2023 INSC 472

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1011 OF 2023

JUDGEBIR SINGH @ JASBIR SINGH SAMRA @ JASBIR & ORS. .... APPELLANT(S)

VERSUS

NATIONAL INVESTIGATION AGENCY .... RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1012 OF 2023

J U D G M E N T

J. B. PARDIWALA, J:

1. As the issues raised in both the captioned appeals are common and the challenge is also to the self-same order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. These appeals by special leave are at the instance of five under trial accused charged with having committed offences punishable under Section

120B of the Indian Penal Code, 1860 (for short, 'the IPC'), Sections 17, 18, 18B and 20 respectively of the Unlawful Activities (Prevention) Act, 1967 (for short, 'the UAPA') and Sections 4 and 5 respectively of the Explosive Substances Act, 1908 (for short, 'the 1908 Act') and are directed against the order passed by the High Court of Punjab and Haryana at Chandigarh dated 26.04.2022 in CRA-D No. 47 of 2021 (O&M) by which, the High Court dismissed the appeal and thereby declined to release the accused persons on default bail under Section 167(2) of the CrPC.

3. The seminal issues falling for the consideration of this Court may be formulated as under:-

(i) Whether an accused is entitled to seek default bail under the provisions of Section 167(2) of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') on the ground that although the chargesheet might have been filed within the statutory time period as prescribed in law yet the chargesheet sans a valid order of sanction passed by a competent authority is no chargesheet in the eye of law and therefore, it is as good as saying that no chargesheet was filed by the investigating agency within the statutory time period as prescribed in law? To put it more succinctly, whether the Court concerned is precluded in any manner for the purpose of Section 167 of the CrPC from taking notice of the chargesheet that might have been filed by the investigating agency in the absence of a valid order of sanction?

(ii) Whether cognizance of the chargesheet is necessary to prevent the accused from seeking default bail or whether mere filing of the chargesheet would suffice for the investigation to be deemed complete? To put it in different words, whether the grant of sanction is contemplated under Section of the 167 CrPC?

(iii) A Special Court may not be in a position to take cognizance on account of failure on the part of the prosecution to obtain sanction to prosecute the accused under the UAPA and the 1908 Act, but does such failure amount to non-compliance with the provisions of Section 167(2) of the CrPC so as to entitle the accused to seek default bail?

(iv) Whether filing of the chargesheet for the offences as enumerated above, in the Court of the Magistrate and the Magistrate thereafter, committing the case to the Court of Sessions or designated Court would vitiate all subsequent proceedings on the ground that Section 16 of the National Investigation Agency Act, 2008 (for short, 'the NIA Act') empowers the Special Court to take cognizance of any offence without the accused being committed to it for trial upon receiving a police report? To put it in other words, whether the error on the part of the investigating agency to file chargesheet for the offence enumerated above, in the Court of Magistrate and not in the Sessions or designated Court would by itself entitle the accused to seek default bail under the provisions of Section 167(2) of the CrPC?

4. For the purpose of answering the aforesaid issues, it is very much essential to take notice of the following chronology of dates and events:

(a) On 02.06.2019 at around 04:50 in the morning, a team of police officers was patrolling. The vehicles passing through the Harsh Cheena, Kukkarwal bus stop in Raja Sansi, District Amritsar, State of Punjab, were being checked. At that point of time two boys belonging to the Sikh community were noticed to have been travelling on a motorcycle without a number plate. On being asked to stop, they fled away. In the process of running away, one blue coloured bag which was in the hands of the pillion rider fell down. A mobile phone and two hand grenades were recovered from the bag. In such circumstances, FIR No. 90 came to be registered at the Police Station Raja Sansi, District Amritsar

(Rural), Punjab, for the offences punishable under the 1908 Act. Thus, the FIR came to be registered on 02.06.2019.

(b) On 05.06.2019, the Punjab Police added Sections 17, 18, 18B and 20 of the UAPA.

(c) On 08.06.2019, accused Jasbir Singh and Varinder Singh came to be arrested by the Punjab Police.

(d) On 27.07.2019, Sukhpreet Singh alias Budda (Accused No. 8) was arrayed as accused in the instant FIR and offence under Section 120B of the IPC was added.

(e) On 18.08.2019, the Appellant No. 3 Kulbir Singh alias Kulbir and Appellant No. 4 Manjit Kaur wife of Darshan Singh (Appellants of Crl. A. No. 1011 of 2023) came to be arrested. It is the case of the prosecution that Kulbir Singh and Manjit Kaur at the relevant point of time were residing at Cambodia. One Harmit Singh and Kulwinder Singh were also arrayed as accused.

(f) On 04.09.2019, the Punjab Police applied for extension of time for completing the investigation under the proviso to Section 43D(2)(b) of the UAPA before the Additional Sessions Judge, Amritsar. It is pertinent to note that the application seeking extension was filed two days prior to the expiry of 90 days from the date of arrest. Section 43D(2)(b) of the UAPA empowers the competent court to extend the period of 90 days as contemplated under Section 167 of the CrPC up to 180 days.

(g) On 07.09.2019, Taranbir Singh (Appellant of Crl. A. No. 1012 of 2023) came to be arrayed as accused in the instant FIR. Taranbir Singh at the relevant point of time was residing in Malaysia.

(h) On 11.09.2019, Taranbir Singh was arrested.

(i) On 17.09.2019, the Additional Sessions Judge, Amritsar, extended the period of completion of investigation from 90 days to 180 days. It is pertinent to note at this stage that the extension was granted by the Additional Sessions Judge after giving an opportunity of hearing to all the accused persons.

(j) On 15.11.2019, a final report under Section 173(2) of the CrPC was prepared by the investigating agency and presented before the Court of the Sub-Divisional Judicial Magistrate, Ajnala. This report (chargesheet) was filed in connection with the FIR No. 90 for the offence enumerated above. A common chargesheet was filed before the Court of Magistrate on 15.11.2019. Since the accused Nos. 1 and 2 respectively were arrested on 08.06.2019, the chargesheet could be said to have been presented on the 161st day from the date of their formal arrest. The accused Nos. 3 & 4 were arrested on 18.08.2019; for them, the chargesheet was filed within 90 days post-arrest, and in the case of the accused No. 5 who was arrested on 11.09.2019, it was filed within 66 days of his arrest. Thus, the chargesheet was filed within the extended period of 180 days so far as Appellant Nos. 1 and 2 are concerned.

(k) On 16.11.2019, the SDJM, Ajnala adjourned the proceedings of all the accused persons.

(l) On 20.11.2019, the SDJM, Ajnala further adjourned the proceedings to 25.11.2019.

(m) On 25.11.2019, the SDJM, Ajnala committed the case to the Court of Sessions under the provisions of Section 209 of the CrPC, as the offences were exclusively triable by the Court of Sessions. The next date fixed was 06.12.2019.

(n) On 06.12.2019, the Additional Sessions Judge, Amritsar, simply registered the case without cognizance being taken.

(o) On 22.02.2020, the NIA, New Delhi re-registered the instant case as RC-07/2020/NIA/DLI under Sections 17, 18, 18B and 20 respectively of the UAPA in compliance with the Government of India, Ministry of Home Affairs, CTCR Division Order No. 11011/22/2020/NIA dated 20.02.2020 in the FIR No. 90 of 2019.

(p) On 09.03.2020, the Special Judge, CBI Punjab, SAS Nagar, Mohali, received the entire file from the Court of Additional Sessions Judge, Amritsar. In this manner, the prosecution ultimately stood transferred to the Special Court constituted under the NIA/UAPA.

(q) On 26.10.2020, the District Magistrate, Amritsar, accorded sanction for prosecution under the 1908 Act.

(r) On 12.11.2020, the Special Judge, NIA recorded that the sanction to prosecute the accused persons for the offences under the 1908 Act had been accorded and the sanction under the UAPA was being awaited.

(s) On 14.12.2020, an application for default bail under Section 167(2) of the CrPC r/w Section 43D of the UAPA was filed before the Special Judge NIA, SAS Nagar, Mohali, essentially on the ground that although the chargesheet had been filed within the extended period of 180 days, yet the same could be termed as incomplete because of want of sanction under the UAPA. In such circumstances, the position was as if there was no chargesheet.

(t) On 16.12.2020, the prosecution produced the order of grant of sanction issued by the District Magistrate, Amritsar, under the 1908 Act before the trial court.

(u) On 17.12.2020, the NIA filed its reply to the application filed by the accused persons seeking default bail.

(v) On 17.12.2020, the Special Court rejected the application filed by the accused persons seeking default bail on the ground that the chargesheet had already been filed.

(w) On 06.01.2021, the Government of Punjab accorded sanction for prosecution under the UAPA.

(x) On 07.01.2021, the Special Court acknowledged the receipt of the sanction under the UAPA from the Home Department of the Punjab Government.

(y) On 18.01.2021, the appellants herein filed appeal before the High Court of Punjab and Haryana against the order dated 17.12.2020 passed by the Special Court rejecting the default bail application.

(z) On 17.03.2021, the Government of India, accorded sanction under Section 45(1) of the UAPA for prosecuting the Appellants.

(aa) On 22.03.2021, a supplementary chargesheet was filed by the NIA before the Special Judge, NIA, Punjab, along with the relevant sanctions for prosecution.

(ab) On 05.04.2021, the Special Court, NIA took cognizance of the offences enumerated above and issued notices to the accused persons.

(ac) On 06.09.2021, the Special Court proceeded to frame charge against the accused persons.

(ad) On 26.04.2022, the High Court of Punjab and Haryana dismissed the appeal filed by the Appellants against the order of the Special Court rejecting the plea of default bail.

5. To make it more explicit and clear, we trim down the aforesaid chronology of dates and events as under:

(i) 02.06.2019 – FIR was registered;

(ii) 08.06.2019 – arrest of the first and second Appellants;

(iii) 18.08.2019 – arrest of the third and fourth Appellants;

(iv) 11.09.2019 – arrest of Taranbir Singh (Appellant of Crl. A. No. 1012 of 2023)

(v) 17.09.2019 – extension of the period of investigation from 90 to 180 days;

(vi) 15.11.2019 – chargesheet presented;

(vii) 14.12.2020 – application for default bail;

(viii) 16.12.2020 – sanction order dated 26.10.2020 under the 1908 Act filed;

(ix) 06.01.2021 – sanction order was issued under the UAPA;

(x) 17.03.2021 – sanction by the Ministry of Home Affairs under Section 45(1), UAPA following the transfer of investigation to NIA; and

(xi) 22.03.2021 – supplementary chargesheet has been presented by NIA.

6. In such circumstances referred to above, the Appellants (original accused persons) are here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE ACCUSED PERSONS

7. Mr. Colin Gonsalves, the learned Senior Counsel and Mr. Satya Mitra, the learned Counsel appearing for the respective appellants vehemently submitted that the High Court committed a serious error in declining to grant the benefit of default bail to the appellants.

8. According to both the learned counsel, the chargesheet filed without sanction is an incomplete chargesheet and on the basis of such incomplete

chargesheet no cognizance can be taken. It was submitted that the final report is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence should be taken or not. The sum and substance of the submission canvassed on behalf of the accused persons is that there cannot be a part chargesheet. A chargesheet filed without sanction is an incomplete chargesheet and does not meet the requirement of a police report within the meaning of Section 173(2) of the CrPC. Such a chargesheet would also not be in consonance with sub section (5) of Section 173 of the CrPC.

9. Such incomplete chargesheet cannot be used as a tool or device by the police to defeat an application seeking statutory/default bail. It was argued that a chargesheet filed under the UAPA must be complete in all respects. The emphasis put by both the learned counsel was on the fact that the sanction order must accompany the chargesheet to enable the court concerned to take cognizance.

10. It was further argued that mere gathering of evidence by the investigating agency is not sufficient when it comes to comparing usual criminal cases with the cases under the UAPA. The investigation cannot be said to be complete until the facts gathered are scrutinised by the authority appointed by the Central Government and such authority submits its report.

11. Our attention was drawn by both the learned counsel to Rules 3 and 4 respectively of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (for short, 'Rules 2008'), which provide a time limit for making recommendation by the authority and a time limit thereafter, for sanction of the prosecution. It was argued that the provisions of the UAPA and Rules 2008 framed thereunder make the grant of sanction, time bound.

12. It was vociferously submitted by both the learned Counsel that the extension of time from 90 to 180 days read together with Rules 3 and 4 respectively of the Rules 2008 referred to above, makes the grant of sanction mandatorily time bound. The same leads to only one conclusion that the sanction order must accompany for it to be considered a final report.

13. It was argued that since the chargesheet in the case on hand was filed on 15.11.2019, the material collected by the investigating agency should have been received by the competent authority on 15.11.2019 itself. The report of the competent authority should have been ready seven days thereafter, i.e., by 22.11.2019. In view of Rule 4, the sanction should have been granted by 29.11.2019. However, according to both the learned counsel, the report was filed only on 12.03.2021 i.e., after a delay of one year and three months. The sanction was granted on 17.03.2021 i.e., beyond the period of 180 days which expired on 10.03.2020. The default bail application was instituted on 14.12.2020.

14. It was further argued that the NIA after taking over the investigation on 22.01.2020 was left with 49 days to file or place on record the appropriate sanction before the expiry of the limit of 180 days. The default bail application was filed on 14.12.2020. The sanction, which was granted only on 17.03.2021, ought to have been granted on 29.11.2019 in view of the time period prescribed by Rules 3 and 4 respectively of the 2008 Rules referred to above. In such circumstances, both the learned counsel submitted that such a delayed sanction even if otherwise valid cannot defeat the indefeasible right of the accused persons to seek default bail.

15. The second limb of the submission canvassed by both the learned counsel appearing for the accused persons is that the chargesheet could not have been filed in the Court of SDJM, Ajnala as the proceedings under the NIA are

to be conducted in the Special Court only notified under Section 22 of the NIA Act. If there is no Special Court notified then before the Sessions Judge. However, in any event, the chargesheet could not have been filed before the Court of Magistrate. It was argued that in view of Section 16 of the NIA Act read with Section 22 of the NIA Act, the provisions of Section 193 of the CrPC would not come into play. It was argued that the error on the part of investigating agency in filing the chargesheet before the Court of Magistrate and the Magistrate thereafter, committing the case to the Court of Sessions was absolutely contrary to the provisions of the NIA Act and also the provisions of the UAPA, which rendered all subsequent proceedings to be without jurisdiction and hence, a nullity.

16. In support of the aforesaid submissions, reliance has been placed on the following case law:

(i) ***Fakhrey Alam v. State of Uttar Pradesh***, 2021 SCC OnLine 532

(ii) ***Abdul Azeez P.V. and Others v. National Investigation Agency***, (2014) 16 SCC 543

(iii) ***Chitra Ramkrishna v. Central Bureau of Investigation***, (2022) SCC OnLine Del 3124

(iv) ***Rambhai Nathabhai Gadhvi and Others v. State of Gujarat***, (1997) 7 SCC 744

(v) ***Ashrafkhan v. State of Gujarat***, (2012) 11 SCC 606

(vi) ***Bikramjit Singh v. State of Punjab***, (2020) 10 SCC 616

17. In such circumstances referred to above, both the learned counsel prayed that there being merit in their appeals, those may be allowed and the accused persons be ordered to be released on default bail.

SUBMISSIONS ON BEHALF OF THE NIA/UNION OF INDIA

18. Mr. Sanjay Jain, the learned ASG, on the other hand, while vehemently opposing both the appeals submitted that it is settled law that the indefeasible right under Section 167(2) of the CrPC accrues to an accused only if the chargesheet is not filed within the time prescribed therein or within the time extended by a competent court under a special statute. He would submit that the right ceases to be available if the chargesheet is filed within the time indicated above or if the chargesheet is filed prior to preferring an application under Section 167(2) of the CrPC. Mr. Jain sought to fortify his submission by placing reliance on the Constitution Bench decision of this Court in the case of ***Sanjay Dutt v. State*** reported in (1994) 5 SCC 410 (paras 48 and 53(2)(b)) and in the case of ***Serious Fraud Investigation Office v. Rahul Modi and Others*** reported in (2022) SCC OnLine 153 (para 16).

19. Mr. Jain vehemently submitted that there is no merit in the submission canvassed on behalf of the accused persons that a chargesheet without requisite sanction under the UAPA or the 1908 Act is incomplete. In other words, according to Mr. Jain, there is no merit in the contention canvassed on behalf of the accused persons that although the chargesheet was filed within the period of 180 days, yet the same being without sanction, it could be said to be as good as not filing the chargesheet within the statutory time period.

20. In the aforesaid context, Mr. Jain invited the attention of this Court to the following aspects:

a. The act of grant of sanction for prosecution, in several statutes, is entrusted upon an authority other than the Investigating Agency and as such it is not within the domain of the Investigating Agency to grant such Sanction.

b. In the present case, at the time of filing of the first chargesheet by the State Investigating Agency (SIA), the SIA had already sought sanction for prosecution from the appropriate Governments.

c. The cognizance of the offence was taken by the Special Court NIA/UAPA on 05.04.2021, only after the sanctions under the 1908 Act and UAPA were granted by the appropriate governments and communicated to the Court, as is evident from the timeline indicated above.

d. The question of grant of sanction for prosecution is relevant only at the stage of taking cognizance, which is altogether a separate stage distinct from the stage of investigation. [Reliance is placed on ***Suresh Kumar Bhikamchand Jain v. State of Maharashtra and Another***, (2013) 3 SCC 77 @ Paras 17 – 19]

21. Mr. Jain submitted that as some of the accused persons were declared as absconders, the request for extension of time to file chargesheet was made by the investigating agency on 04.09.2019 (i.e., within the period of 90 days), the said application was finally heard on 17.09.2019 and the hearing was in conformity with the principles of natural justice as all the accused persons were duly represented and arguments on behalf of the accused as well as prosecution were heard on the application seeking extension of time

22. Mr. Jain further submitted that the investigation was being carried out by the State Police and in view of the same, the State Police proceeded with filing of the chargesheet on 15.11.2019 before the JMFC, where the accused persons were first produced at the time of their arrest and in view thereof, the original chargesheet was presented before the Magistrate, which at the relevant time had

the custody of the accused persons and thus, the same cannot be termed as non-compliance of Section 167 of the CrPC. [Reliance: ***Suresh Kumar Bhikamchand Jain*** (Supra) @Paras 13 – 17 and ***Rahul Modi*** (supra) @ Para 16].

23. Mr. Jain further submitted that the case was eventually committed to the Court of Sessions and finally to the Special Court constituted for NIA/UAPA (after taking over of investigation by NIA on 22.02.2020 re-registered by NIA as RC-07/2020/NIA/DLI) and finally the cognizance was also taken by the Special Court only, after examining the prosecution sanctions. The sanction under the 1908 Act was received on 26.10.2020 by the District Magistrate, Amritsar, which was duly recorded by the Special Judge, NIA on 12.11.2020. The sanction under the UAPA by the Punjab Government was granted on 06.01.2021. The Special Court recorded the same on 07.01.2021. Further, the Government of India accorded the sanction under Section 45(1) of UAPA on 17.03.2021.

24. In the last, Mr. Jain pointed out that the trial of all the accused persons is in progress and twelve witnesses have been examined so far. The accused persons are facing trial for very serious offences relating to National security. If the accused persons have anything to say in regard to the legality and validity of the sanctions or the mode and manner in which the cognizance was taken then such issues could be raised before the trial court. According to Mr. Jain, there is no scope for the accused persons at this point of time to say that they be released on default bail.

FEW RELEVANT STATUTORY PROVISIONS

25. Before adverting to the rival submissions canvassed on either side, we must look into the few relevant statutory provisions of the CrPC, the UAPA, the 1908 Act and the NIA Act.

26. In the earlier Code of Criminal Procedure, 1898 (for short, 'the CrPC, 1898'), Section 167 laid down the procedure to be followed in the event the investigation of an offence was not completed within 24 hours. Section 167 in the CrPC, 1898, was premised on the conclusion of investigation within 24 hours or within 15 days on the outside, regardless of the nature of the offence or the punishment.

27. The Law Commission of India, in its Forty-first Report, recommended increasing the time-limit for completion of investigation to 60 days. The new CrPC gave effect to the recommendation of the Law Commission. Section 167 as enacted provided for time-limit of 60 days regardless of the nature of offence or the punishment. In the year 1978, Section 167 was amended. Section 167(2) which is relevant for the present case existing as of now is to the following effect:

> *"**167(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;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police."

28. A three-Judge Bench of this Court in ***Uday Mohanlal Acharya v. State of Maharashtra*** reported in (2001) 5 SCC 453, has noticed the object of enacting the provisions of Section 167 of the CrPC. Section 57 of the CrPC contains the embargo on the police officers to detain in custody, a person arrested beyond 24 hours. The object is that the accused should be brought before a Magistrate without delay within 24 hours, which provision is, in fact, in consonance with the constitutional mandate engrafted under Article 22(2) of the Constitution. The provision of Section 167 is supplementary to Section 57. The power under Section 167 is given to detain a person in custody while police goes on with the investigation. Section 167 is, therefore, a provision which authorises the Magistrate permitting the detention of the accused in custody prescribing the maximum period. In ***Uday Mohanlal Acharya*** (supra) this Court while dealing with Section 167 laid down the following:

*"**5.** ...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…."

29. Again, there has been a very detailed consideration of Section 167 by a three-Judge Bench of this Court in ***Rakesh Kumar Paul v. State of Assam***, reported in (2017) 15 SCC 67. This Court in the above case has traced the legislative history of the provision of Section 167. This Court in the above case emphasised that the debate on Section 167 must also be looked at from the perspective of expeditious conclusion of investigation and from the angle of personal liberty. This Court also held that the right of default bail is an indefeasible right which cannot be allowed to be frustrated by the prosecution. Following was laid down in paras 37, 38 and 39:

"***37.*** *This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] . In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] and the conclusions arrived*

at in that decision. We are concerned with Conclusion (3) which reads as follows : (Uday Mohanlal Acharya case [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] , SCC p. 473, para 13)

> *"13. ... (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."*

38. *This Court also dealt with the decision rendered in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and noted that the principle laid down by the Constitution Bench is to the effect that if the charge-sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge-sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.*

39. *This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] wherein it was observed that some courts keep the application for "default bail" pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for "default bail" during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court."*

30. One more judgment of this Court on Section 167 of the CrPC be noticed i.e., ***Achpal alias Ramswaroop and Another v. State of Rajasthan***, reported in (2019) 14 SCC 599. After referring to several earlier judgments of this Court including the judgments of this Court in ***Uday Mohanlal Acharya*** (supra) and ***Rakesh Kumar Paul*** (supra), this Court had laid down that the provisions of the CrPC do not empower anyone to extend the period within which the investigation must be completed. This Court held that no court either directly or indirectly can extend such period. Following are the observations of this Court in para 20 of ***Achpal*** (supra):

> *"**20.** We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no court could either directly or indirectly extend such period. In any event of the matter all that the High Court had recorded in its order dated 3-7-2018 [Mahaveer v. State of Rajasthan, 2018 SCC OnLine Raj 1] was the submission that the investigation would be completed within two months by a gazetted police officer. The order does not indicate that it was brought to the notice of the High Court that the period for completing the investigation was coming to an end. Mere recording of submission of the Public Prosecutor could not be taken to be an order granting extension. We thus reject the submissions in that behalf advanced by the learned counsel for the State and the complainant."*

31. The scheme of the CrPC as noticed above clearly delineates that the provisions of Section 167 of the CrPC give due regard to the personal liberty of a person. Without submission of chargesheet within 60 days or 90 days as

may be applicable, an accused cannot be detained by the police. The provision gives due recognition to the personal liberty. However, as explained by this Court in ***Dinesh Dalmia v. CBI*** reported in (2007) 8 SCC 770, such a right of default bail although a valuable right, yet the same is a conditional one, the condition precedent being pendency of the investigation. Therefore, once the investigation is complete with the filing of the police report, containing the details specified under Section 173(2) of the CrPC, the question of a claim or grant for default bail does not arise.

32. However, Section 43D of the UAPA operates as a special provision vis a vis the applicability of rights granted under Section 167(2)(a) of the CrPC. Section 43D is reproduced hereinbelow:

> ***"43D. Modified application of certain provisions of the Code.***—*(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.*
>
> *(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.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(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 person 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.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

33. Thus, a plain reading of the abovementioned provision of the UAPA makes it clear that the benefit of default bail shall be available to the accused for the offences alleged to have been committed under the UAPA where the investigation has not concluded within 90 days of arrest of the accused irrespective of the punishment of the offences alleged to have been committed by him. At the same time, the provision also gives right to the investigating agency to seek further period of 90 days to complete the investigation by filing a report to the public prosecutor indicating the progress of investigation. Thus, by virtue of Section 43D of the UAPA, the investigating agency gets 90+90 days = 180 days to complete the investigation.

34. We shall now look into Section 45 of the UAPA. Section 45 of the UAPA is with respect to cognizance of offences. Section 45 of the UAPA reads thus:

*"**45. Cognizance of offences.***
(1) No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and if such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of

investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government."

35. A close look at Section 45 of the UAPA referred to above would indicate that sub section (1) deals with the authority who can accord sanction for the offence committed under the UAPA whereas sub section (2) deals with the procedure to be followed by the authority at the time of granting sanction. It is evident from Section 45(1) of the UAPA that if the offence falls under Chapter III of the UAPA, the Court shall not take cognizance of the offence unless previous sanction is accorded either by the Central Government or by any other officer authorised by the Central Government in this behalf. If the offence alleged to have been committed falls under Chapters IV and VI resply, the Court shall not take cognizance of the offence unless previous sanction is granted by the Central Government or the State Government as the case may be. However, if the offence committed as alleged is against the Government of a foreign country, the Court shall not take cognizance without the previous sanction of the Central Government. It is pertinent to mention here that for the offence enumerated under Chapters IV and VI resply, only the Central or State Government, as the case may be, are authorised to grant sanction.

36. We must read Section 45 of the UAPA referred to above along with the Rules 3 and 4 respectively of the 2008 Rules. We quote Rules 3 and 4 respectively as under:

*"**3. Time limit for making a recommendation by the Authority** .— The Authority shall, under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government or, as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.*

> ***4. Time limit for sanction of prosecution*** *.—The Central Government or, as the case may be, the State Government shall, under sub-section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority."*

37. The Rules 2008 referred to above, would indicate that the authority shall, under sub section (2) of Section 45 of the UAPA make its report containing the recommendations to the Central Government (or as the case may be, the State Government) within 7 working days of the receipt of the evidence gathered by the investigating officer under the CrPC. The Central Government (or as the case may be, the State Government) is obliged under sub section (2) of Section 45 of the UAPA to take a decision regarding sanction for prosecution within 7 working days after receipt of the recommendations of the authority.

38. In the aforesaid context, our attention was drawn by the learned counsel appearing for the appellants to the speech of the Hon'ble Home Minister while moving the draft Bills in the Rajya Sabha and in his speech, the Hon'ble Home Minister clearly stated as under:

> *"Finally, Sir, we have incorporated a very salutary provision. To the best of our knowledge-I don't know, I may be corrected by the Law Minister or the Law Secretary later - it is the first time we are introducing this. In a prosecution under the UAPA, now, it is the executive Government which registers the case through a police officer. It is the executive Government which investigates the case through an investigating agency, namely, the police department. It is the executive Govt. which sanctions U/s.45. Therefore, there is a fear that a vindictive or a wrong executive Govt. could register a case, investigate and sanction prosecution. There is a fear. May be, it is not a fear that is entirely justified but you cannot say that it is entirely unjustified. So what are we doing? The executive Govt. can register the case because no one else can register a case. The executive Govt., through its agency, can investigate the case.* ***But****, before sanction is granted under 45(1) we are interposing an independent authority which will review the entire evidence, gathered in the investigation, and then make a recommendation whether this is a fit case of*

prosecution. So, here, we are bringing ***a filter, a buffer, an independent authority*** *who has to review the entire evidence that is gathered and,* ***then****, make a recommendation to the State Govt. or the Central Govt. as the case may be, a fit case for sanction. I think, this is a very* ***salutary safeguard****. All sections of the House should welcome it. This is a biggest buffer against arbitrariness which many Members spoke about. Sir, these are the features in the Bill."*

(Emphasis supplied)

39. We shall now proceed to look into the provisions of the NIA Act. Section 16 of the NIA Act relates to the procedure and powers of Special Courts. Sub section (1) of Section 16 is relevant for our purpose. The same reads thus:

> "***16. Procedure and powers of Special Courts.—***
>
> *(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.*"

40. Section 18 of the NIA Act relates to sanction for prosecution. Section 18 reads thus:

> *"**18. Sanction for prosecution.—***
> *No prosecution, suit or other legal proceedings shall be instituted in any court of law, except with the previous sanction of the Central Government, against any member of the Agency or any person acting on his behalf in respect of anything done or purported to be done in exercise of the powers conferred by this Act."*

41. Section 22 of the NIA Act is with respect to the power of the State Government to designate the Court of Sessions as Special Courts. Section 22 of the NIA Act reads thus:

> *"**22. Power of State Government to designate Court of Session as Special Courts.—** (1) The State Government may designate one*

or more Courts of Session as Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts designated by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—(i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;

(ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State Government";

(iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to "Advocate-General of the State".

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is designated by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is designated by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is designated."

42. We shall now look into the 1908 Act. Section 7 of the 1908 Act imposes restriction on trial of offences under the 1908 Act except with the consent of the District Magistrate. Section 7 reads thus:

*"**7. Restriction on trial of offences.—***

No court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate."

FINAL ANALYSIS

Issue No. 1

43. We find no merit in the principal argument canvassed on behalf of the appellants that a chargesheet filed without sanction is an incomplete chargesheet which could be termed as not in consonance with sub section (5) of Section 173 of the CrPC. It was conceded by the learned counsel appearing for the appellants that the chargesheet was filed well within the statutory time period i.e., 180 days, however, the court concerned could not have taken cognizance of such chargesheet in the absence of the orders of sanction not being a part of such chargesheet. Whether the sanction is required or not under a statute, is a question that has to be considered at the time of taking cognizance of the offence and not during inquiry or investigation. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that cognizance is taken of the offence and not of the offender. It cannot be said that obtaining sanction from the competent authorities or the authorities concerned is part of investigation. Sanction is required only to enable the court to take cognizance of the offence. The court may take cognizance of the offence after the sanction order was produced before the court, but the moment, the final report is filed along with the documents that may be relied on by the prosecution, then the investigation will be deemed to have been completed. Taking cognizance is entirely different from completing the investigation. To complete the investigation and file a final report is a duty of the investigating agency, but taking cognizance of the offence is the power of the court. The court in a given case, may not take cognizance of the offence for a particular period of time even after filing of the final report. In such circumstance, the

accused concerned cannot claim their indefeasible right under Section 167(2) of the CrPC for being released on default bail. What is contemplated under Section 167(2) of the CrPC is that the Magistrate or designated Court (as the case may be) has no powers to order detention of the accused beyond the period of 180 days or 90 days or 60 days as the case may be. If the investigation is concluded within the prescribed period, no right accrues to the accused concerned to be released on bail under the proviso to Section 167(2) of the CrPC.

44. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. Section 173 of the CrPC does not speak about the sanction order at all. Section 167 of the CrPC also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.

45. Section 173(5) of the CrPC, of course, requires all the documents or the relevant extracts thereof on which the prosecution proposes to rely on, to accompany the final report. Sanction order cannot be brought within the

category of those documents contemplated under clause (5) to Section 173 of the CrPC. The grant of sanction is altogether a different act to be performed by the Government concerned under Section 45 of the UAPA.

46. In the case of ***Central Bureau of Investigation v. R.S. Pai and Another*** reported in (2002) 5 SCC 82, it was observed by this Court that *"...it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court."* It was further observed that *"....the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. State of A.P. [AIR 1957 SC 737 : 1958 SCR 283 : 1957 Cri LJ 1320] (SCR at p. 293) and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused...."*

47. From the aforesaid, it is evident that the order of sanction passed by the competent authority can be produced and placed on record even after the filing

of the chargesheet. It may happen that the inordinate delay in placing the order of sanction before the Special Court may lead to delay in trial because the competent court will not be able to take cognizance of the offence without a valid sanction on record. In such an eventuality, at the most, it may be open for the accused to argue that his right to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution. This may at the most entitle the accused to pray for regular bail on the ground of delay in trial. But the same cannot be a ground to pray for statutory/default bail under the provisions of Section 167(2) of the CrPC.

48. The chargesheet is nothing but a final report of police officer under Section 173(2) of the CrPC. Section 173(2) of the CrPC provides that on completion of the investigation, the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government, stating therein (*a*) the names of the parties; (*b*) the nature of the information; (*c*) the names of the persons who appear to be acquainted with the circumstances of the case; (*d*) whether any offence appears to have been committed and, if so, by whom (*e*) whether the accused has been arrested; (*f*) whether he had been released on his bond and, if so, whether with or without sureties; and (*g*) whether he has been forwarded in custody under Section 170. As observed by this Court in ***Satya Narain Musadi and Others v. State of Bihar*** reported in (1980) 3 SCC 152 at 157 that the statutory requirement of the report under Section 173(2) of the CrPC would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) of the CrPC

purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5) of the CrPC. Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e., in the course of the trial of the case by adducing acceptable evidence. (See ***K. Veeraswami v. Union of India and Others***, (1991) 3 SCC 655.)

49. The maximum period of 180 days which is being granted to the investigating agency to complete the investigation in the case wherein the prosecution is for the offence under the UAPA is not something in the form of a package that everything has to be completed including obtaining of sanction within this period of 180 days. As observed above, the investigating agency has nothing to do with sanction. Sanction is altogether a different process. Sanction is accorded, based on the materials collected by the investigating agency which forms the part of the final report under Section 173 of the CrPC. The investigating agency gets full 180 days to complete the investigation. To say that obtaining of sanction and placing the same along with the chargesheet should be done within the period of 180 days is something which is not only contrary to the provisions of law discussed above, but is inconceivable.

50. Let us test the aforesaid argument, keeping in mind the Rules 2008. Rule 3 of the Rules 2008 makes it very clear that the authority concerned shall make its report under sub section (2) of Section 45 of the UAPA containing the recommendations to the Central Government from the State Government as the case may be within 7 working days of the receipt of the evidence gathered by

the investigating officer under the CrPC. We place emphasis on the expression "within 7 working days of the receipt of the evidence gathered by the investigating officer under the CrPC". This evidence which Rule 3 of the Rules 2008 contemplates is the final report i.e., filed by the investigating agency under Section 173 of the CrPC. How can one expect the authority under sub section (2) of Section 45 to make its report containing the recommendations without looking into the chargesheet thoroughly containing the evidence gathered by the investigating officer. On the contrary, Rule 3 of the Rules 2008 makes it explicitly clear that the authority under sub section (2) of Section 45 of the UAPA is obliged in law to apply its mind thoroughly to the evidence gathered by the investigating officer and thereafter, prepare its report containing the recommendations to the Central Government or the State government for the grant of sanction. The grant of sanction is not an idle formality. The grant of sanction should reflect proper application of mind.

51. This Court in ***Central Bureau of Investigation v. Ashok Kumar Aggarwal*** reported in (2014) 14 SCC 295, while deliberating on the validity of sanction held as under:

> *"**13.** The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public*

interest and the protection available to the accused against whom the sanction is sought."

52. While summarising the legal propositions in ***Ashok Kumar Aggarwal*** (supra) in para 16, this Court observed as under:

> *"**16.1.** The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
>
> ***16.2.** The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.*
>
> ***16.3.** The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.*
>
> ***16.4.** The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.*
>
> ***16.5.** In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."*

53. It is, therefore, very much necessary that the evidence collected by the investigating agency in the form of chargesheet is thoroughly looked into and thereafter, the recommendations are made. The investigating agency gets full 180 days to complete the investigation and file its report before the competent court in accordance with Section 173(2) of the CrPC. If we accept the argument

canvassed on behalf of the appellants, it comes to this that the investigating agency may have to adjust the period of investigation in such a manner that within the period of 180 days, the sanction is also obtained and placed before the court. We find this argument absolutely unpalatable.

54. This Court in the case of ***Suresh Kumar Bhikamchand Jain*** (supra) had the occasion to consider in detail the question whether cognizance of the chargesheet was necessary to prevent the accused from seeking default bail or whether mere filing of the chargesheet would suffice for the investigation to be deemed complete. The petitioner in the said case was arrested on 11.03.2012 on the allegation of misappropriation of amounts meant for development of slums in Jalgaon City. The petitioner therein was accused of committing offences punishable under Sections 120B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34, IPC and also under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The contention of the petitioner therein was that he could not have been remanded to custody in view of cognizance not being taken for want of sanction within the statutory period of 90 days. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein. This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm view that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of chargesheet having been filed, the court has no option but to release the accused on bail. However, once the chargesheet was filed within the stipulated period, the right of the accused to statutory/default bail came to an end and the accused would be entitled to pray for regular bail

on merits. It was held by this Court that the filing of chargesheet is sufficient compliance with the provisions of proviso (a) to Section 167(2) of the CrPC and that taking of cognizance is not material to Section 167 of the CrPC. The scheme of CrPC is such that once the stage of investigation is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with the power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2) of the CrPC. Acknowledging the fact that an accused has to remain in custody of some court, this Court concluded that on filing of the chargesheet within the stipulated period, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 of the CrPC. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the accused with a court.

55. We refer to the relevant portions of ***Suresh Kumar Bhikamchand Jain*** (supra) judgment as under:

> *"**16.** At this juncture, we may refer to certain dates which are relevant to the facts of this case, namely:*
> *(a) 11-3-2012 — The petitioner arrested and remanded to police custody;*
> *(b) 25-4-2012 — First charge-sheet filed against the four accused;*
> *(c) 1-6-2012 — Supplementary charge-sheet filed in which the petitioner is named;*
> *(d) 30-7-2012 — The trial court rejected the petitioner's prayer for grant of bail;*
> *(e) 13-9-2012 [Suresh v. State of Maharashtra, Criminal Application No. 3568 of 2012, order dated 13-9-2012 (Bom)] — The High Court confirmed the order of the trial court;*

(f) 2-10-2012 — Application filed under Section 167(2) CrPC before the trial court;
(g) 5-10-2012 — The trial court rejected the application under Section 167(2) CrPC.

From the above dates, it would be evident that both the charge-sheet as also the supplementary charge-sheet were filed within 90 days from the date of the petitioner's arrest and remand to police custody. It is true that cognizance was not taken by the Special Court on account of failure of the prosecution to obtain sanction to prosecute the accused under the provisions of the PC Act, but does such failure amount to non-compliance with the provisions of Section 167(2) CrPC is the question with which we are confronted.

17. *In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida case [(1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.*

> ***18.*** *None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court."* (Emphasis supplied)

56. It is clear from the decision of this Court in ***Suresh Kumar Bhikamchand Jain*** (supra) that filing of a chargesheet is sufficient compliance with the provisions of Section 167 of the CrPC and that an accused cannot demand release on default bail under Section 167(2) of the CrPC on the ground that cognizance has not been taken before the expiry of the statutory time period. The accused continues to be in the custody of the Magistrate till such

time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken.

57. The aforesaid decision of this Court makes the position of law very clear that once the chargesheet has been filed within the stipulated time, the question of grant of statutory/default bail does not arise. Whether cognizance has been taken or not taken is not relevant for the purpose of compliance of Section 167 of the CrPC. The mere filing of the chargesheet is sufficient.

58. The decision of ***Suresh Kumar Bhikamchand Jain*** (supra) has been referred to and relied upon by this Court in the case of ***Serious Fraud Investigation Office*** (supra). In the said decision, the very same point fell for the consideration of the Court, whether the accused is entitled for statutory/default bail under Section 167(2) of the CrPC on the ground that cognizance had not been taken before the expiry of 60 days or 90 days from the date of remand?

59. However, one another issue that fell for the consideration of this Court, in ***Serious Fraud Investigation Office*** (supra) was whether ***Suresh Kumar Bhikamchand Jain*** (supra) had taken a different view than in the case of ***Sanjay Dutt*** (supra), ***Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra*** reported in (1996) 1 SCC 722 and ***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*** reported in (2021) 2 SCC 485. This Court explained in details as to why nothing contrary to ***Sanjay Dutt*** (supra), ***Iqbal Madar*** (supra) and ***M. Ravindran*** (supra) had been decided in ***Suresh Kumar Bhikamchand Jain*** (supra). We quote the relevant observations:

> ***"12.*** *The point that requires to be considered is whether this Court has taken a different view in Sanjay Dutt (supra), Madar Sheikh (supra) and M. Ravindran (supra). In Sanjay Dutt (supra), this Court held that the indefeasible right accruing to the accused is*

enforceable only prior to the filing of challan and it does not survive or remain enforceable, on the challan being filed. It was made clear that once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. In light of the above findings, this Court held that the custody of the accused after the challan has been filed is not governed by Section 167(2) but different provisions of the CrPC.

13. *In Madar Sheikh (supra), which was relied upon by the learned Senior Counsel appearing for Respondent Nos. 1 and 2 and the Intervenor, the appellants therein were taken into custody on 16.01.1993. The charge-sheet was submitted on 30.08.1993. Though the appellants were entitled to be released in view of the charge-sheet not being filed within the statutory period prescribed under Section 20(4)(b) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 read with proviso (a) to Section 167(2), CrPC, they did not make an application for release on bail on the ground of default in completion of the investigation within the statutory period. After filing of the charge-sheet and cognizance having been taken, they continued to be in custody on the basis of orders of remand passed under other provisions of the CrPC. Refusing to grant relief of statutory bail in the said fact situation, this Court held that the right conferred on an accused under Section 167(2) cannot be exercised after the charge-sheet has been submitted and cognizance has been taken. A plain reading of the judgment in Madar Sheikh (supra) would show that reference to the right of statutory bail becoming unenforceable after cognizance having been taken is in view of the facts of the said case, where this Court denied statutory bail to the appellants therein on the ground that charge-sheet was filed and cognizance had also been taken, with orders of remand passed under other provisions of the CrPC. Thereafter, they were not entitled for bail under Section 167(2).*

14. *Application for bail under Section 167(2), CrPC fell for consideration of this Court in M. Ravindran (supra). In the said case, the appellant was arrested and remanded to judicial custody on 04.08.2018 for offences punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985. On 01.02.2019, the appellant therein filed an application for bail under Section 167(2) on the ground that investigation was not complete and charge-sheet had not been filed within the statutory period. The trial court granted bail under Section 167(2), which was set aside by the High Court of*

Madras by judgment dated 21.11.2019. Challenging the said judgment of the High Court, the appellant approached this Court. The crucial fact in the said case is that the appellant therein filed an application on 01.02.2019 at 10.30 a.m. before the trial court and on the same day at 4.25 p.m., an additional complaint was filed against the appellant, on the basis of which dismissal of the bail application was sought. This Court restored the order of the trial court while setting aside the judgment of the High Court, by holding that the accused is deemed to have "availed of" or enforced his right to be released on default bail, once application for bail has been filed under Section 167(2) on expiry of the stipulated time period. Taking into account the fact that before the expiry of 180 days, no charge-sheet had been submitted nor any application filed seeking extension of time to investigate, this Court held that the appellant was entitled to be released on statutory bail notwithstanding the subsequent filing of an additional complaint. The point that was decided in the said case was that the filing of an additional complaint after the accused has availed his right to be released on default bail, should not deter the courts from enforcing this indefeasible right, if the charge-sheet was not filed before the expiry of the statutory period. Reference was made by this Court to Madar Sheikh (supra) in M. Ravindran (supra). This Court observed that no prior application for bail was filed in Madar Sheikh (supra) though the charge-sheet was submitted after the expiry of the statutory period. This Court repeated the findings recorded in Madar Sheikh (supra) that the right to bail cannot be exercised once the charge-sheet has been submitted and cognizance has been taken. As stated above, the said conclusion in Madar Sheikh (supra) was arrived at with reference to the facts of the case.

15. *The issue that arose for consideration before this Court in Criminal Appeal Nos. 701-702 of 2020 relates to whether the date of remand is to be included in computation of the period of 60 days or 90 days, as contemplated under proviso (a) to Section 167(2), for considering the claim for default bail. Taking note of the divergence of opinions on the said point, this Court felt the need for consideration of the issue by a larger bench. The later order dated 12.03.2021 passed in SLP (Crl.) Nos. 2105-2106 of 2021 and SLP (Crl.) Nos. 2111-2112 of 2021 is for tagging all those matters along with Criminal Appeal Nos. 701-702 of 2020. The submission made on behalf of the petitioners therein and recorded in the said order relates to the filing of a charge-sheet on the last day without a list of*

witnesses and documents not amounting to a proper filing of charge-sheet. Mr. Rohatgi referred to the SLP (Crl.) No. 2111-2112 of 2021 and submitted that one of the points raised relates to cognizance being taken before the expiry of the statutory period under Section 167, CrPC. It is clear that a reference to a larger bench pertains to the issue of exclusion or inclusion of the date of remand for computation of the period prescribed under Section 167. Therefore, there is no requirement for referring this case to a larger bench.

16. *A close scrutiny of the judgments in Sanjay Dutt (supra), Madar Sheikh (supra) and M. Ravindran (supra) would show that there is nothing contrary to what has been decided in Bhikamchand Jain (supra). In all the above judgments which are relied upon by either side, this Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2), CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period. Reference to cognizance in Madar Sheikh (supra) is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2), CrPC, failing which the accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in both Madar Sheikh (supra) and M. Ravindran (supra), this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2), CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court in Bhikamchand Jain (supra). It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. As the issue that arises for consideration in this case is squarely covered by the judgment in Bhikamchand Jain (supra), the order passed by the High Court on 31.05.2019 is hereby set aside."* (Emphasis supplied)

60. Our attention was drawn by the learned counsel appearing for the accused to a very recent pronouncement of this Court, in the case of ***Ritu Chhabaria v. Union of India and Others***, Writ Petition (Crl.) No. 60 of 2023

decided on 26.04.2023. This decision has been relied upon to fortify the submission that right of an accused to seek default bail cannot be defeated by filing incomplete chargesheet. Ritu Chhabaria filed a writ petition under Article 32 of the Constitution, seeking release of her husband on default bail. In the facts of the said case, three issues fell for the consideration of this Court:

i. Can a chargesheet or a prosecution complaint be filed in piecemeal without first completing the investigation of the case?

ii. Whether the filing of such a chargesheet without completing the investigation will extinguish the right of an accused for grant of default bail?

iii. Whether the remand of an accused can be continued by the trial court during the pendency of investigation beyond the stipulated time as prescribed by the CrPC?

61. This Court, while allowing the petition observed in paras 24 and 25 respectively, as under:

> *"**24.** This right of statutory bail, however, is extinguished, if the charge sheet is filed within the stipulated period. The question of resorting to a supplementary chargesheet u/s 173(8) of the Cr.PC only arises after the main chargesheet has been filed, and as such, a supplementary chargesheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail, for then, the entire purpose of default bail is defeated, and the filing of a chargesheet or a supplementary chargesheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled.*
>
> ***25.** It is thus axiomatic that first investigation is to be completed, and only then can a chargesheet or a complaint be filed within the stipulated period, and failure to do so would trigger the statutory right of default bail under Section 167(2) of Cr.PC. In the case of Union of India vs Thamisharasi & Ors. [(1995) 4 SCC 190] , which was a case under the Narcotic Drugs and*

Psychotropic Substances Act, 1985, on finding that the investigation was not complete and a chargesheet was not filed within the prescribed period, denial of default bail was held to be in violation of Article 21 of the Constitution of India, and it was further held that even the twin limitation on grant of bail would not apply."

62. Thus, in ***Ritu Chhabaria*** (supra), the facts were altogether different. In the said case, indisputably, the investigation was in progress, but as the statutory time period to file the chargesheet was coming to an end, the chargesheet was filed clarifying that the investigation was still pending. In such circumstances, this Court took the view that there is no question of filing any supplementary chargesheet, taking the aid of sub section (8) of Section 173 of the CrPC, as sub section (8) of Section 173 of the CrPC comes into play only after the investigation is completed and the chargesheet is laid. We are of the view that the aforesaid decision of this Court is of no avail to the accused in the present case. In the case on hand, the chargesheet was filed after the entire investigation was completed. This fact is not in dispute.

63. Thus, we answer Issue No. 1 holding that filing of a chargesheet is sufficient compliance with the provisions of Section 167 of the CrPC and that an accused cannot claim any indefeasible right of being released on statutory/default bail under Section 167(2) of the CrPC on the ground that cognizance has not been taken before the expiry of the statutory time period to file the chargesheet. We once again, reiterate what this Court said in ***Suresh Kumar Bhikamchand Jain*** (supra) that grant of sanction is nowhere contemplated under Section 167 of the CrPC.

Issue No. 2

64. We now proceed to discuss the second limb of the submission canvassed on behalf of the appellants that filing of the chargesheet in the Court of SDJM, Ajnala instead of the Special Court as notified under Section 22 of the NIA Act and the Magistrate thereafter, committing the case to the Court of Sessions under the provisions of Section 209 of the CrPC vitiated all further proceedings rendering the custody or further detention of the appellants from the date of filing of the chargesheet in the Court of Magistrate absolutely unlawful. To put it in other words, we need to consider the submission that since the chargesheet was filed in the Court of Magistrate on 15.11.2019, i.e., on the 161st day from the arrest of two of the appellants before us, the further detention thereafter, of the appellants could be termed as unlawful and the appellants were entitled to be released on statutory/default bail under the provisions of Section 167(2) of CrPC.

65. Section 2(1)(d) of the UAPA reads as follows:

> *"**2(1)(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 22 of the National Investigation Agency Act, 2008;"*

66. The plain reading of the definition of "court" referred to above indicates that it includes the Special Court, constituted under Section 11 or Section 22 of the NIA Act. Section 11 of the NIA Act confers power upon the Central Government to designate the Court of Sessions as the Special Courts. Section 22 of the NIA Act confers power upon the State Government to designate the Court of Sessions, as the Special Courts.

67. A perusal of Section 6 of the NIA Act enumerates about the investigation of the scheduled offences. The scheduled offences under the UAPA are included at Sr. No. 2 in the Schedule of the NIA Act. Thereafter, Section 10 of

the NIA Act prescribes about the power of the State Government to investigate the scheduled offences. Section 11 of the NIA Act prescribes about the power of Central Government for constituting the Special Court, whereas Section 22 of the NIA Act prescribes the power of the State Govt. for constituting the Special Court for trial of the scheduled offence. Section 13 of the NIA Act contains the details of the jurisdiction of the Special Court. A conjoint reading of these provisions of both the Acts reveals the legislative mandate that the offences under the UAPA Act fall under the scheduled offences having been included in the Schedule of NIA Act. However, the scheme of NIA Act prescribes the procedure for investigating the same either by the NIA or by the concerned State Government, after following the statutory provisions meticulously. Section 10 of the NIA Act further clarifies that the State Government also has the power to investigate the scheduled offence in accordance with the procedure prescribed under this Act. However, there is no ambiguity in the legislative mandate that in both the situations, whether the investigation is carried out by the NIA or by the State Government, the trial of the scheduled offence would be conducted only by the Special Court constituted under this Act. Section 13 of the NIA Act is to be read with Section 11 of this Act when the investigation is carried out by the NIA and in the situation, investigation having been entrusted to the State Government, then Section 13 is to be read with 22 of the NIA Act. A combined reading of both the sections makes it crystal clear that in the situation where the investigation has been carried out by the State Government, in that situation as per Section 22(2)(ii) the reference to Agency in sub section (1) of Section 13 of the NIA Act shall be construed as a reference to "Investigating Agency of the State Government".

68. Thus, the scheme of both the Acts makes it clear that once the investigation is completed, the report under Section 173 of the CrPC is to be

filed in the Special Court constituted under the Act. Section 16 of the NIA Act leaves no room for any doubt, as it empowers the Special Court to take cognizance of any offence without the accused being committed to it, for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts. Thus, by incorporating Section 16 in the NIA Act the legislature has made the Special Court as the court of original jurisdiction unlike the Sessions Court, which is a court of committal under the Criminal Procedure Code. (See ***Satish Kumar v. State of Punjab and Another***, 2021 SCC OnLine P&H 786)

69. In ***Satish Kumar*** (supra), the High Court of Punjab and Haryana at Chandigarh has referred to a notification issued by the Government of Punjab dated 10.6.2014 wherein the Special Courts are constituted by the State Government for the trial of offence as specified in the schedule appended to the NIA Act which are investigated by the State Police. The aforesaid notification is reproduced as under:

> *"**NOTIFICATION The 10th June, 2014 No. S.O.141/C.A.34/2008/S.22/2014-** In exercise of the powers conferred under sub section (1) of section 22 of the National Investigation Agency Act, 2008 (Central Act No. 34 of 2008) and all other powers enabling him in this behalf, the Governor of Punjab with the concurrence of Hon'ble Chief Justice of the High Court of Punjab and Haryana, Chandigarh is pleased to constitute the courts of Sessions Judge and the first Additional Sessions Judge (for the area falling within their respective jurisdiction), at each district headquarter in the State, to be the Special Courts, for the trial of offences as specified in the Scheduled appended to the aforesaid Act, which are investigated by the State Police."*

70. The learned counsel appearing for the appellants placed strong reliance on the decision of this Court in ***Bikramjit Singh*** (supra) wherein this Court held that all offences under the UAPA whether investigated by the NIA or by the

investigating agency of the State Government are to be tried exclusively by the Special Court set up under that Act and in the absence of any Special Court, set up by notifications issued either by the Central Government or the State Government, then the Court of Sessions alone. This Court held as under:

> *"**26.** Before the NIA Act was enacted, offences under the UAPA were of two kinds — those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Session. This scheme has been completely done away with by the NIA Act, 2008 as all Scheduled Offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. In the absence of any designated court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone. Thus, under the aforesaid scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself. The impugned judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts.*
>
> ***27.** xxx xxx xxx*
>
> *"...The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be*

examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds.""

71. The reply to the aforesaid at the end of the learned ASG is that since the investigation was being carried out by the State Police, it proceeded to file the first report on 15.11.2019 before the SDJM, Ajnala where the appellants were first produced after their arrest. This according to the learned ASG has nothing to do with Section 167 of the CrPC. The learned ASG further pointed out that eventually the case was committed to the Court of Sessions and finally transferred to the Special Court constituted for NIA/UAPA. According to the learned ASG, it is not in dispute that the cognizance was finally taken by the Special Court after looking into the sanctions accorded by the competent authorities.

72. We do agree that the chargesheet could not have been filed in the Court of the SDJM and the same should have been filed in the Special Court. Section 16 of the NIA Act empowers the Special Court to take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such an offence or upon a police report of such facts. However, the pristine question to consider is whether the unnecessary committal proceedings by itself vitiated all further proceedings and thereby creating an indefeasible right in favour of the appellants to seek statutory/default bail under Section 167 of the CrPC? We are of the view that the error on the part of the investigating agency in filing the chargesheet in the Court of SDJM and thereafter, committing the case to the Court of Sessions has again nothing to do with Section 167 of the CrPC. This entire argument canvassed on behalf of the appellants can be put to rest solely on the ground

that the application seeking default bail under Section 167(2) of the CrPC read with Section 43D of the UAPA was filed before the Special Judge, NIA, Mohali, on 14.12.2020 and by that time, the chargesheet had already been filed and the proceedings were pending in the court of Special Judge, CBI, Punjab, SAS Nagar, Mohali. It is not in dispute that at the time when the Special Court took cognizance of the offence the sanctions under the UAPA and the 1908 Act had already been granted.

73. Thus, we answer Issue No.2 holding that the error on the part of the investigating agency in filing chargesheet first before the Court of Magistrate has nothing to do with the right of the accused to seek statutory/default bail under Section 167(2) of the CrPC. The committal proceedings are not warranted, when it comes to prosecution under the UAPA by the NIA by virtue of Section 16 of the NIA Act. This is because the Special Court acts, as one of the original jurisdictions. By virtue of Section 16 of the NIA Act, the Court need not follow the requirements of Section 193 of the CrPC.

74. We have also looked into the case law relied upon by the learned counsel appearing for the respective appellants in support of their submissions. However, it is not necessary for us to discuss each one of the decisions relied upon as none of the decisions are of any avail to the appellant. Each of the decisions are in the peculiar facts of the case.

75. In view of the aforesaid discussion, both the appeals are liable to be dismissed. However, before we proceed to pass the final order, there is one grey area in this litigation which we must look into and say something in that regard. Of course, this grey area has not been ventured into by the learned counsel appearing for the appellants, but as a highest Court of the Country, we should not shut our eyes to the same.

AN EYE-OPENER LITIGATION FOR THE NIA/STATE POLICE

76. As is evident from the chronology of dates and events referred to in the earlier part of our judgment, the final report under Section 173(2) of the CrPC was filed in the Court of SDJM, Ajnala on 15.11.2019. 15.11.2019 was the 161st day from the date of arrest of two of the appellants before us, namely, Jasbir Singh and Varinder Singh. They were the first to be arrested on 08.06.2019. The Punjab Police applied to the Court of the Additional Sessions Judge, Amritsar, for extension of time to complete the investigation invoking the proviso to Section 43D(2)(b) of the UAPA on 04.09.2019. When this application for extension of time was filed only two days were left for 90 days to expire. This is suggestive of the fact that the 91st day would have fallen on 07.09.2019. What is important to highlight is that the Additional Sessions Judge, Amritsar, looked into the extension application dated 04.09.2019 filed by the Punjab Police and ultimately, extended the time limit *vide* its order dated 17.09.2019 i.e., on the 101st day. By the time, the Additional Sessions Judge, Amritsar, passed an order extending the time, the period of 90 days had already expired. Indisputably, there was no chargesheet before the Court on the 91st day i.e., on 07.09.2019. The reason why we say that this is a grey area is because what would have happened if the appellants Jasbir Singh and Varinder Singh had preferred an application seeking statutory/default bail under Section 167(2) of the CrPC on the 91st day i.e., on 07.09.2019. The application seeking extension of time was very much pending. The Additional Sessions Judge could not have even allowed such application promptly i.e., on or before the 90th day without giving notice to the accused persons. The law is now well settled in view of the decision of this Court in the case of ***Jigar alias Jimmy Pravinchandra Aditya v. State of Gujarat*** reported in 2022 SCC OnLine SC 1290 that an opportunity of hearing has to be given to the accused persons

before the time is extended up to 180 days to complete the investigation. The only error or lapse on the part of the appellants Jasbir and Varinder Singh was that they failed to prefer an appropriate application seeking statutory/default bail on the 91st day. If such application would have been filed, the court would have had no option but to release them on statutory/default bail. The Court could not have said that since the extension application was pending, it shall pass an appropriate order only after the extension application was decided. That again would have been something contrary to the well settled position of law. This litigation is an eye opener for the NIA as well as the State investigating agency that if they want to seek extension, they must be careful that such extension is not prayed for at the last moment.

77. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, or a report seeking extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

78. Our observations in paras 76 and 77 respectively as above are keeping in mind the decision of this Court rendered by a three-Judge Bench in the case of ***Sayed Mohd. Ahmad Kazmi v. State (Government of NCT of Delhi) and Others*** reported in (2012) 12 SCC 1, wherein in paras 25, 26 and 27 respectively, this Court observed as under:

*"**25.** Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right, as has been commented upon by this Court in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.*

***26.** The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.*

***27.** We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for*

extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise."

(Emphasis supplied)

79. In view of the aforesaid discussion, both the appeals fail and are hereby dismissed.

80. Pending application(s), if any, shall stand disposed of.

……..CJI.
(DR. DHANANJAYA Y. CHANDRACHUD)

……..J.
(J.B. PARDIWALA)

NEW DELHI;
MAY 1, 2023.