

(2025) 03 UK CK 0892
In the Uttarakhand High Court
Case No : Criminal Appeal No. 617 Of 2024

Shakeel Ahmad Ansari

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 21-03-2025

Acts Referred:

National Investigation Agency Act, 2008 — Section 21(4)
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 307, 323, 332, 341, 342, 353, 395, 412, 427, 436
Prevention Of Damage To Public Property Act, 1984 — Section 3, 4
Criminal Law Amendment Act, 1932 — Section 7
Arms Act, 1959, — Section 3, 4, 7, 25
Unlawful Activities (Prevention) Act, 1967 — Section 15, 16, 43D(2)(b)

Citation : (2025) 03 UK CK 0892

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

Bench : Division Bench

Advocate : Zafar Siddique, Deep Chandra Joshi, Rakesh Joshi

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Office report suggests that this appeal has been time barred, wherefor, the application seeking condonation of delay (IA No.1 of 2024) has been filed. On being satisfied with the reasons, so furnished, we allow the application and condone the delay. The objections filed by the State stand disposed of accordingly.

2. This appeal is filed by the appellant under Section 21(4) of National Investigation Agency Act, 2008 against the order dated 04.06.2024 (wrongly mentioned as 10.05.2024 in the prayer clause) passed by learned First Additional Sessions Judge, Haldwani, District Nainital in FIR No.21 of 2024, registered at Police Station Banbhoolpura, District Nainital under Sections 147, 148, 149, 307, 395, 323, 332, 341, 342, 353, 412, 427, 436, 120-B IPC r/w Sections 3 & 4 of the Prevention of Damage to Public Property Act, 1984, r/w Section 7 of the

Criminal Law Amendment Act, 1932, r/w Sections 3/25, 4/25, 7/25 of The Arms Act, r/w Sections 15 & 16 of the UAPA, whereby, the learned trial court has extended the time period of investigation and detention beyond 90 days.

3. 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 appellant was arrested during investigation.

4. By order dated 04.06.2024 passed by the First Additional Sessions Judge, Haldwani, District Nainital in Bail Application No.153 of 2024 (FIR/Crime No.21 of 2024) has invoked the provisions envisaged under order under Section 43-D(2) (b) of U.A.P.A. Act, 1967, 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).

5. An application was moved qua 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. On the said application, a report was submitted by the A.D.G.C. District Nainital to the learned First Additional Sessions Judge, Haldwani, who, 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. Since the period of completion of investigation and detention was extended beyond 90 days by learned First Additional Sessions Judge, Haldwani, default bail application moved by the appellant stands rejected vide impugned order dated 04.06.2024. Feeling aggrieved by aforesaid impugned order the appellant has preferred the present appeal.

6. The controversy involved in present matters has already been dealt with and discussed in great detail by this very Court in CRLA No.495 of 2024 (Javed Siddiqui and Another Vs. State of Uttarakhand and Another) decided on 08.01.2025. The said judgment was also based upon another judgment by this very Court in CRLA No. 291 of 2024 (Mujjamil and others Vs. State of Uttarakhand and another) and Batch decided on 28.08.2024, wherein, the Division Bench held out that in view of the law laid down by the Hon'ble Apex Court in the case of Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat reported in (2023) 6 SCC 484, wherein, it was held out that mandatory notice

and mandatory presence of the accused is there in the Court while the application of extension is considered by the Court. 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 is 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.

7. Since, the issue involved has already been decided by this Court on previous occasion, mentioned hereinabove, and the appellant has been the person who was left out in the aforesaid matters, accordingly, we are of the considered view that present appellant also deserves the same protection.

8. In view of what has been stated above, present appeal is allowed. Orders dated 04.06.2024 passed by learned First Additional Sessions Judge, Haldwani, District Nainital in FIR No.21 of 2024 is accordingly, set-aside qua the appellant. Appellant-Shakeel Ahmad Ansari is directed to be released on bail on his executing personal bond and furnishing two reliable sureties, each of the like amount to the satisfaction of the Court concerned.

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