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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 5th December, 2024

Date of decision: 12th December, 2024

\+ **CRL.A. 1071/2024 & CRL.M.A. 34590-91/2024**

STATE NCT OF DELHI .....Appellant

Through: Mr. Laksh Khanna, APP for the State with Ms. Diksha Suri, Ms. Deepshikha Kaur Anand, Mr. Akhand Pratap Singh, SPP for the State, Ms. Samridhi Dobhal, Mr. Krishna Mohammed Chandel & Mr. Abhinandan Gautam (M-9988001666).

versus

ANAMUL ANSARI & ORS. .....Respondents

Through: Mr. Jawahar Raja Adv. for 1 to 6 and 8 to 10.
Ms. Anushka Baruah, Mr. Abu Bakar Sabbaq and Mohd. Faiz Ansard, Advs. for R-7.
Mr. Kartik Murukutla, Advocate for R-11.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal has been filed by the Appellant – State under Section 21 of the National Investigating Agency Act, 2008 (hereinafter "*NIA Act*") read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "*BNSS*"), challenging the impugned order dated 18th November, 2024, passed by the ld. Additional Sessions Judge-02, New Delhi District, Patiala House Courts, New Delhi, arising out of ***FIR No. 301/2024*** dated 15th

July, 2024, registered at P.S. Special Cell (Delhi) under Section 61 of Bharatiya Nyaya Sanhita, 2023 (hereinafter "*BNS*").

2. *Vide* the impugned order, the Trial Court has rejected an application filed by the State seeking extension of time for concluding the investigation beyond 90 days under Section 43D of the Unlawful Activities (Prevention) Act, 1967 (hereinafter "*UAPA*"). The Trial Court has held that there is no justification for granting further custody of the accused persons to enable completion of the investigation beyond the initial statutory period of 90 days. The relevant portion of the impugned order is set out below:

> *"xxx xxx xxx*
>
> ***C. Said report indicating the progress of investigation and the specific reasons for detention of the accused persons beyond the period of 90 days.***
>
> *Now, I proceed to examine the application of the Ld. Addl. Public Prosecutor regarding the third requirement as cited above.*
>
> *In order to qualify the above mentioned test, the report of the Ld Addl. PP is required to satisfy following two requirements:-*
>
> *(i) The progress of the investigation must be indicated in the report.*
>
> *(ii) Specific reasons for detention of the accused beyond the period of 90 days must also be indicated in the report itself.*
>
> *From perusal of the contents of the application, it is evident that report of the Ld. Addl. PP only shows the development and progress of the investigation but no where it discloses justification for keeping the accused persons in further custody to enable the investigating agency to complete the investigation.*
>
> *In view of the aforesaid discussions, this Court has considered view that the prosecution has failed to set out a case for extension of the statutory time period to conclude investigation and the application at hand*

deserves to be dismissed.

Application is disposed off accordingly.

The instant application and report be kept in a sealed envelope. (Reliance is placed upon the observations made by Hon'ble High Court of Delhi in Zeeshan Qamar v. State NCT of Delhi 2023 SCC OnLine Del 1114.)"

Brief Background

3. The brief background of this case is that on 15th July, 2024, ***FIR No. 301/2024*** under Section 61 of BNS was registered at P.S. Special Cell (Delhi). It is stated that during investigation Sections 4 and 5 of the Explosive Substance Act, 1908, Section 25 of the Arms Act, 1959, and Sections 16, 17, and 18 of the UAPA were added to the said FIR. The said FIR was registered on the basis of secret inputs received by the Special Cell (Delhi) that a highly radicalized Jharkhand based group, along with certain sympathizers based in/around Delhi, were conspiring/planning a terror attack. On the basis of the said inputs, surveillance was launched by the Special Cell (Delhi) and as per the FIR, the said group was at an advanced stage of procuring sophisticated weapons in furtherance of their conspiracy.

4. As part of the investigation, sometime in August, 2024, various raids were conducted in different places, including in Rajasthan, Jharkhand and Uttar Pradesh. It is stated that seven individuals were found to have obtained weapons training in Rajasthan. Out of the said seven individuals, it is stated that six persons were apprehended and various weapons were recovered. In addition, in the raids conducted in Ranchi, Jharkhand, five persons were arrested and one hand made SLR, one hand made Carbine and some cash is recorded to have been recovered.

5. It is the case of the State that upon an analysis of the mobile phones of the accused persons and on the basis of the material which was recovered during the raids, aforesaid Sections of the UAPA *i.e.*, Sections 16, 17 and 18 of the UAPA, were also added, in view of the perceived threat to the security and sovereignty of the country.

6. In this background, since the investigation could not have been completed within the statutory period of 90 days, the application seeking extension of time for investigation by another 90 days was moved by the State under Section 43D(2) of UAPA. It is stated that the said application was moved well within time before the expiry of initial 90 days. The Additional Public prosecutor had also submitted a detailed report, as required under proviso to Section 43D(2)(b) of UAPA, providing the reasons necessitating the continued detention of all the accused persons beyond the stipulated period of 90 days. The said report has also been placed before this Court in a sealed cover and the same has been perused by the Court.

7. The Trial Court *vide* the impugned order has rejected the said application of the State. Hence, the present appeal has been preferred by the State praying for setting aside the impugned order and granting extension of time for investigation for additional 90 days.

Submissions on the maintainability of present appeal

8. At the outset, Ms. Rebecca M. John, ld. Sr. Counsel, appearing for the Respondent No. 7, and Mr. Jawahar Raja, ld. Counsel appearing for the Respondent Nos. 1 to 6 and 8 to 10, have raised a preliminary objection as to the maintainability of the present appeal under Section 21 of NIA Act against the impugned order. Mr. Kartik Murukutla, ld. Counsel appearing for Respondent No. 11, has also joined the ld. Counsels for other Respondents in

questioning the maintainability of the present appeal.

9. It is the submission of the Respondents that an order refusing to grant extension of time to complete investigation beyond the prescribed period of 90 days under Section 43D(2) of the UAPA is not appealable under Section 21 of the NIA Act. The said submission is based on the wording of Section 21 of NIA Act which clearly provides that an appeal would lie only from any judgment, sentence or order which is not an interlocutory order. According to the ld. Counsels for the Respondents, an order refusing to grant extension of time under Section 43D(2) of UAPA is in effect an order refusing remand and hence, the said order is merely an interlocutory order.

10. It is submitted by Ms. John, ld. Sr. Counsel, that an order of remand is one which is passed under Section 167 of CrPC. The ld. Sr. Counsel, has placed reliance on the decision of the Supreme Court in ***State Rep. By Inspector Of Police v. N.M.T. Joy Immaculate, (2004) 5 SCC 729*** wherein it was held that an order of remand would merely be an interlocutory order and no revision petition under Section 397 of Code of Criminal Procedure, 1973 (hereinafter "*CrPC*") is maintainable against such an order. The ld. Sr. Counsel has also placed reliance on ***Gautam Navlakha v. National Investigation Agency (2022)13 SCC 542*** wherein the Supreme Court has reiterated the position in ***NMT Joy Immaculate*** that an order granting remand of the accused persons is an interlocutory order and hence, a revision petition would not be maintainable.

11. Further, illustratively, it is argued by Ms. John, ld. Sr. Counsel, that even an order framing charge is not appealable under Section 21 of the NIA Act and therefore, the impugned order would also not be appealable. In addition, it is submitted that only under extraordinary circumstances would a

Constitutional Court exercise its inherent or writ jurisdiction to entertain a challenge to an order against which no statutory appeal would lie.

12. Mr. Jawahar Raja, ld. Counsel, appearing for Respondent Nos. 1 to 6 & 8 to 10, relies upon the decision of the Supreme Court in ***Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299*** to argue that even an order framing charge is not to be interfered with in an appeal under Section 21 of NIA Act as the said order would be an interlocutory order. Reliance is also placed by the ld. Counsel upon the decision in ***Bachraj Bengani @ B.R. Jain v. State, 2004 SCC OnLine Del 128*** which dealt with the provisions of Prevention of Terrorism Act, 2002, to argue that when speedy trial is the norm under special statutes, interference with an interlocutory order in an appeal, would in fact be contrary to the spirit of the said special statute itself.

13. Mr. Kartik Murukutla, ld. Counsel appearing for Respondent No.11, has supplemented the submissions of Ms. John, ld. Sr. Counsel and Mr. Raja, ld. Counsel, on the issue of maintainability of the present appeal. It is submitted by the ld. Counsel that the impugned order is an interlocutory order as the concerned proceedings before the Trial Court would not end with the refusal of extension of time to complete the investigation. It is only when bail is granted following such an order that an appeal can be filed as per the ld. Counsel. According to the ld. Counsel the present appeal, is therefore, premature.

14. Mr. Laksh Khanna, ld. APP for the State, has countered the preliminary objection on maintainability of the present appeal. It is submitted by the ld. APP, that the refusal to grant extension for a further period of 90 days to complete the investigation under Section 43D(2) of UAPA cannot be termed as an interlocutory order as there is a finality attached to it. It is further

submitted that the orders, such as the impugned order, refusing to grant extension of time to complete investigation would have a serious consequence on the investigation, such as the accused would be entitled to be enlarged on default bail. Hence, it is submitted that the impugned order would not be an interlocutory order. It would be an order against which an appeal would lie under Section 21 of NIA Act, as it is in the nature of a proceeding which has finally come to a culmination.

15. In support of his submissions, the ld. APP has placed reliance on the decision of the Gujarat High Court in ***Kandhal Sarman Jadeja v. State of Gujarat, 2012 SCC OnLine Guj 3104,*** wherein the High Court has considered the very same issue *i.e.,* whether an order refusing to grant police remand is an interlocutory order or an intermediate order or final order, and held that such an order would be a final order against which revision under Section 397 of CrPC would lie.

16. Mr. Khanna, ld. APP, has also submitted that the Full Bench of the Guwahati High Court has also held in ***National Investigation Agency v. Akhil Gogoi, 2022 SCC OnLine Gau 1446,*** that the order of refusal of extension of investigation would be appealable as there is a final determination but an order granting an extension would be in the nature of an interlocutory order. The ld. APP has also relied on the decision of the Andhra Pradesh High Court in ***P Narayana v. State of Andhra Pradesh Through The Investigating Officer, Rep. by its Public Prosecutor, 2022 SCC OnLine AP 2867.***

Submissions on extension of time for completion of investigation

17. In the present case, according to the ld. APP for the State, eight accused were on police remand on the date when the impugned order was passed. The fact that the said accused persons were on police remand itself shows that the

investigation was continuing and progressing. The ld. APP also relies upon the report of the concerned Additional Public Prosecutor, to argue that the stage at which the relevant investigation is positioned, the non-grant of the extension of time resulting in the accused persons availing default statutory bail has a final consequence for the prosecution.

18. Further, it is the submission of the ld. APP that all the necessary conditions under Section 43D(2) of UAPA have been fulfilled by the State. It is submitted that in the application seeking extension of time to complete investigation under Section 43D(2) of UAPA was duly provided to the Respondents. In this regard, the ld. APP has laid reliance on the decision of a Co-ordinate Bench of this Court in ***Zeeshan Qamar v. State NCT of Delhi, 2023 SCC OnLine Del 1114,*** wherein it is held that the accused are entitled to a meaningful notice and that the report of the Public Prosecutor need not be provided to the accused persons. Thus, it is submitted by the ld. APP, that since the application seeking extension was duly provided to the accused and they were also heard by the Trial Court before passing the impugned order, the Respondents cannot claim that all the requirements of law have not been satisfied.

19. On merits it is submitted by Ms. John, ld. Sr. Counsel, that insofar as Respondent No. 7 is concerned, the suspicious literature was allegedly recovered from the said Respondent way back on 2nd/ 7th September, 2024. Thus, till date if the literature has not been translated, analysed or investigated, the agency cannot be seeking a fresh extension of time for completion of the investigation, thereby refusing the Respondent No. 7 to have the benefit of being released on default bail.

20. Mr. Raja, ld. Counsel, appearing on behalf of Respondent No. 1 to 6 &

8 to 10, has taken the Court through various remand orders passed by the Trial Court in the concerned proceedings. It is highlighted that from September, 2024, onwards the matter has been heard in respect of remand of the accused persons on 1st September, 2024, 2nd September, 2024, 6th September, 2024 and 7th September, 2024. It is submitted that almost identical reasons have been recorded in the said order for granting police custody. It is argued by Mr. Raja, ld. Counsel, that the reasons for seeking remand being verbatim in the abovesaid orders of the Trial Court, the same very reasons cannot now be utilised or made the basis for seeking further extension of the investigation for a period of 90 days under Section 43D(2) of UAPA.

21. Mr. Raja, ld. Counsel, has also submitted that after the order on 7th September, 2024, the Trial Court has further passed remand orders on several dates including on 12th September, 2024, 26th September, 2024, 9th October, 2024, 23rd October, 2024 and 6th November, 2024. The reasons for seeking judicial custody that have been recorded in the said orders are also identical. It is further submitted that it is only on 12th November, 2024, that the State had alleged new or additional facts *qua* several of the accused persons for again seeking grant of police custody. It is submitted by the ld. Counsel that the Trial Court was conscious of the fact that repeatedly police remand and/or judicial custody was being sought by the State on the basis of identical grounds and thus, on 18th November, 2024 and 19th November, 2024, only one days' remand was granted. Thereafter, on 20th November, 2024, the accused were sent to judicial custody till 26th November, 2024.

22. In view of the orders passed by the Trial Court, it is argued by Mr. Raja that the Trial Court, which is monitoring the investigation of this case, is conscious of the reasons for which the extension of time for completion of the

investigation was sought by the State.

23. It is submitted by Mr. Raja, ld. Counsel, that there are two essential considerations in granting extension of time under Section 43D (2) of UAPA *i.e.,* (i) the progress of the investigation and (ii) the justification disclosed by the authority for seeking custody of the accused for further enabling the investigation. It is not sufficient if only one of the consideration is satisfied. Ld. Counsel has placed reliance upon the decision in ***State of Maharashtra v. Surendra Pundlik Gadling & Ors., (2019) 5 SCC 178,*** wherein the Supreme Court has dealt with the importance of the Public Prosecutor's report and the satisfaction of the Court as to the reasons mentioned therein for granting extension of time for completion of investigation under Section 43D(2) of UAPA. Reliance is also placed on the decision in ***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485*** and ***Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat, (2022) 13 S.C.R. 367***.

24. Mr. Raja, ld. Counsel, has also highlighted the decision in ***Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors., (1994) 4 SCC 602,*** to argue that the entire purpose behind putting stringent timelines for completion of investigation would be completely defeated if the investigation agency continues to presume that it would be granted extensions mechanically. Paragraph 23 of the decision in ***Hitendra*** is emphasised by the ld. Counsel to show that both the aforesaid considerations have to be satisfied by the Court before the grant of extension of time beyond the statutory period.

25. Insofar as Respondent No. 11 is concerned, Mr. Murukutla, ld. Counsel, has submitted that all the five grounds which are alleged by the State as the basis for seeking extension of remand in respect of Respondent No. 11,

i.e., reasons such as unearthing of financial transactions, translations of the literature which has been recovered, phone data and analysis thereof, etc., would not be justified for further grant of remand as the same reasons are being cited since the date of initial arrest of the said Respondent. It is also submitted that the State has had a callous attitude and there are no details as to whether and when the translations of the material allegedly recovered from Respondent No. 11 were sought. Further, no information has been provided as to what is the analysis of the data which have been given to the service providers by the State.

26. It is argued by Mr. Murukutla, ld. Counsel, that there have been two rounds of police custody *qua* the Respondent No. 11, and despite this, the State has not been able to conclude the investigation. It is submitted by the ld. Counsel that the Respondent No. 11 has already been confronted with the recovered literature along with its translations, thus, in the case of Respondent No.11, there is no justification for seeking extension of remand. Lastly, it is submitted that the extension of 90 days cannot be mechanical and it has to be granted after due application of mind.

Analysis and Findings

27. Heard.

28. In the present appeal, two issues that arise for consideration are:-

I. Whether an order rejecting remand of the accused is an interlocutory order under Section 21 of the NIA Act and hence not appealable?

II. Whether the application seeking extension of time for completion of investigation under Section 43D(2) of UAPA deserves to be allowed and if so, for what period?

I. Whether an order rejecting remand of the accused is an interlocutory

order under Section 21 of the NIA Act and hence not appealable?

29. The present appeal has been filed by the State under Section 21 of the NIA Act. The said provision reads as under:

> *"21.* ***Appeals.— (1)*** ***Notwithstanding anything contained in the Code****,* ***an appeal shall lie from any judgment, sentence or order, not being an interlocutory order,*** *of a Special Court to the High Court both on facts and on law.*
> *(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.*
> *(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.*
> *(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.*
> *(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:*
> *Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:*
> *Provided further that no appeal shall be entertained after the expiry of period of ninety days."*

30. The submission on behalf of the Respondents is that the impugned order, rejecting the application for extension of time for completing investigation filed by the State, is merely an interlocutory order and an appeal challenging the same is not maintainable under Section 21 of the NIA Act. The time for completion of investigation is prescribed under Section 167 of

Cr.P.C. (now Section 187 of BNSS). As per Section 167 of the Cr.P.C., the maximum period fixed for completion of investigation is 90 days, from registration of FIR. The chargesheet has to be filed by the 90th day, failing which certain consequences, including grant of default bail to the accused, would follow. This period of 90 days has been enlarged in the case of special statutes such as UAPA. In the UAPA, Section 43D deals with the same. The said provision for the sake of ready reference is set out below:

> *"**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.”

31. As per Section 43D(2) of the UAPA, Section 167 of Cr.P.C. would apply to offences under UAPA with the modification that instead of the overall maximum period of 90 days for completion of investigation as stipulated under Section 167 of CrPC, the said period may be extended up to 180 days, subject to the satisfaction of the following conditions:

i. That the report of the Public Prosecutor ought to indicate the progress of the investigation;

ii. That specific reasons for detention of the accused beyond the period of initial 90 days are satisfactorily set out.

32. Thus, in order for the Investigating Agency, to obtain a remand of the accused for the maximum period of 180 days instead of the 90 days prescribed in the Cr.P.C., the Court has to be satisfied that the need for extending the period of remand exists, on the basis of cogent material and grounds placed before the Court by the Investigating Agency.

33. The obvious consequences of grant or non-grant of the extension of time would be that upon the expiry of the statutory period, the accused would be automatically entitled to bail which is also commonly known as ‘default bail’ under proviso to Section 167(2) of Cr.P.C. A similar position would also follow upon rejection of an application under Section 43D(2) of UAPA. Therefore, in the present case, the obvious consequence of the impugned order would be that all the accused persons would be entitled to default bail if the application for extension is dismissed.

34. Would such an order dismissing an application for extension of time under Section 43D(2) of UAPA be an interlocutory order, is now the question.

35. In the course of civil or criminal proceedings, there are various orders which are passed by Courts. Such orders which are passed traditionally fall only in two categories, namely, interlocutory orders and final orders. The question as to what are interlocutory orders and final orders is the subject matter of a catena of judgments both in criminal and civil jurisprudence[1].

36. Insofar as it relates to criminal jurisprudence, under the Cr.P.C., Section 397(2) specifically provides that a revision petition would not be maintainable against an interlocutory order. The equivalent provision under BNS would be Section 438 which reads as under:

> ***"438. Calling for records to exercise powers of revision.****—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.*
>
> *Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.*
>
> ***(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory***

[1] The Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania, (1981) 4 SCC 8*, has settled the law as to what are the characteristics of a final order and an interlocutory order in civil jurisprudence.

order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

37. Various decisions have been rendered as to what is an interlocutory order by the Supreme Court and High Courts in the context of Cr.P.C. and other special statutes. Though strictly speaking, Section 21 of NIA Act begins with a non-obstante clause, the said decisions would be of relevance and are discussed hereinafter.

38. In ***Madhu Limaye v. The State of Maharashtra, (1977) 4 SCC 551***, the Supreme Court was dealing with an application filed before the Trial Court which sought quashing of an FIR under Section 500 IPC on the ground, *inter alia*, that proper sanction under Section 199(4)(a) of CrPC for initiating prosecution for defamation had not been obtained. The prayer for quashing was rejected by the Trial Court. A revision petition was filed before the High Court which was rejected as being not maintainable under Section 397(2) of the CrPC as the said order was held by the High Court to be merely an interlocutory order. The Supreme Court in this decision observed as under:

"....
In such a situation it appear to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case (supra), but, yet it may not be an interlocutory order – pure of simple. Some kinds of order may fall in between the two.

By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from may decided cases. ***We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course****.*

14. In passing, for the sake of explaining ourselves, we may refer to what has been said by Kania, C.J. in Kuppuswami's case at page 187 by quoting a few words from Sir George Lowndes in the case of V.M. Abdul Rahman v. D.K. Cassim and Sons. The learned Law Lord said with reference to the order under consideration in that case:

> *The effect of the order from which it is here sought to appeal was not to dispose finally of the rights of the parties. It no doubt decided an important, and even a vital, issue in the case, but it left the suit alive, and provided for its trial in the ordinary way.*

Many a time a question arose in India as to what is the exact meaning of the phrase "case decided" occurring in Section 115 of the Code of Civil Procedure. Some High Courts had taken the view that it meant the final order passed on final determination of the action. Many

others had, however, opined that even interlocutory orders were covered by the said term. This Court struck a mean and it did not approve of either of the two extreme lines. In Baldevdas v. Filmistan Distributors (India) Pvt. Ltd." it has been pointed out:

> *A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy.*

We may give a clear example of ***an order in a civil case which may not be a final order within the meaning of Article 133(1) of the Constitution, yet it will not be purely or simply of an interlocutory character****.* ***Suppose for example, a defendant raises the plea of jurisdiction of a particular Court to try the suit or the bar of limitation and succeeds, then the action is determined finally in that Court. But if the point is decided against him the suit proceeds****. Of course, in a given case the point raised may be such that it is interwoven and inter-connected with the other issues in the case, and that it may not be possible to decide it under Order 14, Rule 2 of the Code of Civil Procedure as a preliminary point of law.* ***But, if it is a pure point of law and is decided one way or the other, then the order deciding such a point may not be interlocutory, albeit- may not be final either. Surely, it will be a case decided, as pointed out by this Court in some decisions, within the meaning of Section 115 of the Code of Civil Procedure. We think it would be just and proper to apply the same kind of test for finding out the real meaning of the expression 'interlocutory order' occurring in Section 397 (2)****."*

39. The Supreme Court, thus, held that a revision petition under Section 397 of CrPC would be maintainable as the impugned order therein, passed by the Trial Court rejecting the challenge to the validity of the criminal proceedings and framing charge, was not an interlocutory order.

40. In ***V.C. Shukla v. State Through CBI, 1980 Supp. SCC 92,*** an order of the Special Judge, appointed under the Special Courts Act, 1979, directing framing of charges under the relevant provisions of the Indian Penal Code (hereinafter "*IPC*") read with the Prevention of Corruption Act, 1947, was assailed by the Appellant in an appeal under Section 11(1) of the Special Courts Act. The State had raised preliminary objections as to the maintainability of the said appeal on the ground that the impugned order was an interlocutory order against which no appeal would lie under Section 11(1) of the Special Courts Act. The Supreme Court was conscious of the fact that it was dealing with a special statute and on the interpretation of the term "interlocutory order" observed as under:

> ***"8.*** *There can be no doubt that the stage of framing of the charges is an important stage and the court before framing the charge has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds for proceeding against the accused. But this case is not an authority for the proposition that once the court, after considering the materials, passes an order framing the charges, the order is a final order which could be revised and would not be barred under Section 397(2) of the Code which, however, did not exist at the time when the decision was given. It follows therefore that an order framing a charge was clearly revisable by the High Court under Sections 435 and 439 of the Code of 1898. We may, however, point out that we are in complete agreement with the principle, involved in the cases discussed above, that an order framing charges against an accused undoubtedly decides an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing*

charges. The question, however, with which we are concerned in the present appeal is essentially different. The order of the Special Judge framing the charge is a reasoned order and not a mechanical or a casual order so as to vitiate the order of the Special Judge. ***In the instant case, we are concerned with a much larger question viz. whether or not the term "interlocutory order" used in Section 11(1) of the Act should be given the same meaning as this very term appearing in Section 397(2) of the Code. In other words, the question is whether Section 11(1) of the Act tightens or widens the scope of the term "interlocutory order" as contained in Section 397(2) of the Code and as interpreted by this Court in the decisions, referred to above****.*

***** ***** ***** *****

24. ***To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment****. Untwalia, J. in the case of* ***Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : (1978) 1 SCR 749****] clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in Corpus Juris Secundum, Vol. 60. We find ourselves in complete agreement with the observations made in Corpus Juris Secundum.* ***It is obvious that an order framing of the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term "interlocutory order" as used in Section 11(1) of the Act.*** *Wharton's Law Lexicon (14th Edn., p. 529) defines*

interlocutory order thus:

> *"An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."*

* * * *

34. *There is yet another aspect of the matter which has to be considered so far as this decision is concerned, to which we shall advert when we deal with the last plank of the argument of the learned counsel for the appellant. Suffice it to say at the moment that the case referred to also fully endorses the view taken by the Federal Court and the English decisions viz.* ***that an order is not a final but an interlocutory one if it does not determine or decide the rights of parties once for all. Thus, on a consideration of the authorities, mentioned above, the following propositions emerge:***

"(1) ***that an order which does not determine the right of the parties but only one aspect of the suit or the trial is an interlocutory order;***

(2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order*;*

(3) that one of the tests generally accepted by the English courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, ***then the proceedings would continue, because, in our opinion, the term 'interlocutory order' in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi-final orders;***

(4) ***that an order passed by the Special Court discharging the accused would undoubtedly be a final***

order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;
(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Article 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act works serious injustice to the accused.

* * * *

45. On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression "interlocutory order", there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties*. According to the test laid down in Kuppuswami case [1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625] the order impugned was undoubtedly an interlocutory order.* ***Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : (1978) 1 SCR 749] and Amar Nath v. State of Haryana [(1977) 4 SCC 137 : 1977 SCC (Cri) 585 : (1978) 1 SCR 222] were given with respect to the provisions of the Code, particularly***

Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non obstante clause.”

41. Thus, the Supreme Court was of the view that an order framing charges is an interlocutory order under the Special Courts Act, since the same did not terminate the proceedings or finally decide the rights of the parties. Further, the Supreme Court has held that while interpretating the meaning “interlocutory order” under a special statute, decisions interpretating the said term under Section 397 of CrPC would not be apposite. However, an order discharging the accused is not an interlocutory order and is hence appealable.

42. In ***State Represented by Inspector of Police and Ors. v. N.M.T. Joy Immaculate, (2004) 5 SCC 729,*** the Supreme Court was dealing with a case where the order of the Trial Court granting police custody under Section 167 of Cr.P.C. was challenged before the High Court in revision under Section 397 of CrPC. The Supreme Court, after considering several judgements, held that an order of remand under Section 167 of CrPC would merely be an interlocutory order and no revision is maintainable against the same. The observations of the Supreme Court are set out below:

> *“**10.** In S.Kuppuswami Rao v. R. the following principle laid down in Salaman v. Warner was quoted with approval: (AIR p. 3, para 6)*
>
> > *“If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go*

on, then I think it is not final, but interlocutory."

10.1. The test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined.

11. *However, in Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order was not accepted as this will render the revisional power conferred by Section 397(1) nugatory. After taking into consideration the scheme of the Code of Criminal Procedure and the object of conferring a power of revision on the Court of Session and the High Court, it was observed as follows: (SCC p. 558, para 13)*

"In such a situation it appears to us that the real intention of the legislature was not to equate the expression 'interlocutory order' as invariably being converse of the words 'final order'. There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders.

12. *Same question has recently been considered in K.K. Patel v. State of Gujarat. In this case a criminal complaint was filed against the Superintendent of Police and Deputy Superintendent of Police alleging commission of several offences under the Penal Code, 1860 and also under Section 147-G of the Bombay Police Act. The Metropolitan Magistrate took cognisance of the offence and issued process to the*

accused, who on appearance filed a petition for discharge on the ground that no sanction as contemplated by Section 197 CrPC had been obtained. The Metropolitan Magistrate dismissed the petition against which a revision was filed before the Sessions Judge, who allowed the same on the objection raised by the accused based upon Section 197 CrPC and also Section 161(1) of the Bombay Police Act, which creates a bar of limitation of one year. The revision preferred by the complainant against the order of discharge was allowed by the High Court on the ground that the order passed by the Metropolitan Magistrate rejecting the prayer of the accused to discharge them was an interlocutory order. In the appeal preferred by the accused, this Court after referring to Amar Nath v. State of Haryana , Madhu Limaye v. State of Maharashtra and V.C. Shukla v. State held that in deciding whether an order challenged is interlocutory or not, as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings. If so, any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. It was further held that as in the facts of the case, if the objections raised by the accused were upheld, the entire prosecution proceedings would have been terminated, the order was not an interlocutory order and consequently it was revisable."

13. *Section 167 CrPC empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209 CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after taking cognisance of an offence or during*

> *commencement of trial when it finds it necessary to adjourn the enquiry or trial.* ***The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaye case it cannot be categorised even as an "intermediate order".*** *The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6-11-2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."*

43. In ***Gautam Navlakha v. National Investigation Agency, (2022) 13 SCC 542,*** which dealt with an order of remand under Section 167 of CrPC and the maintainability of a revision petition against the said order, the Supreme Court observed that an order of remand is purely an interlocutory order and that no revision is maintainable. However, while doing so, the Supreme Court observed as under:

> *"**72.** Thus, an order under Section 167 is purely an interlocutory order. No revision is maintainable. A petition under Section 482 cannot be ruled out. Now at this juncture we must notice the following dimension. When a person arrested in a non-bailable offence is in custody, subject to the restrictions, contained therein, a court other than the High Court or the Court of Session, before whom he is brought, inter alia, can release him on bail under Section 437CrPC. Section 439CrPC deals with special powers of the High Court and the Court of*

Session to grant bail to a person in custody. The said courts may also set aside or modify any condition in an order by a Magistrate.

* * * *

***74. Thus, ordinarily, when the court considers a request for remand there would be an application for bail. It is for the court to grant bail failing which an order of remand would follow**."*

44. In ***Asian Resurfacing of Road Agency Private Limited & Anr. v. Central Bureau of Investigation***, ***(2018) 16 SCC 299,*** the question that the Supreme Court was considering was whether an order framing charge was an interlocutory order. The Supreme Court observed that the principles laid down in ***Madhu Limaye (supra)*** will continue to apply, despite the view taken in ***V.C. Shukla (supra)***. The observations of the Court are reproduced hereunder:

*"**21. The principles laid down in Madhu Limaye still hold the field and have not been in any manner diluted by the decision of four Judges in V.C. Shukla v. State or by the recent three-Judge Bench decision in Girish Kumar Suneja v. CBI. Though in V.C. Shukla, order framing charge was held to be interlocutory order, judgment in Madhu Limaye taking a contrary view was distinguished in the context of the statute considered therein.** The view in S. Kuppuswami Rao, was held to have been endorsed in Mohanlal Maganlal Thakkar though factually in Madhu Limaye [Madhu Limaye v. State of Maharashtra], the said view was explained differently, as already noted. Thus, in spite of the fact that V.C. Shukla is a judgment by Bench of four Judges, it cannot be held that the principle of Madhu Limaye does not*

hold the field. As regards Girish Kumar Suneja , which is by a Bench of three Judges, the issue considered was whether the order of this Court directing that no court other than this Court will stay investigation/trial in Manohar Lal Sharma v. Union of India (Coal Block allocation cases) violated right or remedies of the affected parties against an order framing charge. It was observed that the order framing charge being interlocutory order, the same could not be interfered with under Section 397(2) nor under Section 482 CrPC. It was further held that stay of proceedings could not be granted in the PC Act cases even under Section 482 CrPC. It was further observed that though power under Article 227 is extremely vast, the same cannot be exercised at the drop of a hat as held in Shalini Shyam Shetty v. Rajendra Shankar Patil , SCC p. 835, para 37)

> *"37. ... '49. ... (n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.' (Shalini Shyam case [Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] , SCC p. 349, para 49)"*

* * * *

27. <u>Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 CrPC, the principle laid down in Madhu</u>

Limaye still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.

* * * *

28. *We have thus no hesitation in concluding that the High Court has jurisdiction in an appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further."*

45. Apart from the above Supreme Court judgments, certain decisions of High Courts, specifically in the context of UAPA, also deserve consideration. In ***Kandhal Sarman Jadeja v. State of Gujarat***, ***2012 SCC OnLine Guj 3104,*** a ld. Division Bench of the Gujarat High Court has examined a similar issue as raised in the present appeal *qua* the nature of an order rejecting the remand of an accused under Section 167 of the Code. The said Bench was considering the following four issues referred by the ld. Single Judge:

"

(i) Whether an order refusing to grant remand has any bearing on the proceedings of the trial itself? Whether an order refusing to grant remand has any effect on the ultimate decision of the case?

(ii) Whether an order refusing to grant remand can affect the progress of the trial or its decision in any manner?

(iii) Whether an order refusing to grant police remand is an interlocutory order or an intermediate or a final order?

(iv) Consequently, whether a revision against an order refusing to grant police remand is maintainable under section 397 Cr.P.C.?"

46. The Gujarat High Court then observed as under:

"14. We have given our anxious consideration to the contention of the learned advocate appearing for both the parties. We are of the view that the observation made by the Supreme Court in the case of N.M.T. Joy Immaculate (supra) to the effect that the order of remand has no bearing on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case was in the context of the main issue before the Supreme Court. The main issue before the Supreme Court was as to whether an order of grant of remand is an interlocutory order or a final order so as to make the Revision Application under Section 397 read with Section 401 of the Code maintainable. ***On plain reading of the judgment of the Supreme Court in N.M.T. Joy Immaculate (supra), we find that the only issue before the Supreme Court was as to whether an order of remand passed against the accused can be termed as an interlocutory order or a final order****. The Supreme Court after considering the true meaning of the term "interlocutory order" and after considering the judgment of the Supreme Court in Madhu Limaye (supra) and Amar Nath (supra) held that if the remand is granted then in that case, the proceedings are not finally culminated, and what the Supreme Court has tried to convey is that the remand is a step in aid of effective and proper investigation. If an accused is subjected to remand all that happens is that he will remain in custody of the police for more than 24 hours,*

during which the accused is subjected to interrogation so that the Investigating Agency can investigate the offence properly and collect cogent material to put the accused to trial by filing the chargesheet. In this context, the Supreme Court held and observed that if the order of remand is passed, it will have no bearing on the proceedings of the trial itself or will have any effect on the ultimate result of the case. ***However, in the present case, we are looking into the question as to what will be the effect if remand is refused and thereby, taking away right of the Investigating Agency to have an accused in police custody for more than 24 hours for the purpose of proper investigation. As we have observed earlier, the Supreme Court has very much answered this issue in Paragraph-10.1 by observing "If objection of the accused succeeded, the proceedings could have been ended but not vice versa and the order can be said to be a final order only if, in either event, the action will be determined"****.*

15. We have to our advantage two judgments of this very High Court on the issue which we would like to refer and rely upon. In A. Majmudar (supra), the question for consideration before the learned Single Judge was ***whether an order of granting remand is a final order against which revision lies under Section 397 of the Code or is an interlocutory order against which revision is barred under Section 397(2) of the Code. While answering this question, the learned Single Judge has touched this issue as regards bearing on the proceedings of the trial or any effect on the ultimate decision of the case. We are in complete agreement with the reasonings assigned by the learned Single Judge in this regard and we approve the same.*** *The learned Single Judge held as under:*

> *"3. […]*
>
> *Needless to say that if a case is registered against certain accused and the said accused is arrested*

and produced before the Magistrate within a period of 24 hours of his arrest the Magistrate has two options. The first is to keep such accused on being produced before him in judicial custody for a period not exceeding 15 days at intervals, ***the second option is to place the accused in police custody on the request of the police for effectively helping further investigation in the matter. The Investigating Agency is duty bound to investigate into allegation of commission of crime or offence by the accused. Correspondingly it has duty to effectively investigate commission of offence so as to find out who is the real culprit, who has committed offence. This duty of investigation can be discharged by the Investigating Agency either by interrogating the accused in judicial custody or by interrogating him in police custody. Normally, police custody is not lightly granted, but looking to the facts and circumstances of the case and seriousness of offence and on the request of the Investigating Agency to enable it to collect material evidence upon interrogation of the accused by placing him in police custody such request can be granted****. By granting such request the Magistrate does not decide rights and obligations of the parties, namely, the prosecution and the accused. The Court simply assists the investigation in carrying out investigation in impartial and effective manner. After all investigation has to be carried out once the case is registered and the police makes a request for carrying out investigation.* ***Carrying out investigation is a step in aid of submission of charge sheet or step in aid of submission of final report as is contemplated u/s. 169 Cr.P.C. It is only when the charge-sheet is submitted that the right of the accused can be said to have been determined one way or the other by the police****.*

Likewise if a final report u/s. 169 is submitted it can be said that the right of the prosecution to prosecute the accused has been finally decided and such order is certainly revisable. However, mere order placing the accused in police custody is not final order in the sense that it terminates the proceeding before the Court or it terminates investigation pending before the Investigating Agency. ***Termination of proceeding is sine qua none for determining the finality of the order against which the revision lies. If by granting police remand the investigation is not terminated one way or the other it cannot be said to be a final order against which revision lies.***

4. […]
If an order refusing remand is passed it is certainly a final order against which revision lies and such order cannot be termed as interlocutory order. For example, if the Investigating Agency makes a request that discovery of fact on the information of the accused in police custody is to be made such request, if refused, decides the rights of the prosecution or the investigation agency not only to collect a very material evidence u/s.27 of the Evidence Act, but also affects materially the right of the prosecution to produce material evidence which may have vital bearing on the decision of the case. In such cases it can certainly be said that while refusing to grant police remand the right of the prosecution are certainly finally determined to the limited extent for which police remand is refused and in such cases such order of refusal to grant police remand is certainly a final order against which revision lies. *The matter can be illustrated further that if during investigation it comes to the notice of the Investigating Agency that after commission of*

murder the accused has buried the dead body of the deceased at a particular place and the police wants to recover the said dead body consequent upon the information given by the accused in police custody resulting into discovery of fact such would be a case of collection of evidence u/s. 27 of the Evidence Act which may have material bearing in a murder trial to connect that the murder was committed by the accused and he knew where after commission of murder he has concealed or buried the dead body. ***If on these facts police remand is refused certainly the right of the prosecution is taken away and to that extent it affects the right of the prosecution partly hence it decides a case partially against the prosecution. Consequently in such a case refusal of police remand is certainly revisable.*** *But granting police remand is not a case where the right of the prosecution or right of the accused has in any way been partly or wholly adjudicated upon. Consequently it is not a final order against which no revision lies."*

47. The conclusion on the various issues were then summarised as under:

"17. In light of the aforesaid discussion, our final conclusion may be summarized thus:

(I) An order refusing to grant remand has direct bearing on the proceedings of the trial itself and in a given case will definitely have effect on the ultimate decision of the case.

(II) An order refusing to grant remand may affect the progress of the trial or its decision in any manner if Investigating Agency is deprived of having custodial interrogation of the accused so as to effectively investigate the offence and gather necessary evidence

and material to put the accused to trial.

(III) An order refusing to grant police remand would be a final order and a revision under Section 397 read with Section 401 of the Code would be maintainable."

48. In the above decision, therefore, the ld. Division Bench of the Gujarat High Court distinguished between orders granting remand and orders refusing remand. The Court held that an order refusing remand is not an interlocutory order. The reasoning of the High Court was that an order refusing remand would have a final bearing on the investigation and would materially affect the right of the prosecution to produce evidence which may have a bearing on the trial. Thus, refusing remand, in effect, finally determines the right of the prosecution to conduct its investigation in the manner as it so deems fit.

49. This decision in ***Kandhal Sarman Jadeja (supra)*** was subsequently followed in ***P. Narayana v. State of Andhra Pradesh Through the Investigating Officer, rep. by its Public Prosecutor, 2022 SCC OnLine AP 2867,*** by the ld. Division Bench of the Andhra Pradesh High Court, wherein the Court observed as under:

"16. The scope of the bar under Section 397(2) Cr. P.C., against filing a revision against an interlocutory order, was considered by the Hon'ble Supreme Court in Amar Nath v. State of Haryana. This was further explained by the Hon'ble Supreme Court in Madhu Limaye v. State of Maharashtra, wherein the Hon'ble Supreme Court had taken the view that the orders passed in the course of criminal proceedings would be interlocutory or intermediate or final orders and the bar under Section 397(2) Cr. P.C., would apply only to interlocutory orders. The Hon'ble Supreme Court

in State, rep. by Inspector of Police v. N.M.T. Joy Immaculate had held that an order of extension of remand is an interlocutory order against which revision would not lie. ***However, a Division Bench of the Hon'ble High Court of Gujarat in Kandhal Sarman Jadeja v. State of Gujarat, had held as follows****:*

> *17. In light of the aforesaid discussion, our final conclusion may be summarized thus:*
>
> ***(I) An order refusing to grant remand has direct bearing on the proceedings of the trial itself and in a given case will definitely have effect on the ultimate decision of the case.***
>
> ***(II) An order refusing to grant remand may affect the progress of the trial or its decision in any manner if Investigating Agency is deprived of having custodial interrogation of the accused so as to effectively investigate the offence and gather necessary evidence and material to put the accused to trial.***
>
> ***(III) An order refusing to grant police remand would be a final order and a revision under Section 397 read with Section 401 of the Code would be maintainable.***

Reference is accordingly answered. Registry shall place the matter once again before the Hon'ble Chief Justice for appropriate orders so that the main matter can be placed before the appropriate Court taking up such matter.

17. I am in respectful agreement with the said principle laid down by the Division Bench of the Hon'ble High Court of Gujarat. In such circumstances, it must be held that the revision filed before the Sessions Judge was maintainable.*"*

50. A Full Bench of the Gauhati High Court in ***National Investigation Agency v. Shri Akhil Gogoi, GAHC010066072020,*** was also dealing with an appeal under Section 21 of the NIA Act against an order of the Special Judge

rejecting the application under Section 43-D(2) of the UAPA seeking extension of time to complete investigation. The concerned Public Prosecutor had filed a report mentioning the grounds on which the extension was sought. However, the ld. Special Judge rejected the said application. The NIA assailed the said order of the ld. Special Judge before the High Court in an appeal under Section 21 of NIA Act. In the said decision, the Full Bench considered the entire line of cases as discussed above and observed as under:

> *"33. In order to answer the question under reference as to whether an order refusing the extension of detention in custody under Section 43 D of the UAPA1967 would be appealable under Section 21(1) of the NIA Act, as per the contentions and submissions of the learned counsel for the parties, two relevant questions for determination would be:*
>
> *(i). What would be the meaning of the expression 'interlocutory order' in the context of NIA Act 2008 and UAPA-1967?*
>
> *(ii). What would be the meaning of the expression 'proceeding' in the context of an order refusing extension of detention in custody in terms of Section 43D of the UAPA-1967?*
>
> *34. Before examining the question as to what would be the meaning of 'interlocutory order' in the context of NIA Act-2008 and UAPA-1967, we take note that the expression 'interlocutory order' had been examined in many of the matters including that of the pronouncements in Amarnath (supra), Madhu Limaye (supra) and Joy Immaculate (supra).* ***But in all the aforesaid propositions the expression 'interlocutory order' was examined in the context of Section 397(2) of the Cr.P.C., wherein the powers of revision were not made applicable in relation to any interlocutory order***

passed in any appeal, enquiry, trial or other proceedings. But in paragraph 45 of its pronouncement in VC Shukla (supra), by referring to the provisions of Section 11(1) of the Special Courts Act which begins with a non-obstante clause, it has been provided that by applying the non-obstante clause the position is that the provisions of the Cr.P.C., are expressly excluded and, therefore, Section 397(2) of the Cr.P.C., cannot be called into aid in order to hold that the order impugned is not an interlocutory order. In view of such provisions in paragraph 45 of VC Shukla (supra) we also have to understand that the meaning given to the expression 'interlocutory order' in the context of Section 397(2) of the Cr.P.C., cannot be brought into effect to also give a meaning to the expression 'interlocutory order' in relation to Section 21(1) of the NIA Act-2008, which also begins with the same nonobstante clause 'not withstanding anything contained in the Code'.

35. In paragraph 24 of its pronouncement in VC Shukla (supra), the Supreme Court provided that an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit, or a trial, but which does not, however, conclude the trial at all. ***Accordingly, it has to be understood that in case of a proceeding other than a suit or a trial if an order decides a particular aspect or a particular issue or a particular matter in a proceeding such order would be an interlocutory order****. **As a corollary, it has to be understood that if an order decides the entire aspect or the issue or the matter involved in a proceeding it would not be an interlocutory order, but a final order for such proceeding.***

36. For the purpose, to understand, as to whether the order impugned dated 16.03.2020 refusing an extension

of detention in custody to the accused A1 and the order dated 04.04.2020 also refusing an extension of detention in custody to accused A2, A3 and A4 would be an interlocutory order or a final order, we have to understand as to what is the meaning and scope of the expression 'proceeding' and whether the proceeding in which the Special NIA Court had considered whether to grant extension of detention in custody to the aforesaid accused persons or not to grant extension, were itself a proceeding or it was a part of a proceeding in a larger context.

* * * *

45. ***Going by the meaning of the expression 'proceeding' in Babu Lal (supra), it can be accepted that the respective parties having adopted a prescribed course of action for enforcing a legal right, the petition No. 492/2020 and petition No.541/2020 leading to Misc.Case (NIA) No.01/2020 and Misc.Case (NIA) No.04/2020, respectively were itself proceedings. In paragraph 24 of the pronouncement in VC Shukla (supra), the provision that an interlocutory order is one which only decides a particular aspect or a particular issue, or a particular matter in a proceeding, suit or trial also makes it discernible that the Supreme Court distinguishes between a proceeding, a suit or a trial and, therefore, it cannot be that only at the conclusion of a trial would make it to be a proceeding.***

* * * *

56. In paragraph 33 of VC Shukla, the Supreme Court by referring to Kuppuswamy (supra) and Mohan Lal (supra) was of the view that generally speaking a judgment or order which determines the principal matter in question is termed final.

* * * *

76. From the aforesaid conclusions, as regards the proceedings on the subject matter of extension of detention in custody of the accused persons for the purpose of the investigation, it can be concluded that by the orders of refusal of extension of detention in custody dated 16.03.2020 and 04.04.2020 the proceedings itself came to an end. ***Further by the orders of refusal of extension of detention in custody dated 16.03.2020 and 04.04.2020 the fundamental and legal rights of accused A1 and accused A2, A3 and A4 to remain not in custody any further in connection with the investigation in NIA Case No.RC13/2019/NIA/GUW had also been finally determined. As such, there is a final determination of the rights of one of the parties to the proceedings i.e. the accused persons. Also the requirement of the investigation being the appellant NIA to have the detention of the accused persons extended beyond 90 days upto 180 days had also been finally determined by the two orders dated 16.03.2020 and 04.04.2020.***

77. In view of such conclusion, the orders dated 16.03.2020 in Misc. Case (NIA)No.01/2020 and dated 04.04.2020 in Misc.Case (NIA)No.04/2020 ***cannot be said to be 'interlocutory order', but a 'final order', inasmuch as, the proceedings in which such orders were passed came to an end and the rights of one of the parties had been finally determined and also the requirement of the other party had also been finally determined.***

* * * *

79. We further provide that the judgment and order dated 20.12.2019 of the Division Bench rendered in Jai Kishan Sarma and Another Vs. Union of India reported in 2020 (1) GLT 122 providing that the order allowing

for extension of detention in custody of the accused persons is an 'interlocutory order' is accepted to be the correct proposition of law. In a situation, where extension of detention in custody of the accused persons is allowed, firstly, the proceeding on the subject matter whether such detention is to be allowed or not does not come to an end and ***secondly, the right of one of the parties i.e., the accused persons, to remain not in custody in connection with the investigation, otherwise, than by following the due procedure of law, had also not been finally determined inasmuch as, after the end of the extended period of detention there would be a further consideration as to whether the detention requires to be further extended or not."***

51. A perusal of the above decisions shows that the reasoning of the Gauhati High Court in holding an order rejecting extension of time under Section 43D(2) of UAPA, as a final order was based on the interpretation of the term 'proceeding' as defined by the Supreme Court in ***Babu Lal v. Hazari Lal Kishori Lal & Ors., (1982) 1 SCC 525*** and a conjoint reading of the same with the decision in ***V.C. Shukla (supra).*** In ***Babu Lal*** the Supreme Court interpreted the term proceedings to mean a prescribed course of action to enforce a legal right and in ***V.C. Shukla (supra)*** the Supreme Court had held that if an order finally determines the entire issue involved in a proceedings, then such an order would be a final order for the purposes of the said proceedings.

52. Thus, as per the Gauhati High Court, applications of the investigating agency seeking extension of the period of investigation and remand of the accused in furtherance of their requirement to conduct investigation in the prescribed manner as stipulated under law, would be a proceeding on its own,

and by rejecting the said application, the Trial Court/Special Judge terminates/ finally determines the said proceedings. However, an order allowing extension of detention in custody would be an interlocutory order.

53. The crux of the above decisions would show that there are three categories of orders:

i. Final orders.

ii. Interlocutory orders.

iii. Intermediate orders.

54. The third category of orders, as laid down in ***Madhu Limaye (supra),*** are neither interlocutory orders nor final orders but somewhere in between. In the course of a civil or a criminal proceeding, there could be several orders which would not fall in the category of interlocutory or final. Such orders could have trappings of finality and irretrievable consequences that may be attached to them. Such orders though not deciding the case finally, are clearly not interlocutory orders as they may have a final bearing on the manner in which the case would proceed.

55. For example, an order framing charge could have finality attached to it as held in ***V.C. Shukla (supra).*** Other examples of the same would be:

(i) Order summoning an accused, as held in ***Jagan Nath v. Bhagwan Dass, 1978 Cri LT 133 (Punj & Har HC);***

(ii) Order taking cognizance of offence, as held in ***Tilk Raj v. State of U.P., 1979 Cri LJ 308 (All HC);***

(iii) Order attaching subject of dispute, as held in ***Umrao v. Sheonarain, 1975 Raj LW 353;***

(iv) Order of discharge, as held in ***Gurucharan Singh v. State of Punjab, 1978 Cri LJ 1330 (P&H HC);***

56. In the present case, the dismissal of the application seeking extension of time under Section 43D(2) of UAPA, has two clear consequences:

a) The accused is entitled to default bail;

b) The release of the accused would have a direct bearing on the investigation and the manner in which it would proceed.

57. Would such an order merely be an interlocutory order against which no appeal would lie? The answer, in view of the position of law as discussed hereinabove, is clearly in the negative. The finality attached to such an order would be that the State may be unable to again obtain custody of these accused, especially, in a case involving serious offences including under the UAPA. The accused would be allowed to freely move around in society while the investigation is not concluded and some of the other accused persons are still at large. Such accused could also affect or tamper with evidence or witnesses or even indulge in prejudicial activities which may have a larger impact on society.

58. In this regard, the recent decision of the Supreme Court in ***Shaik Nazneen v. State of Telangana, (2023) 9 SCC 633,*** is relevant. The Court while considering the default bail available to an accused under Section 167 of CrPC has observed as under *qua* imposition of stringent conditions in cases of default bail:

> ***"15.*** *The other reason assigned is that the trial court while granting bail did not lay down any conditions. This is again a wrong presentation of the case.* ***Conditions were not imposed simply as it was a default bail, and in bail of this nature conditions are not liable to be imposed."***

Thus, if the accused are granted the benefit of default bail in the present

matter, the Trial Court may not be able to impose any stringent conditions as may be necessary in such sensitive matters involving national security.

59. As can be seen from the facts of the present case, some of the accused have still not been arrested or apprehended. They are absconding. There are possibilities of the accused teaming up with such non-apprehended persons and adversely impacting the investigation. Further, prior to the filing of the charge-sheet, the accused would be released on default bail wherein the usual conditions for grant of bail are not to be gone into by the Trial Court. These consequences are irreversible upon the passing of the impugned order. Any order which can have such irreversible consequences in a case of such magnitude and sensitivity cannot be held to be an interlocutory order.

60. In view of the abovesaid discussion, it is clear that an order rejecting the application for extension of period of investigation from initial 90 to 180 days under Section 43D(2) of UAPA would be an appealable order and not an interlocutory order.

61. Thus, the appeal in the present case is held to be maintainable and the preliminary objection raised by the Respondents is rejected.

II. <u>Whether the application seeking extension of time for completion of investigation deserves to be allowed and if so, for what period?</u>

62. The second issue that is to be considered in the present appeal is whether the State has made out a case of grant of extension and if so, for what period.

63. In ***State of Maharashtra v. Surendra Pundlik Gadling And Others, (2019) 5 SCC 178***, the Supreme Court was dealing with a case where the Respondent detenues had claimed default bail before the Trial Court due to failure by the State in filing a charge-sheet within a period of 90 days. It was

also alleged by the Respondent detenues that the request for extension for a further period of 90 days would not meet the requirement under Section 43D(2)(b) of UAPA.

64. In the said case of ***Surendra Gadling***, after the initial period of 90 days for investigation, the State relied upon Section 43D(2)(b) of UAPA to seek extension and complete the investigation. The said application was allowed by the ld. Special Judge. However, the said order of the ld. Special Judge was set aside by the Bombay High Court *vide* order dated 24th October, 2018, which was challenged by the State before the Supreme Court. The Supreme Court observed that the requirements to be fulfilled under Section 43-D (2)(b) are as under:

> *"**14.** A perusal of the proviso to Section 43-D(2)(b) of the said Act shows that there are certain requirements that need to be fulfilled, for its proper application. These are as under:*
>
> ***14.1.** It has not been possible to complete the investigation within the period of 90 days.*
>
> ***14.2.** A report to be submitted by the Public Prosecutor.*
>
> ***14.3.** Said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days.*
>
> ***14.4.** Satisfaction of the Court in respect of the report of the Public Prosecutor."*

65. The Supreme Court in ***Surendra Gadling (supra)*** relied upon the decision in ***Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors., (1994) 4 SCC 602,*** which was a decision under the Terrorist and

Disruptive Activities (Prevention) Act, 1987. The Supreme Court observed that the report of the Public Prosecutor seeking extension of time for completion of investigation may have been lacking in the said case. However, it was held that while considering such a report and the application for extension, the focus has to be more on the substance than on form of the report of the Public Prosecutor. The Supreme Court considering the substance of the report of the Public Prosecutor held that the detenue would not be entitled to default bail and the Trial Court was correct in rejecting an application seeking default bail. The extension of investigation was in effect approved by the Supreme Court in ***Hitendra Vishnu***. The observations of the Supreme Court in ***Surendra Gadling (supra)*** *qua* the Public Prosecutors report under Section 167 of CrPC are relevant and reproduced hereunder:

> *"**32**. There is no doubt that the report/application of the Public Prosecutor, setting out the reasons for extension of ninety (90) days of custody to complete investigation leaves something to be desired. The first document placed before the trial court was an application/report filed by the IO, though that is also stated to contain the signature of the Public Prosecutor. The second document, which purports to be the report of the Public Prosecutor, has also been filed in the form of an application.* ***There is repetition of averments that the IO is approaching the court. Para 10 of the second document again mentions that the investigating authority had approached the court for an extension of a further period of ninety (90) days on the grounds set out therein and the trial court also appears to have treated the document in question as an application filed by the IO. A clarity in the form of a proper endorsement by the Public Prosecutor that he had perused the grounds in the earlier document submitted by the IO and, thus, was satisfied that a case had been***

made out for extension of time to complete the investigation would have obviated such a controversy. But that is not to be.

33. *We may, however, notice that insofar as the existence of reasons for such extension is concerned, we have found that the same exist in the detailed grounds extracted aforesaid. The first document, purporting to be the application of the IO, contains the reasons for such extended period of investigation but the second document details out the grounds in extenso and cannot be said to be only a mere reproduction of what is stated in the first document. It cannot, thus, be said that there has been complete absence of application of mind by the Public Prosecutor.*

34. There is merit in the contention of the learned Senior Counsel for the appellant State that the question is more of substance than form, an aspect even emphasised in Hitendra Vishnu Thakur case [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087], which has been relied upon by the learned counsel for both the parties. *The second document in the form of an application has been filed on the same day. It is not as if the first document, which is an application of the IO was withdrawn to file the second document, which purports to be the report of the Public Prosecutor. It is on the analysis of the first document that the second document has been filed, albeit both containing the endorsement of the Public Prosecutor. There are averments in the second application referring to the progress of the investigation and the rejoinder before us elucidates that the Public Prosecutor had the benefit of scrutinising these papers. There are additional and expanded grounds set out in the second document.*

35. *Mr Mukul Rohatgi, learned Senior Counsel appearing for the appellant State has rightly contended that there is a material difference in the facts of the present case and those of Hitendra Vishnu Thakur case [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , inasmuch as the application in that case was in the form of an affidavit of the IO, whose signatures were identified by an endorsement of the Public Prosecutor. It is in those circumstances it was held that mere identification by the Public Prosecutor, of the deponent of the affidavit could not justify the application to be treated as a report of the Public Prosecutor. In the present case, the second document contains a clear endorsement of the Public Prosecutor in support of the averments made therein.*

37. ***Undoubtedly the request of an IO for extension of time is not a substitute for the report of the Public Prosecutor but since we find that there has been, as per the comparison of the two documents, an application of mind by the Public Prosecutor as well as an endorsement by him, the infirmities in the form should not entitle the respondents to the benefit of a default bail when in substance there has been an application of mind.*** *The detailed grounds certainly fall within the category of "compelling reasons" as enunciated in Sanjay Kumar Kedia case [Sanjay Kumar Kedia v. Narcotics Control Bureau, (2009) 17 SCC 631 : (2011) 1 SCC (Cri) 1099] .*

38. *We are, thus, not able to persuade ourselves to agree with the conclusions of the learned Single Judge of the Bombay High Court in the impugned order [Surendra Pundlik Gadling v. State of Maharashtra, 2018 SCC OnLine Bom 3878] and hold that the respondents would not be entitled to the benefit of default bail and consequently the impugned order is set aside."*

66. The Supreme Court in ***M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485*** the Supreme Court has held that the provision of default bail is not merely a statutory provision, rather the same is in furtherance of the constitutional commitments under Article 21 of the Constitution of India. Further, in ***Jigar v. State of Gujarat, (2023) 6 SCC 484,*** the Supreme Court was considering default bail under Section 167 of CrPC sread with provisions of Gujarat Control of Terrorism and Organised Crime Act, 2015. The decision in ***Hitendra Vishnu (supra)*** has been relied upon in ***Jigar.***

67. The Coordinate Bench of this Court in ***Zeeshan Qamar v. State NCT of Delhi, 2023 SCC OnLine Del 1114*** has also considered the requirements that have to be satisfied at the time of grant of extension of time under Section 43D(2) of UAPA. The relevant paragraphs of the said judgment are extracted herein below:

> *"23. Emphasizing on the need of an independent application of mind by the Public Prosecutors, Hon"ble Supreme Court in Surendra Pundlik Gadling (supra), held that the mandatory requirement of a Public Prosecutor"s report under Section 20(4)(bb) of TADA by the Legislature was to not leave to the I.O. to make an application for seeking extension of time from the Court, thereby, requiring the investigating agency to submit itself to the scrutiny of the Public Prosecutor, in the first instance and satisfying him about the progress of investigation and furnishing reasons for seeking further custody of an accused. The Public Prosecutor is not a part of investigating agency but an independent statutory authority and thus, is expected to independently apply his mind to the request of the investigating agency, before submitting a report to the Court for extension of time with a view to enable the*

investigating agency to complete its investigation. Therefore, if the Public Prosecutor finds that the investigation has not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation, he may refuse to submit any report to the Court under clause (bb) to seek extension of time.

* * * *

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

* * * *

33. The Special Court thus would thus be required to take into consideration the submission on behalf of the accused while examining the Public Prosecutor's report regarding the progress of investigation, as well as the specific reasons for seeking further detention and whether from the investigation carried out till that date, there is sufficient material to form a reasonable belief that prima facie an offence under UAPA is made out

against the accused or not, the last being for the reason, if prima facie, no offence under UAPA is made out, the Special Court would have no jurisdiction to entertain the remand of the accused, much less, extend the same. Needless to note that at this stage, the learned Special Court would not be required to give reasons in his order as to how a prima facie offence under UAPA is made out, for the reason, that the same will entail disclosure of the investigation already carried out and to be carried out. However, the Special Court would be required to satisfy itself about this requirement. Thus, even without being supplied with the copy of the Public Prosecutor's report, if the accused is heard on the relevant facts which go to the root of granting extension of time for continued investigation, the same will be a meaningful notice. With these safeguards provided to the accused at the time of extension of the period of remand beyond 90 days, we find no merit in the contention of learned counsels for the appellants that for a meaningful notice, the report of the Public Prosecutor is required to be provided to the accused at the stage of grant of extension of remand for continued investigation.

* * * *

35. Supreme Court in Surendra Pundlik Gadling (supra) held that on a report/application submitted by the Public Prosecutor for extension of time in terms of proviso to Section 43D(2)(b) of UAPA, the Special Court is required to ensure that following ingredients of the said provisions are complied with;

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

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

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

(iv) Satisfaction of the Court in respect of the report of

the Public Prosecutor."

68. The ld. Division Bench then concluded that the essential requirements that are to be seen at the stage of extension of remand are as under:

> *"46. Therefore, the essential requirements to be seen by the learned Special Court at the stage of extension of remand of the accused for further period to complete the investigation under the proviso to Sub-Section 2(b) to Section 43D of the UAPA are:*
> *(i) Reasons evidencing the personal satisfaction of the Public Prosecutor as regards the progress of investigation made based on the investigation carried out,*
> *(ii) Reasons indicating why the investigation could not be completed within the period of 90 days; and*
> *(iii) Further investigation required to be carried out for which, extended period of time is necessary."*

69. A conjoint reading of the decisions in ***Surendra Gadling (supra)*** and ***Zeeshan Qamar (supra),*** would be that the requirements for seeking an extension under Section 43D(2) of UAPA could be disclosed either in the report of the Public Prosecutor or even in the application for extension. The substance of the grounds have to be considered and not the form in which they are set out.

70. At this stage, it is pertinent to note that the ld. Trial Court while declining to allow the prayer for extension of investigation under Section 43D(2) of the UAPA observed and held as under:

> ***"C. Said report indicating the progress of investigation and the specific reasons for detention of the accused persons beyond the period of 90 days.***
> *Now, I proceed to examine the application of the*

Ld. Addl. Public Prosecutor regarding the third requirement as cited above.

In order to qualify the above mentioned test, the report of the Ld Addl. PP is required to satisfy following two requirements:-

(i) The progress of the investigation must be indicated in the report.

(ii) Specific reasons for detention of the accused beyond the period of 90 days must also be indicated in the report itself.

From perusal of the contents of the application, it is evident that report of the Ld. Addl. PP only shows the development and progress of the investigation but no where it discloses justification for keeping the accused persons in further custody to enable the investigating agency to complete the investigation.

In View of the aforesaid discussions, this Court has considered view that the that the prosecution has failed to set out a case for extension of the statutory time period to conclude investigation and the application at hand deserves to be dismissed.

Application is disposed off accordingly.

The instant application and report be kept in a sealed envelope. ***(Reliance is placed upon the observations made by Hon'ble High Court of Delhi in Zeeshan Qamar v. State NCT of Delhi 2023 SCC OnLine Del 1114.)***

Copy of this order be given dasti to the IO."

71. A perusal of the aforesaid observation would show that the ld. Trial Court did not actually apply its mind to appreciate the requirements for extension of the period of investigation. In the opinion of the ld. Trial Court only because there were no specific reasons given in the report, for detaining the accused persons but only the progress for investigation, the permission as sought by the State was denied.

72. As noted hereinabove, the legal requirement in such cases would be the substance of the grounds that have been stated in the application/report and not in the form in which they are set out. Needless to state that the Court by allowing an application seeking permission for extension of period of investigation is, in fact, allowing the prayer of extension of custody of the accused person(s) as well.

73. The ld. Division Bench of this Court in ***Zeeshan Qamar (supra)*** in similar circumstances has observed and held as under:

> *"**57.** Thus, the essential component of informing the Special Court about the progress of the investigation carried out, showing that there was no laxity or inordinate delay, was placed and also that further investigation was required for which continued custody of the appellant Zeeshan was essential. Even though the requirement in terms of the examination report of the IEDs, grenades deposited with the FSL and the sanction under Section 45 of the UAPA, Section 7 of the Explosive Substances Act and Section 39 of the Arms Act cannot be the reasons for grant of extension of remand period, however, the fact that the main accused was evading arrest and on arrest, confrontation and interaction was necessary, besides retrieval of the data and analysis of the phones and identification and tracing of other connected members, were sufficient reasons to form an opinion for the learned Special Court for extension of time of investigation for a period of 90 days. Therefore, we find no ground to interfere with the impugned order of the learned Special Court granting extension of time for investigation and remand, leading to continued detention of the appellant Zeeshan Qamar.*
>
> ***77.** Since the report of the Public Prosecutor was not on record, learned counsel for NIA placed on record the copy of the Public Prosecutor's report as well as*

relevant extract of the subject case diaries. We have perused the same and inter alia find the following reasons given in Public Prosecutor's report:
(i) That investigation qua the new names revealed in the disclosure statement of the accused persons would take some more time.
(ii) That forensic data of seized mobile phones is yet to be received from CERT-In and because of its volume, analysis and scrutiny of the said data would take some more time to unearth a larger conspiracy.
(iii) That the geographical spread of the conspiracy requires field investigation which is yet to be completed and would take more time.
(iv) That Covid-19 Pandemic was on the rise and investigating team faced issues in completing the investigation within 90 days.
(v) That sanction under Section 45 of the UAPA is still required to be obtained.

78. *Having gone through the Public Prosecutor's report and the impugned order passed by the learned Special Court, we find that there was material before the learned Special Court showing the investigation already carried out and that further field investigation as also the investigation qua the new names revealed and the analysis of the forensic data retrieved was required to be carried out as narrated in sub-paras (i), (ii) and (iii) of Para 12.5 even if sub-paras (iv) and (v) are not relevant for consideration for extension of the period of investigation and the continued detention."*

74. The various orders which have been brought to the notice of the Court passed from time to time while extending the remand set out the following reasons for grant of extension:

a) To unearth the whole conspiracy.

b) To analyze the voluminous data on the mobile phones of the accused.

c) To confront the accused persons with the data from the mobile phones.

d) To conduct sustained interrogation of accused persons and confront them with each other.

e) To take accused persons to Jharkhand to verify the places where they took training.

f) To trace and apprehend the source of weapons.

g) To conduct sustained interrogation regarding three weapons which are yet to be recovered.

h) To apprehend their associate and trainers who fled away from the spot.

i) To identify main handler/handlers of the group.

j) To prevent the accused persons from committing further offence.

k) To prevent the accused persons from causing the evidence of the case to disappear or tampering with such evidence.

l) To prevent accused persons from making any threat or inducement to any person acquainted with the facts of the case or to the police officer.

75. The report of the ld. Additional Public Prosecutor has also been placed before this Court in which the following factors have been highlighted as grounds for seeking extension of the time for completion of the investigation:

1) That one of the accused is evading arrest and his interrogation and confrontation with the arrested accused is necessary;

2) The co-accused who provided weapons training to the accused are yet to be identified and traced;

3) Statements of certain witnesses, including protected witnesses, have been recorded wherein new facts have emerged in respect of procurement of weapons, fund raising and other further persons involved in the conspiracy - all of which are to be investigated;

4) That vide order dated 12th November, 2024, the accused persons were remanded to police custody till 18th November, 2024. That some new facts have emerged/ surfaced during the said police custody remand of accused persons which are to be investigated.
5) The source of weapons which have been recovered is yet to be established;
6) Some platforms such as Telegram are yet to provide data which has been requested;
7) The data recovered from the digital devices is voluminous and the analysis is time consuming;
8) SIM cards have been issued in names of other individuals who are yet to be identified and their relationship with the accused is yet to be established;
9) Service providers have furnished CDR, CAF and location chart which are again voluminous and their analysis is ongoing;
10) Arms and ammunition as also hand grenades have been recovered which have been deposited with the FSL and the Home Ministry, reports are yet to be received;
11) Certain sanctions under Section 45 and Section 39 of the Arms Act are still pending;
12) The geographical spread of the conspiracy has still not been ascertained and would require more time.

76. In the context of the report submitted by the ld. Additional Public Prosecutor, the Court takes into account the fact that as per the prosecution, there has been substantial recovery of arms, ammunition and weapons from the accused persons. It is also noted that the report brings on record the fact

that the investigation was spread across various States. The matter is serious in nature and though some time has already been consumed, it cannot be said that the Prosecution has not achieved any progress. The orders of the Trial Court may appear to be stereotypical and extremely technical despite the fact that the report of the ld. Additional Public Prosecutor does show progress from time to time.

Conclusion

77. While it is true that mere progress is insufficient and the request for extension has to be considered along with the impact on investigation, the Court is clear that dismissal of the application and the non-extension of the custody would have an adverse impact on the investigation.

78. The said adverse impact is not quantifiable at this stage and while balancing the necessity for continued investigation while keeping the accused in custody with the consequence of non-grant of extension, the Court is inclined to hold that the State is entitled to the extension sought for. Recently, the Supreme Court, in a case involving grant of default bail under the UAPA has emphasised the seriousness of offences involving terrorist activities. The Supreme Court observed in ***State of NCT of Delhi v. Raj Kumar @ Lovepreet @ Lovely, (2024) 2 SCC 632*** as under:

> *"13. One more aspect to be considered is the nature of offence which involved terrorist activities having not only pan India impact but also impact on other enemy States. The matter should not have been taken so lightly.*"

79. Cases like the present one, involving national security especially, where there has been substantial evidence collected already which includes recovery of dangerous weapons, evidence of weapon training cannot be

brushed aside. The ld. Trial Court has erred in not granting the extension for completion of the investigation.

80. The application for extension deserves to be allowed and the same is allowed as sought for 90 days. The impugned order is accordingly set aside.

81. The appeal is allowed and is disposed of in above terms.

82. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 12, 2024
Rahul/ms