

(2018) 02 BOM CK 0017
In the Bombay High Court
Case No : 51 of 2017

Abdul Malik S/o. Abdul Razzak

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 11](#), [Section 167\(2\)](#), [Section 185](#) - Courts of Judicial Magistrates - Procedure when investigation cannot be completed In twenty-four hours - Power to order cases to be tried in different sessions divisions
[Indian Penal Code, 1860](#), [Section 307](#), [Section 332](#), [Section 353](#), [Section 153](#), [Section 186](#), [Section 333](#) - Attempt to murder - Voluntarily causing hurt to deter public servant from his duty. - Assault or criminal force to deter public servant from discharge of his duty - Wantonly giving provocation with intent to cause riot - Obstructing public servant in discharge of public functions - Voluntarily causing grievous hurt to deter public servant from his duty
[Arms Act, 1959](#), [Section 4](#), [Section 25](#) - Licence for acquisition and possession of arms of specified description in certain cases - Punishment for certain offences
[Unlawful Activities \(Prevention\) Act, 1967](#), [Section 2\(d\)](#), [Section 43\(D\)\(2\)](#), [Section 43D\(2\)\(b\)](#) - Definitions - Officers competent to investigate offences under Chapters IV and VI
[Bombay Police Act, 1951](#), [Section 135](#) - Penalty for contravention of rule or directions under sections 37, 39 or 40

Citation : (2018) 02 BOM CK 0017

Hon'ble Judges : Revati Mohite Dere

Bench : Division Bench

Advocate : T. W. Pathan, ?P. K. Sathianathan

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. Rule.

3. Rule is made returnable, forthwith with the consent of the parties and is taken up for final disposal.

4. By this petition, the petitioner has impugned the order dated 23.12.2015 passed by the learned Judicial Magistrate First Class, 6 th Court, Nagpur, by which the petitioner's remand was extended beyond 90 days, on an Application preferred by the Investigating Agency; the order dated 15.01.2016, by which the Petitioner's Application seeking statutory bail under Section 167(2) of Cr.P.C. was rejected; as well as the common Judgment and Order dated 15.12.2016 passed by the learned Additional Sessions Judge, Akola dismissing Criminal Revision No. 154 of 2016 (filed by the petitioner against the order of the learned Magistrate extending remand of the petitioner beyond period of 90 days), and Criminal Revision No.155/2016 (filed by the petitioner against the order of the learned Magistrate rejecting the Petitioner's Application for statutory bail under Section 167(2) of Cr.P.C.).

5. Mr. T.W. Pathan, learned counsel for the petitioner submitted that the term "Court" defined in Section 2(d) of the Unlawful Activities (Prevention) Act, 1967 means a Court of Sessions and not the Magisterial Court. He submitted that the Unlawful Activities (Prevention) Act, 1967 (hereinafter for the sake of brevity referred to as "the UAPA") being a Special Act, the same would have an overriding effect, over the provisions of Cr.P.C . According to the learned counsel, even the circulars relied upon by the respondent-State will not apply to the present case, inasmuch as, the circulars cannot override the provisions of the U.A.P.A., being a special statute. Learned counsel further relied on Section 43D(2)(b) of the U.A.P.A. in

support of his submission. According to the learned counsel, the term "Court" would mean a Court having jurisdiction to try the case and in the present case, it would necessarily be the Court of Sessions. According to Mr. Pathan, although initially, provisions of the Indian Penal Code were applied, later, i.e. on 01.10.2015, when U.A.P.A. was applied, it was incumbent on the learned Magistrate to commit the said case to the Court of Sessions for further remand, in view of the provisions of the UAPA. He submitted that the order dated 23.12.2015 passed by the learned Magistrate extending remand beyond 90 days, on an Application preferred by the Investigating Agency i. e. ATS was clearly without jurisdiction and hence, illegal. Under these circumstances, learned counsel prayed that the impugned orders be quashed and set aside and the petitioner be granted statutory bail under Section 167(2) of Cr.P.C. It may be mentioned here, that the learned counsel for the Petitioner during the course of arguments, did not press the submission, that U.A.P.A., being a scheduled offence under the N.I.A. Act, the remand should have gone before the Special Court designated under the NIA Act (under Sections 11 & 12 of the NIA Act).

6. Mr. P. K. Sathianathan, learned Special Prosecutor opposed the petition. He submitted that no interference was warranted in the impugned orders dated 23.12.2015 extending the Magisterial Custody Remand of the petitioner beyond the period of 90 days and the Order dated 15.12.2016 (rejection of the petitioner's application for statutory bail under Section 167(2) of Cr.P.C.). Learned Special Prosecutor also relied on the Government of Maharashtra Notifications dated 29.08.2008 and 26.08.2016 in support of his submissions to show, that by

the said notifications, the learned Magistrate had jurisdiction and was competent to extend the Magisterial Custody Remand of the petitioner beyond the period of 90 days.

7. Perused the papers. The petitioner came to be arrested in connection with C.R. No.318/2015 registered with Pusad Police Station for the alleged offences punishable under Sections 307, 332, 333, 153, 353, 186 of I.P.C.; Sections 4 and 25 of Arms Act; and Section 135 of Bombay Police Act. The aforesaid C. R. was registered on 25.09.2015 and the petitioner was also arrested on the very same day. On 01.10.2015, investigation came to be transferred from the Pusad Police Station to A.T.S. and U.A.P.A. came to be invoked.

Accordingly, the aforesaid CR was re-numbered as CR No.13/2015 (with the Kalachowky Police Station). On 23.12.2015, the A.T.S. filed an application under Section 43(D) (2) of the U.A.P.A. and sought extension of time to file charge-sheet beyond the period of 90 days. Before extension was granted, the learned Magistrate served notice on the Petitioner and others & they were heard through Video Conferencing. The remand Court had noted, that the Advocate for the accused was absent when called. The said application was allowed and the learned Magistrate vide Order dated 23.12.2015 was pleased to extend remand beyond 90 days i. e. upto 20.01.2016. On 14.01.2016, the petitioner filed an application and sought statutory bail under Section 167(2) of Cr.P.C., as the prosecution had failed to file charge-sheet within 90 days. The said application seeking bail under Section 167(2) of Cr.P.C. was filed by the petitioner in the Court of learned Judicial Magistrate First Class, 6 th Court, Nagpur. The learned Magistrate rejected the said application vide order dated

15.01.2016. Being aggrieved by the said order dated 15.01.2016 rejecting the petitioner's application for grant of statutory bail under Section 167(2) of Cr.P.C. as well as being aggrieved by the order dated 23.12.2015 by which the learned Magistrate was pleased to extend remand beyond 90 days, the petitioner preferred two revision applications, being Criminal Revision Nos.154/2016 (against the order of extension of time to file charge-sheet beyond 90 days) and 155/2016 (against the order rejecting the statutory bail application of the petitioner), in the Court of Sessions.

8. On 18.01.2016 i. e. within the extended time, the A.T.S. filed charge-sheet in the Court of Judicial Magistrate First Class, 6th Court, Nagpur and on 20.01.2016, the learned Magistrate committed the case to the Court of Sessions, at Nagpur. Subsequently, in view of the Government Notification dated 26.08.2016, the case was transferred to the Sessions Court, at Akola, in view of the change in jurisdiction.

At the cost of repetition, the relevant dates are again re-produced;

9. 23.12.2015 - The prosecution moved an Application seeking extension of 60 days custody (beyond the period of 90 days) and the learned Magistrate was pleased to extend the magisterial custody remand upto 20.01.2016.

14.01.2016 - The Petitioner filed an Application and sought statutory bail under Section 167(2) of Cr.P.C..

15.01.2016 - The learned Magistrate was pleased to reject the said Application.

18.01.2016 - ATS filed charge-sheet in the Court of the learned Magistrate, 6th Court, Nagpur.

20.01.2016 - Learned Magistrate committed the

case to the Court of Sessions, Nagpur in terms of the Notification.

10. It is pertinent to note, that the investigation in the said case was initially registered with the Pusad Police Station and thereafter, transferred to the ATS and not to the NIA, constituted under the National Investigation Agency Act and hence, there is no question of application of the NIA Act in the facts. It is also pertinent to note, that offences under the UAPA can be registered at any police station and that it is not necessary that every offence under the UAPA is required to be investigated only by the NIA under the NIA Act.

11. Section 43-D(2)(a) of the UAPA Act provides for modification in the period of custody and extension of the period of custody for filing the charge-sheet. Pursuant to the said provision, the Special Public Prosecutor preferred an Application, after being satisfied about the grounds raised by the investigating officer, seeking extension of the period of remand for filing of the charge-sheet by further 60 days. The learned Magistrate on receipt of this Application, gave notice to the Petitioner and other accused and after hearing them through the Video Conferencing passed the Order dated 23.12.2015, by which the period of remand was extended beyond 90 days i. e. upto 20.01.2016. It may be noted, that there is no challenge to the satisfaction recorded by the learned Magistrate extending the period of remand & hence, it is not necessary to go into the same. The only challenge is to the jurisdiction of the learned Magistrate to extend the remand beyond 90 days, as the ATS had applied UAPA to the said case, by the ATS, on 23.12.2015.

12. Section 2(1)(d) of the UAPA defines "Court" as under :-

" "Court" means a Criminal Court having jurisdiction, under the Code, to try offences under this Act and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008."

13. It is, thus, evident that the definition makes a reference to a Criminal Court having jurisdiction under the Code, to try offences under the UAPA i. e. in the present case, the Sessions Court, includes a Special Court constituted under the NIA Act. It is pertinent to note, that the Government of Maharashtra in exercise of powers conferred to it by section 11 r/w 185 of the Cr. P. C. issued a Notification dated 29.08.2008, after receiving the consent of this Court, and designated the Judicial Magistrate First Class, Court No. 6, Nagpur as the remand Court, for cases filed by ATS. In view of the Notifications dated 29.08.2008 & 26.08.2016, specific Magistrate Courts and Sessions Courts all over Maharashtra, were specifically designated for dealing with remand and trial of cases filed by the ATS i. e. Anti Terrorist Squad. Vide the said Notifications, the State Government designated the learned Judicial Magistrate First Class, Court No. 6, Nagpur as a Court to attend the remands and the learned Sessions Judge, Nagpur to conduct the trial of cases filed by ATS, in all the districts covered under the Nagpur and Amravati division. By a subsequent Notification, the Sessions Court, at Nagpur was changed to Sessions Court, at Amravati. It is pertinent to note, that there is no challenge to the Notifications dated 29.08.2008 & 26.08.2016 and hence the same is not gone into. The only submission is that the said Notifications are not binding. As per the Notifications, the Magistrate Court i. e. the learned Judicial Magistrate First Class, Court No. 6, Nagpur was empowered to deal with the remand of cases filed by the ATS and as such, no

infirmity can be found in the said Order dated 23.12.2015 passed by the learned Judicial Magistrate First Class, Court No. 6, Nagpur, extending the period of remand beyond 90 days. Since I have come to the conclusion that the learned Magistrate had jurisdiction to extend the remand beyond 90 days, the second question of granting statutory bail under Section 167(2) of the Cr.P.C. does not arise.

14. Accordingly, Petition is dismissed.

Rule is discharged.