

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.09.2020

+ **CRL.M.C. 1697/2020**

KHALID

.....Petitioner

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Bhavook Chauhan, Mr Rajat Kumar,
Mr Harsh Bora, Mr Praavita Kashyap and
Mr Tushar Yadav, Advocates.

For the Respondents : Mr Aman Lekhi, ASG with Mr Amit
Mahajan, CGSC and SPP Mr Rajat Nair,
SPP with Mr Ujjwal Sinha, Mr Shantnu
Shara, Mr Dhruv Pande, Mr Aniket Seth
and Mr Samarth Khanna, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 13.08.2020 passed by the learned Additional Sessions Judge, whereby the court allowed the respondent's application under Section 43D of the Unlawful Activities (Prevention) Act, 1967 (hereafter 'UAPA') and extended the period of investigation in FIR No. 59/2020 registered with PS Crime Branch, till

17.09.2020. The learned ASJ also extended the period of detention of the accused persons, including the petitioner, till the said date.

2. The petitioner contends that the impugned order violates the principles of natural justice as the petitioner was neither provided a copy of the application (cum report), which was allowed by virtue of the impugned order, nor afforded a meaningful opportunity to be heard in opposition of the said application. The petitioner contends that the same violates the petitioner's right under Article 21 of the Constitution of India.

3. The controversy in the present petition arises in the context of FIR No. 59/2020 under Section 147/148/149/120B of the Indian Penal Code, 1860 (IPC) registered with PS Crime Branch on 06.03.2020. The said FIR was registered by SI Arvind Kumar of Crime Branch, Delhi Police. He had reported that one of his informers had informed him that the riots which had taken place in Delhi on 23rd, 24th and 25th of February 2020, were a result of a pre-planned conspiracy. He alleged that the conspiracy for spreading these riots was hatched by one Umar Khalid, a student of Jawahar Lal Nehru University and his accomplices from different organizations. Umar Khalid had allegedly delivered hate speeches in different places. He had appealed to persons to come and obstruct public roads, in order to lead people to believe internationally that minorities in India were being oppressed. He alleged that as a part of the controversy, women and children were called to protest at different places in Delhi and weapons like firearms, petrol bomb, acid bottles were collected at Chand Bagh, Gokul Puri,

Shiv Vihar and other areas. It was alleged that responsibility for assembling the mobs from other outside areas was assigned to one Danish. Umar Khalid and Danish were the only two persons named in the FIR.

4. On 15.03.2020, the Investigating Agency added offences under Section 120B read with Sections 302, 307, 124A, 153A, 186, 353, 395, 427, 435, 436, 452, 454, 109 and 114 of the IPC; Sections 3 and 4 of the Prevention of Damage of Public Property Act, 1984; and Sections 25 and 27 of the Arms Act, 1959. Thereafter, on 19.04.2020, offences under Sections 13/16/17 & 18 of UAPA were also included. The petitioner was arrested on 21.03.2020 and he was remanded to police custody for six days, that is, till 27.03.2020. Thereafter, the petitioner's police custody was extended from time to time till 05.04.2020. He was produced before the learned Duty Magistrate on 04.04.2020 and was remanded to judicial custody till 19.04.2020. The petitioner's judicial custody was extended from time to time till 30.05.2020.

5. On 26.05.2020, the respondent filed an application under Section 43D of UAPA seeking extension of custody of the petitioner and one other accused (Ishrat Jahan @ Pinki) till 14.06.2020. The respondent also sought judicial custody of three other accused persons for a further period of thirty days. On 30.05.2020, the learned Court allowed the State's application, *inter alia*, seeking extension of judicial custody of the petitioner till 14.06.2020.

6. Thereafter, on 08.06.2020, the State filed an application in terms of the proviso to Section 167(2) of Cr.PC, as inserted by virtue of Section 43D(2) of UAPA, seeking extension of time for completion of investigation till 17.09.2020. The said application was partly allowed in terms of the order dated 15.06.2020 and the time for completing the investigation was extended till 14.08.2020. On that day, the State also sought extension of the judicial custody of the petitioner and the Court extended the term of judicial custody of the petitioner till 25.06.2020. On 25.06.2020, the Court further extended the same till 24.07.2020.

7. On 10.08.2020, the Investigating Agency once again moved an application seeking extension of time for concluding the investigation for a further period till 17.09.2020. However, the copy of the said application was not provided to the petitioner as according to the State, the same was not necessary. By an order dated 10.08.2020, the learned Court issued notice to the petitioner for a hearing scheduled on 11.08.2020, without any directions that the copy of the application be supplied to the petitioner.

8. On 11.08.2020, arguments on the said application were partly heard. The petitioner and other accused insisted that copy of the application be supplied to them so that they could oppose the same. After hearing the petitioner and other accused, the Court adjourned the matter to 13.08.2020 for further arguments. The Court also directed the accused to furnish their written submissions along with relevant case laws relied upon by them. In compliance with the said order, the

petitioner filed a written synopsis of the arguments and opposed the said application seeking extension of time for completion of investigation and for seeking extension of the petitioner's custody. The said application was allowed by the order dated 13.08.2020, which is impugned herein.

9. It was contended on behalf of the petitioner and other co-accused that they are entitled to a copy of the application filed by the respondent seeking extension of time for completion of the investigation and for extending the period of judicial custody so that they can oppose the same. The said contention was not accepted by the learned ASJ. The Court held that in terms of the decision of this Court in ***Sharjeel Imam v. State of NCT of Delhi: 2020 SCC OnLine DEL 734***, it was not necessary that the accused be provided the application/report moved on behalf of the State for extension of time to complete the investigation as contemplated under the proviso to Section 167 of the Cr.PC as inserted by virtue of Section 43D of the UAPA.

10. The learned ASJ examined the application cum report submitted by the learned Special Public Prosecutor as well as the case diaries of the case and observed that specific reasons for seeking extension of time to complete the investigation and compelling reasons in respect of each accused for extension of their custody are borne out from the report and the case diaries. The Court further recorded its satisfaction that the prosecution has made out a case for extension of period of investigation and detention of accused persons and accordingly,

allowed the said application.

11. By the impugned order, the Court also rejected the contention that seeking further extension of time for completion of investigation amounted to review of the order dated 15.06.2020, whereby the learned Court had extended the time for completion of investigating till 14.08.2020.

12. Mr Chauhan, learned counsel appearing for the petitioner contended that the petitioner is entitled to a copy of the application seeking extension of time for completion of the investigation. He submitted that the learned ASJ had rejected the petitioner's request for a copy of the applications by referring to the decisions of this Court in ***Sharjeel Imam v. State: Crl. M.C. 1475/2020, decided on 10.07.2020***; ***Syed Maqbool v. NIA: Crl. A. 781/2013, decided on 05.08.2014*** and ***Syed Shahid Yusuf v. NIA: Crl. A. 426/2018, decided on 31.05.2018***. He contended that in none of these cases, a copy of the application was denied to the accused. He contended that in ***Sharjeel Imam*** (*supra*), the documents relied upon by the prosecution were, in fact, supplied to the accused and were part of the criminal miscellaneous petition. In that case, the arguments largely revolved around the question of issue of written notice to the accused.

13. Next, he contended that the petitioner had a right to be heard to oppose the extension of time for completion of the investigation as held by the Supreme Court in ***Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.: (1994) 4 SCC 602***. He contended that

in this case the learned Court has declined to provide such opportunity and has proceeded on the basis that the petitioner and other accused had no right to oppose the application seeking extension of time. He further submitted the said right to oppose an application for extension of time would not be meaningful if the grounds on which such extension was sought were not communicated to the accused. He submitted that in this view, it was essential for the prosecution to have supplied a copy of the application indicating the reasons why extension of time for completion of investigation is sought by the prosecution.

14. Mr Chauhan also relied upon the decisions in ***Devinderpal Singh v. Govt of National Capital Territory of Delhi: (1996) 1 SCC 44***; ***Syed Shahid Yusuf v. NIA: Crl. A. 426/2018, decided on 31.05.2018***; and ***Wajid Abdul Wahid Shaikh v. State of Maharashtra: (2014) ALL MR (Cri) 4278***.

15. Mr Aman Lekhi, learned ASG countered the aforesaid submissions. He stated that the issues raised in the present petition were squarely covered by the decision of a Coordinate Bench of this Court in ***Sharjeel Imam (supra)***. He submitted that in that case the Court had held that in view of the decision of the Supreme Court in ***Sanjay Dutt v. State through C.B.I. Bombay (II): (1994) 5 SCC 410***, there was no requirement of issuing any written notice and therefore, there was no reason to supply the application seeking extension of time for completion of the investigation or the report submitted by the Public Prosecutor. He submitted that given this view, the questions

raised by the petitioner in this petition were no longer *res integra*. He also submitted that the reliance placed by the petitioner on the decision of the Supreme Court in **Devinderpal** (*supra*) was misplaced. He contended that in that case, the Supreme Court had referred to the decision in **Hitendra Vishnu Thakur** (*supra*). However, since the decision in **Hitendra Vishnu Thakur** (*supra*) stood overruled by the Constitution Bench of the Supreme Court in **Sanjay Dutt** (*supra*), the decision in **Devinderpal Singh** (*supra*) was of no assistance to the petitioner.

16. Next, he submitted that the reliance placed by the petitioner on the decision in the case of **Syed Shahid Yusuf** (*supra*) was wholly misplaced as the said decision was not an authority for the proposition that the application seeking extension of time for completion of the investigation in terms of the proviso to Section 43D of the UAPA is required to be supplied to the accused. He submitted that the said issue did not arise in that case. He further stated that the reliance placed on the decision of the Bombay High Court in **Wajid Abdul Wahid Shaikh** (*supra*) was equally misplaced. He submitted that the said decision was rendered in the context of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) and was rendered in the backdrop of facts where the accused had refused to accept a copy of an application seeking extension of time for investigation. He further stated that in that case, the Court had not considered the decision of the Supreme Court in **Sanjay Dutt** (*supra*). He submitted that in any event, that decision could not be considered as an authority for the

proposition that a copy of the application and the report was required to be served on the accused as that was not an issue in that case.

17. Mr Lekhi earnestly contended that in **Sanjay Dutt** (*supra*), the Supreme Court had overruled the decision in **Hitendra Vishnu Thakur** (*supra*) insofar as the requirement of the accused to be afforded an opportunity to oppose the extension of time for completion of investigation is concerned. He submitted that the requirement was now limited to only ensuring that the accused is present in Court during the hearing. Mr Lekhi further submitted that the necessary ingredients for seeking extension of time for completion of the investigation are set out by the Supreme Court in **State v. Shakul Hameed: (2019) 6 SCC 350** and the said conditions were fully complied with in the present case. He also submitted that there was no requirement for furnishing a separate application for extension of time for completion of the investigation and the prosecutor could submit a consolidated application cum report, as has been held by the Supreme Court in **Hitendra Vishnu Thakur** (*supra*).

18. Lastly, Mr Lekhi contended that in the facts of the present case, the petitioner and other accused were provided full opportunity to be heard to oppose the application for extending the time for completion of the investigation. However, the petitioner and other accused had limited their arguments to insist that they be provided a copy of the application-cum-report of the Public Prosecutor in order to oppose the same. He also drew the attention of this Court to the written submissions filed on behalf of the petitioner before the learned ASJ

and contended that the same were limited to the sole question whether the petitioners were entitled to copy of the application and report.

Reasons and Conclusion

19. The two questions that are required to be addressed in this petition are: first, whether the accused has a right to be heard to oppose an application seeking extension of time for completion of investigation moved in terms of the proviso to Section 167 of the Code of Criminal Procedure, 1973 (Cr.PC) as inserted by virtue of Section 43D(2) of the UAPA; and second, if the answer to the aforesaid question is in the affirmative, whether the accused has a right to a copy of the application seeking extension of time for completion of the investigation and also the report submitted by the Public Prosecutor in terms of the proviso to Section 167 of the Cr.PC as inserted by virtue of Section 43D(2) of the UAPA.

20. By virtue of Section 43D of the UAPA, certain provisions of the Cr.PC stood modified in so far as its application to the offences under the UAPA. Sub-section (2) of Section 43D of UAPA mandates that the provisions of Section 167 of the Cr.PC shall apply in relation to a case involving an offence punishable under the UAPA, *albeit* subject to certain modifications as set out therein. Sub-section (2) of Section 43D of the UAPA is set out below:-

“43D Modified application of certain provisions of this Code.—

(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.

*** ”

21. In terms of proviso (a) to Sub-section (2) of Section 167 of the Cr.PC, a Magistrate is proscribed to authorize detention of an accused person in custody for a period exceeding 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 and not exceeding sixty days (modified to ninety days by virtue of Section 43B(2)(a) of the UAPA), where the investigation relates to

any other offence.

22. On expiry of the said period of ninety days or sixty days, as the case may be, the accused has to be released on bail if he offers to and furnishes bail. It is well settled that a right to bail as per proviso (a) to Section 167(2) of the Cr.PC is an absolute right and the Court has no discretion but to release the accused on bail if he offers and furnishes the same. It is also settled that in case of a default bail, merits of the case are not to be examined and a Magistrate has no power to remand the person to custody beyond the stipulated period of ninety days or sixty days, as the case may be [See: ***Rajnikant Jivanlal Patel v. Intelligence Officer, Narcotic Control Bureau, New Delhi: (1989) 3 SCC 532***].

23. In ***Rakesh Kumar Paul v. State of Assam: (2017) 15 SCC 67***, the Supreme Court had further held that it would be the duty of the concerned Magistrate to inform the accused of his right to seek a default bail in the case where he entitled to do so.

24. By virtue of the proviso to Section 167 of the Cr.PC as introduced by virtue of Section 43D(2)(b) of the UAPA as applicable to cases under the said Act, the detention of an accused can be extended to a period of one hundred and eighty days provided the Court 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 period of ninety days. Thus, the court is required to be satisfied regarding the progress of the

investigation and the requirement of further time to complete the same.

25. Considering that the extension of time for completion of investigation extends the detention of an accused beyond the period of ninety days and further curtails his liberty, the Supreme Court in ***Hitendra Vishnu Thakur*** (*supra*) had – in the context of Section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) by virtue of which a proviso similar to that as set out in Section 43D(2)(b) of UAPA was inserted in Section 167(2) of Cr.PC in respect of offences under TADA – held as under:

“It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution’s ‘default’. *Similarly, 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.* It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a 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 the 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 the 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.”

[italicized for emphasis]

26. It is apparent from the above that a court is proscribed from extending the judicial custody beyond the period specified without a notice to the accused. The purpose of the notice is to afford him an opportunity to oppose the grant of extension beyond the period of ninety days on all legitimate and legal grounds as available to him. The above passage was also referred to by the Division Bench of this Court in ***Syed Maqbool v. NIA: (2014) 8 HCC (Del)***¹⁰⁷. In that case, the Division Bench of this Court had, after noting the aforesaid passage, observed that the said decision did not assist the appellants (in that case) in any manner, because notice was served upon the appellants and the learned Designated Court had extended time after arguments were heard.

27. Mr Lekhi’s contention that the decision of the Supreme Court in ***Hitendra Vishnu Thakur*** (*supra*) is no longer good law as the said decision has been overruled in ***Sanjay Dutt*** (*supra*), is unmerited. His contention that the decision of the Division Bench of this Court in ***Syed Maqbool*** (*supra*) is also *per incuriam* as it does not refer to the decision in ***Sanjay Dutt*** (*supra*), is equally unmerited.

28. In ***Sanjay Dutt*** (*supra*), the Constitution Bench of the Supreme Court did not overrule the earlier decision in ***Hitendra Vishnu Thakur*** (*supra*). On the contrary, the Court reiterated the requirement of issuing notice of the application seeking extension of custody/time for completion of the investigation beyond the period of ninety days to the accused. However, the Supreme Court qualified that such notice [in terms of the decision in ***Hitendra Vishnu Thakur*** (*supra*)] to mean a notice to the accused which requires his production in Court in accordance with Section 167(1) of the Cr.PC. The Supreme Court further explained that the requirement of such notice to the accused before granting of extension for completing the investigation is not a ‘written notice’ to the accused giving reasons therein, but production of the accused in Court at the time of informing him that the question of extension of period for completing the investigation is being considered, would be sufficient for the purpose. The relevant extract of the said decision is set out below:

“(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.”

29. Thus, undisputedly, a notice is required to be issued to the accused for his/her production before the concerned Court and he/she is required to be duly informed that the question of extending the time for completion of the investigation and/or extending his/her term in judicial custody is being considered.

30. It is also relevant to note that in **Sanjay Dutt’s** case, it was also contended on behalf of the State that certain clarifications were required regarding the decision in **Hitendra Vishnu Thakur’s** case as the same was being construed by designated courts to mean that a right of an accused to be released on bail where the time for completing the investigation has expired, is indefeasible and would survive even after a challan (final report) has been filed in the court. To this extent, the Supreme Court authoritatively held that the indefeasible right accruing to an accused in such a situation is only enforceable prior to filing of the challan and does not survive or remain enforceable on the challan being filed if the said right is not availed of. The Court, accordingly, clarified the decision in **Hitendra Vishnu Thakur (supra)** and further held that if the said decision was interpreted to have held otherwise, the Court was unable to subscribe to that view. Thus, if the decision in **Hitendra Vishnu Thakur (supra)** is construed to have held contrary to the said clarification, the same has to be understood as overruled by the decision in **Sanjay Dutt (supra)** to that extent.

31. Apart from clarifying the nature of the notice required to be given to the accused and further clarifying that an indefeasible right to be released on bail does not survive once a challan had been filed, the decision in the case of ***Hitendra Vishnu Thakur*** (*supra*) remained undisturbed and continues to be binding law.

32. In ***Devinderpal Singh*** (*supra*) the Supreme Court had observed as under:

“14. In *Hitendra Vishnu Thakur*’s case it was also opined that no extension can be granted by the Designated Court under Clause (bb) unless the accused is put on notice and permitted to have his say so as to be able to object to the grant of extension.

15. The Constitution Bench in *Sanjay Dutt* case 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* 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 and informing him that the question of extension of the period for completing the investigation was being considered would be sufficient notice to the accused.”

33. The above decision also makes it amply clear that the requirement of issuing notice to the accused as contemplated in ***Hitendra Vishnu Thakur*** (*supra*) was not done away with by the

Supreme Court in **Sanjay Dutt** (*supra*). Further, the Supreme Court has not overruled **Hitendra Vishnu Thakur** (*supra*) insofar as it recognized that the accused would have a right to oppose the application for extension of time.

34. In view of the above, the contention that the requirement to afford an opportunity of hearing the accused to oppose the grant of extension of his judicial custody and extension of the time for completion of the investigation stood overruled by the **Sanjay Dutt** (*supra*), is erroneous. The contention that the decision in **Sanjay Dutt's** case is an authority for the proposition that an accused has to be produced in Court but has to remain a mere mute spectator to the proceedings in Court and has no right to oppose extension of his judicial custody or extension of time for completion of the investigation is, plainly, unacceptable.

35. In **Sharjeel Imam** (*supra*), this Court had, after referring to the decisions in case of **Devinderpal Singh** (*supra*) and **Sanjay Dutt** (*supra*) observed that the contention that the accused has a right to oppose the application/report moved by the APP is not sustainable. The same must be understood in the context of specific opposition to the reasons specified in the public prosecutor's report as the accused is not entitled to a copy of the same. The import of the proviso to Section 167(2) of the Cr.PC as inserted by Section 43D(2)(b) of the UAPA is that the restriction on the court to extend custody of an accused beyond the period of ninety days pending filing of the report, is relaxed on compliance with the conditions set out in the said proviso.

The accused would surely have the right to oppose extension of his/her judicial custody.

36. The decision in ***Sharjeel Imam*** (*supra*) cannot be understood to mean that the accused has no right to make any submission to oppose the extension of his judicial custody or the time to complete the investigation. It is also relevant to note that the principal contention that fell for consideration of the Court was whether a notice was, in fact, served on the accused. The Court had also examined the grounds on which extension of time was sought by the prosecution. If the decision of ***Sharjeel Imam*** (*supra*) is interpreted to mean that an accused would have no right whatsoever to oppose the grant of extension of judicial custody or extension of time for completing the investigation; the same would run contrary to the decision of the Supreme Court in ***Hitendra Vishnu Thakur*** (*supra*) and the observations made in ***Devinderpal Singh*** (*supra*).

37. The decision to extend the judicial custody of an accused seriously affects the accused and the principles of natural justice clearly require that such an accused be granted the right to oppose the passing of any such order. Clearly for the right to be more meaningful, it would also be apposite to disclose the detailed reasons for seeking such an order which extends the time for completion of investigation. However, the rights of the accused in this regard have to be necessarily curtailed by the necessity to conceal such reasons from the accused and not make it public. This is because, at this stage, the investigation is incomplete and disclosing the manner in which

investigation has proceeded and is proposed to be conducted, may frustrate such investigative efforts. Thus, in order to ensure the efficacy and secrecy of investigation, it is necessary to conceal the public prosecutor's report on the progress of investigations and also the reasons why it has remained incomplete. The report may include disclosure of the enquiries yet to be made and the steps proposed to be taken to coalesce the evidence. Disclosure of such information may provide an opportunity for tampering with evidence, which is yet to be collected. However, the fact that such reasons for seeking extension of time for completing of investigation and the report on progress made in the investigation are required to be concealed from the accused does not mean that he has no right to oppose such an application. The accused can make submissions and bring facts to the notice of the Court in support of his contention that such an extension ought not to be granted. As held in ***Hitendra Vishnu Thakur*** (*supra*) the accused must be given an opportunity to oppose the extension on “*all legitimate and legal grounds available to him*”. The Court, of course, is required to consider the said contentions as well as the report submitted by the learned public prosecutor in support of the application for extension of time.

38. In view of the above, the question whether an accused has a right to be heard to oppose an application seeking extension of his custody and extension of time for completion of the investigation, is answered in the affirmative.

39. Mr Chauhan had contended that once it is established that an accused has a right to be heard, it would necessarily follow that the reasons and grounds urged by the prosecution for seeking extension of time, must also be informed to the accused in order for the accused to meaningfully oppose the same.

40. The aforesaid question, whether the accused is entitled to a copy of the application and the report of the Public Prosecutor, is no longer *res integra*. In ***Syed Shahid Yusuf v. National Investigation Agency: (2018) 250 DLT 283***, the Division Bench of this Court had, in unequivocal terms, held that an accused cannot ask to see the reports of the public prosecutor as those reports are like case diaries maintained under Section 174 of the Cr.PC and are used to satisfy the Court regarding the progress of the investigation as well as justification for seeking extension of time to complete the same. The relevant extract of the said decision is set out below:-

“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.”

41. In ***Syed Maqbool*** (*supra*), the Division Bench of this Court had also ruled that it is not necessary that the order granting extension of

time sets out the reasons for the same in detail. The rationale for the said view was explained by the Court in the following words:

“24. But, when an investigation is in progress and all suspects have yet to be arrested and further part evidence is gathered and on an analysis of the same further evidence has to be gathered; from the material gathered the accused have to be interrogated, an exposure of the evidence gathered and the course of investigation chartered till said date giving clue to further course of investigation which may be chartered, it cannot be the requirement of law that the learned Special Judge of the Designated Court should descriptively pen down the objective facts noted by him till the current stage of the investigation and then record the opinion as to why period of detention was to be extended. This would expose the investigating agency to a severe handicap. The other suspects would know the line of investigation and would be in a position to destroy evidence which has yet to be coalesced by the investigating agency.

25. As long as the learned Special Judge has recorded that he has perused the case diaries, which as per law have not to be shared with the accused, and has opined in the order that the learned Special Judge was satisfied that the completion of investigation warranted period of detention to be extended, it would be sufficient compliance with law.”

42. The reasons for concealing the report of the Public Prosecutor and the case diaries from the accused during the period of the investigation is to ensure that the investigation is not frustrated. As discussed hereinabove, the manner in which the investigation is progressing and further inquiries that are proposed to take place need not be disclosed to the accused as such disclosure may have the

propensity to adversely affect the investigation. It is for this reason that neither the case diaries nor the report submitted by the public prosecutor are required to be furnished to the accused nor are the reasons required to be set out in any detail in the order granting extension of time for completion of the investigation.

43. Undeniably, the accused is at a disadvantage since the accused would be unable to address the specific grounds on which the extension of time is sought and to this extent, the hearing afforded to the accused may be of limited value. However, this is unavoidable so as to ensure that the investigation is not hampered or frustrated in any manner.

44. In view of the above, the question whether the petitioner is entitled to a copy of the application or the report furnished by the public prosecutor must be answered in the negative.

45. The court may now examine the controversy in the context of the facts of the present case. Although it has been contended that the learned ASJ had not afforded the petitioner any opportunity of being heard to oppose the application for extension of time for completing the investigation, the same is without substance. The orders dated 10.08.2020 and 11.08.2020 clearly indicate that the learned Court had afforded ample opportunity for the accused to make their representation to oppose extension of time for completion of the investigation. The Court had also granted opportunity to the accused to file written submissions. A plain reading of the written submissions

filed on behalf of the petitioner indicates that the petitioner had limited his submissions to insisting that a copy of the application cum report of the public prosecutor be supplied to it in order for the petitioner to make further submissions.

46. This being the only argument canvassed on behalf of the petitioner, the learned Court considered and rejected the same. Thus, the impugned order cannot be faulted on the ground that the petitioner was not afforded adequate opportunity to be heard. The requirements of providing the petitioner a notice as well as an opportunity to be heard in opposition of the application for extension of time for completion of the investigation were complied with by the learned Court.

47. A report indicating the progress of investigation including specific reasons for detaining the accused beyond the specified period was furnished. The learned Court had perused the same as well as examined the case diaries and had recorded its satisfaction in this regard.

48. In view of the above, no interference with the impugned order is warranted.

49. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

SEPTEMBER 08, 2020
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