



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

W.P.H.C. NO.10 OF 2023

BETWEEN:

1. MOHAMMAD BILAL
S/O YUSUF
AGED ABOUT 23 YEARS
R/AT MJM 138, IFA MANZIL
NEAR MOIDDIN MOSQUE, KASBA
BENGARE , MANGALURU TALUK
D.K DISTRICT 575 001.
2. MOHAMMAD RAFEEQ @ SHORT RAFEEQ
@ KUNTA RAFEEQ
S/O SAYYAD
AGED ABOUT 44 YEARS
R/AT D .NO. 3-342/27
NADUMANE HOUSE, KEMPU KOLA
JOKATTE, MANGALURU TALUK
D.K DISTRICT 575 001.
3. ABBAS KEENYA
S/O LATE IBRAHIM
AGED ABOUT 45 YEARS
R/AT H .NO. 3-33/1
KEENYA VILLAGE AND POST
ULLAL TALUK
D.K DISTRICT 575 020.

4. AKBAR SIDDIQI
S/O ABDULLA
AGED ABOUT 39 YEARS
R/AT H NO. 3-661/1
NEAR WATER TANK
ADYARAPADAVU, ADYAR
MANGALURU TALUK
D.K DISTRICT 575 001.
5. MOHAMMAD RAFEEQ
S/O U P MOOSAN
AGED ABOUT 40 YEARS
R.AT H.NO. 14-75
K.B JAREENA MANZIL, NEAR
AL KAREEM MOSQUE, AKKAREKERE
T.C ROAD, ULLAL TALUK
D.K DISTRICT 575 020

(PETITIONER NO.1 TO 5 ARE IN JUDICIAL CUSTODY)

PETITIONER 1-5 ARE REPRESENTED BY
K.I. ILLYAS
S/O LATE IBRAHIM
AGED ABOUT 39 YEARS
#3-33(1) J K HOUSE, KINYA
D.K DISTRICT 575 023.

... PETITIONERS

(BY MR. MOHAMMED TAHIR, ADV.,)

AND:

1. POLICE SUB-INSPECTOR
LAW AND ORDER
FANAMBUR POLICE STATION
MANGALURU CITY - 575 011.
2. STATE OF KARNATAKA
REP. BY ITS SECRETARY
HOME DEPARTMENT

VIDHANA SOUDHA
BENGALURU - 560001.

... RESPONDENTS

(BY MR. V.S. HEGDE, SPP-II A/W
MR. THEJESH P, HCGP)

THIS WPHC IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE AND SET ASIDE THE ORDER OF EXTENSION OF REMAND/DETENTION PASSED ON 9.1.2023 BY THE HON'BLE 49TH CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR TRIAL OF NIA CASES AT BENGALURU (CCH-50) AT ANNEXURE-A IN CRIME NO.71/2022 REGISTERED BY THE PANABUR PS IS WITHOUT JURISDICTION AND ILLEGAL, AND SET ASIDE DISMISSAL OF DEFAULT BAIL ORDER DATED 17.1.2023 PASSED BY HONBLE 49TH CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR TRIAL OF NIA CASES AT BENGALURU (CCH-50) AT ANNEXURE-B IN CRIME NO.71/2022 REGISTERED BY THE PANABUR PS, UNDER SECTION 121, 121A, 120B, 153A, 109 OF IPC AND U/S 13, 18 OF UAPA 1967 AND SAME IS PENDING IN THE FILES OF HONBLE 49TH CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR TRIAL OF NIA CASES AT BENGALURU (CCH-50) WHEREIN THE PETITIONERS ARE ARRIVED AS ACCUSED NO.3,6,11,19 AND 20 AND. CONSEQUENTLY, SET THE PETITIONER INTO LIBERTY BY APPRECIATING THEIR DEFAULT BAIL APPLICATION FILED BY THE PETITIONERS BEFORE THE HONBLE 49TH CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR TRIAL OF NIA CASES AT BENGALURU (CCH-50) AT ANNEXURE-E BY IMPOSING REASONABLE CONDITIONS TO ENSURE THEIR APPEARANCE BEFORE THE PROPER COURT.

THIS WPHC HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.04.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

This petition seeking a writ of habeas corpus has been filed seeking quashment of orders dated 09.01.2023 and 17.01.2023 passed by 49th City Civil and Sessions Judge and Special Judge for trial of National Investigation Agency (hereinafter referred to as 'the Special Court' for short) cases at Bangalore, granting extension of remand / detention and dismissing the application for default bail, respectively. The petitioners in addition, seek a direction to the respondents to set them at liberty by imposing reasonable conditions to ensure their appearance before the competent court.

2. The relevant facts which are not in dispute, lie in a narrow compass. On 12.10.2022, Police Sub-Inspector of Panambur Police Station, Mangaluru City registered Crime No.71/2022, against the petitioners for offences under Sections 121, 121A, 121B, 153A

and 109 of Indian Penal Code, 1860 and under Section 13 and 18(1)(B) of the Unlawful Activities (Prevention) Act, 1967 on the ground that the petitioners are members of Popular Front of India, which is an organization banned by the Central Government by an order dated 28.09.2022. The allegation against the petitioners is that they were engaged in unlawful activities. The petitioners were arrested on 12.10.2022 and were produced before the Magistrate. The Magistrate, by an order dated 28.12.2022 committed the case to Special Court.

3. The Special Court by an order dated 09.01.2023 has extended the custody of the petitioners for a period from 90 days to 180 days. The petitioners, on 12.01.2023 after completion of 90 days filed applications seeking default bail. The Special Court, by an order dated 17.01.2023 rejected the applications seeking default bail and held that the

Special Court has jurisdiction to try the offences. It is not in dispute that during the pendency of the petition, the State Investigation Agency has filed charge sheet in Special Court on 10.04.2023 and cognizance of the offence has been taken by Special Court on 17.04.2023.

4. Learned counsel for the petitioners, while inviting the attention of this Court to paragraph 63 of the decision of the Hon'ble Supreme Court in **'GAUTAM NAVLAKHA VS. NATIONAL INVESTIGATION AGENCY', (2021) SCC ONLINE SC 382** submitted that in case, the order of remand is absolutely illegal and the same is afflicted with vice of lack of jurisdiction and therefore, a writ of habeas corpus would lie. It is further submitted that the investigation has been conducted by State Police and there is no notification under Section 22(1) of the National Investigation Agency Act, 2008 (hereinafter

referred to as 'the Act' for short) constituting Special Court. Therefore, by virtue of Section 22(3) of the Act, the Court of Session in Mangalore alone has the jurisdiction to deal with the matter and the order of extension of remand and the prayer for grant of default bail could have been considered only by the Court of Session in Mangalore.

5. It is therefore, contended that the orders dated 09.01.2023 and 17.01.2023 passed by the Special Court are per se without jurisdiction and therefore, the writ petition seeking writ of habeas corpus is maintainable. It is also urged that mere filing of charge sheet and cognizance of offence being taken by the Special Court does not divest the petitioners of their rights to seek default bail. In support of aforesaid submissions, reliance has been placed on decision of Hon'ble Supreme Court in '**BIKRAMJIT SINGH VS. THE STATE OF PUNJAB (2020) 10 SCC**

616 and a Division Bench judgment of Bombay High Court in '**SUDHA BHARADWAJ AND OTHERS VS. NATIONAL INVESTIGATION AGENCY AND OTHERS**', **(2022) CRI LJ 752.**

6. On the other hand, learned State Public Prosecutor-2 has submitted that the Central Government had issued a notification dated 31.12.2012 under Section 11(1) of the Act notifying the Court of 49th Addl. City Civil Court and Sessions Judge, Bangalore City to be Special Court. It is pointed out that aforesaid notification was superseded by another notification dated 18.09.2019 and the Court of 49th Addl. City Civil Court and Sessions Judge, Bangalore City was designated as Special Court for trial of scheduled offences investigated by the National Investigation Agency. The State Government also by an order dated 19.07.2012 has established the Court to deal with the cases under the

Act and therefore, the said order has to be treated as an order under Section 22(1) of the Act and the Special Court alone has the jurisdiction to deal with the matter. It is also contended that Section 22(3) of the Act has no application in the fact situation of the case.

7. We have considered the rival submissions made on both sides and have perused the record. The following issues arise for consideration in this writ petition:

(i) Whether writ of habeas corpus is maintainable?

(ii) Whether the order dated 19.07.2012 passed by the State Government establishing the Court as Special Court is an order under Section 22(1) of the Act?

8. Before proceeding further, it is apposite to take note of necessary statutory provisions. The Act was enacted with a view to constitute an investigating agency at the national level to investigate and prosecute the offences relating to sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.

9. Section 2(h) of the Act defines the expression 'Special Court' to mean a Special Court constituted under Section 11 or, as the case may be, under Section 22 of the Act. Section 11 of the Act deals with power of the Central Government to designate Court of sessions as Special Courts, whereas Section 22 of

the Act deals with power of the Government to constitute the Special Courts. Sections 11 and 22 of the Act, prior to its amendment by its amending Act dated 02.08.2019 read as under:

"11. Power of Central Government to constitute Special Courts. -

(1) *The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled Offences, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.*

(2) *Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.*

(3) *A Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court.*

(4) *The Agency may make an application to the Chief Justice of the High Court for*

appointment of a Judge to preside over the Special Court.

(5) On receipt of an application under subsection (4), the Chief Justice shall, as soon as possible and not later than seven days, recommend the name of a judge for being appointed to preside over the Special Court.

(6) The Central Government may, if required, appoint an additional judge or additional judges to the Special Court, on the recommendation of the Chief Justice of the High Court.

(7) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

(8) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as such judge or additional judge and the Central Government may by order

direct that he shall continue as judge until a specified date or until completion of the trial of the case or cases before him as may be specified in that order.

(9) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge."

"22. Power of State Government to constitute Special Courts. -

(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall

have effect subject to the following modifications, namely-

(i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;

(ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State Government";

(iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to "Advocate-General of the State".

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the

State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted."

It is evident that the same deals with power of Central and State Government to constitute Special Courts.

10. Now we may advert to the first issue namely the aspect of maintainability of the writ petition. The aforesaid issue is no longer *res integra* and has been answered by the Hon'ble Supreme Court in **GAUTAM NAVLAKHA**, *supra* wherein in paragraph 63 it has been held as under:

"63. xxx

If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected

can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie."

11. In view of aforesaid enunciation of law, the writ of Habeas Corpus is maintainable in the contingencies envisaged in paragraph 63 of the judgment of Hon'ble Supreme Court in **GAUTAM NAVLAKHA**, *supra*. Accordingly, the first issue is answered.

12. Now we deal with the second issue namely whether the order dated 19.07.2012 passed by the State Government establishing the Court as Special Court is an order under Section 22(1) of the Act. It is not in dispute that offence alleged against the petitioners are scheduled offences under the Act and the provisions of the Act are applicable to the case of the petitioners. Section 22(1) of the Act provides that the State Government may constitute one or more

Special Courts for trial of the offences under any or all of the enactments specified in the Schedule.

13. The order dated 19.07.2012 passed by the State Government establishing the Court of Addl. City Civil and Sessions Judge and Special Court reads as under:

" PROCEEDINGS OF THE GOVERNMENT OF
KARNATAKA

Sub: Establishment of one more court of Additional City Civil & sessions Judge (Spl. Court) to deal with the cases under National Investigation Agency Act, 2008 at Bangalore.

Read:

- 1) Letter No.E-6/2003/2009/NIA/2320 dated 13-05-2010 of the Director General, N.I.A. New Delhi.
- 2) Registrar General of High Court, letter No.GOB II.267/2010, dt:26.10.10, 28.04.2011 and 28.03.2012.
- 3) Inspection General (Admnin), NIA, Ministry of Home Affairs, Government of India, New Delhi, Letter No.E.06/2003/2009/NIA/1171-74 dated 07.05.2012 & 29.06.2012.

Preamble:

In the letter read at (1) above, Director General, N.I.A. New Delhi, had stated that the Government of India has created the National Investigation Agency (NIA) under the National Investigation Agency At, 2008. the Act empowers the National Investigation Agency to investigate & Prosecute offences specified

in the schedule to the Act, which inter-alia includes offences under the Unlawful Activities (Prevention) Act, 1967. Further, he states that in accordance with the provisions of Section 11 of the NIA Act, the Central Government shall constitute a Special Court in every State for trial of schedule offences investigated by the National Investigation Agency within the territorial jurisdiction of the State. The Special Court so constituted shall be presided over by a Judge to be appointed by the Central Government on the recommendation of the Hon'ble Chief Justice of the High Court concerned.

Further, he states that the NIA is investigating 14 cases in various States having inter-state ramifications and for various matter concerning investigation. It is expedient to get atleast one court notified under the NIA, Act, in each State/Union Territory. Further, at any time, cases may also be taken up for investigation by the NIA in the State of Karnataka, necessitating a NIA Special court.

Therefore, requested for recommending a suitable Court and a suitable Presiding Officer to the Central Government, so that the Ministry of Home Affairs, Government of India, issue notification constituting the NIA Special Court at Bangalore for the entire State of Karnataka.

In view of the decision taken by the Central Government, the High Court letter read at (2) above, after considering all the relevant materials resolved to recommend to the Government for creation of one court at Bangalore to deal with the cases under National Investigation Act, 2008, and create one more post in the cadre of District Judges. And again requested the Government to accord sanction for the establishment of one more Court of Additional City Civil and Session Judge (Special Court) to deal with the cases under National Investigation Agency Act, 2008, at

Bangalore together with the post of Presiding Officer and following non-gazetted staff.

<i>Sl. No.</i>	<i>Name of the Post</i>	<i>No. of Posts</i>
1.	<i>Additional City Civil & Session Judge (District Judge Cadre)</i>	1
2.	<i>Judgement Writers</i>	2
3.	<i>Sheristedars</i>	2
4.	<i>First Division Assistant</i>	2
5.	<i>Second Division Assistant</i>	2
6.	<i>Typist</i>	1
7.	<i>Attender</i>	1
8.	<i>Peons</i>	2
	<i>Total</i>	13

In the letter read at (3) above, the Inspector General (Admin), NIA, Ministry of Home Affairs, New Delhi, had requested the State Government to establish a NIA Special Court in accordance with the provisions of the section 11 of the NIA Act, 2008 at the earliest. In view of the facts stated above, the Government has examined the proposal. Hence this order.

GOVERNMENT ORDER NO.LAW 231, LCE 2010,
BANGALORE, DATED 19TH JULY 2012

In the circumstances explained in the preamble, Government agrees for the establishment of one more Court of Additional City Civil & Sessions Judge (Special Court) to deal with the cases under National Investigation Agency Act, 2008, at Bangalore together with the post of Presiding Officer and following non-gazetted staff.

STAFF PATTERN

<i>Sl. No.</i>	<i>Name of the Post</i>	<i>No. of Posts</i>
1.	<i>Additional City Civil & Session Judge (District Judge Cadre)</i>	<i>1</i>
2.	<i>Judgement Writers</i>	<i>2</i>
3.	<i>Sheristedars</i>	<i>2</i>
4.	<i>First Division Assistant</i>	<i>2</i>
5.	<i>Second Division Assistant</i>	<i>2</i>
6.	<i>Typist</i>	<i>1</i>
7.	<i>Attender</i>	<i>1</i>
8.	<i>Peons</i>	<i>2</i>
	<i>Total</i>	<i>13</i>

This order issues with the concurrence of the Finance Department vide U.O. Note No.FD 201 Exp-10/2012, dt:18-06-2012."

14. Thus, from perusal of the Government order dated 19.07.2012, it is evident that an order is an order under Section 22(1) of the Act and therefore, the Special Court has jurisdiction to deal with the order of extension of remand as well as the applications seeking default bail. The provisions of Section 22(3) of the Act has no application to the fact situation of the case. The contention urged by the petitioners that the orders of extension of remand and order rejecting applications for default bail are without jurisdiction

and cannot be sustained. Thus, the second issue is answered by stating that order dated 19.07.2012 is an order passed under Section 22(1) of the Act.

15. For the aforementioned reasons, we do not find any merit in this writ petition. Needless to state that the petitioners shall be at liberty to take recourse to such remedy as may be available to them in law.

With the aforesaid liberty, the petition is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS