

IN THE SUPREME COURT OF INDIA**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.963 OF 2021****(@ OUT OF SPECIAL LEAVE PETITION (CRIMINAL) NO.7767/2018)****SADIQUE & ORS.****Appellant(s)****VERSUS****STATE OF MADHYA PRADESH****Respondent(s)****O R D E R**

Leave granted.

This appeal challenges the final judgment and order dated 11-09-2017 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in MCRC No. 1395/2016.

The appellant No.1 was arrested on 24.12.2013 in connection with crime registered pursuant to FIR No.22/2013 lodged with STF/ATS Police Station, District Bhopal in respect of offences punishable under Sections 307, 34, 467, 468, 481 and 120-B of IPC, Sections 25 and 27 of the Indian Arms Act, Sections 3,10,13,15,18,19,20,23,38 and 39 of the Unlawful Activities (Prevention) Act, 1967 ("UAPA" for short).

Appellant Nos.2 to 4 were also arrested around the same time.

On 20th March, 2014 while dealing with an application

moved on behalf of the Investigating Machinery under Section 43-D(2)(b) of the UAPA, appropriate extension was granted by the Chief Judicial Magistrate, Bhopal.

On completion of 90 days of their actual custody, applications on behalf of appellants were moved under Section 167(2) of Code of Criminal Procedure ("the Code" for short) seeking bail on the ground that no charge-sheet was filed by the Investigating Agency within 90 days.

Said applications under Section 167(2) of the Code having been rejected by the Court of CJM, Bhopal, Revision Applications were preferred by the appellants which were also rejected by the Sessions Court, Bhopal vide order dated 09.07.2015.

The matter was carried further by filing M.Cr.C. No. 1396 of 2016 under Section 482 of the Code.

The High Court by its judgment which is presently under challenge rejected the prayer. It was observed by the High Court that since the CJM, Bhopal had passed an appropriate order on 20th March, 2014, the period available for the Investigating Machinery to complete the investigation stood extended to 180 days and as such the applications preferred by the appellants under Section 167(2) of the Code were not maintainable and that the appellants were not entitled to the

relief as prayed for.

Considering the importance of the matter, this Court requested Mr. S.V. Raju, learned ASG to assist this Court.

Appearing for the appellants, Mr. Siddhartha Dave, learned Senior Advocate has relied upon the decision of this Court in *Bikramjit Singh vs. State of Punjab*¹. It is submitted that para 26 of the decision completely covers the issue and that the extension granted in the instant case by CJM, Bhopal was beyond jurisdiction and would, therefore, be of no consequence.

Para 26 of the decision of this Court in *Bikramjit Singh* was to the following effect:

"26. Before the NIA Act was enacted, offences under the UAPA were of two kinds – those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Session. This scheme has been completely done away with by the NIA Act, 2008 as all Scheduled Offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. In the absence of any designated court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone. Thus, under the aforesaid scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the

absence of a notification specifying a Special Court, or the Special Court itself. The impugned judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts."

After considering various provisions of the relevant statutes, it was concluded that "so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D (2)(b) is non-existent".

Consequently, in so far as "Extension of time to complete investigation" is concerned, the Magistrate would not be competent to consider the request and the only competent authority to consider such request would be "the Court" as specified in the proviso in Section 43-D (2)(b) of the UAPA.

In view of the law laid down by this Court, we accept the plea raised by the appellants and hold them entitled to the relief of default bail as prayed for.

The appeal is, therefore, allowed.

The appellants be produced before the concerned Trial Court within three days from today and the Trial Court, shall release them on bail subject to such conditions as the Trial

Court may deem appropriate to impose to ensure their presence and participation in the pending trial.

We have been apprised that the trial has progressed to a considerable length. We, therefore, direct the Trial Court to conclude the proceedings as early as possible.

With these observations, the instant criminal appeal is allowed.

In the end, we must express our sincere gratitude for the assistance rendered by Mr. S.V. Raju, learned ASG.

.....J.
[UDAY UMESH LALIT]

.....J.
[S. RAVINDRA BHAT]

.....J.
[BELA M. TRIVEDI]

New Delhi;
September 7, 2021.

