

(2024) 08 UK CK 0098

In the Uttarakhand High Court

Case No : Criminal Appeal No. 289, 291, 390, 391, 392, 393 Of 2024

Mujjamil And Others

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 28-08-2024

Acts Referred:

National Investigation Agency Act, 2008 — Section 21(4)
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 307, 332, 353, 395, 427, 435
Arms Act, 1959 — Section 25
Uttarakhand Prevention Of Damage To Public Property Act, 2003 — Section 3, 4
Criminal Law Amendment Act, 1932 — Section 7
Code Of Criminal Procedure, 1973 — Section 167, 167(2), 167(2)(a)(i)
Unlawful Activities (Prevention) Act, 1967 — Section 15, 16, 43D, 43D(2)(b)
Constitution Of India, 1950 — Article 21

Citation : (2024) 08 UK CK 0098

Hon'ble Judges : Manoj Kumar Tiwari, J;Pankaj Purohit, J

Bench : Division Bench

Advocate : Nitya Ramakrishnan, C.K. Sharma, Nitin Tewari, Vijay Kumar Pandey, Manish Kumar Pandey, Shahid Nadeem, Mujahid Ahmad, Stuti Rai, Ram Yadav, J.S. Virk, R.K. Joshi

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. These are two sets of appeals; in one set, the orders passed by the learned Ist Additional Sessions Judge, Haldwani in FIR No.22 of 2024 has been put to challenge, whereas in another set, the order passed by the same Court in FIR No.23 of 2024 has been challenged. However the date of order(s) in all these matters is different. The substance of the said order is that the court has extended the period of investigation and appellants' detention beyond the period of 90 days. At the same time the order(s) passed by the court of learned Ist Additional Sessions Judge, Haldwani in respect of aforementioned FIR/Crime Numbers 22 and 23 of 2024 have been challenged, whereby the application(s) moved by the appellants for granting them default bail has been turned down.

Since the subject matter of all these appeals is one and the same, hence these are being disposed of by this common judgment. But for convenience facts of Criminal Appeal No. 289 of 2024, Gulzar Vs. State of Uttarakhand are being considered.

2. These criminal appeals have been filed under Section 21(4) of National Investigation Agency Act, 2008 against the order dated 11.05.2024, passed by learned Ist Additional Sessions Judge, Haldwani in FIR No.22 of 2024, whereby the learned Ist Additional Sessions Judge, Haldwani has extended the period of investigation and detention of the appellants beyond 90 days as well as the order dated 24.05.2024, passed by learned Ist Additional Sessions Judge, Haldwani in Bail Application Nos.122 and 129 of 2024, whereby the bail applications of the appellants for release on default bail have been rejected.

3. Facts of the case giving rise to the present proceedings are that an FIR No.22 of 2024 dated 08.02.2024 was lodged in Police Station Banbhoolpura, District Nainital under Sections 147, 148, 149, 307, 332, 353, 395, 427, 435 IPC, Section 25 of Arms Act, 1959, Sections 3 and 4 of Uttarakhand Prevention of Damage to Public Property Act, 2003 and under Section 7 of Criminal Law Amendment Act, 1932 was lodged against unknown persons. Another FIR No.23 of 2024 was also registered in Police Station Banbhoolpura on 09.02.2024 under Sections 147, 148, 149, 120-B, 307, 332, 353, 427, 435 IPC and Sections 3 and 4 of Uttarakhand Prevention of Damage to Public Property Act, 2003 against Mehboob Alam, Shakil Ahmed and other unknown persons.

4. 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 rush 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 in a period of two days i.e., on 11.02.2024 and 13.02.2024.

5. 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 12.05.2024 and 13.05.2024 respectively. In respect of the appellants, on 09.05.2024 the offence under Section 15/16 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "U.A.P.A. Act, 1967") were added. By virtue of adding 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).

6. 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.22 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 as the following acts remain to be completed, which are as follows:-

1. Supplementary report of the injuries sustained by Police team is yet to be received;
2. Recording of statement of official witnesses;
3. Statement of member of CCTV team;
4. Statement of the team which made arrest and recoveries;
5. The recovery of service revolver and cartridges is yet to be done;
6. A report of forensic lab awaited;
7. Sanction for the prosecution awaited;
8. Other evidence are yet to be collected;
9. The Investigating Officer prayed for grant of 28 days remand of the appellants-accused.

7. 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.

8. The learned Ist Additional Sessions Judge, Haldwani after hearing both the parties, even the appellants who were being represented through Mohd. Yusuf and Manish Pandey, Advocates, allowed the application for extension of period of investigation and detention for a further period of 28 days in FIR No.22 of 2024 Police Station Banbhoolpura vide order dated 11.05.2024 invoking the provisions of Section 43D(2)(b) of the U.A.P.A. Act.

9. 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 24.05.2024. Feeling aggrieved by aforesaid impugned orders the appellants have preferred the present appeal.

10. 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 11.05.2024 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.

11. Heard learned counsel for the parties.

12. It is contended by learned Senior Advocate 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.

13. 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."

14. 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.

15. It is also submitted by learned Senior Advocate 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".

16. Attention of this Court was drawn by learned Senior Advocate for the appellants that the grounds for extension of the period as shown by the Investigating Officer are as under:-

1. Supplementary report of the injuries sustained by the Police officials are awaited;
2. Recording of statements of officials witnesses;
3. Recovery of stolen service revolver and ammunition;
4. FSL Report in respect of recovered articles are also awaited;
5. Prosecution sanction awaited;
6. Other evidence is yet to be collected.

17. While the grounds taken by the Public Prosecutor in its report are as under:-

1. Recording of statement of official witnesses.
2. Recovery of stolen service revolver and ammunition;
3. FSL Report awaited;
4. Supplementary report of injuries sustained by Police officials awaited and;
5. Other evidence is yet to be collected.

18. It is argued by learned Senior Advocate for the appellants that during the course of three months statements of only 8 official witnesses and 4 public witnesses were recorded. During the first 30 days only 2 public witnesses and 1 official witness were examined. The ground for recovery of stolen arm has continuously been taken as a ground to seek continuous judicial remand of the accused/appellants throughout the period of three months on numerous occasions without any steps being taken to investigate into the topic further. It is strenuously argued that when stolen arms and ammunition could not be found in three months, there was no reason to resume the continued custody of appellant/accused. It would not further assist the prosecution.

19. It is however submitted that during the period of 90 days only 4 arms were recovered at the time of arrest of accused persons on 13.02.2024 and 17.02.2024 respectively and thereafter no attempts were made to recover or search for any other arms.

20. She also drew the attention of this Court to the fact that the applications for remand made on 16.02.2024, 18.02.2024, 05.03.2024, 18.03.2024, 30.03.2024, 12.04.2024 and 24.04.2024 do not mention any ground for extending the remand except that the investigation is going on.

21. On 12.04.2024 and 24.04.2024 extension of judicial remand was sought on the ground of non-recovery of arms and there are no reasons for granting the remand between 16.02.2024 and 24.04.2024. She further pointed out that arms recovered on 13.02.2024 were sent for examination to FSL after an unexplained and inordinate delay of 45 days and articles seized on 17.02.2024 were sent to the FSL only on 18.05.2024, after the 90-day period was over. She expressed great surprise to the fact that still on that ground the I.O. seeks extension of time, the public prosecutor endorses it and the learned Ist Additional Sessions Judge, Haldwani extends the time. She emphatically submitted that this is what is completely against the fundamental right of a citizen i.e., right to life and liberty under Article 21 of the Constitution of India.

22. 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. She 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.

23. It is also argued that the decision of Sanjay Dutt's case is consistently being followed by the Hon'ble Apex Court in various cases like Ateef Nasir Mulla Vs. State of Maharashtra reported in (2005) 7 SCC 29, Sanjay Kumar Kedia Vs. N.C.B. reported in (2009) 17 SCC 631 and State by the Superintendent of Police, National Investigating Agency, Kochi Vs. Shakul Hameed reported in AIR (2019) SC 302.

24. 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.

25. She 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.

26. It is further submitted by her 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.

27. 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.

28. Learned Deputy Advocate General drew attention of this Court on the application dated 10.05.2024 and the report of the Public Prosecutor dated 10.05.2024 from the record of FIR No.22 of 2024, which was called by this Court vide order dated 13.08.2024. He further 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. He further supported the impugned judgment and order dated 11.05.2024 saying that learned Ist Additional Sessions Judge, Haldwani has recorded its satisfaction as required under Section 43D(2)(b) of the U.A.P.A. Act, 1967. 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, reportable judgment in Criminal Appeal No.704 of 2024, Gurwinder Singh Vs. State of Punjab and another and State by the Superintendent of Police, NIA Kochi Vs. Shakul Hameed AIR 2019 SC 3022.

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

30. 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 detention 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.

31. Para nos.15 and 16 of Shakul Hameed (supra) was also relied upon by the learned Deputy Advocate General for the State, which prescribed that necessary ingredients of proviso to Section 43D(2)(b) of the U.A.P.A. Act, 1967 to be fulfilled for proper application.

32. 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.

33. 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 i.e., 13.02.2024 and 16.02.2024 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.

34. 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.

35. 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.

36. 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."

37. 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 appellant to remain under incarceration.

38. In order to appreciate the submissions made by learned counsel 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."

39. 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.

40. 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.

41. 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, in depth 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.

42. 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.

43. 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.

44. Accordingly, the appeals are allowed. Orders dated 11.05.2024, 24.05.2024 assailed in CRLA No.289 of 2024, orders dated 11.05.2024 and 24.05.2024 assailed in CRLA No.291 of 2024 and order dated 06.06.2024 and 01.07.2024 challenged in CRLA No.390 of 2024, orders dated 06.06.2024 and 01.07.2024 challenged in CRLA No.391 of 2024, orders dated 06.06.2024 and 01.07.2024 challenged in CRLA No.392 of 2024 as well as orders dated 06.06.2024 and 01.07.2024 challenged in CRLA No.393 of 2024, are, accordingly, set aside. All 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.