

(2018) 05 DEL CK 0463

In the Delhi High Court

Case No : CRL.A.426 OF 2018 & CRL.M.A.7469 OF 2018

SYED SHAHID YOUSUF

APPELLANT

Vs

NATIONAL INVESTIGATION AGENCY

RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 166A, 167(2), 174, 167, 24(8), 482
Unlawful Activities Prevention Act, 1967 — Section 17, 18, 43D, 43D(2)
Indian Penal Code, 1860 — Section 120B
Negotiable Instruments Act, 1881 — Section 2(u), 15, 21
Prevention of Corruption Act 1988 — Section 19(3)(c) Terrorists and Disruptive
Activities Act 1985 — Section 20(4)(bb)

Citation : (2018) 05 DEL CK 0463

Hon'ble Judges : S. Muralidhar, J; I.S. Mehta, J

Bench : Division Bench

Advocate : Rajat Kumar, Maninder Acharya, Amit Sharma, Viplav Acharya, Som Prakash, Viplav Chaudhary, Neel Kamal PPKanchan, Ajeet Singh Salaria

Final Decision : Dismissed

Judgement

1. The Appellant, who was arrested by the National Investigating Agency (NIA) in FIR No.RC-06/2011/NIA/DLI on 24th October 2017, and

who continues to remain in judicial custody as of date, challenges two orders passed by the Special Court, NIA, Patiala House Courts, New Delhi

dated 5th February 2018 and 7th March 2018. The contention of the Appellant is that he is entitled to statutory bail under Section 167(2) Cr PC and

that the Special Court erred in rejecting the said prayer by its order dated 7th March 2018.

Background

2. The aforementioned FIR has been registered under Sections 17, 18 and 20 of the Unlawful Activities Prevention Act, 1967 (UAPA) read

with Section 120B IPC. After his arrest, the Appellant was first produced before the Special Court (NIA) on 25th October 2017. By an order on that

date, he was remanded to police custody for a period of six days. Inter alia, the reasons given by the Special Court were that his remand till 1st

November 2017 was necessary so as to enable the NIA to unearth the criminal conspiracy and link of accused Shahid Yousuf with proscribed

terrorist organization Hizb-ul-Mujahiddin. (HuM)â??Â Â

3. The matter then came up for hearing before the Special Court on 1st November 2017. On that date the NIA sought the judicial custody of the

Appellant for one month. The prayer of the NIA was granted. It was noticed that since the investigation was ongoing, the Appellant was to be

remanded to judicial custody till 27th November 2017.Â

4. On the next date, i.e. 27th November 2017, the NIA informed the Special Court that the investigation against the Appellant was still at the initial

stage and many of his associates in India and abroad were yet to be questioned. It was submitted that the Appellant has several telephonic contacts in

Pakistan, United Kingdom, UAE, Ireland, etc. and that, in pursuance of a larger criminal conspiracy, the Appellant had visited UAE and had met his

father and others there. It is further noted that requests under Section 166A Cr PC had been sent as Letters Rogatory (â??LRâ??) to Pakistan and

Saudi Arabia. Further, requests under the Mutual Legal Assistance Treaty (â??MLATâ??) were also sent to UAE and United Kingdom for

collection and transfer of evidence. In those circumstances, the Appellant was remanded to judicial custody till 22nd December 2017.Â

Â 5. It must be mentioned that there are four other co-accused in the matter whose names find mention in the aforementioned FIR. The charge sheet

against them was already filed by this date and, in fact, the trial was underway. As far as Appellantâ??s bail application was concerned, it was

directed to be listed on 16th December 2017.Â

Â NIAâ??s applications

6. The 90 days period computed from the date of the Appellantâ??s arrest, i.e. 24th October 2017, was set to expire on 23rd January 2018. On 16th

January 2018, invoking the proviso to Section 43D UAPA, the NIA filed an application before the Special Court for â??extension of period of

investigation and custody of the accused Shahid Yousuf son of Mohammad

Yousuf Shah resident of Village Soibugh, Jamia Mohalla, District Budgam, Jammu and Kashmir for completion of investigation against him from 90 days to 180 days.â?? The prayer in the application was to the same effect.Â

Â 7. It appears that within three days, on 19th January 2018, a separate application was filed by the NIA before the Special Court for extension of judicial custody of the Appellant for 30 days. Both these applications came up before a Link Judge, who passed an order on 19th January 2018

extending the period of investigation by 15 days and extending the judicial custody of the Appellant till 5th February 2018, i.e. 12 days beyond the

period of 90 days from the date of arrest.Â

Â 8. Along with the aforementioned two applications, the NIA filed a report of the Public Prosecutor (PP) under Section 43D (2) (b) UAPA before

the Special Court in a sealed cover. The Appellant was not supplied with the copy of the said report or allowed its inspection.Â

Â 9. On 2nd February 2018, NIA moved an application for extension of the period of investigation and custody of the Appellant beyond 106 days up to

180 days, i.e. from 6th February to 21st April 2018, again invoking the proviso to Section 43D UAPA. On 5th February 2018, another separate

application was filed by the NIA for extension of the judicial custody of the Appellant, which was coming to an end on 5th February 2018, by 30 days.

Â Impugned orders of the Special Court

10. Both the applications were taken up for consideration by the Special Court on 5th February 2018. After hearing counsel for both parties, the

Special Court by its order dated 5th February 2018, which is impugned in the present appeal, did two things: first, it allowed the NIAâ??s request for

extension of time up to 180 days for completion of investigation; and second, it also allowed the second application of the NIA and remanded the

Appellant to judicial custody till 7th March 2018. It also heard arguments on the bail application of the Appellant and the matter was next listed for

hearing on 7th March 2018.Â

Â 11. On 7th March 2018, the Appellant filed application for statutory bail under Section 167 (2) Cr PC on the ground that the NIA had failed to file a

charge sheet against him before the expiry of the extended period of judicialÂ custody. On its part, the NIA filed an application for extension of

judicial custody for 30 days. By the second impugned order dated 7th March

2018, the Special Court rejected the Appellant's application for statutory bail on the ground that by its order dated 5th February 2018, the period of investigation had already been extended till 21st April 2018. As far as the NIA's application was concerned, the Special Court extended the judicial custody of the Appellant till 5th April 2018.

^ The present appeal

12. The contention of the Appellant is that the Special Court could not have extended the period of investigation from 106 to 180 days under Section

43D (2) (b) UAPA read with Section 167(2) Cr PC in a single order and also could not have extended the judicial custody of the Appellant as a

consequence thereof without seeking a fresh report of the PP in terms of Section 43D (2) (b) UAPA. The further contention of the Appellant is that

the order sheets of the Special Court reveal that the purported report of the PP under Section 43D(2)(b) UAPA was not in fact by a PP as defined

under Section 15 of the National Investigating Agency Act 2008 (NIA Act) read with Sections 2(u) NIA Act and 24(8) Cr PC. According to

the Appellant, the procedure adopted by the NIA was in violation of the decision of the Supreme Court in *Hitendra Vishnu Thakur v. State of*

Maharashtra (1994) 4 SCC 602.

13. To complete the narration of facts, it is stated by the NIA in its reply to the application for bail filed along with the present appeal that a charge

sheet has been filed against the Appellant before the Special Court on 20th April 2018 after completion of the investigation in the aforementioned FIR

in which the Appellant is arrayed as Accused No.7 (A-7). The allegation in short, as far as the Appellant is concerned, is that he received a

sum of Rs.4.40 lakhs through Western Union Money Transfer sent by coaccused A-6 who is purportedly a member of the HuM from Saudi Arabia.

^ 14. During the hearing of the arguments in the present appeal, the Court requisitioned the trial Court record (TCR) including the reports of

the PP submitted in a sealed cover in the trial Court. On 22nd May 2018, the said two reports of the PP of the NIA dated 17th January 2018 and 2nd

February 2018 were perused by the Court. The reports were then directed to be re-sealed and placed in the TCR which was directed to be returned

forthwith to the trial Court.

^ Preliminary objection as to maintainability

15. Appearing for the NIA, Ms. Maninder Acharya, the learned Additional Solicitor General of India (ASG), raised a preliminary objection as to the maintainability of the present appeal. She referred to Section 21 NIA Act and submitted that since both the impugned orders of the Special Court dated 5th February 2018 and 7th March 2018 were interlocutory orders, no appeal could lie to this Court.Â

Â 16. Section 21 NIA Act reads:

â??21. Appeals. -

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:Â

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient

cause for not preferring the appeal within the period of thirty days: Provided further that no appeal shall be entertained after the expiry of period of

ninety days.â??

17. A collective reading of sub-sections (1) and (3) of Section 21 NIA Act makes it clear that as far as an interlocutory order is concerned, no appeal

or even revision would lie to any Court. However, sub-section (4) thereunder makes it clear that an appeal would lie to the High Court against an

order of the Special Court granting or refusing bail.Â

18. The order dated 7th March 2018 rejects the Appellantâ??s plea for statutory bail. Consequently, as far as the order dated 7th March 2018 is

concerned, an appeal would lie before this Court in terms of Section 21(4) NIA Act. The preliminary objection as to the maintainability of the appeal qua the order dated 7th March 2018 is accordingly rejected.

19. The order dated 5th February 2018 allows the application of the NIA to the extent that the period of investigation is extended beyond 106 days to

180 days under Section 43D UAPA. While the Respondent may be justified in contending that the order dated 5th February 2018 did not determine

the rights of any of the parties and would have no bearing on the proceedings of the trial Court or the ultimate decision of the case and is, therefore, an

interlocutory order, it appears to the Court that notwithstanding the bar contained under Section 21 NIA Act, this Court can nevertheless judicially

review such an order in exercise of its inherent jurisdiction under Section 482 Cr PC.Â

20. The position has been further clarified by the Supreme Court in its recent judgment in Asian Resurfacing of Road Agency Pvt. Ltd. v. Central

Bureau of Investigation 2018 (5) SCALE 269. That judgment was made in the context of Section 19 (3) (c) Prevention of Corruption Act 1988, which

provides that â??notwithstanding anything contained in the Code of Criminal Procedure, 1973..... (c) no court shall stay the proceedings under this

Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or

other proceedings.â? The Supreme Court has clarified that in the rarest of rare cases, a writ petition could be entertained against such an order

notwithstanding the above bar instead of requiring a separate petition to be filed only for that purpose which will only result in multiplicity of

proceedings.Â

21. Therefore, in the present case, the proper course is for the Court to entertain the challenge to the order dated 5th February 2018 of the Special

Court by invoking the jurisdiction of this Court under Section 482 Cr PC. Therefore, although technically the present appeal against the order dated 5th

February 2018 of the Special court would not be maintainable, to require the Appellant at this stage to file a separate application under Section 482 Cr

PC for that purpose, would only multiply proceedings. Having heard the matter on merits at length, the Court considers it appropriate to exercise its

jurisdiction under Section 482 Cr PC as far as the impugned order dated 5th

February 2018 of the Special Court is concerned, in these proceedings itself. The preliminary objection is disposed of accordingly.Â

Contentions of counsel for the Appellant

22. Mr. Rajat Kumar, the learned counsel for the Appellant, has pointed out that as a result of the amendment to Section 167(2) Cr PC by way of

Section 43D (2) (a) UAPA, the reference to '15 days' and '60 days' in Section

167(2) Cr PC has to be read as '30 days' and '90 days' respectively. According to him, whereas earlier judicial custody under Section

167 Cr PC could not be granted for more than 15 days at a time, in the event that the offence is one under the UAPA, judicial custody cannot be

granted for more than 30 days at a time. He submits that a reading of Section 167 Cr PC as amended by Section 43D(2)(a) UAPA reveals that the

Court can permit the detention of an accused beyond 90 days up to 180 days subject to fulfilment of the conditions specified therein.Â

23. It is submitted by Mr. Kumar that the Special Court erred, in its order dated 5th February 2018, in extending the judicial custody of the Appellant

till 180 days from the date of his arrest. It is submitted that this was done without examining the report of the PP. Further, the Appellant was not given

sufficient notice of the PP's report which was filed in a sealed cover. It is argued that there is no provision which authorizes this. According to

Mr. Kumar, non-supply of the PP's report would not constitute sufficient notice as contemplated in the decision of the Supreme Court in *Hitendra*

Vishnu Thakur (supra).Â

24. Mr. Kumar further submitted that the report filed by the NIA was not in fact a report of the PP as defined under Section 15 NIA Act. It was filed

by one Ms. Kanchan who was a legal advisor of the NIA and not a PP. This mandatory requirement of the proviso to Section 43D UAPA was

therefore violated. Without access to the PP's report, the Appellant could not have possibly opposed the application made for extension of the

detention period beyond 90 days and up to 180 days. Reliance was placed on the decision in *Uday Mohan Lal Acharya v. State of Maharashtra*

(2001) 5 SCC 453. It is submitted that since this is violative of Articles 21 and 22 of the Constitution of India which permits the restriction of the

Appellant's liberty only in accordance with the procedure established by law,

the impugned orders ought to be set aside by this Court. It is further submitted that without formal application on behalf of the NIA, the Special Court could not have directed that the PP's report should be kept in a sealed cover.

Submissions of the ASG

25. Opposing the above submissions, Ms. Acharya pointed out that the application filed by the NIA on 1st February 2018 was for both reliefs, i.e. for extension of the period of investigation as well as custody of the Appellant beyond 106 days and up to 180 days. The impugned order dated 5th February 2018 of the Special Court unambiguously allows this application. According to Ms. Acharya, the other application dated 5th February 2018 seeking extension of judicial custody by 30 days was actually not necessary as the legal position was that once the Special Court had allowed the period for extending the time for investigation up to 180 days, which period was expiring on 21st April 2018, there was no need to go back to the Special Court for further extension of judicial custody for 30 days from 5th February 2018.

26. As far as the order dated 7th March 2018 was concerned, Ms. Acharya submitted that it merely declared the impact of the order dated 5th February 2018 and correctly held that the right of the Appellant to seek statutory bail under Section 167(2) Cr PC had not accrued. She submitted that the Appellant had no right to seek access to the PP's report as it was akin to production of a case diary before a trial Court. Therefore, the Special Court was justified in requiring the said reports to be placed in a sealed cover.

Analysis and reasons

27. Section 167 Cr PC as amended by Section 43D UAPA reads as under:

167(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding thirty days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of thirty days; if

he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this

paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than

ten years;

(ii) ninety days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or ninety days, as the case

may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-

section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

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.

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused

shall be detained in custody so long as he does not furnish bail;].

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the

production of the accused person may be proved by his signature on the order authorising detention. (the amended portions are in italics) 3 3 3

28. The above amended provision contemplates extension of the period of detention up to 180 days where it is not possible for the NIA to complete the investigation within a period of 90 days. For this the Court has to be satisfied, on a perusal of the report of the PP indicating the progress of the investigation, that it cannot be completed within 90 days and that it is necessary therefore to extend the detention beyond 90 days and for a period not beyond 180 days. In other words, the proviso to Section 167 (2) (a) (ii) Cr PC (as amended by Section 43D UAPA) envisages the report of the PP being presented before the Court explaining the progress of the investigation. This report should make out a case that it is not possible to complete the investigation within 90 days. This report should indicate the specific reasons why the detention of the accused beyond 90 days is necessary.Â

29. In effect, although the permission of the Court is sought for extending the period of detention and not for extension of the period of investigation, the Court by allowing an application seeking permission for extension of the period of investigation, for whatever period it thinks fit, is in fact allowing the prayer for extension of the custody of the detainee by that period.Â

30. While Mr. Kumar may be right in his contention that as there is no question of the NIA seeking permission of the trial Court for extension of the period of investigation, what in practice the NIA has been doing in all such cases is to apply to the Special Court for extension of the time for completion of investigation and in that process seek extension of the period of detention of the person arrested. This understanding of the NIA may have come about as a result of certain observations made by the Supreme Court in *Hitendra Vishnu Thakur* (supra).Â

31. The Supreme Court in *Hitendra Vishnu Thakur* (supra) was dealing with Section 20 (4) (bb) of the Terrorists and Disruptive Activities Act 1985 (â??TADAâ??), which amended Section 167 Cr PC in a manner identical to Section 43D UAPA. The Supreme Court observed:

â??23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the

investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression ""on 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"" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of

the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by subsection (4) of Section 20 as discussed in the earlier part of this judgment.....â?? (emphasis supplied)

32. The above italicised portions do indicate that according to the Supreme Court, an application is made to the trial Court by the prosecuting agency for extension of time for completion of investigation. This is repeated in para 25 which reads as under:

â??25. We have already noticed that clause (b) of sub-section (4) of Section 20 was amended by the Amendment Act No. 43 of 1993 with effect from 22-5-1993. Besides reducing the maximum period during which an accused under TADA Could be kept in custody pending investigation from one year to 180 days, the Amendment Act also introduced clause (bb) to sub-section (4) of Section 20 enabling the prosecution to seek extension of time for completion of the investigation. Does the Amendment Act No. 43 of 1993 have retrospective operation and does the amendment apply to the

cases which were pending investigation on the date when the Amendment Act came into force? There may be cases where on 22-5-1993 the period of 180 days had already expired but the period of one year was not yet over. In such a case, the argument of learned counsel for the appellant is that the Act operates retrospectively and applies to pending cases and therefore the accused should be forthwith released on bail if he is willing to be so released and is prepared to furnish the bail bonds as directed by the court, an argument which is seriously contested by the respondents.â (emphasis supplied)

33. Therefore, although the wording of Section 167 Cr PC itself does not stricto sensu require the NIA to apply to the Special Court for extension of time for completion of investigation but only apply for extension of the period of detention, the fact remains that an order to that effect can be passed by the Special Court only upon a report of the PP.

Reports of the PP

34. The Court now turns to the other question whether, in the present case, the Special Court has indeed passed an order on 5th February 2018 on the report of the PP. The answer in the considered view of the Court is in the affirmative. There was indeed a report of the PP as defined under Section 2(1)(e) of the NIA Act read with Section 15 thereof both for the hearing on 19th January 2018 as well as for the hearing on 5th February 2018 before the Special Court.Â

35. Section 15 of the NIA Act reads as under:-

â??15 Public Prosecutors. - (1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to

be the Additional Public Prosecutor or Additional Public Prosecutors:Â

Â Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

Â (2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under

this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years,

under the Union or a State, requiring special knowledge of law.

Â (3) Every person appointed as a Public Prosecutor or an Additional Public

Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.â??

Â 36. In support of its plea that Ms. Kanchan who presented the report of the PP for the hearing on 5th February 2018 was in fact duly appointed

under Section 15 of the Act, the NIA has with its reply to the bail application enclosed a copy of the notification dated 13th July 2015 which states that

the President of India is pleased to appoint Ms. Kanchan as PP in the NIA with effect from the date of joining which is indicated as 9th June 2014.

Although the said notification does not specifically refer to Section 15 of the NIA Act, it is clear that the appointment is in fact under that provision.

The mere nonmention of the provision of the NIA does not render such appointment invalid.

Â 37. It was then submitted by Mr. Kumar that under Section 15 (2) of the NIA Act, the PP should have been in practice as an advocate for not less

than 7 years. It is pointed out by Ms. Acharya that the aforementioned appointment has been made through a selection by the UPSC and pursuant to

the candidates satisfying the minimum qualification. Each of the PPs appointed had already been in practice as Advocate for more than 7 years.Â

Â 38. It was then submitted by Mr. Kumar that an employee of the NIA cannot be expected to act freely and fairly as a PP and would merely

endorse what the IO of the NIA would say in a parrot-like manner.Â A perusal of the report submitted by the PPs of the NIA to the Special Court in

the present case shows that they have not simply forwarded or endorsed a report prepared by the investigation officer of the NIA. The reports have

been prepared by the PP exclusively for the Special Court. They, therefore, satisfy the requirement of the law as far as Section 167 (2) Cr P C as

amended by Section 43D of the UAPA is concerned.

Â 39. It was then submitted that inasmuch as on 5th February 2018, the Special Court had extended the judicial custody only for 30 days and on the

next date, that is, 7th March 2018 another application had been filed for further extension. Such further extension could not have been granted without

a report of the PP being placed before the Special Court.Â

Â 40. Although on first blush, it appears that the Special Court extended

detention of the Appellant only for 30 days from 5th February 2018, the consequence of the Special Court accepting the plea of the NIA for extension of time for completion of investigation would mean that the Special Court also accepted its plea for extension of the period of detention of the Appellant by that period. The requirement that the Appellant should be produced before the Court on the date which is earlier to the date of the expiry of the extended period would not mean that on such date of production, the Special Court had again to be presented with a report of the PP. In other words, in the present case, it would not make the continued detention of the Appellant beyond the 30 day period after 5th February 2018 illegal on the ground that such extension of detention was without the benefit of a report of the PP.Â

Â 41. In the present case, the Special Court again extended the judicial custody of the Appellant for a period of 30 days on 7th March 2018 where in fact, as correctly noted by the Special Judge itself, the period for completion of investigation already stood extended up to 21st April 2018. The orders dated 5th February 2018 and 7th March 2018 of the Special Court ought to have been worded in a manner to avoid such confusion. The filing by the NIA of these separate applications for extension of judicial custody was unnecessary, once the Special Court had extended the period for completion of investigation. This has unnecessarily led to confusion. Even the Special Court mistakenly passed orders of extension of judicial custody by 30 days at a time which was unnecessary since the period of completion of investigation stood already extended up to 21st April 2018.

Â 42. As regards providing the Appellant with copies of the reports of the PP, the Court is inclined to agree with the learned ASG that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso to section 167 Cr PC, the Appellant cannot ask to see the reports of the PP. Those reports, like the case diary maintained under section 174 Cr PC, are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation.Â

Â Conclusion

43. Consequently, the Court does not find any illegality in the impugned orders dated 5th February 2018 and 7th March 2018 of the Special Court. This

Court concurs with the trial Court that once the period for completion of investigation stood extended up to 21st April 2018, the occasion for the

Appellant to file an application for statutory bail under Section 167 Cr P C did not arise unless there was a failure by the NIA to file a charge sheet

before 21st April 2018.Â

Â 44. The Court is informed that the Appellant's application for regular bail is pending before the Special Court. It is clarified that nothing said in

this order will affect the independent consideration of such bail application on its merits by the Special Court in accordance with law.

Â 45. The appeal is dismissed and the application is disposed of with the above observations but in the circumstances with no orders as to costs. Â