

SUPREME COURT OF INDIA

Union of India

Vs.

Mubarak @ Muhammed Mubarak

Crl.A.No. 865 of 2019

(A.M.Khanwilkar and Ajay Rastogi, JJ.,)

07.05.2019

JUDGMENT

Ajay Rastogi, J.,

1. Leave granted.

2. The instant appeal has been filed against the judgment dated 12th September, 2018 passed by the High Court of Judicature at Madras granting bail in default to the accused/respondent after setting aside order of the Special Court (under National 2.2. March, 2018 holding that the remand of the accused/respondent by the Special Court for a further period of 90 days was not in compliance to the mandate of Section 43D(2)(b) of Unlawful Activities(Prevention) Act, 1967(hereinafter being referred to as “UAP Act, 1967”).

3. The facts giving rise to this appeal insofar as they are relevant for disposal are that a case was initially registered at Police Station Thudialur in Cr. No. 735/2016 on the written complaint of one Dhanapal, brother of the deceased(Sasikumar) who was a spokesperson of Hindu Front at Coimbatore, was brutally hacked to death by a gang of unknown persons on 22 nd September, 2016 at about 2315 hrs. Due to the above murder, violence broke out in Coimbatore when the body of the deceased was taken for cremation. As the violence spread out to neighbouring directions of Tirupur, viz., Nilgiris and Erode, about 237 cases came to be registered in respect of the incidence of stone pelting, hurling of petrol bomb on Mosque, setting fire to shops, attack on police vehicles and buses, attack on shops belonging to different sect of the society. For days together, the harmony, public peace and tranquillity got affected. DGP, Tamil Nadu, considering the gravity of the offence transferred the case to (Special Investigation Division) CB CID, Coimbatore on 27 th September, 2016. During the course of investigation, an alteration report was filed by SID CB CID to invoke Section 120B and Section 153A IPC and Section 16 and 18 of UAP Act, 1967.

4. The Central Government in exercise of the powers conferred under Section 6 read with Section 8 of the NIA Act entrusted the investigation to the National Investigation Agency

vide order dated 22nd January, 2018. The case was taken over by the NIA as R.C. No. 03/2018/NIA/DLI under Section 302, 153A, 120B of IPC read with Section 16 and 18 of the UAP Act, 1967 vide order dated 29th January, 2018. During the course of investigation, four accused persons were arrested out of which the accused respondent(A-4) was arrested on 25th December, 2017.

5. A report under Section 43(D)(2) of the UAP Act, 1967 was submitted by the Special Public Prosecutor before the Special Court under NIA assigning specific reasons for seeking extension of judicial detention of the accused respondent for a further period of 90 days enabling him to complete the investigation. A counter statement was filed by the accused respondent on the same date opposing the application filed by the Special Public Prosecutor through his counsel. The Special Court(NIA) after hearing the parties recorded its satisfaction for detention of the accused respondent for a further period of 90 days and allowed the petition filed by the Special Public Prosecutor under its order dated 22nd March, 2018 which was the subject matter of challenge in appeal preferred at the instance of the accused respondent under Section 21 of the NIA Act before the High Court of Madras, which on appraisal of the record, arrived at the conclusion that the specific reasons which has been assigned by the Special Public Prosecutor in his report seeking detention of the respondent for a further period of 90 days does not meet the requirement of law as contemplated under Section 43D(2)(b) of the UAP Act, 1967 and accordingly set aside the order of the Special Court dated 22nd March, 2018 and in consequence thereof, granted statutory bail in default to the accused respondent under its order dated 12th September, 2018 which is a subject mater of challenge in appeal before us.

6. It may be relevant to note at this stage that the other three accused persons, namely, Syed Abuthair(A-1) arrested on 22nd March, 2017 was granted statutory bail on 19 th June, 2017; Sadham Hussain(A-2) arrested on 1st August, 2017 was granted statutory bail on 1st November, 2017 and Subair(A-3) arrested on 11th October, 2017 was granted regular bail on 12th October, 2018 on merits. It has been informed to this Court that later charge-sheet was filed against all the accused(A1 to A4) on 7th April, 2018/21st June, 2018 and it is pending for framing of charge under Section 228 of Code of Criminal Procedure, 1973.

7. Learned counsel for the appellant submits that Paras 8,9,10, 12, 13, 14, 15 & 16 of the report of Special Public Prosecutor indicate specific reasons like need for further NIA custody of the accused as envisaged in Section 43D(2) of the UAP Act, 1967, to verify the facts revealed through experts and for unravelling the conspiracy in the case for the detention of the accused respondent beyond the said period of 90 days and once the satisfaction was recorded by the learned Judge of Special Court meeting out the requirements envisaged under Section 43D(2) of the UAP Act, 1967, the satisfaction so recorded after perusal of the record could not have been overturned by the High Court unless very strong reasons are forthcoming, which has not been pointed out under the impugned judgment.

8. Per contra, while supporting the order of the High Court, learned counsel for the respondent submits that though the reasons have been assigned by the Special Public Prosecutor in his report which may be relevant for further investigation, but are not

relevant to justify for further detention of the accused respondent beyond the period of 90 days and that being the mandate of law as envisaged in Section 43D(2)(b) of the UAP Act, 1967, no error was committed by the High Court in setting aside the order of the Special Court under the impugned judgment.

9. Learned counsel for the respondent in alternate further submits that the detention of the accused respondent might have been necessary at the relevant point of time for further progress of the investigation but the fact situation has later changed and when the charge-sheet has been filed in the instant case against all the four accused persons and accused no. 1 and accused no. 2 were granted bail in default and accused no. 3 was granted regular bail on merits by the competent Court of jurisdiction and in either of the order of bail granted to the accused nos. 1 to 3, prosecution has not filed any application for cancellation and the present accused respondent is also on bail, may be in compliance of the judgment impugned and when it is not the case of the appellant that after statutory bail being granted to him in compliance of the impugned judgment dated 12th September, 2018, he has committed any breach or violated the conditions of the bail granted to him. At least, in the given facts and circumstances, even if there may be some merit in the submission made by the appellant, at least the statutory bail which was granted to the accused respondent in the changed circumstances, may not be interfered with by this Court.

10. It is not disputed that in the instant case that the accused respondent was arrested on 25th December, 2017 and initial period of 90 days was to expire on 24th March, 2018 and prior thereto on 22nd March, 2018, the report was submitted by the Special Public Prosecutor assigning specific reasons for extension of remand of the accused respondent for a further period of 90 days under Section 43D(2)(b) of UAP Act, 1967 and after a copy of application was supplied to the accused respondent, he filed his written objections through counsel and after affording opportunity of hearing to the parties, the Special Court, after recording its satisfaction, in reference to the specific reasons assigned for detention of the accused respondent for a further period of 90 days allowed the application filed by the Special Public Prosecutor vide its order dated 22nd March, 2018.

11. The extract of the report submitted by the Public Prosecutor indicating the progress of the investigation and the specific reasons required for detention of the accused respondent for a further period of 90 days as envisaged under Section 43D of the UAP Act are stated as under:-

8. It is further submitted that, during the course of investigation more than 350 witnesses have been examined, more than 250 suspects were interrogated, more than 2500 Call Data Records were obtained, 25 Tower Dump data were collected, and more than 50 CCTV footages from the path travelled by the deceased were collected. The collected data and CCTV footages are huge volumes and the analyzing of all the above is under active process for the purpose of investigation.

9. It is further submitted that in pursuance of warrant issued by this Hon'ble Court vide dated 16.03.2018, search for evidence at the residences of accused who were involved in this case has been conducted on 18.03.2018. During the search

conducted by NIA, huge amount of incriminating articles such as mobile phones, DVDs/CDs, Memory Cards/SD cards and documents etc. have been seized for the purpose of investigation and the same was produced before this Hon'ble Court for safe custody without delay.

10. It is further submitted that the seized incriminating electronic gadgets such as mobile phones, DVDs/CDs, Memory Cards/SD cards and Hard Discs containing CCTV footages has been forwarded to the Director, CDAC, Thiruvananthapuram for examination/ analysis through this Hon'ble Court on the request of CIO and the same needs to be analysed by the experts of C- DAC, Thiruvananthapuram. The report is yet to be received. The accused persons may be required for further police custody from judicial custody for the purpose of investigation as envisaged in Section 43 D (2) (b) of UA(P) Act 1967 to verify any facts obtained from the forensic experts.

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12. It is further submitted that the NIA is conducting investigation on the social media and email communication used by the accused and associates and the process of sending requests to the United States of America (USA) under Mutual Legal Assistance Treaty (MLAT) between Republic of India and USA to get the details of social media accounts and communications between accused and their associates in India and abroad is under progress.

13. It is further submitted that, the confessions/interrogation of accused Syed Abu Thahir (A-1), Sadham @ Sadham Hussain (A-2), Subair (A-3) and Mubarak (A-4) reveals that after committing the occurrence, they have moved to Karnataka, Andhra Pradesh and Telangana and have concealed themselves from the clutches of law. It is suspected that they would have got assistance and shelter from some organization which should be brought out further. Further one more vehicle involved in this crime is yet to be recovered.

14. The witnesses in this case are at high risk of being eliminated since they have come forward to speak the truth. The agency wishes to secure an order of protection under Section 17 of the NIA Act, 2008 for which an application will be filed in the near future. The NIA also wishes to complete the investigation without any wastage of time. However, the completion of investigation requires at least three months owing to the large amount of evidence to be collected and also the spread of evidence between 5 states namely Kerala, Tamil Nadu, Andhra Pradesh, Karnataka and Telangana.

15. It is further submitted that, the NIA as an investigating force, is required to take steps to unravel the larger conspiracy including the clandestine terror activities of the accused, their association with other organizations, their possible locations in India and abroad and the sources of funding etc. Besides, requisitions were sent to the concerned service providers to get the CDR's of all the mobile phones recovered

and the other numbers used by the accused with a view to analyze the same for establishing the linkages between the accused/suspects and field verification needs to be done. It is not possible to complete the investigation within the said period of ninety days.

16. It is further submitted that the investigation is proceeding in the right direction. Since the accused are hard-core ideologists, detailed further interrogation is inevitable to collect more evidence and for unravelling the larger conspiracy behind the crime. There may be imminent threat to the security of the nation if the accused are not interrogated in detail, more evidence is not collected and detailed investigation is not done to identify and secure other members of the group.

12. Before we proceed to examine the question raised in the instant appeal any further, it may be apposite to take note of Section 43D(2)(b) of the UAP Act, 1967:-

“43D. Modified application of certain provisions of the Code.

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(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.”

13. The necessary ingredients of the proviso to Section 43D(2)(b) of the UAP Act, 1967 has to be fulfilled for its proper application. These are as under:-

A. It has not been possible to complete the investigation within the period of 90 days.

B. A report to be submitted by the Public Prosecutor.

C. Said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days.

D. Satisfaction of the Court in respect of the report of the Public Prosecutor.

14. The scope of Section 43D(2)(b) of UAP Act, 1967 has been examined recently by a three Judge Bench of this Court in *State of Maharashtra Vs. Surendra Pundlik Gadling & Ors*¹. and has not detained us any further.

15. Taking note of the specific reasons which has been assigned by the Special Public Prosecutor in his report of which reference has been made(supra), we are satisfied that the specific reasons assigned by the Public Prosecutor fulfil the mandate and requirement of Section 43D(2)(b) of the UAP Act, 1967 and that was considered by the Special Court in detail who after recording its satisfaction, granted detention of the accused respondent for a further period of 90 days under its Order dated 22nd March, 2018.

16. We cannot be oblivious of the changed circumstances which has been brought to our notice regarding the FIR (Cr. No. 735/2016) registered at Thudialur Police Station, Coimbatore for the incident of 22nd September, 2016. Charge-sheet has been filed against all the four accused persons(A-1 to A-4) including the accused respondent on 7th April, 2018/21st June, 2018 and all the accused nos. 1, 2 and 3 are on bail from 19th June, 2017, 1st November, 2017 and 12th October, 2018 respectively and the matter is pending for framing of charge and it is not the case of the appellant that the present accused respondent after being enlarged on bail in compliance of the impugned judgment dated 12th September, 2018 has committed any breach or violated the conditions of grant of bail.

17. To conclude, we are not in agreement with the conclusions arrived at by the High Court in the impugned judgment dated 12th September, 2018 but taking note of the later developments and the supporting facts brought to our notice, we are not inclined to interfere with the final relief to the extent of granting default bail to the accused respondent in the circumstances of the case on hand. However, it may be open for the prosecution to apply for cancellation of bail, if any exigency arises in future. We consider it further to direct the learned Presiding Officer of the Special Court, NIA, to expedite and conclude the trial on or before March, 2020. Compliance report be sent to the Registry of this Court.

18. Consequently, the appeal is disposed of in the above terms.

Judgment Referred.

¹2019 SCC Online SC 0188