



This Writ Petition filed under Articles 226 and 227 of the Constitution of India read with section 482 of Cr.P.C. praying to quash the impugned order as in Annex-A dtd:09.02.2023 in Special CC No.123/2023 passed by the XLIX Addl. City Civil and Sessions Court and Special Court for Trial of NIA cases at Bengaluru, while allowing the application under section 43D(2) of UA (P) A Act 1967, filed on behalf of by the respondent extending the period of investigation beyond 90 days, consequently appreciate the default bail application filed under section 167(2) of Cr.P.C. same at Annex-E by imposing reasonable conditions.

Date on which the petition was reserved for orders	20.02.2024
Date on which the order was pronounced	12.03.2024

This Writ Petition having been heard & reserved, coming on for pronouncement this day, **Sreenivas Harish Kumar J.**, pronounced the following:



**ORDER**

The question to be answered in this writ petition is this :

Whether the application filed under Section 167 (2) of Cr.P.C by an accused claiming default bail takes priority over an application filed under Section 43D (2) (b) of the Unlawful Activities (Prevention) Act (for short 'UAP Act') whenever two applications are filed on the same day?

2. The petitioner is accused No.21 in Spl. C.C. No. 123/2023 on the file of XLIX Additional City Civil and Sessions Judge and Special Judge for NIA Cases, Bengaluru. Amongst several offences punishable under Indian Penal Code including the offence under Section 302 of IPC and the Arms Act, the NIA has invoked the offences punishable under Sections 16, 18, 19 and 20 of the UAP Act. The petitioner was arrested on 07.11.2022 and produced before the court on 08.11.2022. The NIA filed charge sheet against accused 1 to 20 on 20.01.2023 and sought permission under Section 173 (8) of Cr.P.C for



further investigation. No charge sheet was filed against the petitioner on 20.01.2023. The initial period of ninety days from the date of production of the petitioner before the court expired on 06.02.2023. NIA did not file charge sheet against the petitioner on or before expiry of ninety days period. And when the case was called in the court on 07.02.2023, the petitioner did not exercise his right to be released on bail as the NIA did not file charge sheet within ninety days. When the case was called on 08.02.2023, if the Special Public Prosecutor for NIA filed an application under Section 43D (2) (b) of UAP Act seeking extension of time to file charge sheet, the petitioner filed an application under Section 167(2) of Cr.P.C claiming default bail. The NIA filed its application in the morning session and the petitioner filed his application in the afternoon session of the court. The trial court decided both the applications together and passed an order on 09.02.2023 allowing the application of the NIA and dismissing the petitioner's application. The petitioner has challenged the order dated 09.02.2023.



3. We have heard the arguments of Smt. Haleema Ameen for the petitioner and Sri P.Prasanna Kumar for the respondent.

4. It is the argument of Smt. Haleema Ameen that it was the duty of the trial court to have informed the petitioner of his right to apply for bail soon after expiry of ninety days from the date of his production before the court once the respondent failed to submit the charge sheet. Instead the trial court remanded the petitioner to the custody on an oral submission made by an advocate not authorized to represent the respondent. This remand was bad in the eye of law. The first ninety days time expired on 06.02.2023. The respondent did not file the charge sheet either before or on that date. It was only on 08.02.2023, the respondent sought extension of time to file charge sheet, but on the same day the petitioner filed an application for bail under Section 167 (2) of Cr.P.C. Because the respondent failed to submit the charge sheet and failed to seek extension of time very soon after expiry



of ninety days, the right accrued to the petitioner under Section 167 (2) of Cr.P.C could not have been denied. Though both the applications were filed on the same day, the petitioner's right to be released on bail cannot be defeated. Moreover either on 06.02.2023 or on 07.02.2023 the respondent did not file extension application. Unless application was filed, the petitioner cannot be remanded to custody. In these set of circumstances, the petitioner was entitled to be released on bail. The trial court has failed to recognize the valuable right of the petitioner and its decision to dismiss the application for bail cannot be sustained and hence the impugned order is to be quashed. In support of her arguments she has placed reliance on a few decisions which will be adverted to later.

5. It was the argument of Sri P.Prasanna Kumar that on 07.02.2023 his colleague represented him and orally sought extension of remand of the petitioner to the



custody for a day. It was not that a person not authorized under law sought extension of time. If the submission of Smt. Haleema Ameen in this regard is accepted, no junior can appear in the court.

5.1. It was his further argument that while it was true that ninety days time from the date of first remand to custody expired on 06.02.2023 and that no charge sheet was filed on that day, it was also equally true that the petitioner also did not request the court for releasing him on bail before an application from the respondent's side was filed for extension of remand as the investigation against the petitioner was still under way. The UAP Act provides for filing charge sheet within one hundred and eighty days. It was for this reason, extension of application was filed when the charge sheet could not be filed within first ninety days. It is a fact that the respondent's application for extension of time was filed in the court in the morning session and that the petitioner got filed his application in the afternoon session.



Irrespective of the time of filing of the applications, the legal position is that the court has to decide both the applications together. If the court grants the application for extension of time, automatically the application under Section 167 (2) of Cr.P.C has to be dismissed. The trial court, having found that the respondent had come up with valid reasons for not being able to file charge sheet within ninety days and for extension of time, allowed the application. The respondent has not challenged the order on the application for extension of time. In this view, this writ petition is devoid of merits and it deserves to be dismissed.

6. We have considered the points of arguments.

7. Section 43D (2) (a) of the UAP Act states that whenever the offences punishable there under are invoked in a case, Section 167 of Cr.P.C is applicable with a modification that wherever there is reference to "fifteen days", "ninety days" and "sixty days", it shall be read as "thirty days", "ninety days" and "ninety days" respectively.



Clause (b) of the said Section states that if it is not possible to complete the investigation within a period of ninety days, the court may extend the period up to one hundred and eighty days if the report of the Public Prosecutor indicates the progress made in the investigation and specific reasons for detention of an accused beyond ninety days period. Since Section 43D (2) clearly states that Section 167 of Cr.P.C is applicable in a proceeding in relation to an offence under UAP Act, undoubtedly if charge sheet is not filed within ninety days and if the investigating agency does not seek extension of the period to complete the investigation, an accused gets a right under Section 167 (2) of Cr.P.C to be released on bail. It is an indefeasible right which the court cannot deny if an accused is ready to furnish bail, but this right should be exercised before the investigating agency files charge sheet or seeks extension of time to complete the investigation. Mere filing of application seeking extension of time is not enough, the application must disclose the progress in the investigation and also specific reasons for





detention of the accused beyond ninety days. If the application does not disclose these requirements, the accused has to be released on bail if he is ready to furnish bail.

8. Smt. Haleema Ameen has argued that oral application for extension is not permitted. This argument is difficult to be accepted. There is no bar as such in Section 167 of Cr.P.C for an oral request being made seeking extension of custody period. If the accused does not avail his right to be released on bail after expiry of the prescribed period to file charge sheet, obviously the court has to extend the custody period. The accused cannot be left in lurch. Oral request for extension is also permitted.

9. Now the law is settled that unless the accused makes an application either orally or in writing for being released on bail, the court cannot release him from custody. [**Ref. *Sanjay Dutt vs State [(1994) 5 SCC 410]* and *Hitendra Vishnu Thakur vs State of Maharashtra [(1994) 4 SCC 602]***]. These two decisions



were referred to in a later decision in ***M.Ravindran vs Directorate of Revenue Intelligence [(2021) 2 SCC 485]*** to reiterate the same position. Therefore it is not possible to accept the argument of Smt. Haleema Ameen that the trial court should have released the petitioner on bail immediately after expiry of ninety days without an application being made on his behalf. Since this position of law being very clear, the decision of a learned Single Judge of Madras High Court in ***K.Muthuirul vs Inspector of Police [CRL. OP (MD) No. 18273/2021]*** is of no use. Another decision of the Supreme Court in the case of ***Sayed Mohammed Ahmad Kazmi vs State [Government of NCT of Delhi and Others] [(2012) 12 SCC 1]*** that Smt. Haleema Ameen has referred to also deals with right of an accused to avail bail in case of default by investigating agency to submit charge sheet within the prescribed time. In this decision also it is made very clear that if an accused fails to exercise his right to be released on bail before charge sheet is filed, he loses his right to the benefit for bail once charge sheet is filed.



Smt. Haleema Ameen relied on this decision to support her argument that since in the case on hand charge sheet had not been filed, the petitioner should have been released on bail. The facts in the cited decision make it very clear that after expiry of the prescribed period the accused therein filed an application under Section 167 (2) of Cr.P.C for bail on 17.07.2012. On that day charge sheet had not been filed. The State filed an application before the court on 18.07.2012 seeking extension of custody period as the investigation had not been completed. The court heard on the application on 20.07.2012 and allowed it authorizing the custody period with retrospective effect from 02.06.2012. The Hon'ble Supreme Court noticing this situation held that there was no scope for extending the custody period with retrospective effect once the accused had exercised his right under Section 167 (2) of Cr.P.C. This is not the situation in the present case and therefore ***Sayed Mohammed*** is not applicable.



10. In the case on hand, it is not in dispute that after expiry of ninety days time on 06.02.2023, neither the petitioner made an application claiming bail nor the respondent filed charge sheet or extension application. They were filed on 08.02.2023. In the meantime, on 07.02.2023, upon an oral request made by the counsel appearing on behalf of Special Public Prosecutor, the court extended the custody period till 08.02.2023. When the case was called on 08.02.2023, an application for extension of time was made on behalf of the investigating agency in the morning session of the court and the petitioner also made an application under Section 167 (2) of Cr.P.C in the afternoon session. Digressing for a moment, one line of argument of Smt. Haleema Ameen may be dealt with here contextually.

11. She submitted that counsel who sought extension was not the Special Public Prosecutor and his oral request should not have been considered. On this line of argument she has placed reliance on a judgment of the



Calcutta High Court in ***Saraswati Rai vs Union of India*** [2011 Crl.L.J 3020]. It is difficult to commend the argument of Smt. Haleema Ameen as it is too rhetoric and technical; if it is accepted no junior or a colleague of an advocate can represent in the court. Moreover the cited judgment can be distinguished on facts. The facts therein show that the NIA had not at all appointed a Special Public Prosecutor as required under Section 15 of the NIA Act. The District Public Prosecutor appeared before the court and sought extension of custody period of the accused. The District Public Prosecutor had not been appointed as Special Public Prosecutor for the NIA and taking note of this factual position the Calcutta High Court had to hold that NIA was not represented properly and therefore the extension application could not be entertained. In the case before us, Special Public Prosecutor has been appointed and it appears that his junior appeared before the court and made an oral request for extension of custody period stating that the investigating officer could not file extension application due to inadvertence and he



also made a further submission that necessary application would be filed on the next day. Therefore the case was called on 08.02.2023. In this view, it cannot be stated that the counsel who appeared before the court on 07.02.2023 was not authorized to seek extension of the custody period.

12. Harking back, what should be the approach of the court if two applications as mentioned above are filed on the same day, is made clear by the Supreme Court in the case of **M.Ravindran (supra)**. The relevant observation is as follows :

*"20.1. The observations made in Hitendra Vishnu Thakur and Sanjay Dutt to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the accused. In such a situation, notwithstanding*



*the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.”*

13. That means two applications must be considered together irrespective of the time of their filing. Consideration of two applications together does not arise in case the application by the accused for default bail has already been made, at least a day before the application for extension is filed. If two applications are made on the same day, there is no other go but to decide the two applications together. The answer to the question as to which application gets priority is found in the judgment of the Supreme Court in the case of **Sanjay Dutt (supra)**, a decision on which Smt. Haleema Ameen has relied in the context of her point of argument in regard to indefeasible right available to an accused in case of non-filing of charge



sheet. While answering this point, the Supreme Court has also made it clear that whenever two applications, one for default bail and another for extension of custody period, are filed, no bail can be granted unless the prayer for extension of time is rejected. These observations are found in para 48 :

*"48. .... If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filled because Section 167 Cr.P.C. ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4) (bb), both of them should be considered together. It is obvious that no bail can be given in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer*





*for extension of time, if such a prayer is made.*

*.....”*

14. In this case the trial court decided the applications together and found that the respondent had come up with specific reasons to seek extension of custody period of the petitioner. Obviously once the application of the respondent was allowed, the petitioner’s application for bail had to be dismissed. Since it was not urged before us that there were no specific and valid reasons for extending the custody period of the petitioner, we need not examine that aspect of the matter. In the result, writ petition is to be dismissed and ordered accordingly.

**Sd/-  
JUDGE**

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JUDGE**

ckl/- List No.: 19 Sl No.: 4