

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2312/2020

RAJ KUMAR @ LOVEPREET @ LOVELY Petitioner

Through Mr. Rajiv Mohan, Ms. Tara Narula
and Mr. Lakshya Gupta, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through Mr. Panna Lal Sharma, APP with
ACP Jasbir Singh, IO with Insp.
Neeraj Kumar, Spl. Cell, NR,
Delhi

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

11.02.2021

%

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for setting aside order dated 11.09.2020 passed by learned ASJ, Patiala House Court, New Delhi District and order dated 10.11.2020 passed by Link Judge, learned ASJ, Patiala House Court, New Delhi District for extending the period to conclude investigation under Section 43D(2)(B) of the Unlawful Activities Prevention Act, 1967 (UAPA) and seeking directions to release petitioner under Section 167 (2) of Cr.P.C.

2. The facts of the case are that FIR No.154/2020 was registered on 16.06.2020 at PS Special Cell and the petitioner was arrested on 18.06.2020 and was remanded to police custody for a period of three days following which he was remanded to judicial custody and has been lodged in Mandoli Jail, New Delhi till date. Petitioner's custodial remand

was extended from time to time and he has spent 150 days in custody till the date of filing of the present petition.

3. Learned counsel for the petitioner submits that period of initial 90 days and extended period of investigation granted vide order dated 11.09.2020 expired on 11.11.2020, however, till that date charge-sheet was not filed. Hence, the petitioner moved an application for default bail under Section 167 (2) Cr.P.C. which was dismissed by learned Special Judge vide order dated 17.11.2020 on the ground of maintainability.

4. It is further submitted that learned APP for State again moved an application seeking extension of investigation period on 09.11.2020 which was allowed vide order dated 10.11.2020 and period to conclude the investigation was extended upto 30.11.2020.

5. Learned counsel for petitioner submits that the extension of investigation period was not granted on valid and cogent grounds. The order of extension was passed as there was active concealment of facts before the learned Trial Court and hence, it was *non-est* in the eyes of law. In the circumstances when the extension order was not a valid order and police was required to file charge-sheet on 11.11.2020 which they did not file. Hence, the right of default bail accrued on the accused on 11.11.2020. However, on 11.09.2020, an order passed by learned ASJ in subject FIR exercising jurisdiction under Section 43D(2)(B) of UAPA to extend the period to conclude investigation in the subject FIR till 11.11.2020, thereafter, Order dated 10.11.2020 passed by Link Court, learned ASJ further extended the period to conclude investigation in the subject FIR till 30.11.2020.

6. Learned counsel for the petitioner has drawn attention of this Court

to the sanction for prosecution granted vide order dated 03.11.2020 and the same was received in the Office of Commissioner of Police, Delhi on 05.11.2020 and in the Office of DCP, Head Quarter on 06.11.2020. However, on 09.11.2020, learned APP moved application for further extension of time for filing the charge-sheet.

7. Learned APP, on instructions from Mr. Jasbir Singh, ACP (IO of the case), submits that the respondent received sanction dated 03.11.2020 on 13.11.2020. However, on 11.11.2020, they requested learned Public Prosecutor to move application for extension of time for filing the charge-sheet.

8. The material on record establishes that the sanction dated 03.11.2020 received in the Office of Commissioner of Police, Delhi on 05.11.220 and in the Office of DCP, Head Quarters on 06.11.2020. Thus, it deemed that sanction dated 03.11.2020 received in the office of respondent on 05.11.2020 or maximum by 06.11.2020. Thus, there was no occasion to move application on 09.11.2020 for extension of time for filing the charge-sheet whereas the petitioner after expiry of the extended period moved an application on 11.11.2020 and the same was dismissed as not maintainable.

9. The fact remains that the charge-sheet has not been filed within the extended period despite the fact that the sanction dated 03.11.2020 was received in the Office of CP, Delhi and DCP, Head Quarter on 05.11.2020 and 06.11.2020, respectively.

10. In the case of *Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors.* (1994) 4 SCC 602, the Hon'ble Supreme Court has held as under:

“...65. In the report of the Public Prosecutor, it has been stated that the appellant is a police officer and while the charge-sheet and supplementary charge-sheet against other accused persons have already been filed the charge-sheet against him would be submitted as soon as *sanction* from the Government is received. Sanction is not strictly speaking a part of the investigation and this legal position was conceded by Mr Tulsi, the learned Additional Solicitor General also relieving us of the need to refer to the settled law on this subject. In the absence of sanction there was no bar to file the charge-sheet and then produce the sanction of the competent authority subsequently with the permission of the court. We have dealt with in extenso the ambit and scope of clause (bb) of sub-section (4) of Section 20 of TADA elsewhere in the judgment. The Designated Court could grant extension of time under clause (bb) on the *report* of the Public Prosecutor for *completion of the investigation* and filing the challan thereafter and for no other purpose. The Legislature has limited the grounds on which extension could be granted and the Designated Court could not add to those grounds. Since, on its plain reading clause (bb) could be invoked only if the *investigation* was not complete, the Public Prosecutor could not be permitted to seek extension of time under that clause for ‘administrative difficulties’ or obtaining ‘sanction’ or the like grounds if investigation was already complete. If extension of time was to be granted on *grounds* other than the completion of the investigation, it would defeat the legislative intent clearly manifested in clauses (b) and (bb) as amended by Act 43 of 1993 — not to keep an accused in custody beyond the time prescribed by clause (b) or as extended by clause (bb). The grant of extension beyond the period prescribed by clause (b) very seriously affects the liberty of a citizen and the Designated Court commits an error in the exercise of its jurisdiction if it grants extension of time ignoring the provisions of clause (bb). Grant of extension under clause (bb) on grounds

extraneous thereto, at the whims of the investigating agency, cannot be permitted. The very object of the clause would be defeated if the period of compulsory detention is to be extended in a casual manner for reasons other than those envisaged by clause (bb). In the present case extension has been granted and bail declined to the appellant on *grounds* not sanctioned by clause (bb) and the order of Designated Court refusing bail to the appellant cannot be sustained. The order of the Designated Court in CrMP No. 93 of 1993 rejecting the prayer for release on bail under clause (b) of Section 20(4) of TADA because of the grant of extension of time under clause (bb) is, therefore, set aside. For the reasons noticed above as well as those given by us while dealing with the cases of Hitendra Vishnu Thakur (Crl. Appeal No. 732-735 of 1993) we direct that the appellant Malarao T. Kakodal be released on bail on his furnishing bail bonds in the sum of Rs 30,000 with two sureties of the like amount to the satisfaction of the Designated Court subject, however, to the following conditions:

- (1) That appellant shall before being released on bail furnish the correct and complete address of the place where he would be residing within the jurisdiction of the Designated Court.
- (2) That the appellant shall report at the police station nearest to the place of his residence every week on Mondays; and
- (3) The appellant shall not leave the place of his residence and move out of the jurisdiction of the Designated Court without seeking permission from the Designated Court and informing the police station concerned about the same...”

11. In view of the aforementioned facts and the legal position, I am of the view that the petitioner was entitled to default bail even on 11.11.2020.

12. Accordingly, he shall be released on bail forthwith on his furnishing a personal bond of Rs.25,000/- with two sureties of the like amount to the satisfaction of Trial Court/Designated Court.
13. The petition is, accordingly, allowed and disposed of.
14. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.
15. Order be uploaded on the website of this Court forthwith.

SURESH KUMAR KAIT, J

FEBRUARY 11, 2021
rk