

SUPREME COURT OF INDIA

State by the Superintendent of Police, National Investigation Agency, Kochi

Vs.

Shakul Hameed

Crl.A.No.863-864 of 2019

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

07.05.2019

JUDGMENT

Ajay Rastogi,J.,

SLP(Crl.) No(s). 9783-9784 of 2018

1. Leave granted.
2. The instant appeals have 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 the order dated 12th December, 2017 and 18th January, 2018 passed by the Special Court(under tional Investigation Agency Act, 2008), Chennai holding that the detention of the accused/respondent for a further period of 90 days was not in compliance of Section 43D(2)(b) of the Unlawful Activities(Prevention) Act, 1967(hereinafter being referred to as (“UAP Act, 1967”))
3. The facts giving rise to these appeals insofar as they are relevant for disposal are that as per the case of the prosecution, nine named persons including the accused respondent were involved in a criminal conspiracy and they formed a terrorist gang, raised funds and trained some personnel and facilitated their travel from India to Syria to join the Daesh or the so-called ISIS. The National Investigating Agency, New Delhi registered a case no. R.C. No. 03/2017/NIA/DLI on 26th January, 2017 under Sections 120B IPC and Sections 17,18, 18-B, 20, 38, 39 and 40 of the UAP Act, 1967 against nine accused persons including the accused respondent(A-3).
4. An allegation against accused respondent(A-3) was that he was a radicalized youth from Chennai who, consequent to the criminal conspiracy had attempted to join ISIS/Daesh in Syria. However, he was intercepted by the Turkish authorities while attempting to cross over to Syria and deported to India from Turkey on 29th August, 2015. He was arrested and remanded to judicial custody on 18th September, 2017 as he is alleged to be one of the conspirators.

5. As per his date of arrest, 90 days prior thereto was to expire on 16th December, 2017. On 11th December, 2017, the Special Public Prosecutor filed a report before the Special Court, assigning specific reasons, praying for the extension of judicial detention of the accused respondent for a further period of 90 days to enable the investigating agency to complete the investigation. The written objections were filed by the accused respondent on 11th December, 2017. The Special Court, after affording opportunity of hearing to the respondent accused who appeared through his counsel and taking note of the written submissions opposing the request made by the Special Public Prosecutor for judicial detention for a further period of 90 days as prayed for, after recording its satisfaction on the specific reasons assigned by the Special Public Prosecutor, granted judicial detention for a further period of 90 days under Sections 43D(2)(b) of the UAP Act, 1967 vide its order dated 12th December, 2017.

6. At the same time, application filed by the accused respondent for bail under Section 167(2) of Code of Criminal Procedure, 1973 read with Section 43D of the UAP Act, 1967 was dismissed vide Order dated 18th January, 2018 having become infructuous.

7. Aggrieved by the aforesaid orders dated 12th December, 2017 & 18th January, 2018, the accused respondent(A-3) filed appeal under Section 21 of the National Investigation Agency Act, 2008 before the High Court. The High Court of Madras, on appraisal of the record, arrived at the conclusion that the specific reasons which have been assigned by the Special Public Prosecutor in his report seeking extension of time 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 12th December, 2017 and 18th January, 2018 and in consequence thereof, granted statutory bail in default to the respondent accused under its Order dated 12 th September, 2018 which is a subject matter of challenge in appeals before us.

8. As informed to this Court, that (A-1) Haja Fakkurudeen has been absconding but charge-sheet has been filed against all the accused persons and Khaja Moideen @ Abdullah Muthalif(A-2) was arrested on 15th September, 2017 and bail was granted to him on 23rd January, 2019 and Ansar Meeran(A-4) was arrested on 12 th February, 2018 and bail was granted to him on 19 th November, 2018 and the case is pending for framing of charge under Section 228 of Code of Criminal Procedure, 1973. The case against A-5 to A-7 has been closed by NIA.

9. Learned counsel for the appellant submits that Paras 8 to 12 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 for a further 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)(b) of the UAP Act, 1967, such satisfaction recorded after perusal of the record could not have been overturned by the High Court unless very strong reasons were forthcoming, which has not been pointed out under the impugned judgment.

10. 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 was not relevant to justify further detention of the accused respondent for a further 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.

11. 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 the co-accused persons who are similarly situated(A-2) & (A-4) have been granted bail on 23rd January, 2019 and 19th November, 2018 on merits by the competent Court of jurisdiction after filing of the charge-sheet and in either of the order of bail granted to the accused nos. 2 and 4, prosecution has not filed any application for cancellation. The present accused respondent(A-3) is also on bail may be in compliance of the impugned judgment and when it is not the case of the appellant that after statutory bail was granted to him in compliance of the impugned judgment dated 12 th 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 is some merit in the submission made by the appellant, at least the bail which was granted to the accused respondent in the changed circumstances, may not be interfered with by this Court.

12. It is not disputed that in the instant cases, the accused respondent(A-3) was arrested on 18th September, 2017 and initial period of 90 days from the date of arrest was to expire on 16th December, 2017 and prior thereto on 11th December, 2017, the report was submitted by the Special Public Prosecutor assigning specific reasons for seeking detention 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 beyond a period of 90 days allowed the application filed by the Special Public Prosecutor vide its order dated 12 th December, 2017.

13. 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 the investigation is continued the facts disclosed by the accused while on custody needs further verification and in progress. The electronic gadgets seized at the instance of the accused needs to be forensically analysed. In this regard the electronic gadgets seized from accused were forwarded to C-DAC, Thiruvananthapuram, through this Hon'ble Court, needs to be analysed by the experts of C-DAC, Thiruvananthapuram and report 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 43D(2)(b) of UAP Act, 1967 to verify any facts being obtained from the forensic expert.

9. It is further submitted that investigation against the absconding accused Haja Fakkurudeen(A-1), who had joined the activities of ISIS in Syria, and other accused named in the FIR are in progress. The travel details of the accused are being verified through Immigration authorities to confirm the complicity of the accused tour and travels to Syria and other places. A number of witnesses acquainted with facts of the case are yet to be examined and the investigation period beyond 90 days if not expended, it may cause serious prejudice and enlarging accused Khaja Mohideen (A-2) and Shakul Hameed (A-3) on bail at this stage may hamper the investigation also.

10. It is submitted that the NIA is conducting investigation abroad, on the role of accused and associates operating from abroad in this case. In this regard requests have been send to the Republic of Singapore under Mutual Legal Assistance Treaty(MLAT) between Republic of India and the Republic of Singapore and the reply on certain aspects are yet to be received from the requested country. Further, the process of sending request 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.

11. It is further submitted that the NIA has taken steps to unravel the larger conspiracy including the clandestine terror activities of the accused, their association with other terrorist 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 analyse the same for establishing the linkages between the absconding accused and field verification needs to be done. The names accused in the FIR is yet to be secured and the involvements of those persons have also been investigated and investigation is in crucial stage and therefore it is not possible to complete the investigation within the said period of ninety days. Therefore, as indicated the progress of the investigation and the specific reasons above for the detention of the accused beyond the said period of ninety days extend the said period up to one hundred and eighty days for the purpose of investigation.

12. It is further submitted that the investigation is proceeding in the right direction. Since the accused are hard core ISIS 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.”

14. 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.

(1) xxx

(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.”

15. 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.

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

17. Taking note of the specific reasons which have 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 learned Judge of the Special Court in detail, who after recording its satisfaction, granted detention to the accused for a further period of 90 days under its Order dated 12th December, 2017.

18. We cannot be oblivious of the changed circumstances which has been brought to our notice regarding the present FIR dated 26th January, 2017. Charge-sheet has been filed against all the four accused persons(A-1 to A-4) including the accused respondent(A-3) on 13th March, 2018 and the accused no. 2 and accused no. 4 are on bail from 23rd January, 2019 and 19th November, 2018 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.

19. 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.

20. Consequently, the appeals are disposed of in the above terms.

Judgment Referred.

¹2019 SCC Online SC 0188