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**IN THE SUPREME COURT OF INDIA**  
CRIMINAL APPELLATE JURISDICTION  
**SPECIAL LEAVE PETITION (CRL.) NO. \_\_\_\_\_ OF 2018**

**IN THE MATTER OF:-**

The State of Maharashtra ....Petitioner

Versus

Shri. Surendra Pundlik Gadling & Ors. ...Respondents

**OFFICE REPORT ON LIMITATION**

1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of \_\_\_\_\_ days in filing the same against order dated - \_\_\_\_\_ and Petition for condonation of \_\_\_\_\_ days delay has been filed.
3. There is delay of \_\_\_\_\_ days in refilling the Petition and Petition for condonation of \_\_\_\_\_ days delay in refilling has been filed.

(BRANCH OFFICER)

Place : New Delhi  
Date : 25.10.2018

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**Synopsis**

The case in hand relates to proviso to section 43-D (2) (b) of the Unlawful Activities (Prevention) Act, 1967. For sake of convenience the proviso is produced hereunder:-

*"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 of ninety days, extend the said period up to one hundred and eighty days."*

The respondents were arrested in connection with C.R. No. 4/2018 registered with Vishrambaug Police Station, Pune for the offences punishable under sections 153(A), 505 (1)(B), 117, 120(B), r/w Section 34 of IPC and u/s 13, 16, 17, 18, 18(B), 20, 38, 39, 40 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UAPA) r/w Section 120(B) of the Indian Penal Code. The said offence was registered on 08.01.2018. On 06.06.2018, the respondents were arrested from their respective places. The police started the investigation but could not complete the same. On 03.09.2018, 90 days were completed since the date of

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arrest of the respondent. Prior to that i.e. on 30.08.2018, the public prosecutor submitted a report in the form of an application as per the proviso to section 43-D(2)(b) and prayed for extension of further time of 90 days after 03.09.2018. The respondents did not choose to file their say to the said application. After hearing the parties and upon satisfied by the report of the public prosecutor, the Special Judge and Additional Session Judge, Pune allowed the application and extended the period to complete the investigation by 90 days. Being aggrieved by that, the respondents filed Criminal Writ Petition No. 4148/2018 in the High Court of Judicature at Bombay. By way of the said Criminal Writ Petition, the respondents prayed for setting aside the order of the Special Judge vide which extension of 90 days was granted for completion of investigation. After hearing the parties, the High Court allowed the Criminal Writ Petition of the respondents in part thereby setting aside the order vide which extension of 90 days was granted for completion of investigation.

Because of the following important aspects of the case in hand, the impugned order requires interference at the hence of this Hon'ble Court:-

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# The High Court has resorted to a pedantic view rather than resorting to a pragmatic view. The proviso to section 43-D(2)(b) specifically provides that the Court should be satisfied with the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the period of 90 days. In the case in hand, the investigating officer has filed a report of the application under his signature giving reasons for extension of time on 30.08.2018. On the very same day i.e on 30.08.2018, the public prosecutor submitted her report/application carving out the grounds for extension of time. The public prosecutor, by way of abundant precaution, took signature of the investigating officer. But the High Court was carried away by the fact of signature of the investigating officer and arrived at a conclusion that the report/application was not by the public prosecutor.

# The High Court was carried away by the first paragraph of the order dated 02.09.2018, passed by the Special Judge which mentions, "this application is filed by Investigating officer in Crime No. 04/2018 of Vishrambag Police Station for grant of extension of 90 days after 03.09.2018 for further investigation and filing of charge

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sheet as per the provisions of section 43-D of the Unlawful Activities (Prevention) Act, 1967". Had the High Court considered the title of the report/application, the High Court would not have passed the impugned order. The report/application mentions, "application under section 43(D) of UAP Act for extension of a period of 90 days for further investigation & filing of charge sheet in the said crime". Whether it was necessary for the State of Maharashtra to challenge the contents of paragraphs No. 1 of the order dated 02.09.2018 is pertinent question.

# The High Court should not have been carried away by the fact of mentioning of names of the parties in detail. It appears that the more the State took precaution to file the report/application for extension of time to complete the investigation, the more the High Court considered it as improper and thereby passed the impugned order.

#### **List of Dates**

08/01/2018	On 8/1/2018, First Information Report No.4/2018 was registered with the Vishrambaug Police station, Pune against 6 named persons for
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the offences punishable under section 153-A, 505 (1)(b), 117 read with section 34 of the Indian Penal Code. The complainant informed that there were inflammatory speeches and songs by the accused persons at the place of incident. The date of the incident was 31/12/2017. The First Information Report mentions about objectionable books, which were kept for sale. A True translated copy of the FIR No.4/2018 dated 8/01/2018 registered with Vishrambaug Police station, Pune is produced herewith and marked as **Annexure P-1** **(Page No.\_\_\_\_ to Page No\_\_\_\_)**.

19/02/2018

Thereafter, on 19/02/2018, a supplementary statement of the complainant was recorded wherein the complainant gave details of the incident in question. A true translated copy of the supplementary statement dated 19/02/2018, is produced

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herewith and marked as **Annexure P-2 (Page No.\_\_\_\_to Page No\_\_\_\_)**.

06.06.2018

Thereafter, the police started investigation and it was found that there is a larger conspiracy to disturb the social fabric in the entire country. In the month of April searches were conducted at the residential premises and work places of 8 individuals who were arraigned as accused persons. Much more material was seized during the searches which was sent to the Forensic Science Laboratory. Considering the seized material which showed connection of the accused persons with banned terrorist organisation CPI (Maoist), the Sections 13, 16, 17,18,18 (b), 20,38,39 and 40 of the Unlawful Activities (Prevention) Act were applied. On 06.06.2018, the respondents were arrested.

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30.08.2018

The investigating officer was doing thorough investigation in the offence in question. But the investigating officer realised that he will not be able to complete the investigation. Therefore, on 30.08.2018, the investigating officer submitted an application below Exhibit 29 and prayed for extension of time of 90 days to complete the investigation. It is pertinent to note that the said application was signed by the investigating officer and it was mentioned that the same was filed "through" the District Government Pleader. A true translated copy of the application below Exhibit 29 dated 30.08.2018, signed by the investigating officer and submitted through the District Government Pleader is produced herewith and marked as the **Annexure P-3** (Page No.\_\_\_\_ to Page No\_\_\_\_).



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30.08.2018

On 30.08.2018, a report/application below Exhibit 30 was filed by the public prosecutor for extension of time of 90 days to the investigating officer to further investigate and to file the charge sheet. The Public Prosecutor carved out specific grounds in the report/application seeking extension of time. For sake of convenience, the said grounds are produced hereunder:-

*"a) That all the accused are the active members of banned organization, i.e., C.P.I.(Maoist) and are having direct nexus of unlawful activities of the said organization, viz., CPI (Maoist).*

*b) That, during the investigation, seized devised, documents, pen drives, CD, DVD, hard disk, sim cards and other electronic records were sent to FSL Mumbai for its report and*

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*for mirror image of the data contained in the said electronic devices. That the report from FSL is awaiting.*

*c) That there is a voluminous data in the said electronic record which requires to investigate in order to ascertain the implementation of these unlawful activities not only in the State of Maharashtra, but in other states also and all over the India.*

*d) That it is also necessary to investigate from where the funds are available to the accused persons which is utilized by the said accused for promoting the unlawful activities of the banned organization.*

*e) That during the investigation, it is also revealed that the accused in pursuance of their criminal conspiracy engaged in the unlawful activities of banned organization at Delhi,*

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*Mumbai, Nagpur, Gadchiroli and Chhattisgarh. That further investigation in this context has yet to complete.*

*f) That it is necessary to ascertain the details of Bank Account of all the accused persons as well as their transactions in their respective accounts.*

*g) That it is revealed during the investigation through seized CDR reports of mobile phones of the Accused persons that they are in communication with each other as well as with the absconded and underground accused persons. That investigate pertaining to the said communication is yet to be completed.*

*h) That during the investigation, it is revealed and the students from Tata Institute of Social Science*

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*Mumbai were taken by Accused Mahesh Rao safely and secretly to forest areas of Maoist Guerilla to meet absconding underground Nexalite and to train them. The investigation in this respect is in progress.*

*i) That the accused persons are having their own Face Book accounts and emails. That investigation regarding the said face book account as well as email communications are in progress.*

*j) That after the arrest of accused P. Vara Vara Rao, Vernon Gonsalves & Arum Thomas Parera as well as Sudha Bhardwaj & Gautam Naulakha on 28/08/2018 the naxlite material in the form of electronic record seized from these accused persons and investigation is pertaining to the said*

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*seizure of the documents and electronic records is going on at FSL.*

*k) That all the accused persons are the masterminds of banned organization of CPI (Maoist) and were found involved in commission of illegal act with the intention to commit or advocate, abate and incite people to take violence and create public disorder with intent to threaten the unity, integrity, security of sovereignty of India. That investigation in respect of the same is yet to be completed.*

*l) After completion of the investigating permission u/s 45 of Unlawful Activities (Prevention) Act, 1967, sanction for prosecution is required to be obtained for filing the charge sheet against all the accused persons”.*

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A true copy of the report/application dated 30.08.2018 below Exhibit 30 filed in the Court of Special Judge Under the UAP Act, Pune is produced herewith and marked as **Annexure P-4** (Page No.\_\_\_\_ to Page No\_\_\_\_).

02.09.2018

It is pertinent to note that the respondents chose not to file their say thereby contesting the report/application below Exhibit 30. On 02.09.2018, the Special Judge and Additional Session Judge, Pune allowed the report/application below Exhibit 30 by observing as under:-

*"6. On perusing case diary, prima facie, it reveals that during investigation, investigating officer has collected voluminous DATA in electronic form, from which, it prima facie, reveals that investigating officer has collected some evidence to show involvement of present*

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*applicants/accused in the alleged commission of offence. Moreover, it seems that electronic DATA, which was seized during investigation and other electronic records were sent to Forensic Science Laboratory (FSL), Mumbai, and for its report, which is awaiting. Moreover, it appears that electronic record, which requires to investigate in order to ascertain implementation of these unlawful activities not only in Maharashtra, but in other States of all over the India. Some of the papers collected by Investigating Officer show that student from TATA Insitute of Social Science, Mumbai were taken by accused Mahesh Rao safely and secretly to forest area of Maoist Guerilla to meet underground Naxalite and to train them. Moreover, as investigation is in progress and at crucial stage, therefore, it will not be*

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*proper on my part to disclose all the things collected by Investigating Officer during investigation. Thus, from the investigation conducted by Investigating Officer, certainly there is progress in investigation. Moreover, reasons stated by Investigating Officer for extension of period of investigation, appears to be genuine one. Therefore taking into consideration all these facts and circumstances and gravity of the alleged offence against the accused persons, it is necessary to extend period of investigation beyond 90 days i.e. upto 180 days. Hence I pass following order.*

**ORDER**

- 1. Application is allowed.*
- 2. Period of investigation i.e. 90 days as per section 167 of the Code of Criminal Procedure, is hereby*



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*extended for further 90 days i.e. total 180 days as per provisions of 43-D of the Unlawful Activities (Prevention) Act, 1967.*

*3. Copy of this order be provided to the accused persons.”*

A True copy of the order dated 02.09.2018, passed by the Special Judge and Additional Session Judge, Pune below Application dated 30.08.2018 in C.R. No. 04/2018 is produced herewith and marked as **Annexure P-5 (Page No.\_\_\_\_ to Page No\_\_\_\_)**.

19.09.2018

Being aggrieved by that, the Respondents filed Criminal Writ petition No. 4148/2018 in the High Court of Judicature of Bombay. Without there being any substance in the criminal Writ petition, the respondents prayed for setting aside the order dated 02.09.2018 passed by the Special Judge, Pune. Thereby

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granting the extension of 90 days to complete the investigation. A true copy of the Memo of Criminal Writ petition No. 4148/2018 dated 19.09.2018 filed in the High Court of Judicature of Bombay is produced herewith and marked as **Annexure P-6 (Page No.\_\_\_\_to Page No\_\_\_\_)**.

26.09.2018

On 26.09.2018, the respondent No. 1 alone filed an application and prayed for default bail. A true copy of the Application dated 26.09.2018 filed by the respondent No. 1 in the court of Special Judge-3 at Pune is produced herewith and marked as **Annexure P-7 (Page No.\_\_\_\_to Page No\_\_\_\_)**.

24.10.2018

After hearing the parties, the High Court allowed and disposed of the Criminal Writ petition of the respondents in part by making the rule absolute in terms of prayer Clause A.

25.10.2018

Hence this Special Leave Petition.