



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

सत्यमेव जयते

S.B. Criminal Miscellaneous (Petition) No. 1289/2024

Mohd. Sohail Bishti S/o Siraj Mohd. Bishti, Aged About 23 Years,
R/o Kaharo Ki Hatai, Ward No. 19, Police Station Shahpura, Dist.
Shahpura, Presently Noorjaha Ka Makan, Near Bhopalpura
Masjid, Behind Soni Hospital, Bhilwara. (At Present Accused
Confined In Central Jail, Jaipur)

-----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Shamsheer Khan, Sho Police Station Sog, Jaipur, Rajasthan
R/o 28, Kidvali Nagar Imli Fatak, Jaipur

-----Respondents

For Petitioner(s)	:	Mr. Aaryan Pareek, Mr. Aditya Jain, Mr. Tahir through VC
For Respondent(s)	:	Mr. Rajesh Choudhary, G.A. cum A.A.G, Mr. Rishi Raj Singh Rathore, PP

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

19/09/2025

1. By means of filing instant misc. petition under Section 482 Cr.P.C. (now Section 528 of BNSS), petitioner has assailed the order dated 14.12.2023 (Annexure P-2), passed by Chief Judicial Magistrate, Jaipur Metropolitan-II, whereby the judicial custody of the petitioner, in respect of FIR no. 28/2023, registered at Police Station SOG, Jaipur, for offences under Section 153A IPC and Section 13 of the Unlawful Activities (Prevention) Act, 1967 (for short, "UAPA"), was extended from 90 days to 180 days as also order dated 08.02.2024 (Annexure P-4), passed by Additional Sessions Judge No.7, Jaipur Metropolitan-II, whereby the criminal



revision petition, filed thereagainst, was also dismissed and has also prayed for grant of default bail which was denied by CJM, vide order dated 20.12.2023 (Annexure P-3).

2. It has been stated by counsel for petitioner that an FIR came to be registered against petitioner on 17.09.2023, for offences under Section 153A IPC and Section 13 of UAPA and was confined to judicial custody, for a period of 90 days, from that day onwards. The period of judicial custody of 90 days was to end on 15.12.2023 but vide impugned order dated 14.12.2023, the period of judicial custody was extended further by 90 days by the Chief Judicial Magistrate, who was not competent to grant such extension as power was vested in Special Court or Court of Sessions. After the expiry of period of 90 days, i.e. on 15.12.2023, the petitioner filed an application for grant of default bail under Section 167(2) of CrPC since the investigation had not been completed yet and charge sheet had not been issued, but application was dismissed by Chief Judicial Magistrate, Jaipur Metropolitan-II, vide order dated 20.12.2023, stating *inter alia* that it cannot review over its order dated 14.12.2023. The review petition, filed thereagainst, has been rejected by Additional Sessions Judge No.7, Jaipur Metropolitan-II, vide order dated 08.02.2024, without interfering with the order impugned on merits.

3. It has been contended by counsel for petitioner that the court of Chief Judicial Magistrate was not competent to pass the order of extension of Judicial Custody, since as per Section 22 of National Investigation Agency Act, 2008 (for short "NIA Act,





2008”), only a Special Court is competent to pass order in offences relating to UAPA, 1967 and in absence of Special Court, Court of Sessions has the jurisdiction to try the matter till Special Court is constituted. In support of his contentions, the counsel has placed reliance on the judgment of Hon’ble Supreme Court in case of **Bikramjit Singh v. State of Punjab [(2020) 10 SCC 616]**, wherein it was held that only the Special Court or, in its absence, the Court of Sessions has jurisdiction to extend period for investigation, under Section 43D(2) UAPA, 1967.

4. It has further been pointed out by the counsel for petitioner that as per Section 43D(2)(b) of UAPA, 1967, in case investigation is not completed within the statutory period of 90 days, the period of detention can be extended upto further period of 90 days, but only if a report is submitted by Public Prosecutor, citing specific reasons as to why further extension of detention period is required, as has been held by Apex Court in case of **Union of India v. Mubarak @ Mohammed Mubarak [(2019) 6 SCC 252]**. In the present case, no report has been submitted by the Public Prosecutor, instead the impugned order dated 14.12.2023 has been passed after relying upon the application of Investigating Officer, hence the order is bad in law on merits as also being without jurisdiction.

5. Per contra, Learned Public Prosecutor, to oppose contention of counsel for petitioner, has placed reliance on the judgment of Apex Court in **Naser Bin Abu Bakr Yafai v. State of Maharashtra [(2022) 6 SCC 308]** wherein it was held that till the investigation was handed over to NIA, Mumbai, the Court of



Chief Judicial Magistrate had the jurisdiction to entertain the case under UAPA, 1967. Hence, in the present case as well, Chief Judicial Magistrate, Jaipur Metropolitan-II, was well within its jurisdiction to pass the impugned order.

6. Heard and perused the material available on record.

7. From the record it appears that FIR no. 28/2023 came to be registered at registered at Police Station SOG, Jaipur, for offences under Section 153A IPC and Section 13 of UAPA, 1967. As per FIR, petitioner was found involved in anti-religious activities on social media and was in contact with pakistani members. As per details of FIR, it reveals that from analysis of petitioner's mobile date, videos relating to inciting and instigating people against other religion were found on the social media account of petitioner.

8. It is noteworthy that since FIR was registered for offences u/s. 13 of UAPA, 1967 and offences under UAPA are scheduled offences under the NIA Act, 2008. For such offences, Special Court defined u/s. 2(h) of the NIA Act, 2008 is a competent court and has jurisdiction to try such offences. Section 2(h) of the NIA Act, 2008 reads as under:

"2(h) "Special Court" means a Special Court constituted under Section 11 or, as the case may be under Section 22."

Section 22 of the NIA Act, 2008 reads as under:

22. Power of State Government to constitute Special Courts.

(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government



under sub-section (1) and shall have effect subject to the following modifications, namely—

- (i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;
- (ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State Government";
- (iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to "Advocate-General of the State".

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

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

9. It would be apropos to look into and go through Section 43D of UAPA 1967 which is being reproduced hereunder:-

43D. Modified application of certain provisions of the Code

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

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

- (a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and
- (b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the



progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

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

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

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

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

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

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

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

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

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





10. On bare reading of the above provisions, it is clear that only Special Court has the exclusive jurisdiction to try offences punishable under NIA Act, 2008 and in the absence of such Special Court, only Court of Sessions has the jurisdiction to try such offences, till Special Court is constituted. Further, if the detention of accused is required beyond the statutory period of 90 days, the Public Prosecutor has to provide progress report of the investigation specifying reasons for the detention of the accused.

11. The Hon'ble Supreme Court in case of **The State of West Bengal v. Jayeeta Das [2024 SCC OnLine SC 550]** has held and observed in para nos. 33 to 37 as under:

33. *Under the proviso to Section 43D(2), the Court has been given the power to extend and authorise detention of the accused beyond a period of 90 days as provided under Section 167(2) CrPC.*

34. *Section 2(1)(d) of UAPA provides the definition of 'Court' under the Act and it reads as below:—*

"2. Definitions.—(1) In this Act, unless the context otherwise requires,— (d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a Special Court constituted under Section 11 or under [Section 22] of the National Investigation Agency Act, 2008."

35. *A plain reading of the provision would clearly indicate that the same admits to the jurisdiction of a normal criminal Court and also includes a Special Court constituted under Section 11 or Section 22 of the NIA Act.*

36. *Hence, the Chief Judge cum City Sessions Court had the jurisdiction to pass the order dated 7th April, 2022. In view of the definition of the 'Court' provided under Section 2(1)(d) of UAPA, the jurisdictional Magistrate would also be clothed with the jurisdiction to deal with the remand of the accused albeit for a period of 90 days only because an express order of the Sessions Court or the Special Court, as the case may be, authorising remand beyond such period would be required by virtue of Section 43D(2) of UAPA (reproduced supra).*

37. *Hence, to the extent the learned Chief Metropolitan Magistrate extended the remand of the accused beyond the period of 90 days, the proceedings were grossly illegal. Nonetheless, the fact remains that the charge*





sheet came to be filed beyond the period of 90 days and as a matter of fact, even beyond a period of 180 days, but the accused never claimed default bail on the ground that the charge sheet had not been filed within the extended period as per Section 43D of the UAPA. Hence, the only academic question left for the Court to examine in such circumstances would be the effect of evidence collected, if any, during this period of so called illegal remand, after 90 days had lapsed from the date of initial remand of the accused and the right of the accused to seek any other legal remedy against such illegal remand. Such issues would have to be raised in appropriate proceedings, i.e. before the trial court at the proper stage.

(emphasis supplied)

Hence, from the above-referred judgment it is clear that the Judicial Magistrate would also have the jurisdiction to deal with remand of accused for a period of 90 days only but for further extension of the remand period, an express order of Sessions Court or Special Court would be required.

12. In the facts of the present case, it appears that petitioner was subjected to judicial custody on 17.09.2023 for a period of 90 days but vide order dated 14.12.2023, passed by Chief Judicial Magistrate, Jaipur Metropolitan-II, the period of judicial custody was further extended for a period of 90 days but neither any valid contention has been raised by the Learned Public Prosecutor, to show that the Chief Judicial Magistrate was well within its jurisdiction to extend period of detention nor any express order of Sessions Court or Special Court has been placed on record, authorising extension of remand period. The reliance placed by the Public Prosecutor on the judgment of Hon'ble Supreme Court in case of **Naser Bin Abu Bakr Yafai (supra)**, does not find its footing in the facts of the present case since, in that case, investigation was not even taken up by NIA, Mumbai at the first





instance and ATS, Nanded investigated the offence and filed the charge sheet and till NIA, Mumbai took up the case, CJM, Nanded was within its jurisdiction to entertain the case under UAPA, moreso when no Special Court had been designated by the Government of Maharashtra under Section 22 of NIA Act, 2008.

13. Hence, this Court is of the view that the order of Chief Judicial Magistrate, extending the remand of accused beyond the period of 90 days was grossly illegal and perverse as much as beyond his jurisdiction.

14. Hence, after taking into consideration the facts of the present case and principles laid down by the Apex Court in above mentioned cases, this Court deems it fit to quash the order dated 14.12.2023, passed by Chief Judicial Magistrate, Jaipur Metropolitan-II, to the extent that the further extension of detention period being *de hors* to the provisions of UAPA and NIA, as also violative to the legal principles as laid down in aforementioned judgments of Hon'ble Supreme Court.

15. As far as prayer of petitioner, for grant of default bail under Section 167(2) CrPC, is concerned, reliance has been placed on the judgment of **Bikramjit Singh** (supra) wherein after reiterating the principles laid down in case of **Hitendra Vishnu Thakur v. State of Maharashtra [(1994) 4 SCC 602]**, it was held that once the maximum period for investigation of an offence is over under the first proviso (a) to Section 167(2) CrPC, the accused shall be released on bail, this being an indefeasible right granted by the Code. In case of **Rakesh Kumar Paul v. State of Assam [(2017) 15 SCC 67]**, the majority was of the opinion



that even an oral application for grant of default bail would be suffice and can be made before the charge sheet is filed by the police. It has been held that subsequent filing of charge sheet shall not frustrate the indefeasible right of default bail, if accrued and availed by the accused before submission of charge sheet.

16. Coming to the facts of case in hand, it is an undisputed fact that petitioner is in judicial custody since 17.09.2023, in connection with the present FIR and investigation in FIR was not completed within 90 days therefrom. The extension of period of judicial custody of petitioner beyond 90 days, given by the Chief Judicial Magistrate, has been found to be without jurisdiction, illegal and perverse. It is further undisputed that due to non-submission of charge-sheet within stipulated period of 90 days, petitioner availed his right to be released on default bail, but his application was dismissed by the Chief Judicial Magistrate, vide order dated 20.12.2023, not on merits but only on the ground that Chief Judicial Magistrate itself has extended the period of his judicial custody, vide order dated 14.12.2023, which cannot be reviewed. Although, this Court is primarily of the view that application to release the petitioner on default bail should have been submitted before the Sessions Court, however, since right of default bail is indefeasible right, conferred on the accused by statutory provisions of law and is connected with the fundamental right of life and liberty, as enshrined under Article 21 of the Constitution of India, hence, instead of entering into such technical issues, this Court, in order to protect legal and



constitutional right of petitioner, confirms his right to be released on default bail.

Since, this Court for the afore-referred reasons, reached to the conclusion to set aside the order dated 14.12.2023 and as natural corollary, the order dated 20.12.2023, denying default bail to petitioner, also does not sustain in the eye of law. Impugned order dated 08.02.2024, passed by the Revisional Court is not on merits and revision against orders dated 14.12.2023 and 20.12.2023 was not dismissed after considering merits/ demerits of orders but only on jurisdictional ground. An indefeasible right to release on default bail has accrued in favour of petitioner, as envisaged under Section 167(2) of Cr.PC (now Section 187 of BNSS). Thus, the proposition of law expounded by the Hon'ble Supreme Court in cases of **Bikramjit Singh** (supra) & **Jayeeta Das** (supra), applies to the case of petitioner and he is entitled to get benefit of default bail.

17. As a final result, instant petition succeeds and is hereby allowed. Impugned orders dated 14.12.2023, 20.12.2023 08.02.2024 & are set aside. Petitioner may be released on default bail by the trial Court on suitable terms and conditions, as deem fit by the trial Court, to ensure regular presence of petitioner during course of trial and not to leave the country until completion of trial in the present case.

18. Stay application and pending application(s), if any, stand disposed of.

(SUDESH BANSAL),J

Sachin Sharma/162-S