

CASE NO.:
Appeal (crl.) 1069 of 2005

PETITIONER:
Ateef Nasir Mulla

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 24/08/2005

BENCH:
B.P. SINGH & S.B.SINHA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.5258 Of 2003)

B.P. SINGH, J.

Special leave granted.

In this appeal the petitioner has impugned the judgment and order of the High Court of Judicature at Bombay dated 29th August, 2003 in Criminal Appeal No.995 of 2003. The High Court by its impugned judgment and order dismissed the appeal preferred by the appellant and upheld the order of the Special Judge dated 11.07.2003 granting extension of time to complete the investigation in exercise of power under Section 49 (2) (b) of the Prevention of Terrorism Act, 2002, as also the order of the Special Judge dated 25.7.2003 dismissing the bail application of the appellant herein.

The facts giving rise to this appeal, in so far as they are relevant for the disposal of this appeal, may be noticed at the outset. A blast took place in a local train approaching platform No.3 of the Mulund Railway Station, Mumbai, resulting in the death of 11 persons and injuring 82 others. Investigation disclosed that the incident was the result of a conspiracy hatched by several persons to strike terror in the minds of people by explosion of bombs and preparations to wage war against the State. In connection with the said incident case No. DCB, CID, C.R. No.21/2003 was registered under various provisions of the Indian Penal Code, the Indian Explosives Act read with Explosive Substances Act, Damage to Public Property Act, Indian Railways Act as also under Sections 3 and 4 of the Prevention of Terrorism Act, 2002, hereinafter referred to as the 'Act'.

On 15.4.2003 the appellant was arrested from Bandra-Kurla Complex, Mumbai, in connection with the above case. He was produced before the Special Court which remanded him to police custody till 28.4.2003. The period of remand was again extended till 12th May, 2003. Thereafter the appellant was remanded to judicial custody on 12th May, 2003. This remand was extended from time to time.

It appears that three other similar incidents took place, and in those cases as well the involvement of the appellant was suspected. The police sought custody of the appellant in each of those three cases.

The appellant having been arrested on 15th April, 2003, the

period of 90 days for completing the investigation was to expire on July 13, 2003. On 11.7.2003 he was remanded to judicial custody at about 1130 hours by the Special Court. Later, an application was moved for extension of time to complete the investigation under Section 49(2)(b) of the Act. It is not disputed before us that extension of time for completing the investigation was sought in connection with Mulund blast case. It is also not disputed that the advocate appearing on behalf of the appellant was present in Court at that time in connection with another case namely, the Mumbai blast case. Immediately he made an enquiry and came to know that the prayer for extension of time to complete the investigation had been made in Mulund blast case. He, therefore, immediately enquired of the appellant as to whether he had been informed of the fact that the prosecution had moved an application for extension of time under Section 49(2)(b) of the Act. The appellant's answer was in the negative. His advocate, therefore, requested the Special Public Prosecutor to supply him a copy of the application which was duly supplied. A prayer was made by the appellant's advocate for a week's adjournment so as to enable him to file a reply. However, the Court granted him time till 2.45 p.m. to file a reply which was accordingly filed by the appellant's advocate. In the reply filed on behalf of the appellant an objection was taken that no notice had been given to the accused and, therefore, he was unable to give an effective reply to the facts stated in the application for extension because of insufficiency of time. It was also contended that the application did not disclose any specific reason for the extension of the period of remand as required by Section 49(2)(b) of the Act.

After hearing the parties the Special Court allowed the application by its order of July 11, 2003 and extended the period for completing the investigation till the 14th August, 2003. The appellant was accordingly remanded. This is the first order which was challenged by the appellant before the High Court. On 14th July, 2003 an application for release of the appellant on bail was filed stating that the period of 90 days had expired, and in terms of Section 49(2)(b) read with the provisions of Section 167(2) of the Code of Criminal Procedure, the appellant could not be remanded any further and ought to be released on bail. We, may, notice at this stage that the charge sheet was filed in Court as against the appellant on July 19, 2003.

The learned Special Judge after hearing the parties rejected the application for grant of bail by his order of July 25, 2003. This order is the second order challenged before the High Court in the appeal preferred by the appellant.

Before the High Court three main grounds were urged in support of the appeal. Firstly, it was contended that there was no good ground for grant of extension of the period to complete the investigation under Section 49(2)(b) of the Act. Secondly, the prosecution was guilty of having not given notice of the application to the appellant. Thirdly, it was contended that the prosecution acted in such manner only to defeat the indefeasible right of the appellant under Section 167(2) of the Code of Criminal Procedure read with Section 49(2)(b) of the Act. The High Court on a consideration of the material placed before it rejected all the three contentions and dismissed the appeal.

Mr. Sushil Kumar, learned Senior Advocate appearing on behalf of the appellant submitted before us that the application filed by the Special Public Prosecutor praying for extension of time to complete the investigation did not contain any specific reason for the detention of the accused beyond the statutory period of 90 days. The High Court negatived this contention after considering

the contents of the application filed by the Public Prosecutor before the Special Judge, which is Annexure P-7 in this appeal.

We have also carefully perused the said application filed by the Public Prosecutor and we are satisfied that the High Court rightly rejected the aforesaid contention. The Special Public Prosecutor in his application explained that the investigation of the case revealed that there was a deep-rooted and widespread conspiracy which had bearing on national security and, therefore, it was necessary to unearth the deep-rooted conspiracy and to bring to book all the conspirators and the perpetrators involved in connection with offences committed by them pursuant to the conspiracy. Unfortunately, some of them could be apprehended but many of them were still to be arrested. Despite the arrest of 16 such persons, the persons who were the real brain behind the bomb blast were still absconding. There was some reliable information about their whereabouts and, therefore, police officers had been deputed to different States to apprehend them. After arrest, those apprehended have to be interrogated and further investigation has to be carried out. Moreover, some of the accused persons who were in police custody, were also involved in other bomb blast cases and it had not been possible to call them for identification by witnesses who had been traced out recently. Moreover, 21 audio cassettes and one Urdu book had been recovered at the instance of one of the arrested accused which had been sent for transcription and translation to the Office of the Chief Translator and Interpreter, High Court, Mumbai. The translation had not so far been received. Moreover, investigation disclosed that the arrested accused and other accused had communicated with each other on telephone. The printouts regarding the calls made had to be obtained from different companies and thereafter the data collected has to be analysed. Though, some of the printouts had been received many others have yet to be received. In this manner, in the application the Special Public Prosecutor explained how despite serious efforts made to trace out the absconding accused who were spread all over the country, it had not been possible to complete the investigation. Having regard to the seriousness of the incident which took place in Mulund in Mumbai, it was absolutely necessary to carry out a detailed investigation.

The High Court was satisfied that the application filed before the Special Court by the Public Prosecutor complied with the requirements of Section 49 (2) (b) of the Act, inasmuch as the application indicated the progress of the investigation and the specific reasons for the detention of the accused beyond the period of 90 days. It is no doubt true that the Constitution mandates that the person detained in custody should not be kept in detention for any unreasonable time. The Code of Criminal Procedure also ensures that such a person is not detained in custody unreasonably and that the investigation must proceed with promptness and report submitted to the Court within the period prescribed by law. If the prosecution fails to do so, the person detained in custody is entitled to apply for his release on bail. However, in cases involving serious offences such as those under the Terrorist and Disruptive Activities (Prevention) Act, 1987, and the Prevention of Terrorism Act, 2002 the legislature has advisedly given some latitude to the investigating machinery in the matter of completion of the investigation by providing for extension of time to complete the investigation. The extension is, however, not to be granted as a matter of course, but subject to conditions enumerated in the Act. Unless those conditions are satisfied, the Court will refuse to grant the extension.

The report of the Public Prosecutor must satisfy the Court that the Investigating Agency had acted diligently and though there had been progress of the investigation, yet it was not possible for

reasons disclosed to complete the investigation within the period of 90 days. In such cases, having regard to the progress of the investigation and the specific reason for grant of extension of time, the Court, may, extend the period for completion of the investigation thereby enabling the Court to remand the accused to custody during the extended period. These are compulsions which arise in extra-ordinary situations. The activities of the terrorists are well-organized, well-planned and deftly executed by professionals who have perfected the art of creating panic in public mind. Their activities are pursuant to a deep-rooted conspiracy, and the co-conspirators are more often than not stationed at different places where they perform the role assigned to them. It is only with great difficulty that the investigating agency is able to unearth the well planned and deep-rooted conspiracy involving a large number of persons functioning from different places. It is even more difficult to apprehend the members of the conspiracy. The investigation is further delayed on account of the reluctance on the part of the witnesses to depose in such cases. It is only after giving them full assurance of safety that the police is able to obtain their statement. Thus, while law enjoins upon the investigating agency an obligation to conduct the investigation with a sense of urgency and with promptitude, there are cases in which the period of 90 days may not be sufficient for the purpose. Hence, the legislature, subject to certain safeguards, has empowered the Court concerned to extend the period for the completion of the investigation and to remand the accused to custody during the extended period. In this case, we are satisfied that the circumstances existed justifying the extension of period under Section 49(2)(b) of the Act.

It was then contended before us that the appellant had not been given notice of the application moved under the first proviso to Section 49(2)(b) of the Act. There is no statutory requirement to give any notice to the appellant in any particular form, but this Court has taken the view that even in the absence of any specific provision to this effect, fair play and principles of natural justice demand that before granting extension of time to complete the investigation, the Court must give notice to the accused to oppose the application, if so, advised. Dealing with a similar provision under the Terrorist and Disruptive Activities (Prevention) Act, 1987 this Court in Sanjay Dutt Vs. State through C.B.I., Bombay (II)(1994) 5 SCC 410 held :

"Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose".

In the instant case the petitioner was present in Court and so was his advocate, when such an application was moved. On his request a copy of the application was given to the advocate of the appellant with an opportunity to file a reply. The reply was also filed, though having regard to the urgency of the matter the

applicant was called upon to file a reply by 2.45 p.m. The matter was thereafter heard and only after hearing both the parties the Court passed an order.

We are, therefore, satisfied that the requirement of giving notice to the accused before passing such an order was complied, and the order cannot be faulted on that ground.

It was, then contended on behalf of the appellant that the appellant having acquired an indefeasible right to be released on bail on the expiry of 90 days from the date of his arrest, the Special Judge was not justified in rejecting the application for grant of bail which was filed on July 14, 2003. By then the charge sheet had not been submitted by the police and, hence, there was no reason to continue the detention of the appellant.

This submission overlooks the fact that by an order dated July 11, 2003 the Court had granted extension of time to the investigating agency to complete the investigation. Thus on July 14, 2003 when an application was filed for grant of bail under Section 167(2) of the Code of Criminal Procedure, there was already an order extending the time for completion of investigation, and consequently the Court was empowered to remand the accused to judicial or police custody during the said extended period.

Dealing with similar provisions of the Terrorist and Disruptive Activities (Prevention) Act, this Court in *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others* : (1994) 4 SCC 602 observed :

"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 go 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 infeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment".

In the instant case, the Court was satisfied on the report of the Public Prosecutor filed in the form of an application that there was good ground to grant the extension prayed for under the first proviso to Section 49(2)(b) of the Act. The submission must, therefore, be rejected.

We are, therefore, satisfied that the High Court has committed no error in dismissing the appeal preferred by the appellant. This appeal therefore lacks merit and is, accordingly, dismissed.