

DEVINDERPAL SINGH

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v.

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

NOVEMBER 14, 1995

[A.S. ANAND AND SUHAS C. SEN, JJ.]

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*The Terrorist and Disruptive Activities (Prevention) Act, 1987 : Section 20(4)(bb)—Investigation—Grant of extension of time—Beyond statutory period of 180 days—Validity of—To be considered with reference to the facts as existing on date of order—Absence of report of public prosecutor—Accused not being produced and informed of the question of grant of extension being considered—Held : Order granting extension by Designated Court rendered erroneous and could not be sustained.*

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The appellant was arrested under the Terrorist and Disruptive Activities (Prevention) Act, 1987 and was remanded to judicial custody which was extended from time to time. Before the expiry of the statutory period of 180 days an application was moved in the Designated Court for extension of time for completion of the investigation and for that purpose a prayer was also made for extending the period of detention of the appellant beyond the period 180 days. The Designated Court allowed the application. The appellant thereafter, moved an application in the Designated Court for bail. While the bail application was pending in the Designated Court the appellant preferred the present appeal.

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On behalf of the appellant it was contended that by virtue of proviso to Section 20(4)(bb) of the Act, it was possible for the Designated Court to extend the statutory period of detention beyond the prescribed period of 180 days only if the conditions laid down in that sub-section were fulfilled; that an essential requirement of sub-section (4)(bb) of Section 20 was that there would have to be a report of the Public Prosecutor indicating the progress of the investigation and also the specific reasons for the detention of the accused beyond the aforesaid statutory period; that in the instant case, the Public Prosecutor, had not given any such report; that the Designated Court was in error in extending the period of detention without any report of the Public Prosecutor, as required by the statute; and that the order was behind his back.

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**A Disposing of the appeal, this Court**

**HELD : 1.1. The Designated Court granted extension of time to the investigating agency for completion of the investigation under Section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987. This extension was granted on an application made by the investigating officer only and without any report of the public prosecutor. [203-G]**

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**1.2. The validity of an order granting extension under Section 20(4)(bb) of the Act is to be considered with reference to the facts as existing on the date of the order. The order passed by the Designated Court without any report of the public prosecutor and without even the appellant being produced and informed by the Designated Court that question of grant of extension of the period for completing investigation was under consideration, renders the order granting extension by the Designated Court erroneous and it cannot be sustained. [205-B-C]**

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**D *Hitender Vishnu Thakur v. State of Maharashtra*, [1994] 4 SCC 602, referred to.**

**2. An application for grant of bail on the ground that the prosecution had failed to complete investigation within the statutory period of 180 days was filed and is pending before the Designated Court, this Court refrains from dealing with the bail application filed in this Court or express any opinion on the merits of the bail application pending before the Designated Court. [206-A-B]**

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*Sanjay Dutt v. State*, [1994] 5 SCC 410, cited.

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**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1331 of 1995.**

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From the Judgment and Order dated 12.7.95 of the Designated Court No. II, Tis Hazari, Delhi in F.I.R. No. 316/93, P.S. Parliament Street, New Delhi.

Lokesh Kumar and R.S. Sodhi for the Appellant.

R.P. Srivastava and B.K. Prasad for the Respondent.

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The Judgment of the Court was delivered by

SEN, J. Special leave granted.

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Devinderpal Singh, the appellant herein, was deported from Germany and was arrested on his arrival at New Delhi on the charge of having travelled to Germany on a false passport. A case being FIR No. 22/93 under Section 419/420/468/471, Indian Penal Code, and Section 12 of the Passport Act, was registered against him. He was subsequently ordered to be released on bail.

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On the very same day i.e. 19th January, 1993, the appellant was also arrested in another case being FIR No. 316/93 registered under Section 302/307/326/323/436/120-B, Indian Penal Code, Sections 3, 4 and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Sections 4 and 5 of the Explosive Substances Act.

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The appellant was remanded to judicial custody which was extended from time to time and the statutory period of 180 days expired on 17th July, 1995.

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Before the expiry of the aforesaid statutory period of 180 days, application was moved on 12th July, 1995 for extension of time for completion of the investigation and for that purpose a prayer was also made for extending the period of detention of the appellant beyond the period of 180 days. The Designated Court No. II, Tis Hazari, Delhi, ordered :

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"I have seen the entire file and progress of investigation. I have heard today the Ld. P.P. The evidence has to be collected from Jaipur, Baroda, Ahmedabad against the accused persons and that some of the offenders are yet to be arrested against whom some clues are received very recently. Keeping this in view, I am of the opinion that this is a fit case where extension of time as per provisions of Sec. 20(4)(bb) TADA and Act 93, should be given. I accordingly allow extension of period for another sixty days at the expiry of first statutory period of 180 days with direction to positively complete the investigation by then."

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The appellant was produced before the Additional Chief Metropolitan Magistrate, New Delhi, on 17th July, 1995 and the period of judicial remand was extended on the ground that the Designated Court had already extended the time for completion of the investigation for

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A another 60 days. Consequently, the judicial remand of the appellant was extended for a further period of 60 days till 15th September, 1995.

B The appellant, therefore, on 17th July, 1995, moved an application for bail on the ground that the prosecution had failed to complete the investigation within the statutory period of 180 days and that no independent report has been submitted by the designated Public Prosecutor regarding the progress of the investigation and specific reasons for detaining the appellant beyond the statutory period of 180 days were not stated by the Public Prosecutor. The further contention of the appellant was that he was not produced before the Designated Court at the time of hearing of the application for extension on 12th July, 1995 and the order of extension was passed behind his back and without giving him any opportunity to show cause why the prayer for extension should not be allowed.

D Mr. Sodhi appearing on behalf of the appellant, has contended that by virtue of the proviso to sub-section (4) (bb) of Section 20, it is possible for the Designated Court to extend the statutory period of detention beyond the prescribed period of 180 days only if the conditions laid down in that sub-section are fulfilled. An essential requirement of sub-section (4)(bb) of Section 20 is that there will have to be a report of the Public Prosecutor indicating the progress of the investigation and also the specific reasons for the detention of the accused beyond the aforesaid statutory period. In the instant case, the Public Prosecutor has not given any such report. The Designated Court, therefore, was in error in extending the period of detention without any report of the Public Prosecutor, as required by the statute. Mr. Sodhi further argued that in the judgment in the case of *Hitender Vishnu Thakur v. State of Maharashtra*, [1994] 4 SCC 602, (in which one of us, Dr. Anand, J. was a party), it was clearly laid down that no extension under clause (bb) can be granted for reasons other than those specifically contained therein and the requirements of clause (bb) must be strictly complied with before any extension was granted. The accused had acquired an indefeasible right to be released on bail in this case on account of the default of the prosecution. The Designated Court was clearly in error in extending the time, even though the Public Prosecutor had failed to make a report as required by the statute. It was also emphasised by Mr. Sodhi that the order of extension was passed without any notice to the accused and without producing him before the Court.

On behalf of the respondent, Mr. R.P. Srivastava has argued that there is sufficient material on record and good ground for extending the period of detention beyond the statutory period. It was contended that the application for extension of time of the period of detention was fully considered and heard by the Designated Court. The order to extend the period of detention was passed only after carefully perusing the case diaries and other relevant materials on record of the case. He drew our attention to the statement made on behalf of the respondent in the affidavit filed in this Court by S.N. Srivastava, Deputy Commissioner of Police, Head Quarters-II, PHQ, Delhi, that a challan has been filed under Section 173 of the Code of Criminal Procedure against the appellant before the Additional Sessions Judge, Delhi, on 13th September, 1995.

Mr. Srivastava contended that in the case of *Sanjay Dutt v. State*, [1994] 5 SCC 410, it has been laid down that the indefeasible right accrued to the accused for non-compliance with the requirements of Section 20(4)(bb) was enforceable only prior to the filing of the challan. This indefeasible right did not survive or could not be enforced after the challan was filed. The appellant had failed to enforce his right before the challan was filed and, therefore, he could not enforce this right any more now that the challan has been filed.

Mr. Sodhi countered this argument by saying that the order passed by the Designated Court was clearly erroneous. When the Court heard the case, the challan had not been filed at all. He further contended that the decision in *Sanjay Dutt's* case was given on a concession made by the counsel appearing on behalf of the appellant and the Court had no occasion to examine this issue in detail.

We need not express any opinion on this aspect of the matter. The decision in *Sanjay Dutt's* case was rendered by a Bench of Five Judges and is binding upon this Court.

The Designated Court granted extension of time to the investigating agency for completion of the investigation under clause (bb) of Section 20(4) of TADA. This extension was granted on an application made by the investigating officer only and without any report of the public prosecutor. It is submitted by Mr. Sodhi that extension was granted behind the back of the appellant and without permitting the appellant to have his say against the grant of extension. This position has not been controverted by learned

A counsel for the respondents. In *Hitendra Vishnu Thakur's* case (supra), it was observed :

B "Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency, is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer alongwith his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. 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 to 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."

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G In *Hitendra Vishnu Thakur's* case (supra) it was also opined that no extension can be granted by the Designated Court under Clause (bb) unless the accused is put on notice and permitted to have his say so as to be able to object to the grant of extension.

H The Constitution Bench in *Sanjay Dutt's* case (supra) did not express any contrary opinion in so far as the requirement of the report of the public prosecutor for grant of extension is concerned or on the effect of the absence of such a report under clause (bb) of Section 20(4), but observed that the 'notice' contemplated in the decision in *Hitendra Vishnu Thakur's*

case before granting extension for completion of investigation is not to be construed as a "written notice" to the accused and that only the production of the accused at the time of consideration of the report of the public prosecutor for grant of extension and informing him that the question of extension of the period for completing the investigation was being considered would be sufficient notice to the accused.

The validity of an order granting extension under Clause (bb) of Section 20(4) of TADA is to be considered with reference to the facts as existing on the date of the order. Mr. Sodhi is right in his contention that the order passed by the Designated Court on 12th July, 1995, without any report of the public prosecutor and without even the appellant being produced and informed by the Designated Court that question of grant of extension of the period for completing investigation was under consideration, renders the order granting extension by the Designated Court erroneous and it cannot be sustained.

This now takes us to the question of grant of bail to the appellant. Learned counsel for the parties state that challan has since been filed on 30.9.95. Learned counsel are at variance about the effect of filing the challan on the right of the appellant to be released on bail. This question was examined in *Sanjay Dutt's* case (supra), where it has been laid down that the right to be released on bail for failure to complete the investigation within the prescribed time is not automatic and even if 'indefeasible' it has to be 'availed of' by the accused at the appropriate stage and that :

"The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. *The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 Cr. P.C. ceases to apply.*

- A Since, as submitted by Mr. Sodhi, an application for grant of bail on the ground that the prosecution had failed to complete investigation within the statutory period of 180 days was filed and is pending before the designated Court, we refrain from dealing with the bail application filed in this Court or express any opinion on the merits of the bail application pending before the Designated Court. The Designated Court shall dispose of the pending bail application in accordance with law expeditiously, keeping in view the principles laid down by this Court in the above referred cases.
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- C The appeal and the bail application are therefore disposed of in the terms noticed above. There shall be no order as to costs.

V.S.S.

Appeal disposed of.