D.K. Mangaluru City pending on the file of II J.M.F.C, D.K. Mangaluru for the offence punishable under Section 153A

of IPC, Sections 3 and 5 of the Karnataka Open Place (Prevention of Disfigurement) Act and Sections 13 and 39 of the UA(P) Act, subject to the following conditions:

- (i) *Petitioners-accused Nos.1 and 3 shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakh only) each with two sureties for the likesum to the satisfaction of the Magistrate.*
- (ii) *Petitioners shall not indulge in similar offences strictly;*
- (iii) *Petitioners shall not tamper with the prosecution witnesses directly/ indirectly;*
- (iv) *Petitioners shall not leave the jurisdiction without prior permission of the trial Court;*
- (v) *Petitioners shall appear before the Investigating Officer once in a week between 10.00 a.m. and 4.00 p.m., for a period of six months till filing of the charge-sheet whichever is earlier.*

**Sd/-
JUDGE**