

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 495 of 2024

Javed Siddiqui and another

...Appellants

Versus

State of Uttarakhand and another

.....Respondents

Presence:-

Mr. Prashant Bhusan and Mr. D.S. Patni, learned Senior Advocates assisted by
Mr. Piyush Garg and Mr. Jai Krishan Pandey, Advocate for the appellants.
Mr. J.S. Virk, learned D.A.G with Mr. Rakesh Kumar Joshi, learned B.H. for the
State.

Coram :Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Per: Hon'ble Pankaj Purohit, J.

This criminal appeal has been filed under Section 21(4) of National Investigation Agency Act, 2008 against the orders dated 10.05.2024, 06.06.2024 and 01.07.2024, passed by learned Ist Additional Sessions Judge, Haldwani, District Nainital in FIR No.21 of 2024, registered at Police Station Banbhoolpura, District Haldwani under Sections 147, 148, 149, 307, 395, 323, 332, 341, 342, 353, 427, 436, 120-B IPC r/w Sections 3 & 4 of the Prevention of Damage to Public Property Act, 1984, r/w Section 7 Criminal Law Amendment Act, 1932, r/w 3/25, 4/25, 7/25 of Arms Act, r/w Section 15 & 16 of UAPA, whereby the learned trial court has extended the time period of investigation and detention beyond 90 days and order dated 03.06.2024, whereby the learned trial court has rejected the bail application filed by the appellants for release on default bail.

2. Facts of the case giving rise to the present proceedings are that an FIR No.21 of 2024 dated 08.02.2024 was lodged in Police Station Banbhoolpura, District Nainital. As per the aforesaid FIR, on 08.02.2024 officials from Nagar Nigam, Tehsil and Police went to a place in Banbhoolpura locality to demolish two structures allegedly encroachments on public land – one Madarsa and one Mosque, which was already sealed and fenced. When officials reached the spot they faced resistance from the local public, who formed a mob and started

pelting stones at the officials and petrol bombs were also thrown in the process. During this process Police officials also rushed to the Police Station Banbhoolpura after receiving of reports that some persons attempted to set the police station on fire; petrol bombs were thrown on the Police vehicle and the service pistols and cartridges of Police officials S.O. Mukhani were also snatched. The appellants were arrested during investigation.

3. Under the provisions of CrPC under Section 167(2)(a)(i) the maximum period of detention of under trial is 90 days. According to the provisions of Section 167 CrPC if the investigation of a case as given in the provision of Section 167(2)(a)(i) is not completed within 90 days, the accused persons shall be entitled to get default bail under the said provisions of CrPC. The period of 90 days was going to expire on 10.05.2024. In respect of the appellants, the offences under Section 15/16 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “U.A.P.A. Act, 1967”) were already there. By virtue of the provisions of the U.A.P.A. Act, 1967, the provisions of Section 43D are invoked, which gave right to the prosecution to get the period of detention extended to a period of maximum of 180 days under the proviso to Section 43D(2)(b).

4. After invoking the provisions of the U.A.P.A. Act, 1967 an application is moved by the prosecution in the court of learned Ist Additional Sessions Judge, Haldwani on 10.05.2024 FIR No.21 of 2024 explaining therein the progress of investigation so far. It is also contended in the said application that further investigation is yet to be concluded.

5. On the application dated 10.05.2024 submitted by the Police under Section 43D(2)(b) of the U.A.P.A. Act, 1967 a report was submitted by the A.D.G.C. District Nainital to the learned Ist Additional Sessions Judge, Haldwani.

6. The learned Ist Additional Sessions Judge, Haldwani after hearing both the parties allowed the application for extension of period of investigation and detention for a further period of 28 days in FIR No.21 of 2024 Police Station Banbhoolpura vide order dated 10.05.2024

invoking the provisions of Section 43D(2)(b) of the U.A.P.A. Act.

7. Since the period of completion of investigation and detention was extended beyond 90 days by learned Ist Additional Sessions Judge, Haldwani, default bail application moved by the appellants stands rejected vide impugned order dated 03.06.2024. Feeling aggrieved by aforesaid impugned orders the appellants have preferred the present appeal.

8. The main ground of challenge of the impugned orders by the appellants is that the appellants were not heard by learned Ist Additional Sessions Judge, Haldwani before passing the impugned order dated 10.05.2024 whereby the period of investigation and detention of the appellants was extended and sufficient and meaningful opportunity to the appellants to contest the application for extension was not provided; the appellants were not put to notice of the extension application and were not given opportunity to file an objection; there were no specific reasons available to the prosecution for detention of the accused beyond the said period of 90 days and no satisfaction was recorded by the learned Ist Additional Sessions Judge, Haldwani for extending the period and detention of accused by 28 days i.e., beyond the period of 90 days as envisaged under the provisions of 43D of the U.A.P.A. Act, 1967.

9. Heard learned counsel for the parties.

10. It is contended by learned Senior Advocate appearing for the appellants that a right of liberty of citizen which flows from Article 21 of the Constitution of India cannot be allowed to be curtailed, the manner the same has been done in this case.

11. It is submitted by learned Senior Advocate for the appellants that looking into the entire investigation conducted by the Investigating Agency for a period of 90 days, it transpires that sufficient time has been taken by the Investigating Officer but progress of the investigation is not such which could be termed as the investigation with “the utmost promptitude” “without unnecessary, deliberate or avoidable delay.”

12. It is argued by learned Senior Advocate that it is shocking that identification of the culprits was sought to be done in extended time. Thus, the previous detention of the accused/appellants was unwarranted and thus to continue their detention at the sweet will of the Police cannot be permitted.

13. It is also submitted by learned Senior Advocate for the appellants that the remand of 90 days is a rule and to get the period of detention beyond 90 days upto 180 days is an exception, the extension can only be done on “specific reasons”.

14. Learned Senior Advocate for the appellants relied upon the judgment of Hon’ble Apex Court in the case of Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat reported in (2023) 6 SCC 484 to submit that mandatory notice and mandatory presence of the accused is there in the Court while the application of extension is considered by the Court. He submitted that non-production of accused on the date on which the Special Court consider the request for grant of extension of time and failure of the Special Court to procure the presence of the accused at the time of consideration of the reports submitted by Public Prosecutor for grant of extension of time to complete the investigation and failure to give notice to the accused on the report submitted by the Public Prosecutor are in violation of the mandate of law laid down by the Constitution Bench of the Hon’ble Supreme Court in the case of Sanjay Dutt Vs. State reported in (1994) 5 SCC 410.

15. Learned Senior Advocate for the appellants further relied upon the judgments of Hon’ble Apex Court in the case of Uday Mohanlal Acharya vs. State of Maharashtra; reported in (2001) 5 SCC 453 and Hitendra Vishnu Thakur vs. State of Maharashtra; reported in (1994) 4 SCC 602.

16. Learned Senior Advocate also contended that to get a default bail under Sub-section 2 of Section 167 of CrPC is not merely a statutory right but a fundamental right guaranteed to an accused and the same cannot be trifled with.

17. He further pointed out with eloquence relying upon para

no.13 of the Jigar @ Jimmy Pravinchandra Adatiya (*supra*) case to submit that it has been held by the Hon'ble Apex Court in the case of M. Ravindran Vs. Directorate of Revenue Intelligence reported in (2021) 2 SCC 485 that Sub-section 2 of Section 167 CrPC is integrally linked to the constitutional commitment under Article 21 of the Constitution of India promising protection of life and personal liberty against unlawful and arbitrary detention, therefore the provision of Sub-section 2 of Section 167 of CrPC should be interpreted in such a manner that serves this object.

18. It is further submitted by learned Senior Advocate appearing for the appellants that since the period of investigation was extended by the learned Ist Additional Sessions Judge in violation of the law laid down by the Constitution Bench in Sanjay Dutt's case (*supra*), therefore the said order is completely illegal as it infringes the right of appellants to get default bail which is held to be a fundamental right guaranteed by Article 21 of the Constitution of India.

19. *Per contra*, learned Deputy Advocate General supported the impugned orders passed by learned Ist Additional Sessions Judge, Haldwani. He strenuously submitted that the application moved by Investigating Officer and the report of the public prosecutor both contained the reasons for extension of the period of investigation and detention.

20. Learned Deputy Advocate General submitted that the report is exhaustive which contained the progress of the investigation during 90 days and what has now been left to be investigated and therefore both the applications as well as the report of the Public Prosecutor is within the conformity of the requirements for extension of the period of investigation and detention. On this ground, it is submitted that there is no illegality committed by learned Ist Additional Sessions Judge while passing the impugned orders. He further relied upon the judgment of Hon'ble Supreme Court in the case of State of Maharashtra Vs. Surendra Pundlik Gadling and others reported in AIR (2019) SC 975 and State of NCT of Delhi vs. Raj Kumar @ Lovepreet @ Lovely, 2024 1 SCC (Cri) 808.

21. Para nos.15, 35 and 38 of the State of Maharashtra Vs. Surendra Pundlik Gadling judgment have been pressed to support his submissions.

22. It is submitted by learned Deputy Advocate General for the State that the investigation could not have been completed within 90 days, thus a report is submitted by the Public Prosecutor wherein the progress of investigation and specific reasons for extension of period beyond 90 days have been given; satisfaction of the Court is there on record and nothing else was needed to justify the impugned orders passed by learned Ist Additional Sessions Judge, Haldwani.

23. It is submitted by learned State counsel that when the ingredients of Section 43D(2)(b) of the U.A.P.A. Act, 1967 are fulfilled, no fault can be found with the impugned orders passed by learned Ist learned Additional Sessions Judge, Haldwani.

24. Having heard learned counsel for the parties in great detail and having gone through the record of the case, in particular the Lower Court Record, it is noticed that the appellants are in judicial custody since the date of their arrest and a considerable period of 90 days has expired, during which period it is noticed that no substantial progress has been made in the investigation.

25. The manner in which investigation proceeded clearly reveals the carelessness on the part of the Investigating Officer as to how slow the investigation proceeded with, that too in such a situation where the appellants were languishing in judicial custody.

26. In three months time statements of only 8 official witnesses and four public witnesses were recorded. The height of sluggish investigation is that in the first month only two public witnesses and one official witness were examined.

27. The manner in which the investigation proceeded also speaks volumes when we see that the arms recovered on 13.02.2024 were sent to the FSL only on 01.04.2024 after inordinate and unexplained delay of 45 days and further the articles seized on 16.04.2024 were sent only on 18.05.2024 after the period of 90 days was

over. Moreover the reason which has been cited by the Investigating Officer does not impress us that for the investigation yet to be completed the custody of appellant was at all required. It is quite surprising that one of the reasons cited for investigation is shown as “the prosecution sanctioned awaited.”

28. The right to life and liberty is one of the integral part of the Constitution of India and it is the most sacred Fundamental Right. The custody of people in the name of various enactments and without adhering to the promptness of the investigation, it (the enactments) cannot allow the appellants to remain under incarceration.

29. In order to appreciate the submissions made by learned Senior Advocate appearing for the appellants that special reasons needed to be recorded, provisions of Section 43D(2)(b) of the U.A.P.A. Act, 1967 are quoted herein below:-

“43D. Modified application of certain provisions of the Code.—(1).....
(2).....
(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.”

30. The proviso to Section 43D(2)(b) of the U.A.P.A. Act, 1967 is exception to 90 days period and it can only be resorted to when it is not possible to complete the investigation within the period of 90 days. This is discretion of the Court and if the Court is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and specific reasons for detention of the accused beyond said period of 90 days it can order to extend the period up to 180 days.

31. As stated earlier from perusal of the Lower Court Record

and the case diary, we did not notice promptitude in the investigation rather the investigation was sluggish and for such a sluggish investigation the appellants cannot be made to suffer.

32. So far as the argument advanced by learned Deputy Advocate General for the State is concerned, we have given a thoughtful consideration to the submissions made by him and have perused the case laws cited by him. We found that though the ingredients may be available for the invocation of provision of Section 43D(2)(b), but in order to appreciate the said provision in true sense, indepth look is required to find out as to how the investigation proceeded within a period of 90 days. It cannot be the intention of the law that the Investigating Officer kept silent and did not proceed with the investigation with promptitude and it is only on the expiry of period of 90 days he suddenly awakes from his slumber to move an application that further time is needed to complete the investigation. Such kind of interpretation which deprives citizen of this country of his valuable right to life and liberty, cannot be made.

33. In the case of Pundlik (*supra*) relied upon by learned State counsel, it was found that the accused were active members of a banned organization i.e, CPI (Maoist) and were having direct nexus of unlawful activities of said organization. But here in the case in hand, so far it has not been turned out in investigation that the appellants are member of any banned or unlawful organization.

34. Thus, from the upshot of the aforesaid discussion, there is no manner of doubt in our mind that the impugned orders cannot sustain. The learned Ist Additional Sessions Judge erred in passing the impugned orders.

35. Accordingly, the appeal is allowed. Orders dated 10.05.2024, 06.06.2024 and 01.07.2024, passed by learned Ist Additional Sessions Judge, Haldwani, District Nainital in FIR No.21 of 2024 are accordingly, set-aside qua the appellants. Both the appellants herein are directed to be released on bail on each of them executing personal bond and furnishing two reliable sureties, by each one of them, each of the like amount to the satisfaction of the Court concerned.

36. Pending application, if any, stands disposed of accordingly.

(Pankaj Purohit, J.) (Manoj Kumar Tiwari, J.)
08.01.2025

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