



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.2294 OF 2025 (GM-RES)

BETWEEN:

ANIRUDH RAJAN
AGED ABOUT 34 YEARS
S/O. GRV RAJAN
R/AT SEA CLIFF ENCLAVE
NO.58, 2ND CROSS, AKKARA,
PANAIYURU, INJAMBAKKAM,
CHENNAI, TAMILNADU-600115.

... PETITIONER

(BY SRI S. BALAKRISHNAN, ADVOCATE)

AND:

STATE OF KARNATAKA
INSPECTOR OF POLICE
BY UPPARPET POLICE (CCB)
REP. STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING,
BANGALORE-560001.

... RESPONDENT

(BY SRI P. THEJESH, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER PASSED BY THE HON'BLE XLIX ADDL. CITY AND CIVIL AND SESSIONS JUDGE, (SPECIAL COURT FOR THE TRIAL OF NIA CASES) (CCH-50) AT BENGALURU UNDER THE PROVISION OF 43(D)(2)(b) OF UAP ACT SEEKING EXTENSION OF TIME FOR COMPLETION OF INVESTIGATION DATED 06/12/2024, VIDE AT ANNEXURE-A; MAY BE PLEASED TO ALLOW THE APPLICATION FILED BY THE PETITIONER





UNDER SECTION 187(2) OF BNSS SEEKING DEFAULT BAIL ON 05/12/2024 VIDE AT ANNEXURE-G.

| | |
|--|------------|
| Date on which the petition was reserved for Orders | 04.04.2025 |
| Date on which the Orders was pronounced | 29.04.2025 |

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

CAV ORDER

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

The question that falls for consideration before this Court in this writ petition is:

"Whether an accused is entitled to default bail under Section 167 (2) of Code of Criminal Procedure (Code) (Section 187 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023) (BNSS), when the prosecution files an application under Section 43-D (2) (b) of the Unlawful Activities (Prevention) Act, 1967 along with the report seeking extension of time for investigation before the expiry of initial mandatory 90 days period, but the Court passes the extension order after the said period, and after the accused applies for default bail?"



2. The petitioner is accused in Crime No.207/2024 on the file of XLIX City Civil and Sessions Judge (Special Judge for NIA cases), Bengaluru ('trial Court') charged for the offences punishable under Sections 147, 152, 336 and 340 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS' for short) , Section 10 the Unlawful Activities (Prevention) Act, 1967 (UAP Act for short) and Section 66C of The Information Technology Act (IT Act for short). The petitioner was arrested on 05.09.2024 and remanded to judicial custody on 06.09.2024. The initial period of 90 days expired on 05.12.2024. The prosecution filed the application under Section 43-D(2)(b) of the UAP Act on 03.12.2024 seeking extension of time for completion of the investigation before expiry of 90 days. The accused filed an application seeking default bail under Section 187(3) of BNSS on 05.12.2024. On 07.12.2024, the trial Court allowed the application filed by the prosecution seeking extension of detention of the accused in judicial custody from 90 days to 180 days and rejected the application filed by the



accused seeking statutory bail under Section 187(3) of BNSS.

3. Heard Sri S. Balakrishnan, learned counsel appearing for the petitioner and Sri P. Thejesh, learned HCGP appearing for the respondent.

4. Learned counsel appearing for the petitioner – accused submits that the right to default bail is an indefeasible right under Section 187 (3) of BNSS, which accrues the moment charge sheet is not filed within the statutory period of 90 days. It is submitted by him that although the prosecution filed an application under Section 43-D(2)(b) of UAP Act before the expiry of 90 days, no judicial order was passed extending the period before the right to bail accrued. He places reliance on the decision of the Apex Court in the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others vs. National Investigation Agency¹** (Judgebir); **Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat²** (Jigar). It

¹ 2023 SCC Online SC 543

² (2023) 6 SCC 484



is submitted that the impugned order does not satisfy the requirements for extending judicial custody under Section 43-D(2)(b) of the UAP Act as laid down by the Apex Court in the case of ***State of Maharashtra vs. Surendra Pundlik Gadling and others***³ (*Surendra Pundlik Gadling*). He further argues that the accused cannot be penalized for delays by the court in deciding application of the prosecution. The statutory protection under Section 187 (3) of BNSS operates automatically unless custody period is validly extended by a judicial order within time. It is also submitted that the right to liberty under Article 21 of the Constitution of India demands strict construction in favour of the accused, and in this regard, he places reliance on the decision of the Apex Court in the case of ***Hitendra Vishnu Thakur and others vs. State of Maharashtra and others***⁴ (*Hitendra Vishnu Thakur*). Learned counsel for the petitioner submits that the impugned order passed by the trial Court is unsustainable and the petitioner is entitled to default bail as per Section 187(3) of the BNSS.

³ (2019) 5 SCC 178

⁴ (1994) 4 SCC 602



5. *Per contra*, the learned counsel appearing for the State submits that the petitioner was charged for the offences punishable under Sections 147, 152, 336, 340 of the BNS, Section 10 the UAP Act and Section 66C of IT Act in Crime No.207/2024. The accused was remanded to judicial custody on 06.09.2024. A search was conducted and the petitioner was subsequently charged with the offence under Section 20 of UAP Act with the leave of the Special Court. It is submitted that the State carried out an investigation from 05.09.2024 to 03.12.2024. During investigation, the investigating officer retrieved 1.8 TB of data from the electronic devices seized from the accused. For further investigation to be conducted based on the retrieved data, the State submitted an application seeking extension of the judicial custody period of the accused from 90 days to 180 days to facilitate the ongoing investigation. It is submitted by the learned counsel that the application for extension of time to complete the investigation was filed on 03.12.2024 before the expiry of the initial mandatory 90 days period on 05.12.2024. The application was supported by a report of



the public prosecutor detailing the progress of investigation and the necessity for extension as required by law. It is argued that when an application is filed within time, the accused does not acquire an indefeasible right to bail even if the order on extension is passed later, as the delay if any, in passing the extension order cannot be attributed to prosecution and the accused cannot claim a right based on judicial processing time. It is submitted that the nature of offences under the UAP Act, which concerns threat to national security by acts of terrorism, the statutory provisions relating to extending investigation time must be interpreted to support effective investigation while protecting due process. Learned counsel submits that the allowing of the prosecution's application and rejection of the default bail application of the accused by the trial Court is a considered order and does not warrant any interference.

6. It is submitted that the accused does not acquire an indefeasible right to default bail merely because the Court does not pass an order on the prosecution's application for extension, provided that such application was filed within the



stipulated time. Learned counsel emphasized that if the prosecution files a proper application under Section 43-D(2)(b) of UAP Act before the expiry of 90 days and such an application complies with the legal requirements (including a report by the public prosecutor stating progress and reasons for extension) the right to default does not get crystallized even if the extension is granted later. Delay in passing the order by the Court cannot be construed in favour of the accused.

7. We have carefully considered the rival contentions urged by the learned counsel for the parties and perused the material on record.

8. Section 43-D(2)(a) of the UAP Act states that when offences punishable under this Act are invoked, Section 167 of Cr.P.C. is applicable with a modification that wherever there is a reference to 'fifteen days', 'ninety days' and 'sixty days' it has to be referred as 'thirty days', 'ninety days' and 'ninety days' respectively. Clause (b) of the said section envisages that if it is not possible to complete the



investigation within the said period of ninety days, the Court may extend the said period upto one hundred and eighty days if it is satisfied with the report of the public prosecutor indicating the progress of the investigation and specifying the reasons for detention of the accused beyond the period of ninety days. Since Section 43-D (2) clearly states that Section 167 of Cr.P.C. shall apply (it has to be read as 187 of BNSS) in a proceeding in relation to an offence punishable under the UAP Act, undoubtedly if charge sheet is not filed within ninety days and if the investigation agency does not seek extension of the period to complete the investigation, an accused gets a right under Section 167 (2) Cr.P.C. (187 (3) of BNSS) to be released on bail. It is an indefeasible right which the court cannot deny if the accused files the application for bail and offers to furnish bail, but this right should be exercised before the investigating agency files charge sheet or seeks extension of time to complete the investigation. The Apex Court in the case of ***M Ravindran vs. The Intelligence Officer, Directorate of Revenue***



Intelligence⁵ (*M Ravindran*) addressed the crucial issue of default bail under Section 167 (2) of Cr.P.C., particularly in the context of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The question that fell for consideration before the Apex Court was, "*Whether the right to default bail once approved is extinguished by subsequent filing of an additional complaint by the investigating agency?*" The Apex Court emphasized that the right to default bail becomes indefeasible when the accused files an application and is prepared to furnish bail, even if the court has not yet considered the application or set the bail conditions. The court emphasized that unless the accused makes an application either orally or in writing for being released on bail, the court cannot release him from custody.

9. In the case of ***Surendra Pundlik Gadling***, the Apex Court emphasized the importance of adhering to procedural safeguards to protect the rights of the accused. The Apex Court emphasized that while the prosecution's timely filing of the extension application is crucial, the actual

⁵ (2021) 2 SCC 485



granting of extension by the Court must also occur within the stipulated ninety days period to prevent the accrual of the accused's right to default bail. The Apex Court highlighted that the accused must be produced before the court either physically or virtually, at the time of hearing of the extension application. Failure to ensure the accused presence violates their fundamental right under Article 21 of the Constitution.

The Apex Court emphasized as under:

- i. The public prosecutor's report is crucial for extending the time to file the charge sheet under the UAP Act. The public prosecutor is an independent statutory authority and must independently assess the investigating officer's request for an extension.
 - a) A public prosecutor is not merely a post office or a forwarding agent for the investigating officer's request for extension.



- b) The public prosecutor must apply their mind to the progress of the investigation and the reasons for the delay.
- c) The report must demonstrate that the public prosecutor has applied their mind to the investigation.
- d) The report must indicate the progress of investigation and the specific reasons for detaining the accused beyond the initial 90 days period.
- e) The reasons for extension to be compelling those include:
 - 1. The accused being members of a banned organization;
 - 2. The need to analyze voluminous electronic data;
 - 3. The investigation into the financial details of the accused;
 - 4. Investigation into telephonic interconnections between the



respondents and the other absconding
and underground accused persons.

5. The attempt to train young students;
- ii. The Court distinguished the landmark case of
Hitendar Vishnu, *stated supra*.

10. The Apex Court clarified that the default bail is not automatically granted if there are minor procedural defects in the public prosecutor's report and observed that the Court has to examine whether the public prosecutor has substantially complied with the legal requirements. *This decision balanced the rights of the accused with the need to effectively investigate offences under the UAP Act.*

(emphasis supplied)

11. In the instant case, the prosecution along with the application filed a detailed report of the public prosecutor as envisaged under Section 43-D(2)(b) of the UAP Act indicating the progress in investigation and specific reasons seeking for extension of the judicial custody from 90 days to 180 days.



12. The trial Court found that the extension of investigation period needs to be granted as the investigation conducted so far is thorough and there are no grounds to believe that the extension sought is just for mere asking.

13. In the case of ***Judgebir*** stated *supra*, the Apex Court held that the absence of sanction under Section 45(1) of the UAP Act does not render the charge sheet incomplete for the purpose of Section 167(2) of Cr.P.C. and the requirement of sanction is related to the cognizance of the offence, not the completion of investigation.

14. In the case of ***Jigar*** stated *supra*, the Apex Court emphasized the rights of an accused under Article 21 of the Constitution and the procedural requirements for extending the investigation period under special statutes. The Apex Court held that the accused must be produced before the Court either physically or through video conferencing, when the prosecution's application for extension of the investigation period is being considered. Failure to do so amounts to violation of the accused's fundamental right



under Article 21 of the Constitution. In the case of **Jigar** stated *supra*, the prosecution had filed the application for extension of time before the expiry of 90 days, despite the timely filing, the Court quashed the extension and granted default bail because the accused was not produced either physically or virtually when the extension was considered by the Court. Thus, from the decisions of **Judgebir** and **Jigar** stated *supra* what can be brought home is timely filing of an application for extension of the judicial custody is necessary, but it is not sufficient; mandatory production of the accused either physically or via video conferencing during the hearing of extension application is also a constitutional safeguard and if either of them is missing, default bail must be granted.

15. If the prosecution files an application for extension of time to complete the investigation before the expiry of the statutory period with the report containing compelling reasons for extension, the accused does not acquire an indefeasible right to default bail, even if the Court grants extension after the expiry of the original period. In the instant case, the prosecution filed its application for



extension of time to complete investigation under Section 43-D(2)(b) of the UAP Act prior to expiry of the initial mandatory 90 days period. The accused was produced before the trial Court on 03.12.2024 and the report was filed indicating the compelling reasons for extending the time stating that there was a need to analyze voluminous electronic data. The reasons were found convincing for extension. Merely because the application remained pending at the time when the accused filed the application for default bail, it cannot be said that the accused acquired an indefeasible right to bail and therefore the accused is not entitled for default bail under Section 187(3) of BNSS. With this discussion, we pass the following order.

ORDER

The writ petition is hereby ***dismissed***.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**