IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2485 OF 2024

Sachin Hindurao Waze ..Petitioner
Versus
Union of India, Through the S.P.
The National Investigation Agency & Anr. ..Respondents

Mr. Rounak Naik a/w. Ms. Sajal Yadav, Ms. Aayushya Genuja, Harsh Ghangurde, Ms. Dakshata Dupare and Nihal Rebello for Petitioner.
Mr. Sandesh D. Patil a/w. Chintan Shah, Prithviraj Gole, Krishnakant Deshmukh, Anusha Amin and Ms. Divya Pawar for Respondent No.1/NIA.
Mr. J. P. Yagnik, APP for State/Respondent.
Mr. Nitin Pawar and Mr. Akhilesh Singh, NIA present.

CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.

RESERVED ON : 24 FEBRUARY 2025
PRONOUNCED ON: 06 MARCH 2025

JUDGMENT : *[PER SARANG V. KOTWAL, J.]*

1. Heard Mr. Rounak Naik, learned counsel for the Petitioner, Mr. Sandesh Patil, learned counsel for the Respondent No.1/NIA and Mr. Yagnik, learned APP for the State.

2. This is a writ petition praying for writ of *habeas corpus*

alleging that the Petitioner's detention is illegal. The Petitioner is seeking his release forthwith. Though, there are many grounds raised in the petition, learned counsel for the Petitioner restricted his arguments to the grounds which are noted and considered in the following discussion.

3. Before referring to the submissions made by the learned counsel on behalf of the Petitioner, it is necessary to mention the background as to how the Petitioner came to be arraigned as an accused. There were three separate incidents, apparently having no connection with each other; however, as the events unfolded subsequently, it was realised that all these three incidents were interconnected and the Petitioner was a common factor involved in all these three incidents. These incidents are as follows:

1) C.R.No.47 of 2021 was registered at Vikhroli police station on 18.02.2021 against an unknown accused. The first informant was one Mansukh Hiren. His grievance was that his Mahindra Scorpio vehicle was stolen.

On 26.02.2021, C.I.U. Crime Branch, Mumbai took over the investigation of that offence by registering their

own F.I.R. vide C.R.No.41 of 2021. At this stage, the Petitioner was the Investigating Officer.

On 07.03.2021 the Anti-Terrorism Squad (for short 'ATS') took over the investigation of the same offence by registering their own F.I.R. vide C.R.No.11 of 2021 U/s.379 of the I.P.C.

On 21.05.2021, the National Investigation Agency (for short 'NIA') included the investigation of this offence in their ongoing investigation in connection with their F No.11011/19/2021/NIA.

2) C.R.No.35 of 2021 was registered at Gamdevi police station on 25.02.2021, under sections 286, 465, 473, 506(2), 120B of the I.P.C. and U/s.4(a)(b)(i) of the Explosive Substances Act. It was registered against an unknown accused. It was in connection with one Mahindra Scorpio car found near the residential building of a prominent industrialist.

This investigation was taken over by C.I.U., Crime Branch, Mumbai by registering their own C.R.No.40 of 2021. At this stage, the Petitioner was the Investigating Officer.

On 07.03.2021, the ATS took over this investigation by registering their own C.R.No.10 of 2021. By the order

of the Central Government, on 08.03.2021, the NIA took over the investigation of this offence by registering their F No.11011/19/2021/NIA.

3) Mumbra police station, Thane, A.D.R.No.39 of 2021 U/s.174 of the Cr.p.c. was registered on 05.03.2021. This was registered after the dead body of the aforementioned Mansukh Hiren was found.

On 07.03.2021, ATS took over this investigation by registering their own C.R.No.12 of 2021, under sections 302, 201 and 120B r/w.34 of the I.P.C. Even this investigation was transferred to NIA on 20.03.2021 in their ongoing investigation F No.11011/19/2021/NIA.

4. All these ostensibly unconnected incidents were ultimately found to have had a common thread and the entire matter was investigated by the NIA vide their F No.11011/19/2021/NIA. The investigation was completed and the charge-sheet was filed before the learned Special Judge, Mumbai. The investigation was carried out vide RC/01/NIA/Mum.

5. The Petitioner was arrested by the NIA on 13.03.2021 at 11:40p.m. He was produced before the learned Special Judge,

Mumbai on 14.03.2021. He was granted police custody for 10 days and the next date for remand was 25.03.2021. On 14.03.2021 itself the Petitioner had made an application at Exhibit-3 claiming that his arrest was illegal because the requisite consent of the State Government U/s.45 of the Cr.p.c. was not taken. The said application was rejected on 16.03.2021. It was observed that the issue whether the Petitioner had acted in discharge of his official duties could be decided at an appropriate stage.

6. On 24.03.2021, a report was submitted before the learned Special Judge, Mumbai, mentioning that Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA') were added. The learned Special Judge passed an order "Seen & filed, tagged with NIA R.A.No.312/2021". The remand application number was R.A.No.312/2021 right from the first remand.

7. On 25.03.2021, the police custody remand was extended up to 03.04.2021. It may be noted here that, this period up to 03.04.2021 was beyond the period of 15 days from the date of his

arrest and the date of his first remand. On 09.04.2021, the Petitioner was remanded to judicial custody.

8. On 09.06.2021, the learned Special Judge gave an extension of 60 days to complete the investigation under UAPA. On 05.08.2021, the said period was further extended by 30 days. On 03.09.2021, an application was made for permission to file the charge-sheet. On that day itself, the charge-sheet was filed. On the same day i.e. on 03.09.2021 it was observed that the charge-sheet was filed and hence, R.A.No.312 of 2021 was disposed of.

9. According to the learned counsel for the Petitioner, from 03.09.2021 to 07.09.2021 there was no judicial order authorising detention of the Petitioner. On 07.09.2021, the case was assigned to another learned Judge. He received the charge-sheet at 4:55p.m. and took cognizance on the same day. According to the learned counsel for the Petitioner, no order U/s.309 of the Cr.P.C. remanding the Petitioner was passed on that day. On 15.11.2021, the other documents were received.

These are the important dates. Mr. Naik's submissions

revolved around these dates.

SUBMISSIONS MADE BY SHRI. ROUNAK NAIK, LEARNED COUNSEL ON BEHALF OF THE PETITIONER.

10. According to the learned counsel, Section 45 of the Cr.p.c. is contravened. No consent of the State Government was taken before arresting the Petitioner. Admittedly, he was the Investigating Officer in the aforementioned offences, for which, he was subsequently arrested. All the acts attributed to him were committed during the performance of his official duty, therefore, it was necessary to have obtained the consent U/s.45 of the Cr.p.c., before his arrest.

The first remand should have been obtained by the Investigating Agency from a Magistrate. Learned Special Judge was not empowered to remand the Petitioner at the first instance when he was arrested.

The charge-sheet was filed on 03.09.2021 and, therefore, power to remand before filing of the charge-sheet U/s.167 of the Cr.p.c. came to end on 03.09.2021. After that, the

remand could have been granted only U/s.309 of the Cr.p.c. But there was no such order of the remand U/s.309 of the Cr.p.c. passed on 03.09.2021.

The matter was transferred to another learned Judge on 07.09.2021. The charge-sheet runs into thousands of pages and therefore, it was not possible for him to have applied his mind to the entire set of documents to reach to the conclusion that it was a fit case where cognizance could be taken. In spite of that, on that very day i.e. on 07.09.2021, within a short period the cognizance was taken.

According to Shri. Naik, the warrant of remand U/s.309 of the Cr.p.c. was required to be sent by the learned Special Judge under his own signature. The Criminal Manual provides Form VI requiring signature of the learned Special Judge. But in this case, there is no such warrant of remand U/s.309 of the Cr.P.C. signed by the learned Special Judge.

Learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of ***Ram Narayan Singh Versus State of***

Delhi and others[1]. According to Shri. Naik, the ratio of that judgment is that, every order made under the said section had to be in writing and signed by the Presiding Judge or Magistrate.

Learned counsel relied on the judgment of a Division Bench of this Court in the case of ***Dilip Pandurang Kamath and others Versus The State of Maharashtra***[2], and in particular he relied on paragraph-28 of the said judgment; wherein, it was observed that, as far as, the remand order is concerned, only a warrant is sufficient. It was observed that, it was a settled law that under Section 309(2) of the Cr.p.c. the only requirement was that, if an adjournment was made, then by a warrant the accused may be remanded to custody. According to him, in this case the Petitioner is not remanded to custody U/s.309 of the Cr.P.C. under warrant on each date.

Learned counsel also relied on the Judgment of a Single Judge Bench of the High Court of Delhi at New Delhi in the case of ***Yogesh Mittal Versus Enforcement Directorate***[3]. He relied

1 (1953) 1 SCC 389
2 2005 SCC OnLine Bom 1236
3 2018 SCC OnLine Del 6565

on the observation in paragraph-30, wherein, it was observed that, noting dated 11th August, 2017 in that case was not by the Court but was by the Reader of the Court; which could not be said to be an order of remand by the Court.

SUBMISSIONS MADE BY SHRI. SANDESH PATIL, LEARNED COUNSEL ON BEHALF OF THE RESPONDENT NO.1/NIA.

11. Learned counsel for the Respondent No.1/NIA submitted that the Petitioner was arrested on 13.03.2021 after the NIA had taken over the investigation on 08.03.2021. The offence under the Explosive Substances Act was mentioned in the Schedule of the National Investigating Agency Act, 2008 (for short 'NIA Act'), therefore, the learned Special Judge under NIA was the competent Court who could have granted an order of remand of the petitioner. He relied on the provisions of Sections 2(b) and 16 of the NIA Act. He submitted that the Petitioner had raised a ground that there was no valid remand order after 03.09.2021. He had preferred an application at Exhibit-16 in NIA Special Case No.1090 of 2021 for being released on default bail U/s.167(2) of the Cr.P.C., on that ground. Learned Special Judge had rejected that

application vide the order dated 22.10.2021. There was no challenge to that order by the Petitioner and, therefore, that issue had been finally concluded vide the said order. Hence, the Petitioner cannot raise that issue in the present petition for *habeas corpus*.

Learned counsel further submitted that the order dated 03.09.2021 at Exhibit 106 was in the nature of directions by the learned Special Judge sending the petitioner to a hospital. Similar order was passed on 07.09.2021. As a background, Shri. Patil submitted that on 30.08.2021, the Petitioner was taken to the hospital. Vide that order, the Superintendent, Taloja Jail was directed to take the Petitioner to S.S. Hospital & Research Centre, Pavanputra Enclave, Opp. Jain temple, Thane Bhiwandi Road, village Kalher, Bhiwandi for his medical treatment. The petitioner was in the hospital till 28.09.2021. On 29.09.2021, he was directed to be taken to Taloja Jail, but he was actually in the hospital till 05.10.2021, therefore, he was in authorised custody.

Shri. Patil submitted that, there was a difference between Section 344(2) of the Cr.P.C., 1898 and Section 309(2) of the Cr.P.C., 1973. The requirement of signing every order made under that section by a Magistrate or a Court; which was mentioned in Section 344(2) of the Cr.P.C., 1898, was deleted by the Legislature while enacting Section 309(2) of the Cr.p.c. Therefore, the ratio in the case of ***Ram Narayan Singh (supra)*** is not applicable to this case.

Shri. Patil further submitted that, when the charge-sheet was filed, page nos.1 to 290 summarised the case, and in particular, on page No.19 there was a summary of the charges. Hence, it was not necessary for the learned Special Judge to have gone through the entire documents annexed to the charge-sheet. It was possible for him to have taken cognizance based on the report of the Investigating Officer which did not run into many pages and therefore, there is no force in the submission that the cognizance was taken mechanically and without due application of mind.

SUBMISSIONS MADE BY LEARNED APP SHRI J. P. YAGNIK ON BEHALF OF THE RESPONDENT NO.2 – THE STATE OF MAHARASHTRA :

12. The Petitioner was initially detained in Taloja Central Prison and thereafter he was shifted to Thane Central Prison. Therefore, the question was whether the Petitioner was kept in custody in either or both of these prisons under the valid orders of remand passed by the learned Special Judge from time to time and on every date of the case. To explain this situation, Shri Yagnik has filed two separate affidavits of the Superintendent of Taloja Central Prison and the Superintendent of Thane Central Prison. Shri Yagnik submitted that the procedure followed by both the Superintendents of these prisons was similar. It was based on the order mentioned in the Rozanama and followed by the note prepared by the Judicial Clerk of the Court by using a rubber stamp and inscribing his own signature. The note was given to the Jail Authorities intimating the next date to produce the prisoner either personally or through Video Conferencing. According to those notes, the prisoners were produced before the Court either

personally or through Video Conferencing. Shri Yagnik submitted that this procedure is followed in this particular case.

REASONS AND CONCLUSION :

13. The Respondent No.1 has filed affidavit-in-reply in which the role played by the Petitioner is mentioned. The Petitioner had attempted to show Mansukh Hiren as a conspirator in placing the explosive laden SUV on Carmichael Road and had tried to convince Mansukh Hiren to accept the responsibility for placing the Scorpio vehicle laden with explosives. When Mansukh Hiren refused to accept his proposition, the Petitioner hatched a conspiracy to kill Mansukh Hiren through the accused No.10 and the accused No.5 with the help of the killers i.e. the accused No.6 to accused No.9. The vehicle with explosives was planted by the Petitioner himself on Carmichael Road.

14. Learned counsel for the Petitioner submitted that the consent of the State Government was not taken before arresting the Petitioner and, therefore, Section 45 of the Cr.P.C. was contravened. According to the learned counsel, the Petitioner was the investigating officer in those offences and subsequently he was

arrested. Therefore, he was acting in his official capacity. Hence, he was under the protection of Section 45 of Cr.P.C.. Section 45 of Cr.P.C. reads thus :

> **"Section 45 - Protection of members of the Armed Forces from arrest**
>
> (1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.
>
> (2) The State Government may, by notification, direct that the provisions of subsection (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted."

15. The requirement of the protection is mentioned in Section 45(1) of Cr.P.C.. The benefit is extended to the category of members of the Force charged with maintenance of public order which the State Government could direct under a notification. According to the learned counsel for the Petitioner, the Petitioner was protected under Section 45(2) of Cr.P.C. as he was member of

the Force charged with the maintenance of public order. However, we do not agree with this submission because the requirement mentioned under sub-section (1) of Section 45 of Cr.P.C. is that such person who was to be arrested must have done that act or purported to have done that act in the discharge of his official duties. In the given set of facts, by no stretch of imagination, it can be said that the Petitioner was acting or was purportedly acting in the capacity of his official duties, when he planted that vehicle at Carmichael Road or when he entered into the conspiracy and executed the conspiracy to commit the murder of Mansukh Hiren. Therefore, we do not find any substance in this submission that the NIA should have obtained consent from the State Government before effecting his arrest.

16. The next submission of the learned counsel was that the first remand should have been obtained by the NIA from the Magistrate and not from the learned Special Judge. According to the learned counsel, the learned Special Judge was not empowered to remand the Petitioner at the first instance when the Petitioner was arrested. It is significant to note that there was a

common investigation by the NIA through their F No.11011/19/2021/NIA of the two registered offences and one ADR as mentioned hereinbefore. C.R. No.35/2021 was registered at Gamdevi police station on 25.2.2021 under Sections 286, 465, 473, 506(2), 120B of IPC and under Sections 4(a)(b)(i) of the Explosive Substances Act, 1908.

17. In this background, it is important to note that the Schedule of the National Investigation Agency Act, 2008 (for short, 'NIA Act') lists the Explosive Substances Act, 1908. Section 13(1) of the NIA Act provides thus :

> **"Section 13 - Jurisdiction of Special Courts**
>
> (1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed."

18. The Hon'ble Supreme Court in the case of ***Bikramjit Singh Vs. State of Punjab***[4] has considered the effect of Section 13(1) of the NIA Act and has held that the Special Court alone has exclusive jurisdiction to try the Scheduled offences. It was

4 2020(10) Supreme Court Cases 616

observed in paragraphs-24 & 25 that the Special Court has exclusive jurisdiction over every Scheduled Offence investigated by the Investigating Agency of the State. In the present case, the National Investigation Agency carried out the investigation. The offences under the Explosive Substances Act, 1908 are covered under the Schedule of the NIA Act. Therefore, the learned Special Judge under the NIA Act has the exclusive jurisdiction to try these offences.

19. This judgment was followed by a Division Bench of this Court in the case of ***Sudha Bharadwaj Vs. National Investigation Agency***[5]**.** The Division Bench considered the submissions on behalf of the Investigating Agency that the Special Courts constituted or designated either under Section 11 or Section 22 of the NIA Act are not meant for conduct of pre-trial proceedings. The Division Bench did not accept this proposition and default bail was granted to the Petitioner in that case. The relevant observations are in paragraph-115 & 116 of the said judgment, which read thus :

5 2021 SCC OnLine BOM 4568

"115. This propels us to the next limb of the submission assiduously canvassed on behalf of the respondents that under section 11 of the NIA Act, the Special Courts are to be constituted for the trial of Scheduled Offences. The Special Courts so constituted or designated under either section 11 or section 22 of the NIA Act, are not meant for conduct of pre-trial proceedings. Since the extension of period of detention, pending completion of investigation, is squarely in the realm of investigation, the ordinary criminal Courts are not divested of the jurisdiction to deal with pre-trial proceedings, including the extension of period of detention, was the thrust of the submission on behalf of the respondents.

116. Indeed, there is a marked difference between the stages of investigation, inquiry and trial envisaged by the Code. However, in the light of the controversy at hand, the distinction sought to be drawn between "pre-trial" and "trial" proceedings and the jurisdiction of the Court qua those proceedings, is not of much assistance to the respondents. The reason is not far to seek. The first proviso in section 43-D(2)(b) expressly confers the power to extend the period of detention of the accused upto 180 days upon the 'Court', which in turn is defined in section 2(d) as 'a criminal court having jurisdiction to try offences' under the said Act. The legislature has vested the authority to extend the period of detention in the Court which is competent to try the offences under UAPA. We have seen that, *Bikramjit Singh* (Supra) lays down in emphatic terms that it is only the Special Courts constituted either under sections 11 or 22 of the NIA Act which are competent to try the Scheduled Offences."

20. Therefore, we do not find any force in the submission of learned counsel for the Petitioner that the first remand could not have been granted by the learned Special Judge under NIA Act as far as the Petitioner is concerned.

21. Learned counsel for the Petitioner submitted that the charge-sheet was filed on 03.09.2021 and, therefore, the power to remand the Petitioner U/s.167 of the Cr.P.C. came to an end on 03.09.2021. The cognizance was taken on 07.09.2021, therefore, for the period between 03.09.2021 to 07.09.2021, there was no valid remand order and for that period his detention was completely illegal.

In this connection, it must be noted that, at the first instance, time to complete the investigation beyond 90 days of the first remand was extended for a period of 60 days from 09.06.2021. Before that period of 60 days was over, again further extension was granted on 05.08.2021. On that date, the period of detention and the time for completion of the investigation for a

further period of 30 days was granted w.e.f. 07.08.2021. This period of 30 days from 07.08.2021 would have come to an end on 06.09.2021. On 07.09.2021, the charge-sheet was filed and the cognizance was taken. Therefore, vide the order dated 05.08.2021, remand U/s.167 of the Cr.P.C. was already extended for a period of 30 days w.e.f. 07.08.2021. Hence, merely filing of the charge-sheet on 03.09.2021, it cannot be said that from that date onwards there had to be an order of remand U/s.309 of the Cr.P.C. Remand under that section could be granted only after taking cognizance. In this case, admittedly, cognizance was taken on 07.09.2021 and from that date onwards there was remand U/s.309 of the Cr.P.C. Therefore, there is no force in the submission that, between the period from 03.09.2021 to 07.09.2021 there was no valid order of remand and hence the detention was illegal.

22. In this context, there is another angle on which the issue raised by the learned counsel for the petitioner in this petition can be considered. It was the contention of the learned counsel for the Petitioner that the charge-sheet was filed on 03.09.2021 and cognizance was taken on 07.09.2021 and, therefore, within that

period i.e. between 03.09.2021 to 07.09.2021 there was no valid remand order as the power to grant remand U/s.167 of the Cr.P.C. came to an end on 03.09.2021. In this context, the observations of the Hon'ble Supreme Court in the case of ***Suresh Kumar Bhikamchand Jain Versus State of Maharashtra and Another***[6] is important. In that case the Petitioner therein was functioning as the Minister of Housing and Slum Area Development, and was a Member of the Legislative Assembly. During the investigation, he was arrested on 11.03.2012 and while the charge-sheet was filed against four others on 25.04.2012, a supplementary charge-sheet came to be filed on 01.06.2012. For a while, he was released on interim bail, but upon rejection of his application for bail on merit, he was again taken into custody on 05.07.2012. It was argued on his behalf that, although the charge-sheet was filed within the time stipulated under section 167(2) of the Cr.P.C., sanction to prosecute the Petitioner had not been obtained, as a result whereof, no cognizance was taken of the offence. Notwithstanding that, the remand orders continued to be made and the petitioner in that case remained in Magisterial custody. In that context, it was

6 (2013) 3 Supreme Court Cases 77

argued on behalf of him that, after the statutory period U/s.167(2) of the Cr.P.C. had lapsed, he could not have been remanded to custody by the Special Judge, who was yet to take cognizance for want of sanction. It was argued that the orders passed by the learned Magistrate after the statutory period, were without jurisdiction. In this background, the Hon'ble Supreme Court has discussed this aspect in Paragraph-18 which reads thus:

> "18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 Code of Criminal Procedure is concerned. The right which may have accrued to the Petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 Code of Criminal Procedure, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 Code of Criminal Procedure. The scheme of the Code of Criminal Procedure is such that once the investigation stage is completed, the Court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) Code of Criminal Procedure, the Magistrate is vested with

> authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said Court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 of Code of Criminal Procedure. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court."

It was observed that scheme of the Cr.P.C. was such that once the investigation stage was completed, the Court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During that stage U/s.167(2) of the Cr.P.C., the Magistrate is authorised to grant remand in the stipulated period of 60 days or 90 days, as the case may be. In the event, the charge-sheet is not filed within that period, the accused is entitled to be released on statutory bail. But, in such a situation the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the Court assumes custody of the accused

for the purposes of remand during the trial in terms of Section 309 of the Cr.P.C.

Paragraph-19 further reads thus:

> "19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) Code of Criminal Procedure. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. In that view of the matter, the Special Leave Petition deserves to be and is hereby dismissed."

In that case, the cognizance was not taken in absence of sanction. The Hon'ble Supreme Court held that even then the accused was not entitled for grant of statutory bail since the charge-sheet was filed well within the period contemplated U/s.167(2)(a)(ii) of the Cr.P.C.

23. Thus, considering the submissions of the learned counsel for the Petitioner that the remand was illegal between 03.09.2021 to 07.09.2021, on the above discussion, according to us, the Petitioner cannot be said to be in illegal detention.

24. The Petitioner had preferred an application at Exhibit-16 in NIA Special Case No.1090/2021 for his release on default bail. The said application was rejected by the learned Special Judge vide the order dated 22.10.2021. In that order, there was a specific reference made to the case of ***Suresh Kumar Bhikamchand Jain (supra)***. Following that ratio, the application was rejected. This particular order dated 22.10.2021 was not challenged by the Petitioner and, therefore, had attained finality.

25. Learned counsel for the Petitioner submitted that, after the first remand on 14.03.2021, the police custody was extended up to 03.04.2021; which was beyond the period of 15 days of arrest. He, therefore, submitted that the remand of police custody beyond 15 days was also illegal. However, in that context, it must be noted that on 24.03.2021, a report was submitted before the Special Judge Mumbai, mentioning that Sections 16 and 18 of the UAPA were added. Under that Act, there was a provision for grant of police custody for 30 days. Judicial custody was granted on 09.04.2021 which was well within the period of 30 days; as provided under the UAPA and, therefore, even that submission

does not have any force.

26. The next submission of the learned counsel for the Petitioner was that the charge-sheet was filed before one learned Judge on 03.09.2021 and then it was transferred to another learned Special Judge on 07.09.2021. The charge-sheet runs into many pages and it was not possible for him to apply his mind for reaching the conclusion of taking the cognizance.

27. In this connection, it is rightly submitted by the learned counsel for the NIA that it was not necessary for the learned Special Judge to have gone through the each and every document tendered along with the charge-sheet. It was sufficient for him to read the pages where summary of the charges was mentioned and the pages where the entire case was summarised. Those documents were sufficient to form an opinion for taking the cognizance. We agree with these submissions of Mr. Patil that the Court does not have to go through each and every document submitted along with the charge-sheet for taking cognizance.

28. Learned counsel for the Petitioner submitted that, after the cognizance was taken, the accused could be remanded only

through an order in writing, signed by the Presiding Judge or the Magistrate. He relied on the Judgment of the Hon'ble Supreme Court in the case of ***Ram Narayan Singh (supra)***. In that Judgment, the Hon'ble Supreme Court was considering Section 344 of the Cr.P.C., 1898 which required that, every order made under that section other than by the High Court had to be in writing, signed by the Presiding Judge or the Magistrate.

Section 344 of the Cr.P.C., 1898 reads thus:

> **344. (1)** If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
>
> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.
>
> **(2)** Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.
>
> *Explanation.*- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand."

29. This particular provision was modified in the Cr.PC, 1973. The corresponding section under the Cr.PC, 1973 was Section 309; which reads thus:

> **"Section 309 - Power to postpone or adjourn proceedings-**
>
> (1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:
>
> Provided that when the inquiry or trial relates to an offence under section 376, [Section 376A, Section 376AB, section 376B, section 376C, section 376D, section 376DA or section 376DB of the Indian Penal Code, the inquiry or trial shall] of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.
>
> (2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
>
> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:
>
> Provided further that when witnesses are in

attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that--

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1 .-If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.-The terms on which an adjournment or postponement may be granted in include, in appropriate cases, the payment of costs by the prosecution or the accused.

Thus, sub section 2 of Section 344 of the Cr.PC, 1898 is not carried forward U/s.309 of the Cr.PC, 1973. Therefore, that particular requirement that every order under the said section had to be in writing and had to be signed by the Presiding Judge or the Magistrate, was dispensed with.

30. The contention of the learned counsel for the Petitioner was that the accused had to be remanded under a warrant and the order had to be in writing and signed by the Presiding Judge. He relied on the Form VI of the Criminal Manual which provides warrant for remand U/s.309 of the Cr.PC, 1973. Learned counsel for the Petitioner submitted that, no such warrant was issued or signed by the learned Special Judge and, therefore, remand U/s.309 of the Cr.PC, 1973 during pendency of trial was illegal.

31. To counter this submission, Shri. Patil submitted that, Sub Section 2 of Section 309 of the Cr.PC, 1973 uses the word 'may'. Sub Section 2 of Section 309 mentions that, if the Court finds it necessary to adjourn any trial, it may, from time to time, for reasons to be recorded, adjourn the same for such time as it

considers reasonable, and 'may' by a warrant remand the accused if in custody. Therefore, Shri. Patil submitted that, this section is in two parts; one is for adjournment of the trial and other part is for remanding the accused by a warrant. Shri. Patil submitted that the requirement to remand the accused by a warrant is not mandatory as the word 'may' is used. Therefore, the procedure adopted by the learned Special Judge, U/s.309 of the Cr.PC will have to be seen and not the absence of a specific warrant under Form VI of the Criminal Manual.

We find force in the submission of Shri. Patil in that behalf.

32. In this context, we examined the procedure adopted by the learned Special Judge while adjourning the trial.

33. We have perused a copy of a *Roznama* of the said case produced by Shri. Patil. As a specimen, the *Roznama* dated 02.12.2024 is produced herein below:

"**Daily Status**

City Sessions Court, Mumbai
In the court of : COURT 57 ADDL SESSIONS JUDGE
CNR Number : MHCC020110482021
Case Number : SPL.CASE/0101090/2021
NATIONAL INVESTIGATION AGENCY **versus** SACHIN HINDURAO WAZE AND ORS.09
Date : 02-12-2024

Business :CORAM-SHRI A.M.PATIL, SPECIAL JUDGE UNDER MCOCA/TADA/POTA/NIA AND OTHER SESSIONS CASES, COURT ROOM NO.57. 11.01 a.m. - SPP S.D. Gonsalves for the NIA present. HC Sandeep Chande attached to the NIA present. Havildar Santosh Magar attached to Thane District Jail informed on VC that the accused Sachin Waze has been taken to the MM Court, Esplanade, Mumbai. Hence, not produced. Accused no.2, 3, 4 and 10 on bail absent. Ld. SPP sought short time to file say on Exh.375, Exh.377 and Exh.378 on the ground that the reply is on waiting from the NIA. O- Time is granted. Later on at 11.15a.m.- Accused no.2 and 3 on bail present. Adv. Dakshata Dupare h/f Adv. Rounak Naik for accused no.1 present. Accused no.6-Santosh Atmaram Shelar, 7-Anand Pandurang Jadhav, and accused no.8-Satish Tirupati Mothkuri @ Tanni produced on VC from Taloja Jail. Later on at 11.40a.m.- Accused no.10 on bail present. Adv. Chandansingh Shekhawat for accused no.10 present. Accused no.5-Sunil Dharma Mane produced on VC from Taloja Jail. Heard accused no.5 below Exh.359 on VC. Ld. SPP submitted that he has appointment with the Doctor at 4.00p.m. Later on at 12.00 noon.- Heard Ld. SPP below Exh.359. Later on at 01.00 p.m.- Accused no.9-Manish Soni

produced physically from MCP. Application (Exh.378) is not pressed by the accused no.9. Hence, disposed of. Later on at 01.15 p.m.- Accused no.4 on bail present. Matter is adjourned to 20.12.2024 for further hearing on Exh.293 on behalf of NIA, hearing Exh.340, reply on Exh.375, Exh.377 and for Order on Exh.359. Special Judge

Next Purpose : HEARING
Next Hearing Date : 04-12-2024

COURT 57 ADDL SESSIONS JUDGE"

The *roznamas* of the other dates are more or less in this format. All necessary components as to why the matter was being adjourned is mentioned in that roznama. The next purpose of the trial is mentioned and the next date of hearing is also specifically mentioned. Pursuant to the noting in the roznama as thus, the Sheristedar issued a note under a stamp informing the Jail authorities the next date of hearing on which date the accused has to be produced before the Court physically or through the video conferencing. The jail authorities act on these directions and then produce the accused on the next date, as directed through this communication.

34. The Affidavits filed by the Superintendent of Taloja Central Prison and Thane Central Prison mention that, whenever

the accused was produced in the Court physically, at that time, the Judicial Clerk noted the presence of the prisoner and once the matter was over, the Sheristedar used to intimate the next date of production of the prisoner either physically or through V.C.; by putting a rubber stamp for directions. The concerned jail authorities take note of those directions for necessary compliance in producing the accused. Thus, the requirement of Section 309 of the Cr.PC is complied with. The reason for adjournment is mentioned in the roznama by the learned Special Judge. Pursuant to the noting in the roznama, the Sheristedar intimates the Jail Superintendent the next date for production of the accused before the Court and accordingly, on the next date the accused are produced. Thus, this is sufficient compliance of Section 309 of the Cr.P.C., and therefore, it cannot be said that the accused is detained in jail without any valid remand order. In this view of the matter, the ratio of the judgments in the case of **Dilip Kamath** and **Yogesh Mittal** does not help the submissions of Shri Naik.

35. Though, the petition runs into many pages and many grounds are taken, learned counsel for the petitioner specifically

restricted his arguments only to the submissions which we have noted down in this order.

36. Considering all these aspects and the above discussion, we are of the opinion that no relief can be granted in terms of the prayers mentioned in this petition. It is made clear that the reference to the merits and facts of the case is made only for the purpose of deciding this Petition. The Trial Court, at an appropriate stage, shall decide the trial in accordance with law on the basis of the evidence produced before it.

37. Accordingly, the Writ Petition is dismissed.

(S. M. MODAK, J.) **(SARANG V. KOTWAL, J.)**

[Gokhale/Deshmane]