

(2020) 07 DEL CK 0206

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1525 Of 2020, Criminal
Miscellaneous Application No. 9386 Of 2020

Ishrat Jahan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Unlawful Activities (Prevention) Act, 1967 — Section 43(D), 43(D)(2)(b), 44, 45
Code Of Criminal Procedure, 1973 — Section 160, 161, 164, 167(2), 437(1), 482
Indian Penal Code, 1860 — Section 34, 109, 114, 120B, 124A, 147, 148, 149, 153A,
186, 212, 302, 307, 353, 395, 427, 435, 436, 452, 454
Prevention of Damage of Public Property Act, 1984 — Section 3, 4
Arms Act, 1959 — Section 25, 27
Unlawful Activities Prevention Act, 1967 — Section 13, 16, 17, 18

Citation : (2020) 07 DEL CK 0206

Hon'ble Judges : Suresh Kumar Kait , J

Bench : Single Bench

Advocate : Lalit Valecha, Manu Prabhakar, Tushar Anand, Abhinav Meena, Rahul Mehra, Amit Chadha, Amit Mahajan, Amit Prasad

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. The present petition has been filed under section 482 read with section 43(D) of Unlawful Activities (Prevention) Act, 1967 to set aside the order

dated 15.06.2020 passed by learned ASJ, Patiala House Court, New Delhi in pursuance to FIR No.59/2020 registered at Police Station Crime Branch

investigated by Special Cell, Delhi Police, whereby granted 60 days time till 14.08.2020 to investigate the instant case.

2. The brief facts of the case are that the petitioner is an advocate since 2006 and has also served as a Congress Municipal Councillor (2012-2017)

from Ward No.231, Ghondli, Delhi.

3. It is stated in the present petition that in February 2020, a peaceful protest against Citizenship Amendment Act had been going on at Khureji Khas

and no complaint of any criminal activity had been moved against any of the protestors. The petitioner being a Former Municipal Councillor was

falsely implicated and arrested in case FIR No.44/2020 registered at Police Station Jagat Puri on 26.02.2020 and was sent to judicial custody,

however, granted bail by the court of Ms.Manjusha Wadhwa, learned ASJ-03, Shahdara District, Karkardooma Court vide order dated 21.03.2020

wherein the learned sessions Court held that "Role assigned to applicant Ishrat Jahan is that she incited the crowd to remain present at the spot as

well as raised slogan of freedom, however, no overt act has been imputed to her whereby she incited the crowd to take law in their hands and use

force against the police. She is a woman and is in JC since 26.02.2020. There are no allegation of use of katta by her or providing the same to any

other member of the crowd and thus invocation of Section 307 IPC against her is debatable. In the considered opinion of this Court, the applicant

Ishrat Jahan @ Pinki being a woman is entitled to benefit of proviso to Section 437(1) Cr.P.C. and it is in the fitness of things to extend her benefit of

bail."

4. But, to defeat the above bail order, the petitioner was taken into police custody in the present case FIR No.59/2020 registered at Police Station

Crime Branch investigated by Special Cell, Delhi Police on 21.03.2020 itself for the purpose of investigation of similar alleged offences. The petitioner

remained in police custody in FIR No.59/2020 from 21.03.2020 to 05.04.2020 and thereafter in judicial custody. The investigating agency subsequently

added section 124A/302/ 307/353/186/212/395/427/435/436/452/454/109/114/153A/34 IPC and sections 3 & 4 of Prevention of Damage of Public

Property Act, 1984, section 25/27 Arms Act and section 13/16/17/18 of Unlawful Activities Prevention Act, 1967 which came into the knowledge of

the petitioner when her judicial custody was extended.

5. Three accused persons namely Mohd.Danish, Mohd.Illiyas and Parvez Alam in the present FIR were admitted to bail vide order dated 13.03.2020.

And learned sessions court was pleased to grant interim bail to the petitioner

vide order dated 30.05.2020 on the ground of her marriage which has been solemnized on 12.06.2020. Thereafter, on 08.06.2020, the learned APP had filed an application, without mentioning provision of law, seeking extension of time of 90 days for filing chargesheet against two accused persons i.e. the present petitioner and one Khalid s/o Abdul Latif. Accordingly, vide the impugned order, the learned sessions court allowed the application granting extension of 60 days.

6. Learned counsel appearing on behalf of the petitioner submitted that the application filed by learned Public Prosecutor is an abuse of the legal process as the same fails to make out any legal or factual basis that justifies extension of time. This exercise is only to subvert and defeat the right of the petitioner to seek regular and statutory bail under the Cr.P.C. The impugned order deserves to be set aside on the ground that speedy and fair investigation are fundamental tenets of criminal justice system as has been held in Vinubhai Haribhai Malviya & Ors. vs. State of Gujarat & Anr.:

2019 SCC OnLine SC 1346 (Crl.A.478-79/2017) by the Hon'ble Apex Court.

7. However, the learned Sessions Court has failed to appreciate that the report of the learned APP did not satisfy the law as enumerated in the Unlawful Activities (Prevention) Act, 1967. None of the reasons for seeking extension of time for filing chargesheet or extension of detention for petitioner/accused Ishrat Jahan were meaningful or sufficient to satisfy the grant of extension of the same as per mandate of the 2nd limb of section 43(D)(2)(b) of UAPA which speaks about specific reasons that there are to be stated for extension of the detention. It is a settled principal of law that general investigative procedures cannot be a ground for seeking extension of remand.

8. It is further submitted that learned Sessions Court has failed to appreciate that in order to investigate the financial/funds alleged by the investigating agency, statement of petitioner/accused Ishrat Jahan has already been recorded that she had received these funds, in lieu of an investment, from her brother-in-law Imran Siddiqui. On her statement, Imran Siddiqui was summoned by the investigating agency under section 160 Cr.P.C. for joining investigation and after thorough investigation, statement of Imran Siddiqui was recorded and documents pertaining to the bank statements were handed over to the investigating agency on 31.03.2020. However, it is

worthwhile that in the investigation/extension report, as filed by learned APP, there is no mention for the same. Hence, it can be attributed that the learned APP or the investigating agency is trying to keep real facts away from the learned Sessions Court.

9. Further submitted that the learned Sessions Court failed to acknowledge the fact that the application for extension filed by the prosecution was

against two alleged accused persons. The alleged electronic data as per the application filed by the prosecution is yet to be recovered from accused

Khalid for which neither the presence nor custody of the petitioner is required nor any data is to be recovered from any electronic gadget belonging to

her. It being a job of technical expert, the same can be done without presence of the petitioner.

10. Further submitted that police cannot claim the extension of time for investigation on the lockdown situation because despite the lockdown, police

has raided various locations and arrested number of persons, therefore, submissions of the police in this regard were liable to be discarded. The mere

fact that investigation for accused Khalid is underway and yet to be concluded, the same cannot be attributable to the petitioner.

11. Learned counsel for the petitioner submitted that in Criminal Appeal no. 452 of 2020 titled "S. Kasi vs. State through the Inspector of Police

Samaynallur Police Station Madurai District: 2020 SCC OnLine SC 529" the Hon'ble Supreme Court has held that during pandemic, the

restrictions imposed cannot be held to have eclipsed the right of an accused under section 167(2) Cr.P.C. and thus, cannot be used to extend the

period of investigation. Moreover, on the same facts, petitioner has already been granted bail in FIR No.44/2020 as mentioned above. Therefore, the

present petition deserves to be allowed.

12. On the other hand, learned counsels named above submitted that an FIR No. 59/2020 dated 06.03.2020 was registered under Section

147/148/149/120-B IPC at Police Station Crime Branch. The investigation of the aforementioned case was transferred to Special Cell, New Delhi

Range, Lodhi Colony, New Delhi. A source information was received in the Crime Branch that the communal riot incidents of February 23 to 25, 2020

in Delhi were pre-planned and the same were hatched by one Umar Khalid, a student of Jawahar Lal University (JNU) and his associates, however,

linked with the different groups. As per the pre-planned conspiracy, Umar Khalid gave provoking speeches at different places and appealed to the

people to come out on public roads and block roads so that during the visit of Mr. Donald Trump, President of USA, propaganda of Minorities in India

are being persecuted may publicized at International level. One part of the conspiracy was to use women and elderlies as human shield behind

persons, mobilized by said conspirators, who would perpetrate violence, if required, in name of carrying out civil protest. In accordance to this

conspiracy, Umar Khalid and his associates brought women and children on roads in order to instigate riots. In furtherance of this conspiracy,

firearms, petrol bombs, acid bottles, stones, sling shots and other dangerous materials were stockpiled in houses at various places in Delhi which are

Maujpur, Jafarabad, Chand Bagh, Gokalpuri, Shiv Vihar and surrounding areas.

13. Accordingly, to participate in riots Danish s/o Khalid r/o Bhajanpura was given charge to bring people from different-different areas. As per

conspiracy, on February 22, 2020, the road was blocked by the children and women at Jafarabad metro station so that inconvenience is caused to

people residing nearby causing tension and then riots. On this day, schools in these areas where children of minority community were studying were

vacated in accordance to the conspiracy. In the aforesaid backdrop, since this conspiracy did not remain in the realm of advocacy and was actually

implemented on ground which resulted in riots happening in parts of Delhi claiming more than 50 innocent lives and destruction of public property

worth Crores, the present case was registered to unearth the larger conspiracy behind these riots which took place at several places during 24.02.2020

to 26.02.2020 in North-East District. In respect of individual instances of riots which occurred on the aforesaid dates, about 751 FIRs have been

registered at different Police Station in North-East District, Delhi against the rioters. In these riots about 53 persons were killed and hundreds of

persons were injured. A large number of houses and shops were gutted and private as well as government properties were damaged and stolen.

About 53 cases of riots with murder are pending investigation with the different branches of Crime Branch and rest of the riots cases are pending

investigation with the North-East District Police. In some of the cases, Crime Branch has filed Charge-sheets before the concerned Courts. District

Police have also filed Charge-sheets before the concerned Courts.

14. Further submitted that during investigation following Sections 302/307/124A/153A/186/212/395/353/427/435/436/452/454/109/114 of IPC and 3 &

4 of the Prevention of Damage to Public Property Act, and 25/27 Arms Act r/w Section 120-B IPC were added on 15.03.2020 in the present FIR.

Thereafter, in view of the evidence gathered, on 19.04.2020 Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967 were added

during the investigation of the instant case. Accordingly, statements of witnesses have been recorded under Section 164 of the Code of Criminal

Procedure, 1973 before the concerned Magistrate and the testimony of witnesses have been recorded under Section 161 of the Code of Criminal

Procedure. Some of the witnesses whose testimony have been recorded under Section 161 and 164 Cr. P. C are protected witness as contemplated

under Section 44 of the Unlawful Activities (Prevention) Act, 1967. So far as 18 accused persons have been arrested in the instant case.

15. Thereafter, as per provision of law, a request was filed before the learned Public Prosecutor to move an application before the Court to extend the

period of investigation for further 90 days to conclude the investigation in FIR No.59/2020. Accordingly, on 08.06.2020, Irfan Ahmad, learned APP, on

duty Patiala House Court, New Delhi after perusal of the case file including a report prepared by the IO and being convinced with the necessity for

requirement of further time to conclude investigation, approached the Court under section 43(D) of UAPA Act for extension of time to investigate

with regard to the petitioner and other co-accused person namely Khalid. The same was allowed vide order dated 15.06.2020.

16. Learned Standing counsel (Criminal) of the State and learned SPP submitted that section 43D of the Unlawful Activities (Prevention) Act, 1967, is

a specific provision which prescribes for extended timelines for completion of investigation. It is only when the period prescribed for completing the

investigation is expiring, an application for extension of period of investigation can possibly lie. The intend behind deferring an application for extension

was the endeavour to complete the investigation within the original period. However, the court may, after it is satisfied with the report of the learned

Public Prosecutor, which indicates the stage and progress of the investigation and the specific reasons for detention of the accused beyond the said

period of 90 days, extend the said period upto 180 days. A bare perusal of the learned Public Prosecutor's application dated 08.06.2020 would

demonstrate that Public Prosecutor has duly applied his mind and after perusing the report of the investigating officer and being convinced with the

necessity for requirement of further time to conclude investigation, approached the learned Court for extension of the investigation period and

consequential detention of the accused under the UAPA in terms of section 43(D). The application enumerates the specific reasons and factors

including but not limited to the development and progress of the investigation. The UAPA in unequivocal terms provides the Public Prosecutor the

authority to prefer an application for extension. Section 43-D of UAP Act, 1967 is a specific, precise, exact and definite provision in this regard. Thus,

the present petition deserves to be dismissed.

17. I have heard learned counsel for the parties at length and perused the material available on record.

18. The requirement as held in *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.*: (1994) 4 SCC 60 is 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.

19. This Court in the case of *Syed Shahid Yousuf vs. NIA*: 2018 SCC OnLine Del 932 9 specifically held that at the stage of extension of time for

completion of investigation or extension of the period of detention, the accused cannot ask to see the reports of the learned Public Prosecutor. Those

reports are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation.

20. The proviso of Section 43-D of the Act stipulates that if it is not possible to complete the investigation within the period of 90 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 90 days, extend the period upto 180 days. The prosecutor has to see whether the professed requirement of the

investigating agency is justified. This justification, is based not only upon the application of the investigation officer but also on the progress of

investigation as recorded in the case diary.

21. A bare perusal of the application would reveal the reasons/grounds for seeking extension of time to complete the investigation as envisaged under Section 43-D of UAP Act, 1967, filed by the Public Prosecutor, which are reproduced herein below:

1. The present case is related to deep rooted and large scale conspiracy behind the recent riot incidents that happened in Delhi in February

2020. The key conspirators are yet to be arrested. Efforts are being made to identify and arrest the other accused persons. Their

apprehension is crucial in finding out the missing links of the larger conspiracy.

2. Accused Ishrat Jahan got funds from a suspicious route through her relative residing in Ghaziabad (UP) and other connected persons

are residing in Maharashtra and were unable to move due to Covid-19 lockdown. Examination of these connected persons is very crucial in

order to investigate illegal funding.

3. In the same way, accused Khalid get suspicious funds through a NRI account of a person who is serving in Singapore, in the account of

NGO which he is running in partnership with his friend. The examination of the NGO partner of Khalid could not be completed as in the

midway of examination, he has been quarantined by the local authority in Meerut (UP) as Covid-19 suspect. Apart from this, investigation

with respect to the fund raiser, who is in Singapore, is under way.

4. Due to some technical fault, relevant data from the mobile phone of accused Khalid could not recover, which are important for the

purpose of investigation. However, due to Covid-19 lockdown, expert technician could not be available. Now, efforts would be made to get

it opened through authorized service station so that data could be extracted and examined to complete the chain of investigation.

5. It is revealed from the investigation that there are several layers of conspiracy in the present case and to unearth the said deep rooted

conspiracy, arrests of remaining accused is important for the purpose to investigate the present case from all possible angles so that a fair,

logical and impartial charge-sheet could be filed before the Honâ??ble Court. Searches of other co-accused persons of this case are

going on. It is pertinent to mention here that some of them are presently out of Delhi and due to lockdown Covid-19 period, process of

searches was not so easy and there were some other unavoidable difficulties to apprehend them.

6. In the present case, more than 750 FIRs have been registered at various police stations in Delhi. Apart from local police, investigation of

some cases is being conducted by the Crime Branch. As the present case is related to the overall conspiracy behind these riots, hence all the

cases registered in these riots are being examined for the purpose of fair and impartial investigation which requires more time.

7. Certified copies of call details of mobile phones of accused are still awaited and the same is to be examined for the purpose of

investigation.

8. To obtain the prosecution Sanction u/s 45 of Unlawful Activities (Prevention) Act-2008 from GNCT of Delhi as well as other necessary

permissions against above accused persons after completing above investigation.

22. Recently, the Honâ??ble Supreme Court in the matter of â??State of Maharashtra vs. Surendra Pundlik Gadling: (2019) 5 SCC 178â ?while

dealing with the issue of necessary ingredients of the proviso to section 43D(2) (b) has observed as under:

â??15. A perusal of the proviso to Section 43D(2)(b) of the said Act shows that there are certain requirements that need to be fulfilled, for

its proper application. These are as under:

a. It has not been possible to complete the investigation within the period of 90 days.

b. A report to be submitted by the Public Prosecutor.

c. Said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days.

d. Satisfaction of the Court in respect of the report of the Public Prosecutor.â??

23. It is pertinent to note that the learned ASJ has in unequivocal terms at para nos.30 and 31 of the order dated 15.06.2020 has held that there exist

sufficient reasons to extend the period of investigation detention of the accused beyond the period of 90 days as contemplated under section 43-D of

UAP Act, 1967, the same are reproduced as under:

â??30. Upon perusal of the contents of the application, it is evident that the report of the learned APP not only shows the justification for

keeping the accused in further custody to enable the investigating agency to complete the investigation. It is specifically contended that the

case involves a deep rooted and large scale conspiracy and the key conspirators are yet to be arrested, the source of illegal funds is

required to be investigated, mobile phone data is to be retrieved and analysed, the conspiracy is multi layered and the deep rooted

conspiracy is to be unearthed, certified copies of complete details of mobile phones of accused are still awaited and same is to be examined

for the purpose of investigation and the prosecution sanction under section 45 of the UAPA and other necessary permission is still awaited.

31. Therefore, in light of the above said judicial pronouncements i.e. State of Maharashtra vs. Surendra Punklik Gadling (supra) and Syed

Maqbool vs. NIA (supra), I am of the opinion that the reasons cited by the learned APP in the case at hand are valid reasons and the report

of the learned APP meets the third requirement also. The contention of the defence that the report of the learned Prosecutor fails to meet the

statutory requirement is bereft of any merits and thus deserves to be dismissed.

33. Further, it is evident from the case diary and the report of the learned APP that investigation on certain material counts is still pending

therefore, the contention that the investigation is already complete is factually incorrect and deserves to be discarded.â??

24. The satisfaction of the Court for extension of the period of investigation is clearly recorded in the impugned order dated 15.06.2020. This satisfies

the requirement of section 43-D of UAPA. It is apparent from the above that the court formed an opinion (implicit in the expression â??upon

perusalâ?) and the opinion so formed was predicated on: a) submissions; b) perusal of case diary and c) Report of the learned Public Prosecutor,

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. The court, therefore, has considered all relevant circumstances for passing the order granting extension of

period of investigation.

25. Moreover, similar issue came before this Court also in the case of Sharjeel Imam vs. State of NCT of Delhi vide CrI.M.C.1475/2020 and the same

was dismissed vide judgment dated 10.07.2020 while upholding the impugned

order whereby time for investigation was extended.

26. In view of the facts recorded above and the settled legal position of law, I am of the view that Public Prosecutor had moved an application, for

extension of time to file chargesheet, after going through the whole matrix of the case and after satisfying himself as per the law as enumerated in the

second limb of Section 43(D)(2)(b) of the Unlawful Activities (Prevention) Act, 1967. Learned Judge also after going through the facts and

circumstances and mandate of provisions of law of the Act mentioned above and after recording his satisfaction had passed impugned order.

Therefore, I am of the view that there is no illegality or perversity in the said order.

27. Accordingly, finding no merit in the present petition, the same is accordingly, dismissed with no order as to costs.

28. Pending application also stands disposed of.

29. The Trial Court shall not get influenced by the observations made by this Court while passing the order.

30. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.