

A.F.R.

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Judgment Reserved on: 16.04.2024

Judgment Delivered on: 14.05.2024

Court No. - 1

Case :- CRIMINAL APPEAL No. - 2376 of 2023

Appellant :- Mohammed Aleem @ Abdul Aleem And Another

Respondent :- State Of U.P. Thru. A.T.S. Lucknow

Counsel for Appellant :- Furkan Pathan

Counsel for Respondent :- G.A.

with

Case :- CRIMINAL APPEAL No. - 2377 of 2023

Appellant :- Lukman

Respondent :- State Of U.P. Thru. A.T.S. Lucknow

Counsel for Appellant :- Furkan Pathan

Counsel for Respondent :- G.A.

with

Case :- CRIMINAL APPEAL No. - 2378 of 2023

Appellant :- Mudassir And Another

Respondent :- State Of U.P. Thru. A.T.S. Lucknow

Counsel for Appellant :- Furkan Pathan

Counsel for Respondent :- G.A.

with

Case :- CRIMINAL APPEAL No. - 2379 of 2023

Appellant :- Mohammad Nadeem And Another

Respondent :- State Of U.P. Thru. A.T.S. Lucknow

Counsel for Appellant :- Furkan Pathan

Counsel for Respondent :- G.A.

with

Case :- CRIMINAL APPEAL No. - 2380 of 2023

Appellant :- Mohammad Harish And Another

Respondent :- State Of U.P. Thru. Ats, Lucknow
Counsel for Appellant :- Furkan Pathan
Counsel for Respondent :- G.A.

with

Case :- CRIMINAL APPEAL No. - 2381 of 2023

Appellant :- Qari Shahjad And Another
Respondent :- State Of U.P. Thru. A.T.S. Lucknow
Counsel for Appellant :- Furkan Pathan, O.P. Tiwari
Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi, J.
Hon'ble Manish Kumar Nigam, J.

(Per: Manish Kumar Nigam, J.)

1. We have heard Shri Aarif Ali, Sri O.P. Tiwari and Sri Furkan Pathan, learned counsel for the appellants, learned Sri Shiv Nath Tilhari, Additional Government Advocate for the State-respondent and perused the record.
2. **Criminal Appeal No. 2376 of 2023 (Mohammed Aleem @ Abdul Aleem and another v. State of U.P.)** has been filed against the order dated 03.02.2023 passed by Additional Sessions Judge, Court No. 5, Special Judge, N.I.A., Lucknow in Bail Application No. 148 of 2023, rejecting the default bail application of the appellants under Section 167(2) of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') read with Section 43-D of Unlawful Activities Prevention Act, 1967 (hereinafter referred to as the 'Act of 1967') in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20, 38 of Act of 1967, registered at Police Station A.T.S., Lucknow.

Criminal Appeal No. 2377 of 2023 (Lukman v. State of U.P.) has been filed against the order dated 03.02.2023 passed by

Additional Sessions Judge, Court No. 5, Special Judge, N.I.A., Lucknow in Bail Application No. 86 of 2023, rejecting the default bail application of the appellants under Section 167(2) of Cr.P.C. read with Section 43-D of the Act of 1967 in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20, 38 of Act of 1967, registered at Police Station A.T.S., Lucknow.

Criminal Appeal No. 2378 of 2023 (Mudassir and another v. State of U.P.) has been filed against the order dated 03.02.2023 passed by Additional Sessions Judge, Court No. 5, Special Judge, N.I.A., Lucknow in Bail Application No. 145 of 2023, rejecting the default bail application of the appellants under Section 167(2) of Cr.P.C. read with Section 43-D of the Act of 1967 in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 38 of Act of 1967, registered at Police Station A.T.S., Lucknow.

Criminal Appeal No. 2379 of 2023 (Mohammad Nadeem and another v. State of U.P.) has been filed against the order dated 03.02.2023 passed by Additional Sessions Judge, Court No. 5, Special Judge, N.I.A., Lucknow in Bail Application No. 985 of 2023, rejecting the default bail application of the appellants under Section 167(2) of Cr.P.C. read with Section 43-D of the Act of 1967 in Case Crime No. 3 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 38 of Act of 1967, registered at Police Station A.T.S., Lucknow.

Criminal Appeal No. 2380 of 2023 (Mohammad Harish and another v. State of U.P.) has been filed against the order dated 13.02.2023 passed by Additional Sessions Judge, Court No. 5, Special Judge, N.I.A., Lucknow in Bail Application No. 969 of 2023, rejecting the default bail application of the appellants under

Section 167(2) of Cr.P.C. read with Section 43-D of Act of 1967 in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20, 38 of Act of 1967, registered at Police Station A.T.S., Lucknow.

Criminal Appeal No. 2381 of 2023 (Qari Shahjad and another v. State of U.P.) has been filed against the order dated 13.02.2023 passed by Additional Sessions Judge, Court No. 5, Special Judge, N.I.A., Lucknow in Bail Application No. 971 of 2023, rejecting the default bail application of the appellants under Section 167(2) of Cr.P.C. read with Section 43-D of the Act of 1967 in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 38 of Act of 1967, registered at Police Station A.T.S., Lucknow.

Since all the aforementioned appeals involve a common question of law, they are decided together. Criminal Appeal No. 2376 of 2023 (Mohammed Aleem @ Abdul Aleem and another v. State of U.P.) will be treated as the leading appeal.

Facts of Criminal Appeal No. 2376 of 2023

3. First Information Report was registered on 27.09.2022 against two persons, namely Lukman, son of Imran and Abdul Talha @ Hussain @ Zakir under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 and 38 of the Act of 1967 in Case Crime No. 04 of 2022 at Police Station A.T.S. Gomti Nagar, Lucknow.
4. The appellants Mohammed Aleem @ Abdul Aleem and Mohammad Nawajis Ansari were arrested on 06.10.2022 in Case Crime No. 04 of 2022, referred to above. They were produced before the Special Court on 07.10.2022. The Special Court granted police custody remand from 07.10.2022 to 20.10.2022 by order

dated 07.10.2022. Thereafter, the remand was extended from time to time. The statutory period of 90 days was to complete on 05.01.2023. By order dated 14.12.2022, the appellants were granted remand up to 22.12.2022. On 19.12.2022, an application was filed by Sri Anurag Darshan, Additional Superintendent of Police/Investigating Officer A.T.S., Lucknow, U.P., for an extension of 60 days time for further investigation under Section 43(d) of Act of 1967. On the aforesaid application, an endorsement was made by the Public Prosecutor on 21.12.2022 "submitted". On the same day, i.e. 21.12.2022, the Special Court passed an order "Permitted for 45 days only". The application dated 19.12.2022 has been annexed at page no. 20 as annexure no. 7 to the counter affidavit filed by Abhilash Kumar Singh on 27.09.2022 along with application No. A/5/23 for taking the aforesaid counter affidavit on record.

5. On 22.12.2022, further remand of 30 days was allowed by the Special Court, which was extended till 18.01.2023. An application was filed by the appellants for being released on default bail as, according to them, the statutory period of 90 days was to expire on 05.01.2023, and by the said date, no charge sheet was filed by the police in the aforesaid case crime number. The application filed by the appellant was registered as Bail Application No. 148 of 2023. After the exchange of affidavits, the abovementioned application was rejected by the Special Court by its order dated 03.02.2023, which is impugned in the present appeal.

6. During the pendency of the application for grant of bail, the period of investigation was again extended on an application moved by the Public Prosecutor for 30 days. Again, on 04.03.2023, the period of investigation was extended for 20 days by an order dated 04.03.2023 passed by the Special Court. During

this period, the remand of the appellant was also extended. The investigating officer submitted the charge sheet against the appellants under Section 121A/123 I.P.C. and Sections 13/18/18B/20/38 of the Act of 1967 on 22.03.2023. On 23.03.2023, the Special Court directed to register the case as Misc. Case. On 13.04.2023, the State granted prosecution sanction, and by order dated 28.04.2023, the Special Court had taken cognizance.

7. The contention of the learned counsel for the appellants is that the statutory period of 90 days was going to expire on 05.01.2023. The application dated 19.12.2022 was filed by the investigating officer for extension of time for investigation under Section 43-D of the Act of 1967. Application dated 19.12.2022 was filed behind the back of appellants and without any notice to them. It has been further contended by learned counsel for the appellants that the application was moved by the investigating officer and not by the Public Prosecutor as required by the proviso to Section 43-D of the Act of 1967. The Public Prosecutor has merely endorsed words 'submitted' on the aforesaid application. It is next submitted by the learned counsel for the appellants that the Special Court has passed an order dated 21.12.2022 without application of mind. It has extended the period of investigation for 45 days. It is also contended by learned counsel for the appellant that the order dated 21.12.2022 passed by the Special Court has been passed in the absence of the appellants. The appellants were neither present in person nor through video conferencing on the date, i.e. 21.12.2022, when the order was passed, extending the period of investigation for 45 days. It has also been contended that the Special Court has merely passed an order "permitted for 45 days only". No reasons have been given by the Special Court for permitting the extension of time for investigation. The order dated

21.12.2022 is cryptic and has been passed mechanically by the Special Court. After the expiry of the statutory period, the appellants filed a bail application for being released on bail as no charge sheet was submitted within the statutory period of 90 days. Only when the objection was filed by the opposite party, the appellants came to know about the order dated 21.12.2022.

8. Per contra, learned Standing Counsel submitted that the Special Court had committed no illegality in rejecting the bail application of the appellants. It has been further contended by learned Standing Counsel that since the charge sheet has been submitted by the investigating agency and sanction has been granted by the government, the right of bail, if any, under Section 167(2) of Cr.P.C. is extinguished, and now the same cannot be granted. It is further contended that since time for further investigation was extended by an order dated 21.12.2022 for 45 days, the default bail cannot be given to the appellants on the expiry of the statutory period of 90 days.

9. Before considering the rival submissions of the learned counsel for the parties, it will be useful to look into the relevant statutory provisions:

Section 167 Cr.P.C., 1973 provides for the procedure when the investigation cannot be completed in the time frame provided by the Code of Criminal Procedure. Section 167 of the Code of Criminal Procedure is quoted as follows:

167. Procedure when investigation cannot be completed in twenty-four hours.- (1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the

investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

10. Section 43D of the Unlawful Activities (Prevention) Act, 1967, provides for the modified application of certain provisions of the Code. Section 43D of the Act of 1967 is quoted as under:

[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."

11. An order for release on bail under proviso (a) to section 167(2) may appropriately be termed an order on default. Indeed, it is a release on bail on the default of the prosecution in filing charge-sheet within the prescribed period. The right to bail under Section 167(2) proviso (a) is absolute. If the investigating agency fails to file a charge sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail, irrespective of the order passed under Section 439. The object of incorporating the proviso is to see that a person arrested by police does not languish unnecessarily in prison awaiting the completion of the investigation. The provisions contained in Section 167(2) are mandatory and failure of the Investigating Agency to complete the investigation within the prescribed period entitles the accused to be enlarged on bail Proviso (a) to Sub-section (2) Section 167, Cr.P.C. is not controlled by Section 437 of Cr.P.C. Merits of the

case are immaterial. Whatever may be the serious nature of the crime and gravity of the offence, no discretion is given to the Magistrate when the accused files an application for grant of bail under the said section, and thereupon, the accused is entitled to bail as a matter of right.

12. We cannot lose sight of the fact that legislature envisaged that the investigation should be completed in 24 hours, but practically, that was never found feasible. It is in these circumstances that Section 167 of the Code of Criminal Procedure provided for time period within which investigation should be completed depending upon the nature of offence. Since liberty is a constitutional right, time periods were specified in default of which the accused will have a right of default bail.

13. It would be useful to refer to Section 57 Cr.P.C., which provides that any person arrested by the police should not be detained for more than 24 hours unless an order is obtained from the Magistrate under Section 167 of the Code. The Code was originally enacted in the year 1898. We must remember that at that time, the means of communication were very primitive; the means of telecommunication barely existed. Despite that, in the Code as originally enacted, the police were expected to complete the investigation within 15 days, and the Magistrate did not have any jurisdiction to pass an order detaining a person beyond 15 days if the investigation was not completed. This system worked well enough for more than seven decades. After the country attained independence, we enacted and gave to ourselves the Constitution of India, which came into force on 26.01.1950. Article 21 of the Constitution provides that "no man shall be deprived of his life and personal liberty except in accordance with procedure established by law". The right of personal liberty is not only a

legal but also a human right, which is inherent in every citizen of any civilized society. Article 21 only recognizes this right. We can read Sections 57 and 167 to be the procedure established by law that curtails this right.

14. The Code of Criminal Procedure enacted in 1898 contained Section 167, which laid down the procedure to be followed if the investigation into an offence is not completed within twenty-four hours. The legislative expectation was that the investigation would ordinarily be completed within twenty-four hours. Incidentally, this legislative expectation continues till today. Whatever the anxiety of the Legislature in 1898, there can be no gainsaying that investigation into an offence deserves an early closure, one way or the other. Therefore, when Section 167 was enacted in the Code of Criminal Procedure, 1898, it was premised on the conclusion of investigations within twenty-four hours or 15 days on the outside, regardless of the nature of the offence or the punishment. Section 167 of the Code of Criminal Procedure, 1898 reads as follows:

167. Procedure when investigation cannot be completed in twenty-four hours.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. Suppose he has no jurisdiction to try or commit the case for trial and considers further detention unnecessary. In that case, he may order the

accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorise detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate."

15. The Law Commission of India, in its 41st report, proposed to increase the time limit for completion of an investigation to 60 days, which was accepted by the legislature while enacting the new Code, i.e. Code of Criminal Procedure, 1973 incorporating the time limit to be 60 days by providing the same under Section 167 of the Code of Criminal Procedure, 1973, regardless the nature of offence or punishment. Section 167 of Cr.P.C., 1973 provides as under:

167. Procedure when investigation cannot be completed in twenty-four hours.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole: and if he has no jurisdiction to try the case or commit it for trial, and considers

further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail; and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

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

Explanation.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention."

16. In 1978, a need was felt to amend Section 167 Cr.P.C. by not only extending the period of completing the investigation but also relating that period to the offence. Section 167 Cr.P.C., as amended in 1978, has already been quoted above.

17. Generally speaking, therefore, it could be said that ever since 1898, the legislative intent has been to conclude investigations within twenty-four hours. This intention has not changed for more than a century. However, the Legislature has been pragmatic enough to appreciate that it is not always possible to complete investigations into an offence within twenty-four hours. Therefore,

initially, in the Cr.P.C. of 1898, a maximum period of 15 days was provided for completing the investigations. Unfortunately, this limit was being violated through the subterfuge of taking advantage of Section 344 of the Cr.P.C. of 1898. The misuse was recognized in the 41st Report of the Law Commission of India. Consequently, the Law Commission recommended fixing a maximum period of 60 days for completing investigations, and that recommendation was enacted as the law in the Cr.P.C. of 1973. Subsequently, this period was also found to be insufficient for completing investigations into more serious offences, and, as mentioned above, the period for completing investigations was bifurcated into 90 days for some offences and 60 days for the remaining offences.

18. From the mid-eighties, the prevailing conditions have been surcharged with terrorism and disruption, posing a serious threat to the sovereignty and integrity of India as well as creating panic and a sense of insecurity in the minds of people. Added to that, the brutality of terrorism let loose by the secessionists and anti-nationals in the highly vulnerable area of Indian territory was causing grave concern even about the chances of survival of the democratic polity and process. There was also the continuous commission of heinous offences such as gruesome mass-killings of defenceless innocent people, including women, children and bystanders, destroying the peace, tranquillity and security. The existing ordinary criminal laws were found inadequate to deal sternly with such activities perpetrated on humanity. It was only in these prevailing circumstances the legislature was compelled to bring forth various special Acts such as The Terrorist and Disruptive Activities (Prevention) Act, 1987, The Prevention of Terrorism Act, 2002, The Narcotic Drugs and Psychotropic

Substance Act, 1985, etc. to prevent and deal with conditions prevailing providing different procedure.

The Legislature responded to the menace without sacrificing the national values and to combat terrorism by extending and expanding the legal powers of the State and taking steps/measures in a legalised way. The outcome of such responses is the enactment of these Acts after a prolonged debate in both Houses of Parliament as the Legislature has felt that the ordinary criminal laws, both Penal and Procedural, are quite inadequate to meet the challenges, especially when the incidents of terrorists and disruptionists activities have increased astronomically.

19. In cases involving serious offences, such as those under the Terrorist and Disruptive Activities (Prevention) Act, Prevention of Terrorism Act, Unlawful Activities (Prevention) Act and Narcotic Drugs and Psychotropic Substances Act, the Legislature has given some latitude to the investigating machinery in the manner of completion of the investigation by providing for extension of time to complete the investigation. Under the Act of 1967, Section 43-D was inserted by Act 35 of 2008. The amended Section provided for modified applications of certain provisions of the Code of Criminal Procedure. Under the special Acts, this period was further extended by the legislature to a period ranging from 180 days to 365 days, on certain eventualities provided in the Act itself. Though Section 43-D of the Act of 1967 provides for the extension of time for completing the investigation. The extension is, however, not to be granted as a matter of course but subject to conditions enumerated in the Act. Unless those conditions are satisfied, the Court will refuse to grant an extension.

20. Notwithstanding this, the basic legislative intent of

completing investigations within twenty-four hours or within an otherwise time-bound period remained unchanged, even though the period had been extended several times under the special Acts. This indicates that in addition to giving adequate time to the investigating agency to complete investigations, the Legislature has always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time limits have been laid down by the Legislature. There is a legislative appreciation of the fact that certain offences require more extensive and intensive investigations and, therefore, for those offences, a longer period is provided for completing investigations.

21. The question of grant of default bail is that once the maximum period for investigation of an offence is over under the first proviso (a) to Section 167(2) of Cr.P.C., the accused shall be released on bail, this being an indefeasible right granted by the legislature. Sub Section (2) of Section 167 of Cr.P.C. lays down that the Magistrate to whom the accused is forwarded may authorise his detention in such custody as he may deem fit for a term specified in that Section. Proviso to Sub-section (2) fixes the outer limit within which the investigation must be completed, and in case, the same is not completed within the said prescribed period, the accused would acquire a right to seek to be released on bail and if he is prepared to and does furnish bail, the Magistrate shall release him on bail and such release shall be deemed to be grant of bail under Chapter XXXIII of the Cr.P.C.
22. Section 167 Cr.P.C., thus, strictly speaking, is not a provision for 'grant of bail' but deals with the maximum period during which a person accused of an offence may be kept in custody and

detention to enable the investigating agency to complete the investigation and file the charge-sheet, if necessary, in the court. The proviso to Section 167(2) Cr.P.C., therefore, creates an indefeasible right in an accused person on account of 'default' by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order of his release on bail. It is for this reason that an order for release on bail under proviso (a) of Section 167(2) Cr.P.C. is termed as an order of 'default' as it is granted on the ground of 'default' of the prosecution to complete the investigation and file the charge-sheet within the prescribed period.

23. Before we proceed to consider the parameters of the right to default bail under Section 167 (2) as interpreted by various decisions of this Court and Supreme Court, we find it pertinent to note the observations made by this Court in case of **Uday Mohanlal Acharya v. State of Maharashtra** reported in **(2001) 5 SCC 453** on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC P 472 p. 13)

“13. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.”

24. Article 21 of the Constitution of India provides that “no

person shall be deprived of his life or personal liberty except according to procedure established by law”. It has been settled by a Constitution Bench of this Court in ***Meneka Gandhi v. Union of India*** reported in ***AIR 1978 SC 597*** that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) Cr.P.C. and the safeguard of “default bail” contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

25. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention and must be interpreted in a manner that serves this purpose. In our opinion, the entire matter before us must also be looked at from the point of view of expeditious conclusion of investigations and the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court. Therefore, the courts cannot adopt a rigid or formalistic approach when considering any issue that touches upon the rights contained in Article 21.

26. We may also refer with benefit to the recent Judgment of

this Court in **S. Kasi v. State** reported in **(2021) 12 SCC 1** wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a chargesheet.

27. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the Courts must favour the interpretation that leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

28. With respect to the CrPC, the Statement of Objects and Reasons is an important aid for construction. Section 167(2) has to be interpreted keeping in mind the three-fold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21. The entire justice-delivery system is dependent upon the concept of fairness. It is the interest of justice that has a predominant role in the criminal jurisprudence of the country- the hallmark of justice is the requirement of the day and the need of the hour.

29. In case of **Hitendra Vishnu Thakur and others v. State of**

Maharashtra and others reported in (1994) 4 SCC 602, while interpreting Section 20(4) of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA Act') read with Section 167 Cr.P.C., the Supreme Court held that once the period for filing the charge-sheet has expired and either no extension under Clause (bb) has been granted by the designated court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under Sub-Section (4) of Section 20 of TADA Act read with Section 167 of Cr.P.C. and designated court shall release him on bail, if the accused seeks to be released and furnishes the requisite bail bonds but that does not mean that on expiry of the period, during which investigation is required to be completed under Section 24 of TADA Act read with Section 167 of Cr.P.C., the court must release the accused on bail on its own motion even without any application from the accused person on his offering to furnish bail. The accused will be required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency, and once such an application is made, the court should issue notices to the Public Prosecutor who may either show that prosecution has obtained the order for completing the investigation from the court under Clause (bb) or that the charge-sheet has been filed in the designated court before the expiry of prescribed period or even that the prescribed period has actually not expired and thus, resists the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid a multiplicity of proceedings. It would, therefore, serve the ends of justice, if both sides are heard on the petition for bail on account of prosecution 'default'. It has

been further held by the Supreme Court that when a report submitted by the Public Prosecutor to the designated court, for grant of extension for Clause (bb), its notice should be issued to the accused, before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. Even though neither Clause (b) nor Clause (bb) of Section 20 (4) of the TADA Act provide for the issuance of such notice but, the issuance of such notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice, and issuance of notice to the accused or the Public Prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or Public Prosecutor in the scheme of the Act, and no prejudice whatsoever can be caused by the issuance of such a notice to any party. (para 21 of Judgment on pages 627 to 628)

30. The Constitutional Bench of the Supreme Court in the case of **Sanjay Dutt v. State of Maharashtra through C.B.I. Bombay** reported in **(1994) 5 SCC 410**, in para no. 2 was considering the following questions which were referred to the bench:

“2. The question of law indicated in the said order of reference, to be decided by us, are three, namely:

- (1) The proper construction of Section 5 of the TADA Act indicating the ingredients of the offence punishable thereunder and the ambit of the defence available to a person accused of that offence;

(2) The proper construction of clause (bb) of sub-section (4) of Section 20 of the TADA Act indicating the nature of the right of an accused to be released on bail thereunder, on the default to complete the investigation within the time allowed therein; and

(3) The proper construction and ambit of sub-section (8) of Section 20 of the TADA Act indicating the scope for bail thereunder."

31. In the present case, we are only concerned with question no. 2, which was referred to the Supreme Court in the case of Sanjay Dutt (Supra). The above reference was answered by the Apex Court in para no. 53 of the Judgment which is as under:

"1.

(2)(a) Section 20(4)(bb) of the TADA Act only requires the production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the Judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose.

(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the

Code of Criminal Procedure. The right of the accused to be released on bail after filing the challan, notwithstanding the default in filing it within the time allowed, as governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at the stage.

3."

32. The decision of the Supreme Court in the case of Hitendra Vishnu Thakur (Supra) was modified by the Constitutional Bench in the case of Sanjay Dutt (Supra) on a very limited aspect. The requirement of law as laid down in the case of Hitendra Vishnu Thakur (Supra) regarding procuring the presence of accused at the time of considering the report seeking extension of time and the requirement of putting the accused to the notice of the filing of such a report has not been disturbed in the case of Sanjay Dutt (Supra). On the contrary, the decision of the Constitutional Bench in the case of Sanjay Dutt (Supra) reiterates the mandatory requirement of production of the accused before the court at the time of consideration of the report submitted by the Public Prosecutor. The only modification made by the Constitution Bench in the decision of Hitendra Vishnu Thakur (Supra) is by holding that the mode of giving notice to the accused is by informing about the filing of such a report by producing him before the Special Court and a written notice is not required. The Supreme Court, in the case of Sanjay Dutt (Supra), has laid down the requirement of informing the accused about the filing of a report seeking extension of time. The accused on receiving the intimation is entitled to object to the prayer made by the Public Prosecutor for grant of extension of time. In the case of Sanjay Dutt (Supra), it has been held that it is not necessary for the Special Court to supply a copy of the report submitted by the Public Prosecutor to the accused. Section 43-D of the U.A.P.A. is pari-materia with the proviso added by Clause (bb) of Sub Section (4) of Section 20 of

T.A.D.A.

33. In the case of **Uday Mohanlal Acharya v. State of Maharashtra** reported in **(2001) 5 SCC 453** in paragraph 13 thereof, the majority view has been summarised which read thus:

"On the aforesaid premises, we would record our conclusions as follows:

1. Under sub-section (2) of Section 167. a Magistrate before whom an accused is detention of the accused in such custody as the Magistrate thinks fit exceeding 15 days on the whole.

2. Under the proviso to the aforesaid of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

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

4. When an application for bail is filed by an accused for enforcement of his Indefeasible right alleged to have been accrued in his favour on account of the default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the

proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called infeasible right of the accused would stand extinguished.

34. In the case of **M. Ravindran v. Intelligence Officer, Directorate Revenue** reported in **(2021) 2 SCC 485**, again considered the matter and the conclusion of the said decision can be summarised as under:

"(i) Majority view in the case of Uday Mohanlal Acharya is correct;

(ii) Sub-section (2) of Section 167 of CrPC was enacted for providing an outer time limit to the period of remand of the accused proportionate to the seriousness of the offence alleged. On the failure to complete the investigation within the defined outer limit, the accused acquires an infeasible right to get default bail;

(iii) The timelines provides under sub-section (2) of Section 167, CrPC ensure that investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This provision ensures that the Court takes cognizance of the case without undue delay after investigation is completed within the time provided in subsection (2) of Section 167, CrPC;

(iv) The Legislature has enacted sub-section (2) of Section 167 for balancing the need to provide sufficient time to complete the investigation with the need to protect civil liberties of the accused, which is given paramount importance in our Constitution;

(v) Sub-section (2) of Section 167 is integrally linked to the constitutional commitment under Article 21 of the Constitution of India promising protection of the personal liberty against unlawful and arbitrary detention;

(vi) The decision of this Court in the case of S. Kasi was quoted with the approval which holds that the infeasible right to default bail is an integral part of the right to personal liberty under Article 21, and the said right cannot be suspended even during the pandemic situation; and

(vii) It is well settled that in case of any ambiguity in the construction of a penal statute, the Court must favour the interpretation which leans towards protecting the rights of the accused. This principle is applicable even in the case of a procedure providing for curtailment of liberty of the accused."

35. So far as the contention of the learned counsel for the appellants that the application was filed on 19.12.2023 by the Investigating Officer for extension of time for investigation under Section 43-D of the Act of 1967, which was allowed by the Special Court by order dated 21.12.2022 extending the time for 45 days for further investigation without giving any notice of the application and also in the absence of the appellants. On 21.12.2022, the appellants were not present before the Special Court in person or virtually. We have to consider the legal consequences of failure of the Special Court to procure the presence of accused at the time of consideration of the reports submitted by Investigating Officer / Public Prosecutor for a grant of extension of time to complete the investigation. In addition, we must also consider the effect of failure to give notice to the accused of the reports submitted by the Public Prosecutor/Investigating Officer.

36. Sub-section (2) of Section 43-D of the Act of 1967 provides that Section 167 Cr.P.C. shall apply in relation to a case involving an offence punishable under this Act subject to modification that in Sub-section (2).

37. Clause (b) of Sub-section (2) of Section 43-D of the Act of 1967 is a pari-materia proviso that empowers the designated court to extend the period provided in Clause (a) of Sub-section (2) of Section 167 Cr.P.C.

38. The Supreme Court, in the case of **Jigar alias Jimmy Pravinchandra Adatiya v. State of Gujarat** reported in **2022**

SCC OnLine SC 1290, considered this question while considering the provisions of Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as "the Act of 2015") which also contained a pari-materia proviso in Section 20 (2) of the Act of 2015. The Supreme Court in case of Jigar alias Jimmy (Supra) relying upon the Judgment in case of Hitendra Vishnu Thakur (Supra) and the case of Sanjay Dutt vs. State of Maharashtra (Supra) held as under:

"34. Clause (b) of sub-section (2) of Section 167 of CrPC lays down that no Magistrate shall authorise the detention of the accused in the custody of the police unless the accused is produced before him in person. It also provides that judicial custody can be extended on the production of the accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law. This requirement is sine qua non for the exercise of the power to extend the judicial custody remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand. When the Special Court exercises the power of granting extension under the proviso to sub-section (2) of Section 20 of the 2015 Act, it will necessarily lead to the extension of the judicial custody beyond the period of 90 days up to 180 days. Therefore, even in terms of the requirement of clause (b) of sub-section (2) of Section 167 of CrPC, it is mandatory to procure the presence of the accused before the Special Court when a prayer of the prosecution for the extension of time to complete investigation is considered. In fact, the Constitution Bench of this Court in the first part of paragraph 53(2)(a) in its decision in the case of Sanjay Dutt holds so.

The requirement of the report under proviso added by sub-section (2) of Section 20 of the 2015 Act to clause (b) of sub-section (2) of Section 167 of CrPC is two-fold. Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. Therefore, the extension of time is not an empty formality. The Public Prosecutor has application the Court must apply its mind to the

contents of the report before accepting the prosecution has to make out a case in terms of both the aforesaid prayer for grant of extension.

35. As noted earlier, the only modification made by the larger Bench in the case of Sanjay Dutt to the decision in the case of Hitendra Vishnu Thakur is about the mode of service of notice of the application for extension. In so many words, in paragraph 53 (2)(a) of the Judgment, this Court in the case of Sanjay Dutt held that it mandatory to produce the accused at the time when the Court considers the application for extension and that the accused must be informed that the question of extension of the period of investigation is being considered. The accused may not be entitled to get a copy of the report as a matter of right as it may contain details of the investigation carried out. But, if we accept the submission of the respondents that the accused has no say in the matter, the requirement of giving notice by producing the accused will become an empty and meaningless formality. Moreover, it will be against the mandate of clause (b) of the proviso to sub-section (2) of section 167 of CrPC. It cannot be accepted that the accused is not entitled to raise any objection to the application for extension. The scope of the objections may be limited. The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by sub-section (2) Section 20 of the 2015 Act to sub-section (2) of Section 167 of CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted.

36. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. We accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is not a mere procedural irregularity, it will negate the proviso added by sub-section (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant the extension of time takes away the right of the accused to get default bail which intrinsically connected with the fundamental rights guaranteed under Article 21 of Constitution. The procedure contemplated by Article 21 of the Constitution which required to be followed

before the liberty of a person is taken away has to be a fair reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.

37. An attempt was made to argue that the failure to produce the accused will not cause any prejudice to him. As noted earlier, the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused."

39. In the facts of the case in hand when the Special Court considered the report submitted by the Public Prosecutor for grant of extension of time on 21.12.2022, the presence of the appellants was admittedly not procured before the Special Court either personally or through video conferencing.

40. This Court, by order dated 18.12.2023, directed for the original remand file available with the lower court where the trial is pending in the aforesaid case be brought before this Court by the next date to enable the Court to ascertain whether the accused-appellants were present on 21.12.2022 either personally or through electronic mode when the Special Court granted 45 days further time for completing the investigation by order dated 21.12.2022. The order dated 18.10.2023 is quoted as under:

"Let the original remand file available with the lower Court where the trial is pending of case Crime No. 4 of 2022, under Sections 121A, 123 IPC and Section 13, 18, 38 of Unlawful Activities (Prevention) Act relating to Police Station ATS

Lucknow be produced before the Court by the next date to enable it to see as to whether the accused were present on 21.12.2022 either personally or through electronic mode when the Court below granted 45 days further time for completing the investigation on the application of the prosecution dated 19.12.2022, as, thereafter on 22.12.2022 based on this ground the judicial custody of the appellants was extended.

Requisition be sent accordingly by the Senior Registrar of this Court to the Court below.

List this case on 30.10.2023 amongst first ten cases of the day."

41. It is also admitted position that the information about the filing of such a report by the Public Prosecutor was not provided to the accused-appellants. This Court in its order dated 01.11.2023, has recorded the following finding:

"We have perused the original records, as already stated hereinabove, it does not mention the presence of the appellants-accused on 21.12.2022 when the Court allowed the application of the respondents for extending the time for completing the investigation.

We would, however, like to verify the aforesaid facts from the Jail Authorities as to whether the appellants-accused had joined the proceedings on 21.12.2022 from jail through Video Conferencing or had been brought to the Court for the said purpose or not.

Let an affidavit of Superintendent of District Jail, Lucknow, where the appellants-accused are lodged, be filed on the aforesaid aspect of the matter before the next date."

42. In compliance with the order dated 01.11.2023, an affidavit of Mr Ashish Tiwari, Senior Superintendent, District Jail, Lucknow, has been filed in which it has been mentioned that as per the records, no summoning order was received to produce the accused-appellants on 21.12.2022 through video conferencing. Paragraph no. 5 of the affidavit is quoted as under:

"5. यह कि अभिलेखों के अनुसार उपरोक्त अपीलार्थीगण / बंदीगण को दिनांक 21-12-2022 को माननीय न्यायालय के समक्ष

वीडियो कान्फ्रेसिंग से पेश कराने हेतु कोई तलबी आदेश प्राप्त नहीं हुआ था।"

Thus, it is clear that on 21.12.2022, when the order of extension of time for investigation was passed by the Special Court, the accused-appellants were neither present personally nor through video conferencing and as such, the order was passed in their absence.

43. We must note here that the period of 90 days was going to expire on 05.01.2023, and the application for extension was submitted by the Investigating Officer/Public Prosecutor on 19.12.2022. The application was filed more than 17 days before the completion of the period of 90 days. The order was passed by the Special Court on 21.12.2022, 15 days before the completion of 90 days period. There was no such reason for such a hurry. The Special Court could have always granted time of a couple of days to the prosecution to procure the presence of the accused, either physical or virtual. In this case, the remand was expiring on 22.12.2022, and there was no impediment for the prosecution or Special Court to have secure the presence of accused-appellants who were likely to be produced on 22.12.2022 for extension of remand and were actually produced on 22.12.2022 for extension of remand.

44. The accused may not be entitled to know the contents of the report but they are entitled to oppose the grant of extension of time on the grounds available to them in law. In the facts of the present case, the grant of extension of time without complying with the requirements laid down by the Constitution Bench has deprived the accused-appellants from their right to seek default bail. It has resulted in the failure of justice.

45. The order passed by the Special Court extending the period of investigation is rendered illegal on account of the failure of the respondents to produce the accused-appellants before the Special Court either physically or virtually when the prayer for grant of extension made by the Public Prosecutor was considered. It was the duty of the Special Court to ensure that this important procedural safeguard was followed. Moreover, the oral notice, as contemplated by the Supreme Court in the case of Sanjay Dutt (Supra), was also not given to the accused-appellants.
46. The other contention raised by learned counsel for the appellants is that the application dated 19.12.2022 was moved by Anurag Darshan, Additional Superintendent of Police/Investigating Officer, A.T.S., U.P., Lucknow. On the aforesaid application Public Prosecutor has made an endorsement 'submitted' on 21.12.2022. It has been further contended by learned counsel for the appellants that in view of the provisions of Section 43-D of the Act of 1967, the application for an extension of time has to be moved by the Public Prosecutor and not by the Investigating Officer. The order of extending the period of investigation passed by the Special Court on an application moved by the Investigating Officer is wholly illegal and against the law laid down by the Apex Court in the case of Hitendra Vishnu Thakur (Supra). In paragraph no. 23 of the Judgment in case of Hitendra Vishnu Thakur (Supra), the Supreme Court held thus:

"23. We may, at this stage, also, on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking an extension of time for the completion of an investigation on a report of the public prosecutor. **The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be**

kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for the completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor 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 the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. **The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on 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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence**

of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. **The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation.**

Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this Judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. **We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report**

as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. **Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension."**

47. The Supreme Court reiterated the aforesaid principle in case of Jigar alias Jimmy Pravinchandra Adatiya (Supra) in following words: **"Firstly in the report of Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused-appellants beyond the set period of 90 days, therefore, the extension of time is not an empty formality. The Public Prosecutor has to apply his mind before he submits the report/application for extension."** (para 35)

48. In the present case, it is apparent that on the application/report submitted by the Investigating Officer, the

Public Prosecutor has merely made an endorsement on 21.12.2022 'submitted'. There is no application of mind by the Public Prosecutor to the report submitted by the Investigating Officer to the fact whether there was any need for extension of time for investigation and, further, that the ground set forth by the Investigating Officer in its report were worthy for submitting the report by the Public Prosecutor for extension of time. On this score, the order of extension of time for investigation dated 21.12.2022 passed by the Special Court is also vitiated.

49. It has also been submitted by the learned counsel for the appellants that on 21.12.2022, the Special Court passed an order "permitted for 45 days only". It has been further submitted by the learned counsel for the appellants that the order of extension passed by the Special Court on 21.12.2022 does not indicate an application of mind by the Special Court, and the order has been passed merely on the asking by the Investigating Officer. It is next submitted by learned counsel for the appellants that the order of extension passed by the Special Court does not contain any reason for extending the time for investigation and, as such, is arbitrary.

50. Recording of reason is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and legality in decision-making. The person who is adversely affected comes to know as to why his application has been rejected. The recording of reason in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in a appealable order deprives the appellate court or authority of that advantage and casts and onus responsibility upon it to

examine and determine the question on its own.

51. As Lord DENNING has emphasized in *Breen v. A.E.U.* (1971) 2 QB 175, the giving of reason for a decision is one of the fundamentals of good administration. It constitutes a safeguard against arbitrariness on the part of the decision-maker. Articulating the basis of a decision can improve the quality of decision making in a number of significant ways such as if he is made to give reason for his decision, it will impose some restriction upon him in a matter involving personal rights. Secondly, if an adjudicator is obligated to give reason for his conclusions, it will make it necessary for him to consider the matter carefully. The condition to give reason introduces clarity, ensures objectivity and impartiality on the part of the decision-maker and minimizes unfairness and arbitrariness for "compulsion of disclosure guarantees consideration".

52. In India, the position is somewhat different but the Courts have shown a good deal of creativity in this area. A very significant reason of the Indian Courts is to develop the idea that natural justice demands that adjudicatory bodies give reasons for their decisions. The Supreme Court has also held that as several constitutional provisions guarantee judicial control of adjudicatory bodies, it is obligatory for such bodies to render reasoned decisions so as to make judicial control effective and meaningful. In administrative law the duty to assign reason is, however, a judge made law but in case of judicial authorities that includes Magistrates, Special Courts, who exercise the judicial powers under the various statutes, there is no dispute that their order must contain reasons to support the orders. The judicial order without assigning any reason is not an order in the eye of the law.

53. In case of Jigar alias Jimmy Pravinchandra Adatiya (Supra), the Supreme Court has held as under:

"The prosecuting has to make out a case in terms of both the aforesaid requirements and the court must apply its mind to the contents of the report before accepting prayer for grant of extension."

54. The Supreme Court in the case of **State of Maharashtra v. Surendra Pundlik Gadling** reported in **(2019) 5 SCC 178** held as under (para 14, 14.1, 14.2, 14.3, 14.4, page 184):

"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 the investigation and the specific reasons for the 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."

55. Thus, before an order is passed by the Special Court while exercising the power under proviso to Section 43-D (2)(b) of the Act of 1967 it has to satisfy itself that all the above four ingredients are complied with.

56. The application of mind is only reflected by the reasons given in the judgment. An order supported by reasons ensures that the adjudicatory authority/court genuinely addressed itself to the arguments and evidence advanced at the time of the hearing. It is the well-known principle that justice should not only be done but should also seem to be done. Unreasoned decisions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have the appearance of justice.

57. It has been contended by the learned counsel for the respondents that at the stage of granting an extension of time for completing the investigation, the Special Court/designated court is not required to pass judgment containing elaborate reasons. Indeed, the designated court or Special Court is not supposed to pass judgment and give an elaborate reason but the designated court/ Special Judge is supposed to pass an order which must reflect the application of mind by the court to the grounds taken by the Public Prosecutor in its report for extension of time for completing the investigation.
58. In the facts of the present case, the designated court has passed the order "permitted for 45 days only" is an unreasoned order. It does not reflect that the Special Court has applied its mind to the grounds whatsoever were there for an extension of time for the investigation. On this score also the order of extension of time for investigation passed by the Special Court cannot be sustained.
59. The contention of the learned Standing Counsel is that since the charge sheet has been submitted by the investigating agency and the sanction has been granted by the State Government, the right of 'default' bail, if any, under Section 167 (2) of Cr.P.C. is extinguished and now the same cannot be granted. It has been further submitted that even if, it is taken that extension of time by order dated 21.12.2022 was not in accordance with law, the same gets cured by subsequent orders passed for extension of time by the Special Court and therefore, now, the appellants cannot claim bail on the ground of 'default'.
60. The question as to whether 'default' bail can be granted once a charge sheet is filed was authoritatively dealt with in a decision of three Judges Bench of the Supreme Court in Uday Mohanlal

Acharya (Supra), the Supreme Court reviewed the decisions of the Supreme Court and in particular expression "if already not availed of" in Sanjay Dutt (Supra). The Court then held (SCC pp. 469-70 & 472-74, para 13):

"13....The crucial question that arises for consideration, therefore, is what is the true meaning of the expression "if already not availed of"? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. To interpret the expression "availed of" to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose of the proviso to Section 167(2) of the Criminal Procedure Code and further would make illegal custody to be legal, inasmuch as after the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not. If the expression "availed of" is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an order notwithstanding the maximum period stipulated in Section 167 had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge-sheet then also the so-called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated. Since the legislature has given its mandate it would be the bounden duty of the court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression "if not availed of" in a manner which is capable of being abused by the prosecution. A two-judge Bench decision of this Court in

State of M.P. v. Rustam [1995 Supp (3) SCC 221: 1995 SCC (Cri) 830] setting aside the order of grant of bail by the High Court on a conclusion that on the date of the order the prosecution had already submitted a police report and, therefore, the right stood extinguished, in our considered opinion, does not express the correct position in law of the expression “if already not availed of”, used by the Constitution Bench in Sanjay Dutt [(1994) 5 SCC 410:1994 SCC (Cri) 1433]...In the aforesaid premises, we are of the considered opinion that an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to sub-section (2) of Section 167 of the Code if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of the arrest of the accused. In our view, such interpretation would subserve the purpose and the object for which the provision in question was brought on to the statute book. In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without the filing of a challan by the investigating agency would be subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution. There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in the proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail...But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the accused on being released on bail cannot be frustrated on the off chance of the

Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency. On the aforesaid premises, we would record our conclusions as follows:

* * *

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

* * *

6. The expression “if not already availed of” used by this Court in the Sanjay Dutt case [(1994) 5 SCC 410: 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.”

(Emphasis Supplied)

61. Again in the case of **Union of India v. Nirmala Yadav** reported in **(2014) 9 SCC 457**, a two Judges Bench of the Supreme Court referred to all the relevant authorities on the subject including the majority judgment of Uday Mohanlal Acharya (Supra) and then concluded (SCC pp. 482-84, paras 44-46):

"44. At this juncture, it is absolutely essential to delve into what were the precise principles stated in the Uday Mohanlal Acharya case (supra) and how the two-judge Bench has

understood the same in *Pragya Singh Thakur* (supra). We have already reproduced the paragraphs in extenso from the *Uday Mohanlal Acharya* case (supra) and the relevant paragraphs from *Pragya Singh Thakur*. *Pragya Singh Thakur*, has drawn support from *Rustam 1995 Supp (3) SCC 221* case to buttress the principle it has laid down though in *Uday Mohanlal Acharya* case the said decision has been held not to have stated the correct position of law and, therefore, the same could not have been placed reliance upon. The Division Bench in para 56 which has been reproduced hereinabove, has referred to para 13 and the conclusions of *Uday Mohanlal Acharya* case. We have already quoted from para 13 and the conclusions.

45. The opinion expressed in paras 54 and 58 in *Pragya Singh Thakur* which we have emphasised, as it seems to us, runs counter to the principles stated in *Uday Mohanlal Acharya* which has been followed in *Hassan Ali Khan and Sayed Mohd. Ahmad Kazmi*. The decision in *Sayed Mohd. Ahmad Kazmi* case has been rendered by a three-judge Bench. We may hasten to state, though in *Pragya Singh Thakur* case the learned Judges have referred to *Uday Mohanlal Acharya* case but have stated the principle that even if an application for bail is filed on the ground that the charge-sheet was not filed within 90 days, but before the consideration of the same and before being released on bail if the charge-sheet is filed the said right to be enlarged on bail is lost. This opinion is contrary to the earlier larger Bench decisions and also runs counter to the subsequent three-judge Bench decision in the *Mushtaq Ahmed Mohammed Isak* case. We are disposed to think so, as the two-judge Bench has used the words “before consideration of the same and before being released on bail”, the said principle specifically strikes a discordant note with the proposition stated in the decisions rendered by the larger Benches.

46. At this juncture, it will be appropriate to refer to the dissenting opinion by B.N. Agarwal, J. in the *Uday Mohanlal Acharya* case. The learned Judge dissented with the majority as far as the interpretation of the expression “if not already availed of” by stating so: (SCC p. 481, paras 29-30)

“29. My learned Brother has referred to the expression ‘if not already availed of’ referred to in the judgment in the *Sanjay Dutt* case for arriving at Conclusion 6. According to me, the expression ‘availed of’ does not mean mere filing of application for bail expressing therein willingness of the accused to furnish the bail bond. What will happen if, on the 61st day, an application for bail is filed for being released on bail on the ground of default by

not filing the challan by the 60th day and on the 61st day the challan is also filed by the time the Magistrate is called upon to apply his mind to the challan as well as the petition for grant of bail? In view of the several decisions referred to above and the requirements prescribed by clause (a)(ii) of the proviso read with Explanation I to Section 167(2) of the Code, as no bail bond has been furnished, such an application for bail has to be dismissed because the stage of the proviso to Section 167(2) is over, as such right is extinguished the moment the challan is filed.

30. In this background, the expression ‘availed of’ does not mean the mere filing of the application for bail expressing thereunder willingness to furnish bail bond, but the stage for actual furnishing of bail bond must reach. If the challan is filed before that, then there is no question of enforcing the right, howsoever valuable or indefeasible it may be, after the filing of the challan because thereafter the right under default clause cannot be exercised.”

On a careful reading of the aforesaid two paragraphs, we think, the two-judge Bench in *Pragya Singh Thakur* case has somewhat in a similar matter stated the same. As long as the majority view occupies the field it is a binding precedent. That apart, it has been followed by a three-judge Bench in *Sayed Mohd. Ahmad Kazmi* case. Keeping in view the principle stated in *Sayed Mohd. Ahmad Kazmi* case which is based on the three-judge Bench decision in *Uday Mohanlal Acharya* case, we are obliged to conclude and hold that the principle laid down in paras 54 and 58 of *Pragya Singh Thakur* case (which has been emphasised by us: see paras 42 and 43 above) does not state the correct principle of law. It can clearly be stated that in view of the subsequent decision of a larger Bench that cannot be treated to be good law. Our view finds support from the decision in *Union of India v. Arviva Industries India Ltd.*”

62. Also, in ***Syed Mohd. Ahmad Kazmi v. State (Govt. of NCT of Delhi)*** reported in **(2012) 12 SCC 1**, Section 43-D of the UAPA came up for consideration before the Court, in particular the proviso which extends the period for investigation beyond 90 days up to a period of 180 days. An application for default bail had

been made on 17.07.2012, as no charge sheet was filed within a period of 90 days of the appellant's custody. The charge sheet in the aforesaid case was filed thereafter on 31.07.2012. Despite the fact that this application was not taken up for hearing before the filing of the charge sheet, this Court held that since an application for default bail had been filed prior to the filing of the charge sheet the "indefeasible right" spoken of earlier had sprung into action, as a result of which default bail had to be granted. The Court held: (SCC pp. 9-10, para 25-27)

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

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

investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right to grant statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise.”

63. In a fairly recent judgment reported as **Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67**, a Three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge sheet is filed by the police, default bail must be granted.

64. In the case of **Bikramjit Singh v. State of Punjab** reported in **(2020) 10 SCC 616**, held in paragraph no. 36 as under:

"36. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the criminal court in question either does not dispose of such application before the charge sheet is filed disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted."

65. In view of the law laid down by the Supreme Court in the aforementioned cases, the submission of the learned Standing

Counsel that the appellant will lose the right of 'default' bail since the charge sheet has been submitted by the investigating agency and sanction has been granted by the State Government, is devoid of merit as in the present case, application for bail on 'default' was moved by the appellants on 05.01.2023, the day on which 90 days was completed. Since we have already held that the order of extension granting further time for investigation by the Special Court is not valid, therefore, in our considered opinion filing of charge-sheet after filing of the application for bail by the appellants is of no consequence.

66. In the present appeal, the order passed by the Special Court on 21.12.2022, extending the period for investigation is vitiated for the reasons aforementioned.
67. Once we hold that the order granting an extension of time to complete the investigation is illegal and stands vitiated, it follows that the appellants are entitled to default bail.
68. When the appellants applied for bail, they had no notice of extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge sheet, hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the cases of Bikramjeet Singh (Supra), the Supreme Court held that the grant of default bail does not prevent re-arrest of the appellant on the cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra reported in (1996) 1 SCC 722**, re-arrest cannot be made only on the ground of filing a charge sheet. It all depends on the facts of each case.

69. Accordingly, the impugned order dated 21.12.2022, passed by Special Court, granting an extension of time to complete the investigation and the order dated 03.02.2023 passed by Special Court rejecting the default bail application filed by the appellants are hereby quashed and set aside. The appellant shall be enlarged on default bail under Sub-section (2) of Section 167 of Cr.P.C. in Case Crime No. 4 of 2022, under Section 121A, 123 of I.P.C. and Section 13, 18, 18B, 20, 38 of Act of 1967 registered at Police Station A.T.S., Lucknow on the following conditions:

- a) The appellants shall furnish a bail bond of Rs. 1,00,000/- with appropriate sureties as may be decided by the Special Court;
- b) The appellants shall surrender their passport (if they have one) to the Special Court at the time of furnishing security;
- c) The appellants shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and
- d) The appellants shall mark regular attendance with such police station and at such periodical intervals as may be determined by the Special Court; and
- e) The appellants shall cooperate with the Special Court for the early conclusion of the trial.

70. The appeal is **allowed** on the above terms.

Criminal Appeal No. 2377 of 2023

1. The accused-appellant Lukman was arrested on 26.09.2022 in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow. He was produced before the

Special Court on 27.09.2022. The Special Court granted police custody remand from 27.09.2022 to 10.10.2022. Thereafter, the remand was extended from time to time. On 14.12.2022, the remand was granted by the Special Court till 22.12.2022. The statutory period of 90 days was to complete on 26.12.2022. On 19.12.2022, an application was filed by Sri Anurag Darshan, Additional Superintendent of Police, A.T.S., Lucknow, U.P. for an extension of 60 days time for further investigation under Section 43-D of the Act of 1967. On the aforesaid application, an endorsement was made by the Public Prosecutor on 21.12.2022 'submitted'. On 21.12.2022 the Special Court passed an order 'permitted for 45 days only'. The application dated 19.12.2022 has been annexed at page no. 22 as annexure no. 7 to the counter affidavit filed by Shri Abhishek Kumar Singh on 27.09.2022 along with an application No. 4 of 2023 for taking the aforesaid counter affidavit on record. On 22.12.2022, remand was granted by the Special Court till 18.01.2023. An application dated 03.01.2023 was filed by the appellant for being released on default bail as according to them, the statutory period of 90 days expired on 26.12.2022 and by the said date, no charge-sheet was filed by the police in the aforesaid case crime number. The said application filed by the appellant was registered as Bail Application No. 86 of 2023. After the exchange of affidavits, the aforesaid application was rejected by the Special Court by its order dated 03.02.2023 which is impugned in the present appeal.

2. During the pendency of the application for grant of bail, the period of investigation was extended. By order dated 03.02.2023, the remand was extended till 04.03.2023. By another order dated 04.03.2023, the period of investigation was extended for another period of 20 days and the remand was also extended till

04.03.2023. The charge sheet submitted by the Investigating Officer against the appellant on 22.03.2023, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of Act of 1967. On 23.03.2023, the Special Court directed to register the case as a Misc. Case. On 13.04.2023, prosecution sanction was granted by the State Government and by order dated 28.04.2023, the Special Court has taken cognizance.

3. In the present appeal also the order passed by the Special Court on 21.12.2022, is vitiated for the reasons as mentioned in Criminal Appeal No. 2376 of 2023.
4. Once we hold that the order granting extension to complete the investigation is illegal and stands vitiated, it follows that the appellant is entitled to default bail.
5. When the appellant applied for bail, he had no notice of an extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge sheet, hence, the appellant is entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the case of Bikramjeet Singh (Supra), the Supreme Court held that the grant of default bail does not prevent re-arrest of the appellant on the cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra** reported in (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing a charge sheet. It all depends on the facts of each case.
6. Accordingly, the impugned order dated 21.12.2022, passed by Special Court, granting an extension of time to complete the investigation and the order dated 03.02.2023 passed by Special

Court rejecting the default bail application filed by the appellant are hereby quashed and set aside. The appellant shall be enlarged on default bail under Sub-section (2) of Section 167 of Cr.P.C. in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow, on the following conditions:

- (a).The appellant shall furnish a bail bond of Rs. 1,00,000/- with appropriate sureties as may be decided by the Special Court;
- (b).The appellant shall surrender his passport (if he has one) to the Special Court at the time of furnishing security;
- (c).The appellant shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and
- (d).The appellant shall mark regular attendance with such police station and at such periodical intervals as may be determined by the Special Court; and
- (e).The appellant shall cooperate with the Special Court for the early conclusion of the trial.

7. The appeal is **allowed** on the above terms.

Criminal Appeal No. 2378 of 2023

1. The appellants Mudassir and Mohammad Mukhtar were arrested on 05.10.2022 in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow. They were produced before the Special Court on 06.10.2022. The Special Court granted police custody remand from 06.10.2022 to

19.10.2022 by order dated 06.10.2022. Thereafter, the remand was extended from time to time. By order dated 14.12.2022 passed by Special Court remand was extended up to 22.12.2022. The statutory period of 90 days was to complete on 03.01.2023. On 19.12.2022, an application was filed by Sri Anurag Darshan Additional Superintendent of Police/Investigating Officer A.T.S., Lucknow, U.P. for extension of 60 days time for further investigation under Section 43(d) of Act of 1967. On the aforesaid application, an endorsement was made by the Public Prosecutor on 21.12.2022 "submitted". On the same day i.e. 21.12.2022, the Special Court passed an order "Permitted for 45 days only". The application dated 19.12.2022 has been annexed at page no. 18 as annexure no. 7 to the counter affidavit filed by Abhilash Kumar Singh on 27.09.2022 along with an application No. 5/23 for taking the aforesaid counter affidavit on record.

2. On 22.12.2022, further remand of 30 days was allowed by the Special Court which was extended till 18.01.2023. An application was filed by the appellants for being released on default bail as according to them the statutory period of 90 days was to expire on 04.01.2023 and by the said date no charge sheet was filed by the police in the aforesaid case crime number. The said application filed by the appellants was registered as Bail Application No. 145 of 2023. After the exchange of affidavits, the aforesaid application was rejected by the Special Court by its order dated 03.02.2023 which is impugned in the present appeal.
3. During the pendency of the application for grant of bail, the period of investigation was again extended on an application moved by the Public Prosecutor for 30 days. Again on 04.03.2023, the period of investigation was extended for 20 days by an order dated 24.03.2023 passed by the Special Court and during this period the

remand of the appellant was also extended. The charge sheet was submitted by the investigating officer against the appellants under Section 121A/123 I.P.C. and Sections 13/18/18B/20/38 of the Act of 1967 on 22.03.2023. On 23.03.2023, the Special Court directed to register the case as Misc. Case. On 13.04.2023, prosecution sanction was granted by the State and by order dated 28.04.2023, the Special Court had taken cognizance.

4. In the present appeal also the order passed by the Special Court on 21.12.2022, is vitiated for the reasons as mentioned in Criminal Appeal No. 2376 of 2023.
5. Once we hold that the order granting extension to complete the investigation is illegal and stands vitiated, it follows that the appellants are entitled to default bail.
6. When the appellants applied for bail, they had no notice of extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge sheet, hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the case of Bikramjeet Singh (Supra), the Supreme Court held that the grant of default bail does not prevent re-arrest of the appellant on the cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra** reported in (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing a charge sheet. It all depends on the facts of each case.
7. Accordingly, the impugned order dated 21.12.2022, passed by Special Court, granting extension to complete investigation and order dated 03.02.2023 passed by Special Court rejecting the

default bail application filed by the appellants are hereby quashed and set aside. The appellant shall be enlarged on default bail under Sub-section (2) of Section 167 of Cr.P.C. in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow, on the following conditions:

- (a).The appellant shall furnish a bail bond of Rs. 1,00,000/- with appropriate sureties as may be decided by the Special Court;
- (b).The appellants shall surrender their passport (if they have one) to the Special Court at the time of furnishing security;
- (c).The appellants shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and
- (d).The appellants shall mark regular attendance with such police station and at such periodical intervals as may be determined by the Special Court; and
- (e).The appellants shall cooperate with the Special Court for the early conclusion of the trial.

8. The appeal is **allowed** on the above terms.

Criminal Appeal No. 2379 of 2023

1. First Information Report was registered on 12.08.2022, against Mohd. Nadeem (appellant no. 1) in Case Crime No. 3 of 2022, under Section 121A, 123 I.P.C. read with Section 13, 18 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow. The appellant no. 1 Mohd. Nadeem was arrested by the police on 11.08.2022 and was produced before the Special Court on

12.08.2022. On 12.08.2022, the Special Court granted remand for the period 12.08.2022 to 25.08.2022. The accused-appellant no. 2 Habeedul Islam @ Shaifullah was arrested on 13.08.2022, in Case Crime No. 3 of 2022 referred to above. The appellant no. 2 was produced before the Special Court on 14.08.2022. By order dated 14.08.2022, remand was granted by the Special Court from 14.08.2022 to 26.08.2022. Thereafter, the remand was extended from time to time. The statutory period of 90 days was to complete on 09.11.2022 in the case of appellant no. 1 and on 10.11.2022 in the case of appellant no. 2. On 07.11.2022, an application for an extension of the period of investigation by 30 days was moved by the Investigating Officer. On 07.11.2022, by the order passed by Special Court, the accused were summoned fixing 09.11.2022. On 09.11.2022, the period of investigation was extended by the Special Court. The Order passed by the Special Court on 09.11.2022 was 'permitted'. The accused-appellants were present on 09.11.2022 as of 09.11.2022, the remand was extended for 30 days i.e. up to 08.12.2022. Again on 03.12.2022, an application was moved by the Senior Prosecuting Officer for an extension of the period of 30 days for completing the investigation which is on page 27 of the counter affidavit filed by Shailendra S. Rathore filed along with the application dated 03.12.2022. On the aforesaid application dated 03.12.2022, the Public Prosecutor made an endorsement on 06.12.2022 'submitted'. On 06.12.2022, the Special Court passed an order 'permitted'. On 08.12.2022, the custody of the appellants was extended for another period of 30 days i.e. up to 03.01.2023.

2. Again on 02.01.2023, an application was moved by the Investigating Officer for an extension of investigation on which an endorsement was made by the Public Prosecutor 'submitted'. The

Special Court by order dated 03.01.2023 extended the period of investigation for 30 days and passed the order 'permitted for 30 days only'. On 03.01.2023, the accused-appellants were present through virtual mode before the Special Court and their period of remand was extended till 02.02.2023. On 12.12.2022, a default bail application was filed by the appellants as the extended period for investigation of 30 days as extended by an order dated 09.11.2022, expired on 10.12.2022.

3. The bail application filed by the appellants was registered as Bail Application No. 985 of 2023. After the exchange of affidavits, the aforesaid application was rejected by the Special Court by its order dated 03.02.2023 which is impugned in the present appeal.
4. During the pendency of the appeal, a charge sheet was submitted by the Investigating Agency in court on 07.02.2023 against the appellants under Section 121A, 123 I.P.C. read with Sections 13, 18 & 38 of the Act of 1967. On 07.02.2023, the Special Court directed to register the case as Misc. Case.
5. In the present appeal though the first order of extension of time dated 09.11.2022 was passed in the presence of the appellants but the second order of extension dated 06.12.2022 has been passed in the absence of the appellants. Appellants were not present before the Special Court on 06.12.2022 either personally or virtually. The application dated 03.12.2022, for an extension of the period of investigation was moved by the Senior Prosecuting Officer on which an endorsement was made by the Public Prosecutor 'submitted' on 06.12.2022 and the order was passed by Special Court on 06.12.2022 'permitted'. This Court by its order dated 22.1.2023 directed the appellants to file an affidavit to the effect indicating as to whether the appellants were present either

personally or virtually on 06.12.2022 when time for completing the investigation was extended by the Special Court. In compliance thereof in the rejoinder affidavit, paragraph no. 5 of the affidavit, it has been stated that on 06.12.2022, when the Special Court allowed the application dated 03.12.2022 for extension of the period for further investigation was without securing the presence of the appellants physically or virtually.

6. For the reasons given in the judgment in appeal No. 2376 of 2023, we are of the considered opinion that the order passed by the Special Court on 06.12.2022, extending the period of investigation, is illegal on account of the failure of the respondents to produce the accused before the Special Court either physically or virtually when the prayer for grant of extension made by the Public Prosecutor was considered.
7. Once we hold that the order granting an extension to complete the investigation is illegal and stands vitiated, it follows that the appellants are entitled to default bail.
8. When the appellants applied for bail, they had no notice of extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge sheet, hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the case of Bikramjeet Singh (Supra), the Supreme Court held that the grant of default bail does not prevent re-arrest of the appellants on cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra** reported in (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing a charge

sheet. It all depends on the facts of each case.

9. Accordingly, the impugned order dated 06.12.2022, passed by Special Court, granting extension to complete investigation and order dated 03.02.2023 passed by Special Court rejecting the default bail application filed by the appellants are hereby quashed and set aside. The appellants shall be enlarged on default bail under Sub-section (2) of Section 167 of Cr.P.C. in Case Crime No. 3 of 2022, under Section 121A, 123 I.P.C. read with Section 13, 18 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow, on the following conditions:

- (a).The appellants shall furnish a bail bond of Rs. 1,00,000/- each with appropriate sureties as may be decided by the Special Court;
- (b).The appellants shall surrender their passport (if they have one) to the Special Court at the time of furnishing security;
- (c).The appellants shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and
- (d).The appellants shall mark regular attendance with such police station and at such periodical intervals as may be determined by the Special Court; and
- (e).The appellants shall cooperate with the Special Court for the early conclusion of the trial.

10.The appeal is **allowed** on the above terms.

Criminal Appeal No. 2380 of 2023

1. The appellants Mohammad Harish and Ash Mohammad were arrested on 30.10.2022 in Case Crime No. 4 of 2022, under

Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow. They were produced before the Special Court on 01.11.2022. The Special Court granted remand from 01.11.2022 to 30.11.2022 by order dated 01.11.2022. Thereafter, the remand was extended from time to time. The statutory period of 90 days was to complete on 29.01.2023. By order dated 14.12.2022, the appellants were granted remand up to 22.12.2022. On 19.12.2022, an application was filed by Sri Anurag Darshan Additional Superintendent of Police/Investigating Officer A.T.S., Lucknow, U.P. for extension of 60 days time for further investigation under Section 43(d) of Act of 1967. On the aforesaid application, an endorsement was made by the Public Prosecutor on 21.12.2022 "submitted". On the same day i.e. 21.12.2022, the Special Court passed an order "Permitted for 45 days only". The application dated 19.12.2022 has been annexed at page no. 14 as annexure no. 5 to the counter affidavit filed by Abhilash Kumar Singh on 27.09.2022 along with an application No. 3/2023 for taking the aforesaid counter affidavit on record.

2. On 22.12.2022, the remand was extended by the Special Court till 18.01.2023. An application dated 31.01.2023 was filed by the appellants for being released on default bail as according to them the statutory period of 90 days was to expire on 29.01.2023 and by the said date no charge sheet was filed by the police in the aforesaid case crime number. The said application filed by the appellant was registered as Bail Application No. 969 of 2023. After the exchange of affidavits, the aforesaid application was rejected by the Special Court by its order dated 13.02.2023 which is impugned in the present appeal.

3. During the pendency of the application for grant of bail, the period

of investigation was again extended on an application moved by the Public Prosecutor for 30 days. Again on 04.03.2023, the period of investigation was extended for 20 days by an order dated 04.03.2023 passed by the Special Court and during this period the remand of the appellant was also extended. The charge sheet was submitted by the investigating officer against the appellants under Section 121A/123 I.P.C. and Sections 13/18/18B/20/38 of the Act of 1967 on 22.03.2023. On 23.03.2023, the Special Court directed to register the case as Misc. Case. On 13.04.2023, prosecution sanction was granted by the State and by order dated 28.04.2023, the Special Court had taken cognizance.

4. In the present appeal also the order passed by the Special Court on 21.12.2022, is vitiated for the reasons as mentioned in Criminal Appeal No. 2376 of 2023.
5. Once we hold that the order granting extension to complete the investigation is illegal and stands vitiated, it follows that the appellants are entitled to default bail.
6. When the appellants applied for bail, they had no notice of extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge sheet, hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the case of Bikramjeet Singh (Supra), the Supreme Court held that the grant of default bail does not prevent re-arrest of the appellant on the cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh v. State of Maharashtra** reported in (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing a charge sheet. It all

depends on the facts of each case.

7. Accordingly, the impugned order dated 21.12.2022, passed by Special Court, granting extension to complete investigation and order dated 13.02.2023 passed by Special Court rejecting the default bail application filed by the appellants are hereby quashed and set aside. The appellant shall be enlarged on default bail under Sub-section (2) of Section 167 of Cr.P.C. in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow, on the following conditions:

- (a).The appellants shall furnish a bail bond of Rs. 1,00,000/- with appropriate sureties as may be decided by the Special Court;
- (b).The appellants shall surrender their passport (if they have one) to the Special Court at the time of furnishing security;
- (c).The appellants shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and
- (d).The appellants shall mark regular attendance with such police station and at such periodical intervals as may be determined by the Special Court; and
- (e).The appellants shall cooperate with the Special Court for the early conclusion of the trial.

8. The appeal is **allowed** on the above terms.

Criminal Appeal No. 2381 of 2023

1. The appellants Qari Shahjad and Ali Noor @ Unamul Haque were arrested on 05.10.2022 in Case Crime No. 4 of 2022, under

Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow. They were produced before the Special Court on 06.10.2022. The Special Court granted police custody remand from 06.10.2022 to 19.10.2022 by order dated 06.10.2022. Thereafter, the remand was extended from time to time. The statutory period of 90 days was to complete on 03.01.2023. By order dated 14.12.2022, the appellants were granted remand up to 22.12.2022. On 19.12.2022, an application was filed by Sri Anurag Darshan Additional Superintendent of Police/Investigating Officer A.T.S., Lucknow, U.P. for extension of 60 days time for further investigation under Section 43(d) of Act of 1967. On the aforesaid application, an endorsement was made by the Public Prosecutor on 21.12.2022 "submitted". On the same day i.e. 21.12.2022, the Special Court passed an order "Permitted for 45 days only". The application dated 19.12.2022 has been annexed at page no. 18 as annexure no. 7 to the counter affidavit filed by Abhilash Kumar Singh on 27.09.2022 along with an application No. 5/2023 for taking the aforesaid counter affidavit on record.

2. On 22.12.2022, the remand was extended by the Special Court till 18.01.2023. An application was filed by the appellants on 31.01.2023 for being released on default bail as according to them the statutory period of 90 days was to expire on 03.01.2023 and by the said date no charge sheet was filed by the police in the aforesaid case crime number. The said application filed by the appellant was registered as Bail Application No. 971 of 2023. After the exchange of affidavits, the aforesaid application was rejected by the Special Court by its order dated 13.02.2023 which is impugned in the present appeal.

3. During the pendency of the application for grant of bail, the period

of investigation was again extended on an application moved by the Public Prosecutor for 30 days. Again on 04.03.2023, the period of investigation was extended for 20 days by an order dated 04.03.2023 passed by the Special Court and during this period the remand of the appellant was also extended. The charge sheet was submitted by the investigating officer against the appellants under Section 121A/123 I.P.C. and Sections 13/18/18B/20/38 of the Act of 1967 on 22.03.2023. On 23.03.2023, the Special Court directed to register the case as Misc. Case. On 13.04.2023, prosecution sanction was granted by the State and by order dated 28.04.2023, the Special Court had taken cognizance.

4. In the present appeal also the order passed by the Special Court on 21.12.2022, is vitiated for the reasons as mentioned in Criminal Appeal No. 2376 of 2023.
5. Once we hold that the order granting extension to complete the investigation is illegal and stands vitiated, it follows that the appellants are entitled to default bail.
6. When the appellants applied for bail, they had no notice of extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge sheet, hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the case of Bikramjeet Singh (Supra), the Supreme Court held that the grant of default bail does not prevent re-arrest of the appellant on the cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra** reported in (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing a charge

sheet. It all depends on the facts of each case.

7. Accordingly, the impugned order dated 21.12.2022, passed by Special Court, granting extension to complete investigation and order dated 13.02.2023 passed by Special Court rejecting the default bail application filed by the appellants are hereby quashed and set aside. The appellants shall be enlarged on default bail under Sub-section (2) of Section 167 of Cr.P.C. in Case Crime No. 4 of 2022, under Section 121A, 123 I.P.C. and Section 13, 18, 18B, 20 & 38 of the Act of 1967, Police Station A.T.S., Gomti Nagar, Lucknow, on the following conditions:

- (1).The appellants shall furnish a bail bond of Rs. 1,00,000/- with appropriate sureties as may be decided by the Special Court;
- (2).The appellants shall surrender their passport (if they have one) to the Special Court at the time of furnishing security;
- (3).The appellants shall not interfere in any manner with the further investigation, if any and shall not make any effort to influence the prosecution witnesses; and
- (4).The appellants shall mark regular attendance with such police station and at such periodical intervals as may be determined by the Special Court; and
- (5).The appellants shall cooperate with the Special Court for early conclusion of the trial.

8. The appeal is **allowed** on the above terms.

Order Date: 14.05.2024

Ved Prakash

(Manish Kumar Nigam,J.) (Attai Rahman Masoodi,J.)