IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 10, 2020

\+ CRL.M.C. 1475/2020

SHARJEEL IMAM ..... Petitioner

Through: Ms. Rebecca Mammen John, Sr. Adv. with Mr. Bhavook Chauhan, Mr. Surabhi Dhar, Mr. Ahmed Ibrahim and Ms. Praavita K, Advs.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Aman Lekhi, ASG with Mr. Amit Mahajan, CGSC and SPP, Mr. Rajat Nair, Special Public Prosecutor, Mr. Ritwik Rishabh, Mr. Ujjwal Sinha, Mr. Aniket Seth and Mr. Dhruv Pande, Advs. for Delhi Police. Mr. Amit Gupta, APP

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to the order dated April 25, 2020 passed by the Roster Judge, Patiala House Courts, New Delhi, whereby the Court on an application / report submitted by the learned Addl. Public Prosecutor ('APP' for short) extended the period of investigation for further 90 days totalling to 180 days. The challenge is also to the order passed on the Bail

application No. 1051/2020, under Section 167 (2) of Cr.P.C., which was dismissed on the ground that the period of investigation has been extended.

2. The facts in brief are that an FIR bearing no. 22/2020 is registered against the petitioner on January 25, 2020 at PS-Crime Branch, New Delhi under Section 124A/153A/505 of the Indian Penal Code ('IPC', for short) with regard to speeches made in the area of Jamia on December 13, 2019. The said speech was shared on social media. Another speech was uploaded on twitter handle and on different websites in which he is seen addressing gathering in Aligarh Muslim University. According to the State, the petitioner is accused of offence relating to sedition, promoting enmity between groups on the ground of religion and indulging in unlawful activities to cause disaffection towards India. It appears FIRs have also been registered at places like Assam, Imphal and Itanagar. The petitioner was arrested from Jehanabad, Bihar on January 28, 2020. On a transit remand he was brought to Delhi. On January 29, 2020, he was produced before the Chief Metropolitan Magistrate, Patiala House Courts, New Delhi and was remanded to police custody for five days till February 3, 2020. On February 3, 2020, the police custody was extended for three more days till February 6, 2020. He spent six more days in police custody till February 12, 2020. The police custody was further extended till February 26, 2020.

3. It is noted that the petitioner was taken to Assam pursuant to a production warrant of the relevant Jurisdictional Magistrate

in Assam which was issued for investigation in an FIR registered on the same day as the FIR in Delhi. The petitioner is currently lodged in Assam Central Jail.

4. It is noted as a fact that during the course of investigation Section 13 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA', for short) was further added in the case. On April 24, 2020, a whatsapp message was sent by Sh. Vijay Kumar, Investigation Officer to the Counsel for the petitioner Ms. Surabhi Dhar stating as under:

> *"Madam, Good evening,*
> *A case vide FIR No. 22/2020 was registered at PS-Crime Branch, New Delhi and accused Sharjeel Imam was arrested in the case. You had filed the Vakalatnama as counsel to the accused Sharjeel Imam in the present case. Now, Section 13 of Unlawful Activities (Prevention) Act has been added in the case and a request is being made in Court u/s Unlawful Activities (Prevention) Act on 25.04.2020.*
> *You, being the counsel to the accused Sharjeel Imam, are requested to appear in the court of Shri Gurvinder Pal Singh, Learned District Judge (Commercial Court)-02, Patiala House Court, New Delhi on 25.04.2020 at 11:00 AM for the same.*
> *In case any assistance (curfew pass) is required, Kindly intimate at one.*
> *Regards…"*

5. On April 25, 2020 (Annexure P-7), a request was made by the IO to the APP to make a request to the Court to extend the period of investigation for further 90 days to conclude the investigation. At 10.50 AM on April 25, 2020, the counsel for the petitioner has in response to the whatsapp message of Sh. Vijay Kumar, IO has stated as under:

> *"Dear Mr. Vijay Kumar, it is in reference to the application u/a 43 of the Unlawful Activities Prevention Act purported to be filed by you qua Sharjeel Imam in FIR no. 22/2020 PS Crime Branch. Until the Ld. Court issues notice to the accused on the said application, I cannot appear for him as I have no instructions from in this regard."*

6. The APP on duty on April 25, 2020 (page 10 of the supplementary report) filed an application / report before the Court of Sh. Gurvinder Pal Singh, Roster Judge, Patiala House Courts, New Delhi with a prayer to the Court, in view of provision made under Section 43 of UAPA, to extend the period of investigation for further 90 days. It is on this application / report, that the impugned order has been passed on April 25, 2020.

7. That on April 29, 2020, the petitioner filed an application under Section 167(2) Cr.PC for statutory bail. The said application was rejected on May 04, 2020 on the ground that vide order dated April 25, 2020, the time period for completing the investigation has been extended.

SUBMISSIONS ON BEHALF OF THE PETITIONER.

8. Ms. Rebecca John, learned Sr. Counsel for the petitioner stated, the impugned order under Section 43D(2)(b) UAPA thereby extending the period of detention of the Petitioner is bad for the following reasons:

a) Notice of the report/application submitted by the Ld. APP under Section 43D(2)(b) was not issued by the Court to the petitioner, contrary to mandatory requirement of Section 43D(2)(b). She stated (i) in ***Hitendra Vishnu***

Thakur v. State of Maharashtra", (1994) 4 SCC 602 it is held, when a report is submitted by the public prosecutor to the Designated Court for grant of extension under 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. (ii) Information given by the investigating agency to the counsel for the Petitioner, that the investigating agency intends to move an application under Section 43 UAPA, is not a substitute for a notice issued by the Court on an application/report filed by the Ld. APP, seeking extension of time for investigation.

9. According to Ms. John, The IO had given the said information to the counsel on April 24, 2020 and had moved the application before the Ld. APP only on April 25, 2020, who had thereafter filed his application/report before the Court on April 25, 2020. Therefore, even till April 25, 2020, there was no occasion for the Ld. APP to apply his mind to the facts and materials of the case, and form an independent opinion, if further extension of the period of detention of the petitioner was required. The Ld. APP was well within his rights to have refused to move such an application before the Court. The investigating agency could not have had assumed on April 24, 2020 itself, that the Ld. APP would mechanically prepare a report under Section 43D, just because it intended to move an application in this regard. Further, it could not have been

assumed by the investigating agency that the Court would dispose of the said application on April 25, 2020 itself, as the Court could have refused to even issue notice on the said application, if it had deemed such application and report to be prima facie lacking in satisfactory material particulars. Therefore, the *"information"* given by the IO to the counsel for the Petitioner, was premature and unsustainable in law.

10. She stated, during the course of arguments, the respondent conceded that Ld. ASJ in Patiala House Courts has issued notices to counsels through email for consideration of applications/reports, under Section 43D(2)(b) of the UAPA in the ongoing investigation in riot cases. According to her following table will demonstrate how the requirement of law for *"notice"* to the petitioner has been flouted in the present case:

Standard in Law	Facts in the Present case
Notice	Information
That the Report of the Prosecutor for extension is being considered by the court	That an application report will be filed, even before moving an application before the Public prosecutor
on the valid Report of the Prosecutor under Section 43D(2)(b) UAPA	Of the intention of the Investigating agency to move an application under S.43 UAPA
By the Court	By the Investigating Officer
To the Accused	To the counsel for the

through production or to the Accused/Counsel through Court issued Notice	Accused, without any effort to produce the accused, as a whatsapp message

11. She stated the failure to issue notice to the petitioner or seek his production from Assam or conduct proceedings through video conferencing has resulted in grave miscarriage of justice as the liberty of the petitioner has been taken away in a prejudicial manner.

12. It was her submission that even the requirement of production was not fulfilled (as held in ***Sanjay Dutt vs. State (1994) 5 SCC 410***). While COVID-19 lockdown could be a reason for physical non-production but, given that the Assam Jail has video conferencing, there is no reason that is forthcoming for non-production through video conferencing.

13. This non-production is also in violation of the mandatory recourse to video conferencing during the nation-wide lockdown at the time of production of under-trials specified by the Supreme Court vide order dated March 23, 2020 in Suo Motu Writ Petition (C) No. 01/2020 titled *"In Re: Contagion of COVID 19 in Prisons*".

14. She relied on the decision of ***Hitendra Vishnu Thakur (supra)*** requiring the Court to issue notice to the accused to enable the accused to oppose the application for extension of custody, which has been consistently followed in the following judgments:

1. ***Devinderpal Singh v. Govt. of National Capital Territory of Delhi reported at (1996) 1 SCC 44***

2. ***Sanjay Kumar Kedia v. Narcotics Control Bureau, (2009) 17 SCC 631***

3. ***Mohd Maroof v State reported at 2015 SCC OnLine Del 9509***

15. According to her, even the judgements cited by the respondent such as (i) ***State of Maharashtra vs. Surendra Pundlik Gadling & Ors., (2019) 5 SCC 178*** relies on ***Hitendra Vishnu Thakur (supra)*** (ii) ***State v Shakul Hameed, (2019) 6 SCC 350*** demonstrates in paragraph 4 of the judgment that the accused therein was given an opportunity of hearing and also filed written arguments opposing the request for extension of custody and (iii) ***Sayed Shahid Yousuf vs. NIA, 2018 SCC Online Del 9329*** relies on ***Hitendra Vishnu Thakur (supra)***.

16. It was her submission, the impugned Order has been passed on the basis of a false representation by the Investigating Officer, who had wrongly stated in his application that the counsel for the Accused "refused" to appear. According to her the counsel for the petitioner had only stated that she would appear if *"notice"* is issued by the Court. In this regard, she has drawn my attention to Annexure P6, Page 71@72). She stated the first status report filed on June 4, 2020 claims at paragraph 9 that the Ld. Roster Judge passed the Impugned Order after *"verifying" "the WhatsApp message sent by Insp. Vijay Kumar to Advocate Surabhi Dhar as advance notice of the hearing."*

This description appears to be grossly misleading and contrary to the record as the Impugned Order does not record a verification of the WhatsApp message sent, and instead notes that the Investigating Officer submitted that on informing the counsel for the accused, she *"refused to appear"* and noted that this refusal to appear is mentioned in the bottom of the application moved by the investigating officer / ACP under Section 43D of the UAPA.

17. She stated, the Report/Application was filed on April 25, 2020, i.e., on the 88th day of the custody of the petitioner. No prejudice would have been caused to the respondent had the report/application been put up for consideration on April 27, 2020, i.e., on the 90th day (Monday), after issuance of notice by the Court, to the petitioner through video conferencing or through the Petitioner's counsel.

18. That apart, she stated the *"report"* of the APP under Section 43D(2)(b) does not satisfy the requirement of a report under the Section as it does not display independent application of mind of the APP. In this regard, she has stated the following:

> i. That the legislature and judgments of the Supreme Court as reiterated by this Court, have placed great value to the independent application of mind by the Public prosecutor, to the status of investigation and the compelling need for extension of the detention of the accused. [Reference to ***Hitendra Vishnu Thakur's*** case ***(supra)*** (para 23)].
>
> Mere reproduction of the application of the Investigating

Agency, and recording his *"satisfaction"* in a formal paragraph does not demonstrate application of mind.

ii. According to her in the present case, the report is identical to the application of the investigating agency, including all spelling and grammatical errors of words and sentences, with a change in heading and an additional line stating that the Prosecutor is satisfied, using the language of Section 43D. In this regard, she placed reliance on the judgment in the case of ***Paramjeet Singh Sawney v Dinesh Verma & Another. (1987) 33 DLT 161, 1987 SCC OnLine Del 274***, para 9).

iii. She stated in ***Sanjay Kumar Kedia (Supra),*** it is held that the report of the Public Prosecutor shall set out *"compelling"* reasons seeking extension of custody.

There are no compelling reasons for extension of custody as all the supposed material for investigation has been available with the respondent since the petitioner's police custody, and not enough seems to have been done since then and during the 56 days that the petitioner was in custody before lockdown was imposed.

19. According to her the following is relevant:

a. The only reason for inability to complete the investigation is that the COVID-19 Lockdown *"slowed down the pace of investigation"*. The pace of the investigation could have been slowed down by the lockdown only if the

Report of the APP showed satisfaction that the pace was at regular speed, in the 56 days of custody before the lockdown was imposed. In any event, the Supreme Court has recently held in ***S. Kasi v State through The Inspector of Police, Samaynallur Police Station, Madhurai District***. (***Criminal Appeal No. 452 of 2020*** that the lockdown for COVID-19 cannot be used to claim delay in investigation and deny accused his right to statutory bail.

b. The Report of the Public Prosecutor does not demonstrate whether efforts were made to interrogate the persons apparently yet to be interrogated, prior to the Lockdown, whether notices were sent to them, whether they expressed their inability to join investigation, if statements of witnesses were attempted to be remotely taken or if lockdown passes were offered to them as well, to join investigation.

She stated, Section 161 Cr.PC provides that statements of witnesses can be recorded even through audio-video electronic means, therefore in any event there was no impediment in interrogation of witnesses despite lockdown.

c. The witnesses to be examined appear to be residents of Delhi and the speeches themselves were available with the prosecution prior to the

registration of the FIR. Waiting for sanction or scientific labs / Facebook / Twitter etc. to respond can never be a ground for extension of custody.

iv. According to her, the present challenge to the impugned order is not on the merits of case, as it is neither the stage for doing so, nor does it affect the nature of challenge he is making presently.

However, according to her, the petitioner challenging the report and its findings in its entirety. Therefore, the submission of the respondent that the petitioner has not challenged the said report on merits, is misplaced and baseless.

20. According to Ms. John, invocation of Section 13 of the UAPA, and the request for extension of investigation on the 88th day of custody in an FIR that was only under IPC offences, has been done only with a view to circumvent the rights of the petitioner under Section 167 (2) Cr.PC, and is therefore mala fide for the following reasons:

i. The investigating agency moved an application under Section 43D(2)(b) on April 25, 2020 addressed to the APP. The reason for invocation of the UAPA is given by saying that the alleged speeches of the petitioner were *"carefully gone through"* and *"extracts of the speech clearly reflects that accused has committed, advised and incited commission of unlawful activity. Hence Section 13*

UAPA was added in the case." Evidently, the alleged speeches were available with the investigating agency at the time of the FIR and the transcripts have been available since at least February 3, 2020, as per the remand application of the respondent.

ii. The second status report of the respondent filed on June 23, 2020 admits at paragraph 17 that UAPA was invoked on the 88th day and justifies it by stating that invocation is the prerogative of the Investigating Agency. The petitioner is however challenging the invocation of UAPA on the 88th day, solely for the purpose of circumventing the statutory rights of the petitioner. The respondent has relied upon the alleged voice specimen report of the petitioner for invocation of UAPA on the 88th day, but has not indicated the date of receipt of such report, which would possibly contradict their ground for the last moment invocation of UAPA. She stated, the invocation of section 43D (2) proviso is not the norm but an exception. The Code of Criminal Procedure, does not permit keeping accused persons endlessly in custody. The statutory requirements of section 57, 167(1) and indeed 43D(2) is to complete investigations expeditiously and within the period of 90 days. The invocation of the proviso is in exceptional cases and cannot be routinised.

In the end, she presses for the relief as prayed for.

SUBMISSIONS ON BEHALF OF THE RESPONDENT.

21. Mr. Aman Lekhi, learned ASG appearing for the State would submit that petitioner is accused of offence relating to sedition, promoting enmity between groups on the ground of religion and indulging in unlawful activities to cause disaffection against India.

22. He stated, the submissions of Ms. John restricts the challenge to the following grounds: -

i. The Public Prosecutor in seeking extension of time acted mechanically without application of mind ignoring the legislative intent of not extending custody unreasonably.

ii. There were no *"compelling reasons"* for extension of the period of investigation.

iii. The application for extension was moved on the 88th day of the custody of the petitioner.

iv. The petitioner was not given notice of the Application under Section 43 D of the Unlawful Activity (Prevention) Act, 1967 ('UAPA', for short) and was not produced before the Court even through the medium of electronic video linkage.

23. According to him, Ms. John did not argue ground 'c' that the Report of the APP demonstrating independent application of mind *"was not available before the Ld. Roster Judge"* and that he had *"merely placed his signature along with the date, name and designation on the Application by ACP/SC/Crime"*. He stated that the Report of the APP is not only on record but has

been referred to and relied upon both in the impugned order and the Order dated May 4, 2020.

24. Mr. Lekhi submitted that Ms. John did not challenge the addition of Section 13 of the UAPA to the list of offences of which the petitioner is accused of nor did he dispute the right in the respondent to seek his police remand for further investigation into the said offence. Police remand could only have been taken in terms of the second proviso inserted under Section 43(D)(2)(b) and the petitioner did not argue that there was no cause or justification for requesting a change in custody of the petitioner. No effort was also made to indicate how any of the other reasons contained in the Report did not, in fact, justify the extension of investigation or detention of the petitioner.

25. On the plea of Ms. John that notice was not issued to the petitioner nor the petitioner was produced before Court, he stated the following:

a. Ms. John relied upon ***Hitendra Vishnu Thakur (supra)***, wherein the court has held that "notice should be issued to the accused before granting such an extension so that an accused may have the opportunity to oppose the extension on all legitimate and legal grounds available to him."

b. Ms. John did not cite the judgment of the Constitution Bench of the Supreme Court in ***Sanjay Dutt (supra)*** while making her submissions, dealing with it only in rejoinder and that too without any explanation as to

what ***Sanjay Dutt (supra)*** actually held. The arguments on behalf of petitioner are contrary to the clear declaration of law in the judgment.

c. The reason for the omission by the petitioner to cite ***Sanjay Dutt (supra)*** was the fact that the law relating to *"notice"* as declared in ***Hitendra Vishnu Thakur (supra)*** stands completely modified by the judgment in ***Sanjay Dutt (supra)***.

d. The Supreme Court in ***Sanjay Dutt (supra)***, accepting his counsel's submission that the requirement of notice contemplated by the decision in ***Hitendra Vishnu Thakur (supra)*** before granting the extension for completing the investigation is to mean *"mere production of the accused before the court and not a written notice to the accused giving reasons for seeking the extension requiring the accused to show cause against it"*. He stated, the Constitution Bench held in *para 53(2)(a)* that:-

> *"XXXX XXXX XXXX*
>
> *The requirement of such notice to the accused before granting 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 of completing the investigation is being considered, is alone sufficient for the purpose."*
>
> ***(emphasis supplied)***

e. The absence of the requirement to communicate reasons to the accused is clearly indicative of the policy of law to exclude the participation of the accused in the process of scrutiny of the said reasons to justify the extension of the period of investigation.

f. This also accords with the four conditions enunciated by the Supreme Court itself which *do not contemplate* conceding a right to contest to an accused as a valid precondition for an order of extension.

g. Consequently, the requirement in ***Hitendra Vishnu Thakur (supra)*** to concede to an accused an *"opportunity to oppose"* the extension is not available to him. The requirement of law is only that the accused is made aware of the factum of extension. This Court in the case of ***Syed Shahid Yousuf vs. NIA; 2018 SCC OnLine Del 9329*** at para 42 held that at the stage of extension of time for completion of investigation or extension of the period of detention, the Appellant cannot ask to see the reports of the PP. Those reports, are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation.

h. In any event, the requirements of natural justice are satisfied through provision for a post-decisional hearing as in the case of these proceedings before this Court wherein it is open to the petitioner to demonstrate that the conditions of Section 43D of UAPA are not

satisfied. The requirements of natural justice referred to in ***Hitendra Vishnu Thakur (supra)*** stand modified in ***Sanjay Dutt (supra)***.

26. Mr. Lekhi stated, admittedly, the Supreme Court did not deal with consequence of non-production of the accused. The reason for the same is obvious as in such situations Chapter XXXV of the Code will be attracted. The default does not render proceedings void under Section 461. And under Section 465 of the Code no order is liable to be reversed or altered on account of any error or irregularity *"unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby."* As the Supreme Court has itself has held in ***Willy (William) Slaney vs. The State of M.P. 1955 (2) SCR 1140*** **at *pg. 1153*** that where *"it may be possible to show that having regard to all that occurred no prejudice was occasioned or there was no reasonable probability of prejudice"*, the irregularity will not invalidate the order.

27. He stated, the arguments on behalf of the petitioner apart from simply stating that the petitioner was not produced *do not in any way state how the omission resulted in "failure of justice… in fact"***.** The mere fact that the period of custody stood extended to 180 days cannot be cited as prejudice as the facts of the case clearly demonstrate that the continued detention of the petitioner is justified in law.

28. Moreover, *"failure of justice"* is neither pleaded nor argued despite the requirement of law that the same must be established *"in fact"*. The mere failure to produce the petitioner

cannot vitiate the order extending the period of investigation. Despite the said infraction, the continued detention of the petitioner is justified and no prejudice is caused by his continued incarceration.

29. Mr. Lekhi stated, the judgments cited by Ms. John, i.e., ***Sanjay Kumar Kedia (supra)*** and ***Mohd. Maroof (supra)*** do not refer to the Constitution Bench judgment of ***Sanjay Dutt (supra)*** and the reliance on the facts of ***Shakul Hameed* (supra)**, (*para 4 of the judgment*) to argue that the *"spirit of* ***Hitender Vishnu Thakur*** *is alive"* does violence to not only the doctrine of precedent as the Constitution Bench has overruled ***Hitendera Vishnu Thakur (supra)*** on this issue.

30. He further stated that Ms. John while relying upon ***Devinderpal Singh (supra)*** ignored *para 15* of the judgment, which noticing both ***Sanjay Dutt (supra)*** and ***Hitendra Vishnu Thakur (supra)*** clearly held that written notice to the accused is not required and *"informing him that the question of extension for completing the period of investigation was being considered would be sufficient notice to the accused."* Insofar as reliance on para 16 is concerned, the same is misconceived because in the said case there was no report of the APP. The report of the APP is both a statutory requirement and is one of the four conditions declared by the Supreme Court for a proper exercise of power under section 43D.

31. Additionally, he stated that ***Devinderpal Singh (supra)*** cannot be relied upon to suggest that on non-production, the

order under Section 43D of UAPA stands vitiated. As already stated, this submission ignored Chapter XXXV of the Code.

32. He stated, the Supreme Court in the case of ***Ramesh Kumar Singh vs. State of Bihar 1987 (Supp) SCC 335*** has clearly held that non-production of the accused at the time of his remand will not render the detention illegal.

33. According to Mr. Lekhi, even otherwise, intimation of the proposed hearing was sent to the petitioner's counsel. This intimation has been described by the petitioner as *"notice"*. The description is misleading as the Counsel was only being informed of the proceeding for extension of the period of investigation to be taken the following day.

a. Admittedly, the counsel to whom the intimation was given is the counsel for the petitioner before this Court holding a vakalatnama from him since February, 2020.

b. The said counsel did not, when intimated of the hearing, inform the investigator that she would *not* appear or that she *did not have* any instructions.

c. It was only on the following day i.e. February 25, 2020, barely a few minutes before the hearing that the counsel intimated that she will not appear.

d. The petition does not state when the counsel for the petitioner actually received instructions and on the contrary raises the grievance that she did not receive any intimation from the investigating agency about the application under Section 43 of the UAPA moved before the Court and proceeds to state that she

thereafter inspected the file to ascertain what had happened.

e. Implicit in this conduct is the existence of the standing instructions to the petitioner's counsel to appear for him in these proceedings. Nowhere does the counsel states that she received fresh instructions from the client after receiving intimation from the investigating officer. In other words, the alleged want of instructions is but a rouse and can clearly be seen as a stratagem to fault the impugned order.

f. The first status report clearly (dated June 2, 2020) stated that the call was made to the counsel, which lasted for 1 minute and 12 seconds AND THERE IS NO DENIAL OF THIS FACT IN THE REPLY FILED TO THE STATUS REPORT. The counsel was also offered the facility of a curfew pass to enable her appearance, intimated both the date and time of hearing and could have appeared before the Court to make the very plea of want of instructions, which she is now raising before this Court. It is also apparent, that there was nothing sinister in what was undertaken by the investigating agency and there was no attempt to hide facts or to conceal the relevant court proceedings.

g. He stated that the petitioner would have been informed of the Application to seek extension of period of investigation. This is also borne out of the fact that the petition deliberately does not state when the petitioner

was in-fact informed and it is implicit in the bare reading of the petition that the petitioner was never in the dark about the proposed extension. In any event, as has already been submitted as there was cause for extension of period of investigation, the continued detention is justified and no prejudice is suffered.

h. In fact, the "right to counsel" is part of a genuinely fair adversarial proceeding and the availability of a counsel learned in law is part of the reform of criminal procedure, which followed from the Treason Act, 1695 and the counsel who was intimated was no stranger to the accused but the very counsel through whom he is now appearing before this Court. In other words, a counsel was not forced upon the petitioner against his will. If it is the case of the petitioner's counsel that they have a right to contest the reasons for extension of the period of investigation, there is no plausible explanation for her deliberate absence in the proceedings, except to use this absence as a ground to challenge the impugned order.

34. On the application / report under Proviso to Section 43D (2) (b) / of UAPA that it does not satisfy the requirement of a report and also does not show the application of mind, Mr. Lekhi submitted that the Supreme Court in ***State vs. Shakul Hameed (supra)*** declared that the ingredients for extension under Section 43(D)(2)(b) are: -

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

(2) A Report to be submitted by the Public Prosecutor;

(3) The said Report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days;

(4) Satisfaction of the court in respect of the Report of the Public Prosecutor.

35. He stated the statutory ingredients to invoke the proviso to Section 43D (2) (b) are comprehensively satisfied in the following manner:

a. The Public Prosecutor stated: *"However investigation wrt following points is still pending and required time to complete the same".* This satisfies the first requirement.

b. The Report of the Public Prosecutor is at *pg. 10-13*of the Supplementary Status Report filed before this Court. This satisfy the *second requirement*. The Report describes itself as *"Application and report u/s 43D(2)(b)".* Mr. Lekhi relied on the judgment of ***Hitendra Vishnu Thakur vs. State of Maharashtra (supra)*** as relied upon by Ms. John herself wherein it is stated: -

> *"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…" *(emphasis supplied)*

c. In the instant case, the Report indicated both the progress of investigation and the specific reason for detention, stating that *"Section 13 of UAPA was added in the case"* for which reason it was stated that the petitioner was to be taken in police custody. He stated, it is not argued that Section 13 could not be added or that there was no occasion for taking the petitioner into police custody. Moreover, 13 other reasons were also set out. This satisfies the third requirement of proviso to Section 43 (2)(b) of UAPA. According to him, the justification can be seen from the following:-

i. That the report of the voice sample of the petitioner was received only on April 20, 2020 thus linking him to the speeches of December 2019 and January 2020 for which speeches he was accused of offences under IPC. Upon receipt of said report the occasion "to verify the role of the accused Sharjeel Imam and unearth the whole conspiracy" with regard to the riots after his speech and the strategy of bringing Delhi to a grinding halt through *chakka jams* all over the city as stated in reason 5 in the list of reasons, became clearly justified. This justification was the basis of

both Report of the APP and the impugned Order.

ii. It is also for this reason that reason 6 in the list of reasons becomes a justifiable ground for extension as it was after the petitioner's speech that roads were blocked, tents were erected and riots spread all over Delhi necessitating the need *"to establish the larger conspiracy and persons behind it"*.

iii. Much as in the same manner as the petitioner did not dispute the addition of Section 13 of the UAPA and the need for police remand, the petitioner did not even contest reasons 5 and 6, referred above. These reasons by themselves justify the need for extending period of investigation. The other reasons also exist necessitating further inquiry particularly in the context of addition of Section 13 of UAPA which, in fact, was the reason for Application seeking extension under UAPA. In the time of the first police remand the petitioner was *not* accused of an offence under UAPA.

iv. Admittedly, for much of the period after the arrest of the petitioner (January 28, 2020) there was a lockdown between March 25, 2020 to May 17, 2020. As a result of the

lockdown, *"the pace of investigation was seriously disrupted"*. The petitioner, however, relied upon the judgment of ***S Kasi (supra)***, to argue that this ground is not available to the respondents. The submission of the petitioner is again completely misconceived as not only the fact of the two cases are different but the applicable law is also not the same.

i. *Firstly*, the offences in the case of *S. Kasi (supra)* were not under UAPA.

ii. *Secondly*, in *S. Kasi* the period for filing the chargesheet had admittedly expired, which is *not* a fact in the present case.

iii. *Thirdly*, in *S. Kasi* the Supreme Court disapproved reliance by the High Court upon Order dated March 23, 2020 of the Supreme Court. According to the Supreme Court the High Court misconstrued the said order to hold that the provisions of the Code stood curtailed. The instant case is not based on order dated March 23, 2020. It is not a case of curtailment of the Code but application of the Code as modified by UAPA. The

impugned Order is clearly in-terms with Section 43D of the UAPA.

iv. *Fourthly*, there is no provision in the Code for extension of the period of investigation beyond what is prescribed under the first proviso of Section 167(2) of Code. Consequently, on completion of the period prescribed and failure to file the chargesheet, he would be entitled to statutory bail. However, under the UAPA, the law itself provides for extension of the period of investigation. The reason for extension in the instant case is not eclipsing of the period of limitation under the order of the Supreme Court dated March 23, 2020 [as was the case in ***S Kasi (supra)***] but the addition of the offence under the UAPA and the consequential need for further investigation, apart from relevant information from the forensic laboratory, which not only confirms the accusations originally made against the petitioner but assume relevance even for the investigation under the UAPA. The same is contained in the Report of the Prosecutor, showing due application of mind to the Application of the investigating officer, justifying the Court exercising statutory

power under section 43D of the UAPA to extend the period of investigation.

v. *Fifthly*, the principle of ***S Kasi (supra)*** would be relevant if the investigating agency had approached the Court *after the completion of 180 days available to it for completion of investigation.*

vi. It is only when the period prescribed for completing the investigation is expiring that an application for extension of period of investigation can possibly lie. The intent behind deferring an application for extension is the endeavor to complete the investigation within the original period. A prior moving of the application would be clearly premature and can invite comment from the Court that period if yet available for completion of investigation. Law does not specify any day for moving the application and as long as the application is moved prior to the expiry of period prescribed the same cannot be faulted on the ground that it was moved on the 80th or 88th day and not on 60th or 65th day. In any event, as already stated there is good cause for extension of period of investigation.

vii. "Compelling reasons" only mean good and sufficient cause for extension. It is

> intended to check a casual or off-hand approach in seeking extension. A bare look at the record suggests that the requisite conditions are sufficiently and satisfactorily attracted and there is concrete and definite reason for the extension. The petitioner apart from saying that "compelling reasons" should exists fails to demonstrate how the stated reasons did not in-fact meet the test.

36. According to Mr. Lekhi, satisfaction of the Court for extension of the period of investigation is clearly recorded in the impugned Order dated April 25, 2020. This satisfies the fourth and final requirement of Section 43 D of UAPA. In this regard, he has drawn my attention to the following: -

> *"In view of the submissions and the report of learned Public Prosecutor indicating the progress of investigation and the elicited specific reasons of detention of the accused beyond the period of 90 days the period of investigation for further 90 days i.e. totaling to 180 days is accordingly extended to conclude the investigation as prayed for."*
>
> *(emphasis supplied)*

37. He stated it is apparent from the above that the Court formed an opinion and the opinion so formed was predicated on: a) submissions and b) Report of the learned APP, which was duly examined to satisfy the requirements of law that: 1) what the progress of investigation was; 2) the specific reasons for detention of the accused beyond the period of 90 days; and 3)

the awareness that the extension was for the entire period of 180 days. He stated, the Court specifically records that Section 13 of UAPA *"was added to the case"*. The Court, therefore, was fully aware of all relevant circumstances for passing the order granting extension of period of investigation.

38. According to him, statutory bail can be granted only upon default of completion of investigation. There being cause for extension of period of investigation and the same being ordered, the occasion to seek statutory bail disappears altogether.

39. On the plea of Ms. John that the Report itself merely reproduced the Investigating Officer's application, Mr. Lekhi stated the petitioner disregards the fact that the investigation is the responsibility of the investigating agency which alone would know the progress of investigation as also the need to extend period for its completion. The APP cannot possibly alter this fact and must necessarily refer and rely upon the same.

40. Further, the Prosecutor has to see whether the professed requirement of the investigating agency is justified. This justification, admittedly, cannot be based only upon the Application of the Investigation Officer. According to him, in the instant case the Report was not based on the Application of the Investigating Officer alone. The progress of investigation is recorded in the case diary and the APP admittedly examined the same. In other words, the APP probed the stated requirement of the investigating agency before endorsing the said requirement by means of his Report. This is clearly apparent from the following paragraph in the Prosecutor's Report.

> *"I have gone through the application filed by the investigating officer under the provisions of UAPA. I have applied my mind and gone through the case file and investigation conducted so far. I am **satisfied** with the investigation conducted so far and there is no logic to file chargesheet without conducting investigation on the aforesaid points."*
> *(emphasis supplied)*

41. In support of his submission, he relied on the judgment of ***Hitendra Vishnu Thakur (supra)*** (*para 23 at p. 631*) as relied upon by Ms. John wherein the following has been held: -

> *"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…(H)is 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 investigation and considered grant of further time to complete the investigation necessary."* *(emphasis supplied)*

42. So, he says *there was an independent application of mind* which is disclosed on the face of the Report and the satisfaction of the Prosecutor that further time for investigation is necessary is clearly evident.

43. Mr. Lekhi also relied on ***State of Maharashtra vs. Surendra Pundlik Gadling (supra)*** to contend that the facts of the said case were not as good as in the instant case. In ***Gadling's case*** there was no report by the APP but two applications, by the Police (one by the Investigating Officer and the other by State of Maharashtra through the ACP, Pune city). The later application only carried an endorsement by the APP.

The issue before the Court was whether the said documents could be considered to be the report of the APP. The Court acknowledged the infirmities in the two reports, but held *(para 32)*: -

> *"A clarity in the form of a proper endorsement by the public prosecutor that he had perused the grounds in the earlier document submitted by the IO and, thus, was satisfied that a case had been made out for extension of time to complete the investigation would have obviated the controversy". (emphasis supplied)*

44. According to Mr. Lekhi in the instant case, there is not merely an endorsement by the APP but a report of the APP himself. This report, moreover, shows *due application of mind* to the statutory requirements it needs to address. He stated in ***Gadling (supra)***, it was held that, even without such a report by the APP, endorsement for on the IO's Application could suffice.

45. He stressed on the fact that in ***Gadling (supra)*** the Court clearly held that the question in each case "*is more of substance than form*." In the instant case the requirements of both form and substance are satisfied.

46. Further the reliance by Ms. John upon a line in the judgment that *"there are additional and expanded grounds set out in the second document"* is utterly misconceived. He stated this submission misses the basic point that the second document was not the report of the APP but was an upgraded version of the IOs application only filed through the ACP. As the application contained additional and expanded grounds which

were endorsed by the APP, the Court referring to the principle of substance and not form held that the requirements of Section 43D of UAPA are satisfied.

47. He stated, the judgment in ***Gadling (supra) cannot*** be read to mean that the report of The APP should have additional and expanded grounds, as is suggested by the counsel. Such a reading disregards the facts of the case, in the context of which alone the relied upon line can be read. The additional and expanded grounds mentioned in the case were grounds in the application by the investigating agency not in the Prosecutor's report which was altogether absent. The endorsement on the additional grounds as stated by the investigating agency was treated as Prosecutor's report.

48. He stated the APP in the instant case having filed a report which discloses due application of mind evidenced in his examining the case file before endorsing the application of the Investigating Officer, the legal requirement as contained both in ***Hitendra Vishnu Thakur (supra)*** which has been followed in ***Gadling (supra)*** is duly satisfied. It is conceded, correctly, that the Prosecutor can sit with the Investigating Officer to examine the case file. This is clearly an exercise to authenticate the reasons in the application and double check the same before any opinion is reached off their being borne out.

49. The examination clearly shows that the Prosecutor did not act perfunctorily nor in a cursory manner and showed instead a serious concern towards solemn responsibility vested upon him. The moving of the application on the same day by

itself can never be a ground of invalidity as long as requirements of law are satisfied and even the Supreme Court in ***Gadling (supra)*** did not attribute to the dispatch shown in making the application even a semblance of illegality.

50. He stated there is no infirmity whatsoever in the impugned order and no cause for interference by this Court. The justification for extension of period of investigation is clearly established and consequently the entitlement of statutory bail is eclipsed. In any event, the Order declining statutory bail (May 4, 2020) has not even been challenged despite the very grounds raised in this petition being raised and rejected by that Order. The petitioner has also correctly given up ground 'd' at *pg. 6* of the petition that *"extension of the judicial custody of the petitioner was not sought and hence he is entitled to statutory bail"*, for the reason that Supreme Court in ***Hitendra Vishnu Thakur (supra)*** has held that, the very consequence of the extension is keeping of the accused in further custody. If the custody of the petitioner is justified, there is no breach of Article 21 of the Constitution and resultantly no prejudice has been caused. The argument of prejudice was not even pleaded or presented during the course of hearing. Mere denial of liberty cannot give rise to legal grievance where deprivation is warranted.

Reasoning and Conclusion

51. Having heard the learned counsel for the parties and perused the record, at the outset I may state that the petitioner has not challenged the addition of Section 13 of UAPA to the

list of offences, he is accused of. Having said that, the first issue which arises for consideration is whether the impugned order is vitiated for want of notice from the Court to the petitioner on the application / report filed by the APP.

52. The plea of Ms. Rebecca John, learned Sr. Counsel appearing for the petitioner is that the notice / production of accused is not an empty formality, it must be to oppose the application / report moved by the APP by relying on the judgment of the Supreme Court in ***Hitendra Vishnu Thakur (Supra)***. On the other hand, Mr. Lekhi pleaded that in view of the judgment of the Supreme Court in ***Sanjay Dutt (Supra)***, requirement of notice contemplated in ***Hitendra Vishnu Thakur (Supra)*** is only production of the accused before the Court and not written notice giving reasons for seeking extension requiring the accused to show cause against it.

53. I agree with the submission of Mr. Lekhi. The Constitution Bench in ***Sanjay Dutt (Supra)*** in Sub-para 2(a) of Para 53 has stated as under:

> *"(2)(a) Section 20(4)(bb) of the TADA Act only requires 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."*

54. Ms. John's plea in this regard was that the said finding of the Supreme Court was on a concession made by the Counsel for the petitioner in that case. I am unable to agree with this plea of Ms. John for the simple reason that the Constitution Bench in ***Sanjay Dutt (Supra)*** has clearly held that the requirement of notice as propounded in ***Hitendra Vishnu Thakur (Supra)*** is not a written notice giving reasons but mere production informing that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose.

55. Ms. John had also relied upon the judgment of the Supreme Court in ***Devinderpal Singh (Supra)***, ***Sanjay Kumar Kedia (Supra)***, ***Mohd. Maroof (Supra)*** and even ***Surendra Pundlik Gadling and Ors. (Supra)*** and ***State v. Shakul Hameed (Supra)*** to reiterate her submission that the accused should be given an opportunity of hearing and also file written arguments opposing the requirement of extension of investigation. In this regard, I may state in ***Devinderpal Singh (Supra)*** the Supreme Court by referring to ***Sanjay Dutt (Supra)*** has in Para 15 has stated as under:

> *"15. The Constitution Bench in Sanjay Dutt's case (supra) did not express any contrary opinion in so far as the requirement of the report of the public prosecutor for grant of extension is*

> *concerned or on the effect of the absence of such a report under clause (bb) of Section 20(4), but observed that the 'notice' contemplated in the decision in Hitendra Vishnu Thakur's case before granting extension for completion of investigation is not to be construed as a "written notice" to the accused and that only the production of the accused at the time of consideration of the report of the public prosecutor for grant of extension of the period for completing the investigation was being considered would be sufficient notice to the accused."*

56. From the above, it is clear that in ***Devinderpal Singh (Supra),*** the Supreme court has reiterated what has been said by the Constitution Bench in ***Sanjay Dutt (Supra).***

57. In so far as the judgment in ***Sanjay Kumar Kedia (Supra)*** is concerned, the said judgment does not refer to the judgment in ***Sanjay Dutt (Supra),*** which settles the law, to mean that the notice to the accused must not be construed as a written notice but only production of the accused at the time of consideration of the report of the APP for grant of extension of investigation and informing the accused that the extension of the period for completing the investigation is under consideration. Similarly, in ***Mohd. Maroof (supra)*** there is no reference to the judgment of ***Sanjay Dutt (supra)***. Reliance on ***Surendra Pundlik Gadling and Ors.*** And ***Shakul Hameed (supra)*** by Ms. John shall not help the case of the petitioner as non-issuance of notice to the accused / purpose of issuance of notice were not the issues in these cases.

58. So, it follows that the plea of Ms. John that an accused has a right to oppose the application / report moved by the APP is not sustainable. This position of law is also seen from the Judgment of this Court in the case of ***Syed Shahid Yousuf v. NIA (Supra)*** wherein, in Para 42, this Court has held as under:

> *"42. As regards providing the Appellant with copies of the reports of the PP, the Court is inclined to agree with the learned ASG that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso to section 167 Cr PC, the Appellant cannot ask to see the reports of the PP. Those reports, like the case diary maintained under section 174 Cr PC, are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation."*

59. The further plea of Ms. John was that the information given by the IO to the counsel for the petitioner on April 24, 2020 that the investigating agency intends to move an application under Section 43 of the UAPA is not a substitute for a notice to be issued by the Court on an application / report filed by the APP.

60. To answer the submission, it is necessary to look / consider the messages exchanged by the IO and the counsel for the petitioner as reproduced in para 8 above. It is seen from the messages that it was only at 10.50 am, on April 25, 2020 that the counsel informed the IO in the manner depicted therein. It was represented that until notice is issued to the accused on the application, she cannot appear as she has no instructions.

61. There is no dispute that the counsel to whom the information was given had filed Vakalatnama on behalf of the petitioner before the Court below and was representing him in the proceedings since February, 2020, as is clear from the ordersheet dated February 12, 2020 (Annexure P5 to the petition). The very filing of the Vakalatnama suggests authority having been given to the counsel to represent the petitioner in the proceedings before the Court and to do all acts and things which may be necessary to be done for the progress and in the course of the prosecution of the case.

62. In fact, I notice, the Vakalatnama filed in these proceedings was also executed by the petitioner on February 18, 2020 while he was in custody in Tihar Jail in favour of the same counsel. On the strength of the information, the counsel could have presented herself before the Court only to know the outcome of the application / report, which may include, the Court on presentation of the application / report if not satisfied with the same, rejecting the same and not extending the time for investigation. The appearance of the counsel would have been a sufficient representation on behalf of the petitioner and this fact is also acknowledged by the counsel for the petitioner, as is seen in the table at para 10, where it is stated that notice to the accused through production or to the accused / counsel through Court is the standard in law. That apart, even this Court, in ***Mohd. Maroof (supra)*** by finding that notice has been issued by the Court to the counsels, and the accused could not be produced in the Court, has not found fault, in the order,

extending the time for investigation. So it follows, the appearance of the counsel for the petitioner being sufficient representation while considering application / report of the APP, whether it is on a notice issued by the Court or on an information from the Investigating Officer, is inconsequential.

63. The fact that the counsel of the petitioner was in the knowledge about the impending application / report seeking extension of time for completion of the investigation beyond 90 days and a written notice giving reasons is not the requirement of law, I find, there is a compliance of principles of natural justice. Even if notice was issued to the petitioner, he would have authorized his counsel to represent him only to know that an application / report being considered for extension of time for completion of investigation. The plea that notice could have been issued to the petitioner for his presence on April 27, 2020, which was the 90th day is not appealing, as the same would not have been required, had the counsel been present on April 25, 2020 and even otherwise, his presence even through video conferencing would be for him to only know about the filing of the application / report for extension of time for completing the investigation is being considered. In that sense no prejudice has been caused to the petitioner in the facts.

64. The plea of Ms. John that the information given by the IO was even before the application is filed with the APP to enable him to apply his mind and the investigating agency could not have assumed on April 24, 2020 itself, that the APP would mechanically prepare a report for consideration of the Court and

as such, information cannot be considered as a notice, is also not appealing as the plea is an afterthought, as the counsel was not privy to such information till she inspected the file on April 27, 2020, (as stated by her) or till the filing of the status report in these proceedings. The plea is primarily to find fault with the impugned order, which according to me is not vitiated on the ground of want of notice by the Court.

65. The reliance placed by Ms. John on the judgment of ***Devinderpal Singh (Supra)*** is misplaced as it is distinguishable on facts, inasmuch as in that case there was (i) no report of the APP and (2) the accused was not produced. Whereas, in this case there is a report of the APP and despite notifying the counsel was not present.

66. In so far as the plea of Ms. John that the report of APP under Section 43D (2) (b) does not satisfy the requirement of a report under that Section is concerned as held by the Supreme court in ***State v. Shakul Hameed Yusuf (Supra)***, the ingredients for extension of investigation under Section 43D(2)(b) are the following:

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

(2) A report to be submitted by the Public Prosecutor;

(3) The said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days;

(4) Satisfaction of the court in respect of the report of the APP.

67. In the case in hand, the APP in the application / report has stated *"following points is still pending and required time to complete the same"*. The application / report also states "since 24/03/2020 due to global COVID-19 Pandemic a lockdown has been imposed due to which the pace of investigation was seriously disrupted".

68. The aforesaid clearly depicts the reasons for not completing the investigation in 90 days. Further, the document at Page 10 of the supplementary status report filed in the petition is with the subject matter *"application and report for under Section 43 D (2)(b). The unlawful activities (prevention) Act, 1967, extension of the period of investigation for further 90 days."* The same was filed in the court of Sh. Gurvinder Pal Singh who passed the impugned order. So, it follows a report was submitted by the APP.

69. The application / report also discloses the progress made in the investigation and the reasons for extending the investigation beyond a period of 90 days. The relevant part is reproduced as under:-

"XXXX XXXX XXXX"

During the course of investigation, accused Sharjeel Imam was arrested from Jahanabad, Bihar on 28.01.2020, produced in the court and transit remand was obtained. On 29.01.2020, accused Sharjeel §mam was produced in the court of Shri Purshotam Pathak, Learned Chief Metropolitan

Magistrate, Patiala House Court, New Delhi and police custody of accused was sought.

During the course of investigation, accused Sharjeel Imam had disclosed that on 13.12.2019 and 16.01.2020 he had delivered the alleged speeches at lamia, Delhi and Aligarh Muslim University, Aligarh, Delhi respectively. He further disclosed that he along with his associates of JNU had created a WhatsApp group in the name 'Muslim students of JNU'. He through the group united and mobilized Muslim students of JNU and had convinced them prepared to spread message among other Muslims that the Bills are anti-Muslim and biased in nature. He also started spreading information that government wants to keep Muslims in 'Detention center' under the garts of CAB and NRC. His JNU friends were the core member of the group. Accused Sharjeel Imam and these core group members arranged money to get printed the pamphlets to be distributed in Muslim localities to mobilise them against CAB/NRC. Thereafter, they prepared and got printed the pamphlets in Hindi and Urdu. Accused Sharjeel lmam had himself got printed the said pamphlets from a shop situated at Munirka Village. Later, these pamphlets were distributed by them in various Mosques in Delhi and its adjoining area. Apart from these two pamphlets, one more pamphlet was distributed by accused Sharjeel Imam urging them to join the Jamia Protest on 13.12.2019. During the course of investigation, these three pamphlets were later recovered from his e-mail account.

During the course of investigation, the alleged video of his speech dated 13.12.2019 delivered in Jamia, Delhi downloaded from his Google drive and transcript of the same was prepared. Another alleged video of speech dated 16.01.2020 was also downloaded from the Facebook page of 'The

Companion' and transcript of the speech was also prepared.

During the course of investigation, letters were also sent to Facebook, Twitter to obtain certify copy of videos. Letter was also sent to Cert-In to provide data in respect of the alleged videos. Desktop, Laptop and mobile phone of accused Sharjeel Imam were also seized and sent to FSL, Rohini, Delhi to extract data from it.

Voice sample of accused Sharjeel Imam has also been obtained to compare the voice of accused with the voice in alleged videos. Later on, the voice sample and the alleged videos were sent to CFSL, CBI Complex, CGO Complex, Lodhi road, New Delhi for analysis and comparison of voice and results have been obtained which is 'positive'.

During the course of Investigation, CDR analysis of mobile number of accused Sharjeel Imam i.e. 8826929526 was also done and the movement of accused Sharjeel Imam as per his disclosure statement is very much corroborated.

During the course of investigation, the speeches delivered by the accused were carefully gone through and it emerged that the accused is indulging in exhortation of a particular religious community on religious lines, invoking religion. It also emerges that in such exhortation by his words spoken in the congregation, the accused incited the members of the group comprised of a particular religious community as also the individuals assembled to hear him, calling upon them to disrupt the sovereignty of India. India's sovereignty is secured by its Constitution and any attempt to generate disaffection towards the Constitution is equivalent to disrupting the sovereignty of India. As per speech dated 13.12.2019, Constitution is worthy of rejection, being fascist document. only to be used for taking benefit in court and wherever it may

beneficial. The innuendo is that on all such occasion where the Constitution is not securing any benefit to a particular religious community, it is liable to be ignored and rejected. Accused, in his speech further exhorts the audience of a particular religious community to disrupt the day to day life in all such cities where Muslims are in substantial number, in an organized manner. The extracts of the speech clearly reflects that accused has committed, advised and incited the commission of unlawful activity. Hence, Sec-13 UAPA was added in the case. However, investigation w.r.t. following points is still pending and required time to complete the same:-

1. Since, 24/03/20 due to Global COVID-19 pandemic a lock down has been imposed, due to which the pace of investigation was seriously disrupted.

2. Members of WhatsApp group 'Muslim students of JNU' are to be interrogated.

3. The person who had provided his accounts to arrange for money to get printed the pamphlets is yet to be interrogated.

4. One Arshad Warsi from Jamia is required to be interrogated in depth to establish link, if any, between 'Muslim students of JNU' (Whatsapp group) and students of Jamia.

5. It is pertinent to mention here that there was series of riots in Delhi after the speech of 13.12.2019 delivered by accused Sharjeel Imam at Jamia, Delhi and the same strategy (road block/Chakka lam as suggested by accused} was followed. To verify the role of accused Sharjeel Imam and to unearth the whole conspiracy, if any.

6. After the speech of 16.01.2020, many protest sites started emerging in city, roads were blocked and tents were erected to sit in to protest against

CAA/NRC. These sites were later on become the initiation of riots in Delhi in February, 2020. To establish the larger conspiracy and persons behind it.

7. Friends of accused Sharjeel lmam from Jamia are to be interrogated.

8. Person who initially videoed the speech at Jamia is yet to identify.

9. Result in respect of hard disk of desktop, laptop and the mobile phone is yet to be received from FSL, Rohini, Delhi and analysed.

10. Part of result in respect of the alleged videos is yet to be received from CFSL, CBL Lodhi road, Delhi.

11. Reply from Facebook, Twitter and Cert-In is yet to be received and analysed.

12. Prosecution sanctions u/s 196 Cr.P.C. is waiting.

13. Prosecution sanction u/s 45 UAPA is to be obtained.

14. Accused shall be again taken on police custody remand for collaboration of facts.

I have gone through the application filed by the Investigating Officer under the provision of UAPA. I have applied my mind and gone through the case file and; investigation conducted so far. I am satisfied with the investigation conducted so far and there is no logic to file the charge sheet without conducting investigation on the aforesaid points.

In view of provision made under section 43 of UAPA, extension for the period of further 90 days may be given to investigating agency to conclude the investigation."

70. That apart, I also find that the Court while granting the extension of investigation has satisfied itself with the application / report of the APP about the reasons / grounds on which the extension of time for doing investigation was sought. The same is clear from the following Para of the impugned order:

> *"In terms of UAPA, the time available with the investigating agency for completion of investigation is 90 days. Section 43-D(2) of UAPA inter alia provided that if it is not possible to complete the investigation within the aforesaid period of 90 days, then upon 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 90 days, after satisfaction, the court can extend the period for investigation to 180 days. It has been submitted that due to Global COVID-19 Pandemic, a lock down has been imposed since 24.03.2020 due to which the pace of investigation was seriously disrupted; members of Whats App group "Muslim Students of JNU" are to be interrogated; the persons who provide their accounts to arrange for money to get printed the pamphlets, are yet to be interrogated; friends of accused Sharjeel Imam are also to be interrogated; person who initially videoed the speech at Jamia is yet to be identified; result in respect of hard disk of desktop, laptop and the mobile phone is yet to be received from FSL, Rohini, Delhi and analysed; result in respect of the alleged videos is yet to be received from CFSL, CBI, Lodhi Road, New Delhi; reply from Facebook, Twitter and Cert-In is yet to be received and analysed; requisite sanctions are also to be obtained; conspiracy is to be unearthed.*

> *In view of the submissions and the report of learned Public Prosecutor indicating the progress of investigation and the elicited specific reasons for detention of the accused beyond the period of 90 days, the period of investigation for further 90 days i.e., totalling to 180 days is accordingly extended to conclude the investigation, as prayed for.*
>
> *The application is disposed of accordingly.*
>
> *Copy of the order be given to IO and the learned Public Prosecutor."*

71. Now I come to the plea of Ms. John that the application / report itself does not show independent application of mind. She qualifies her submission by stating (1) the report was identical to the application of the investigating authority including all spellings and grammatical errors of words and sentences with a change in heading and an additional line stating that the prosecution is satisfied, using the language of Section 43D. (2) Mere reproduction of the application of the investigating authority and recording his satisfaction does not demonstrate application of mind. This submission of Ms. John is also not appealing. On the application of the IO, the APP has finalized the application / report under his signatures (page 10 of the supplementary report) by saying the following:-

> *"I have gone through the application filed by the Investigating Officer under the Provision of UAPA. I have applied my mind and gone through the case file and investigation conducted so far. I am satisfied with the investigation conducted so far and there is no logic to file the*

> *chargesheet without conducting investigation on the aforesaid points.*
>
> *In view of the provision made under Section 43 of the UAPA extension for the period of further 90 days may be given to the investigating agency to conclude the investigation."*

72. The aforesaid demonstrate application of mind by the APP by going through the case file and the investigation conducted till that time. In ***Hitendra Vishnu Thakur (Supra)***, the Supreme Court in Para 23 has held as under:

> *"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…(H)is 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 investigation and considered grant of further time to complete the investigation necessary."*
>
> *(emphasis supplied)*

73. Mr. Lekhi is justified by relying upon the judgment of the Supreme Court in ***State of Maharashtra v. Surendra Pundlik Gadling (Supra)*** to contend that the facts in this case are better than the facts in Gadling's case inasmuch as there was no report of the APP but two applications by the police and it is the latter application which had been endorsed by the APP, still the court upheld such a report.

74. The plea of Ms. John that in ***Gadling's case (supra)*** there are additional and expanded grounds in the second document is also not appealing as the second document was still an

application by the police and not a report by the APP. In any case, the Supreme Court has by noting the additional and expanded grounds which were endorsed by the APP held that it is the substance and not form which matters. It finally went on to hold that the report satisfies the requirement of Section 43 of UAPA.

75. In this case, it is not an endorsement by the APP, but an application / report was filed by the APP after going through the case file and investigation conducted so far showing independent application of mind. Insofar as reliance placed by Ms. John on the judgment of this Court in ***Paramjeet Singh Sawhney (supra)*** in support of her submission that reproduction of language of Section 43(D) of UAPA shows non application of mind is totally misplaced. In the said judgment the facts are that prosecution of the petitioner as a 9 year old boy when he was minor and not in charge of the firm was initiated. Despite that the respondent in the complaint claim that he was in charge of the firm and mechanically reproduced in the complaint the wordings of Section 278B. It was in that context, the Court held that there was no application of mind. Suffice would it be to state the said judgment has no applicability to the facts of this case.

76. In so far as the plea of Ms. John that there were no compelling reasons for extension of custody as all the material for investigation was available with the respondent since the petitioner's police custody and not enough seems to have been done since then i.e. for 56 days before the lockdown was

imposed is also not appealing. In this regard, the primary submissions of Ms. John were (i) the pace of investigation could have been slowed down because of COVID-19 if the pace was at regular speed in 56 days of custody; (ii) in view of the judgment of the Supreme Court in the case of ***S. Kasi (supra)***, COVID-19 cannot be a ground to claim delay in investigation and deny the accused the right of statutory bail; (iii) the report of the APP does not demonstrate whether efforts were made to interrogate the persons apparently yet to be interrogated; steps taken to call them to join the investigation etc; (iv) as per Section 161 Cr.PC statement of witnesses can be recorded through video conferencing; (v) the witnesses to be examined appears to be the residents of Delhi and speeches were available before the registration of FIR.

77. On the other hand, the submissions of Mr. Lekhi were (i) that the report of the voice sample of the petitioner was received only on April 20, 2020 and thus linking him to the speeches of December, 2019 and January, 2020, (ii) upon receipt of the report the occasion to verify the role of the petitioner and unearth the whole conspiracy with regard to riots after his speech which brought Delhi to grinding halt became clearly justified; (iii) the petitioner did not dispute the addition of Section 13 of UAPA and the need for police remand and he also did not contest the reasons stated above, which by themselves justify the need for extending the period of investigation; (iv) for much of the period after the arrest of the petitioner, there was a lockdown between March 25, 2020 to May 17, 2020. As

a result, the pace of the investigation was disrupted. So, there are compelling reasons seeking extension of the investigation beyond 90 days.

78. I have in para 69, above reproduced the nature of investigation carried out till the application / report was filed and the points still pending to be carried out by the investigating authority, on perusal thereof, the grounds being justifiable / good, the decision to extend the period for carrying out investigation cannot be faulted.

79. The reliance placed by Ms. John on the judgment of ***S. Kasi (supra)*** is not applicable to the facts of this case. In the said case, the Supreme Court was concerned with an impugned order of the High Court which by referring to an order of the Supreme Court dated March 23, 2020 in a Suo Moto petition No.3/2020 inter alia held that the Supreme Court having eclipsed all the provisions prescribing period of limitation until further orders, which includes the time prescribed for completing the investigation, denied the bail to the appellant. The said issue is at variance with the issue in this case, which is primarily for extension of time period for completing the investigation under UAPA and because of the impugned order, the period of filing of charge sheet has been extended. In fact, ***S. Kasi's case*** is governed by provisions of Cr.PC and not UAPA. The judgment would be relevant if the prosecution does not file charge sheet within 180 days.

80. Insofar as the submission of Ms. John that the filing of the application / report on 88th day is clearly malafide only to

deny the statutory bail to the petitioner, is also not convincing. This I say so because the addition of Section 13 of UAPA to the offences has not been contested. The UAPA provides for extension of the period of investigation for a further period of 90 days i.e. totalling 180 days. Mr. Lekhi's submission was that the intent of the investigating authority is to complete the investigation in original time period. It is only, when the period prescribed for completing the investigation expiring that an application for extension of the period of investigation would lie and further moving the application / report much in advance would be clearly premature and the Court could comment that sufficient period is still available for completing the investigation and may reject the same. It is only when despite efforts, investigation could not be completed in time, that the investigating authority approached the Court for extension. In any case there is no bar in law for moving the application on the 88th day, are appealing.

81. On the plea of Ms. John that there have to be compelling reasons seeking extension of time for completing the investigation as held by the Supreme Court in the case of ***Sanjay Kumar Kedia (Supra)***, Mr. Lekhi is justified in contending the compelling reasons to mean good / sufficient reasons justifying the extension of the investigation beyond a period of 90 days. This Court has already held there are good / justifiable grounds for extending the investigation.

82. In view of my above conclusion, the present petition filed by the petitioner is devoid of merit and is as such dismissed.

V. KAMESWAR RAO, J

JULY 10, 2020*/jg*