

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE 2021

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO.1417/2021 c/w
W.P.Nos.637/2021, 640/2021, 1299/2021
AND 1706/2021 (GM RES)

In W.P.No.1417 of 2021

BETWEEN:

1. MUZAMMIL PASHA
S/O SYED MUMTAZ,
AGED ABOUT 32 YEARS,
R/AT NO.1727, 1ST STAGE,
2ND BLOCK, YASIN NAGAR,
BANGALORE - 560043.
2. IRSHAD HUSSAIN
S/O ALTAF HUSSAIN,
AGED ABOUT 28 YEARS,
R/AT NO.57, 11TH CROSS,
K.G.HALLI,
BANGALORE - 560045.
3. MOHAMMED HANIF
S/O KAMAL PASHA,
AGED ABOUT 19 YEARS,
R/AT VENKATESHPURAM,
K.G.HALLI, BANGALORE - 560045.
4. FIROZ AHMED
S/O NISAR AHMED,
AGED ABOUT 26 YEARS,
R/AT NO.3 6TH CROSS,
VINOBANANAGAR,
BANGALORE - 560045.
5. MOHAMMED BASHA
S/O MOHINUDDIN,
AGED ABOUT 43 YEARS,

R/AT NO.10 12TH CROSS,
PILANNA GARDEN,
BANGALORE - 560045.

6. SYED ZAKIR
S/O SYED MZHER,
AGED ABOUT 30 YEARS,
R/AT NO.12/48/2,
1ST MAIN, 1ST CROSS,
VENKATESHPURAM NEAR
TOTAL GAS, K.G.HALLI,
BANGALORE - 560045.

7. SAMIUDDIN
S/O LATE RAFIQ SA,
AGED ABOUT 42 YEARS,
R/AT NO.294,
6TH A MAIN, HBR LAYOUT,
BANGALORE - 560045.

8. SIRAJUDDIN
S/O SHEK MOHIDDIN,
AGED ABOUT 45 YEARS,
R/AT NO.460, 6TH CROSS,
VINOBA NAGAR,
K.G.HALLI, BANGALORE - 560045.

... PETITIONERS

(By Sri Shyam Sundar, Adv. for
Sri Mohammed Tahir, Adv.)

AND:

NATIONAL INVESTIGATING AGENCY
REP BY THEIR STANDING COUNSEL
OFFICE AT HIGH COURT COMPLEX
OPP TO VIDHAN SABHA,
BANGALORE - 560001.

... RESPONDENT

(By Sri M.B.Naragund, ASG for
Sri Prasanna Kumar, Spl.P.P.)

WRIT PETITION NO.637/2021

BETWEEN:

1. KALEEM PASHA
S/O MOHAMMED ISMAIL,

- AGED ABOUT 47 YEARS,
R/AT HBR LAYOUT,
BANGALORE - 560043.
2. MOHAMMED HANEEF
S/O KAMAL PASHA,
AGED ABOUT 19 YEARS,
R/AT NO.19, VENKATESHPURAM,
K.G.HALLI, BANGALORE - 560045.
 3. MOHAMMED AKRAM
S/O HOMAMMED GHOUSE,
AGED ABOUT 43 YEARS,
R/AT NO.47, 1ST CROSS,
DODDANNA LAYOUT,
BANGALORE - 560045.
 4. FAIROZ AHMED
S/O NISAR AHMED,
AGED ABOUT 26 YEARS,
R/AT NO.3, 6TH CROSS,
VINOBBHANAGAR,
BANGALORE - 560045.
 5. MOHAMMED SHAFI,
S/O MUBARAK,
AGED ABOUT 22 YEARS,
R/AT NO.693, 2ND CROSS,
VINOBBHANAGAR, K.G.HALLI,
BANGALORE - 560045.
 6. SAMEER KHAN
S/O RIYAZ AHMED,
AGED ABOUT 26 YEARS,
R/AT NO.65, 9TH CROSS,
VINOBBHANAGAR, K.G.HALLI,
BANGALORE - 560045.
 7. AMEEN
S/O MASEERRAHAMAN,
AGED ABOUT 27 YEARS,
R/AT NO.11/19,
B.M.LAYOUT, VENKATESHPURAM,
K.G.HALLI, BANGALORE - 560045.
 8. LOOYI
S/O FEROUZ,

- AGED ABOUT 27 YEARS,
R/AT NO.47, 2ND CROSS,
DODDANNA LAYOUT,
BANGALORE - 560045.
9. KAMAL BASHA,
S/O MAHABOOB SHARIFF,
AGED ABOUT 37 YEARS,
R/AT 2ND MAIN ROAD,
VINOBHANAGAR,
BANGALORE - 560045.
10. MOHAMMED ZALABIULLA,
S/O ASLAM PASHA,
AGED ABOUT 19 YEARS,
R/AT NO.280, NEAR MASJID E KHAIR,
B.M.LAYOUT, VENKATESHPURAM,
K.G.HALLI, BANGALORE - 560045.
11. SYED NAWAZ,
S/O SYED RIYAZ,
AGED ABOUT 28 YEARS,
R/AT NO.64, 9TH CROSS,
VINOBHANAGAR, K.G.HALLI,
BANGALORE-560045.
12. DASTAGIR,
S/O USMAN,
AGED ABOUT 43 YEARS,
R/AT NO.06, 2ND MAIN,
1ST CROSS, KUSHALNAGAR,
K.G.HALLI, BANGALORE - 560045.
13. EJAZ,
S/O AMAD SHARIFF,
AGED ABOUT 32 YEARS,
R/AT NO.32, 1ST CROSS,
B.M.LAYOUT, K.G.HALLI,
BANGALORE - 560045.
14. AYUB PASHA,
S/O NAZEER AHMED,
AGED ABOUT 39 YEARS,
R/AT NO.49, 1ST CROSS,
B.M.LAYOUT, K.G.HALLI,
BANGALORE - 560045.

15. CHAND PASHA,
S/O SAMSUDDIN,
AGED ABOUT 28 YEARS,
R/AT NO.41, 1ST CROSS,
BEAR LAYOUT, K.G.HALLI,
BANGALORE - 560045.
16. SYED ASGAR PASHA,
S/O SYED ABDUL,
AGED ABOUT 28 YEARS,
R/AT NO.43, 13TH CROSS,
KUSHALNAGAR, K.G.HALLI,
BANGALORE - 560045.
17. MOHAMMED MUJAHID,
S/O KHALEEL PASHA,
AGED ABOUT 20 YEARS,
R/AT MAKKA MASJID BACKSIDE,
1ST CROSS, KUSHALNAGAR, K.G.HALLI,
BANGALORE - 560045.
18. MOHAMMED SAMEER
S/O RAHMATHULLA,
AGED ABOUT 28 YEARS,
R/AT FLAT NO.05, 2ND CROSS,
2ND MAIN, KUSHALNAGAR,
K.G.HALLI, BANGALORE - 560045.
19. SIRAJ RAHAMAN,
S/O PASRURRAHAMAN,
AGED ABOUT 32 YEARS,
R/AT NO.05, 2ND MAIN,
RANGAPPA STREET, KUSHAKNAGAR,
K.G.HALLI, BANGALORE - 560045.
20. ZAMEER AHMED,
S/O ABDUL RASHEED,
AGED ABOUT 28 YEARS,
R/AT NO.05, 2ND MAIN,
RANGAPPA STREET, KUSHALNAGAR,
K.G.HALLI, BANGALORE - 560045.
21. SIKANDAR KHAN,
S/O SHYAM NAWAZ KHAN,
AGED ABOUT 30 YEARS,
R/AT 2ND MAIN, 2ND CROSS,
KUSHALNAGAR, K.G.HALLI,

BANGALORE - 560045.

22. MOHAMMED SAMEER @ SAMEERUDDIN,
S/O RAHMATHULLA,
AGED ABOUT 32 YEARS,
R/AT NO.05, 2ND MAIN,
2ND CROSS, K.G.HALLI,
BANGALORE - 560045.
23. SYED ABZAL,
S/O SYED ABDURASHEED,
AGED ABOUT 35 YEARS,
R/AT 1ST CROSS, 2ND MAIN,
KUSHALNAGAR, K.G.HALLI,
BANGALORE - 560045.
24. ABDUL HAFEEZ ZUNAID,
S/O ABDUL RASHEED,
AGED ABOUT 26 YEARS,
R/AT 1ST CROSS, 2ND MAIN,
KUSHALNAGAR, K.G.HALLI,
BANGALORE - 560045.
25. MOHAMMED DASTAGIR,
S/O JABBAR,
AGED ABOUT 28 YEARS,
R/AT 2ND CROSS, GOVINDPURA,
BANGALORE - 560045.
26. SHAIK ADIL,
S/O SHAIK AFZAL,
AGED ABOUT 27 YEARS,
R/AT NO 80, 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
27. MOHAMMED MEBOOB,
S/O SHAIK AFZAL,
AGED ABOUT 28 YEARS,
R/AT NO.80, 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
28. MOHAMMED MUSTAF,
S/O AMEER JAAN,
MAJOR BY AGE,
R/AT 4TH CROSS, AMIR HALL,

K.G.HALLI, BANGALORE - 560045.

29. ALI AHMED,
S/O ABDUL KHADER,
AGED ABOUT 45 YEARS,
R/AT 2ND CROSS, JAFRULLA LAYOUT,
GOVINDPURA, BANGALORE - 560045.
30. SHAHEEDUL ISLAM,
S/O KAHLEEMUDDIN,
AGED ABOUT 27 YEARS,
R/AT 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
31. SIDDIQ PASHA,
S/O PYAREJAN,
AGED ABOUT 19 YEARS,
R/AT NO.6, 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
32. MOHAMMED NASIR,
S/O MOHAMMED TRAFIL,
AGED ABOUT 31 YEARS,
R/AT NO.27, 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
33. SHABBIR,
S/O ABDUL NAZEER,
AGED ABOUT 36 YEARS,
R/AT NO 3, 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
34. MOHAMMED MUJAFFAR,
S/O ABDUL JALEEL,
AGED ABOUT 45 YEARS,
R/AT NO.27, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
35. TABREZ,
S/O AMEERJAN,
AGED ABOUT 28 YEARS,
R/AT NO.73, 1ST CROSS, JAFRULLA

- LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
36. SYED HUSSAIN @ HUSSAIN,
S/O SYED KHADER, AGED ABOUT 37 YEARS,
R/AT NO.74, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
37. SYED FAIROZ,
S/O SHAIK AFZAL,
AGED ABOUT 34 YEARS,
R/AT NO.80, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
38. MOHAMMED SADIQ,
S/O ZABEEDULLAM,
AGED ABOUT 22 YEARS,
R/AT NO.80, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
39. MOHAMMED ALI,
S/O MOHAMMED ANEES,
AGED ABOUT 40 YEARS,
R/AT NO.11, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
40. SYED KHAN,
S/O KHAMARUDDIN KHAN,
AGED ABOUT 36 YEARS,
R/AT NO.12, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
41. MOHAMMED JUNAID,
S/O MOHAMMED JAFFAR,
AGED ABOUT 22 YEARS,
R/AT NO.11, 1ST CROSS, JAFRULLA
LAYOUT, ERRANNA PALYA, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
42. MOHAMMED ZAFRAULLA SHARIFF
@ MOHAMMED NASRULLA SHARIFF,
S/O YUSUF SHARIFF,
AGED ABOUT 44 YEARS,

R/AT NO.10, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.

43. SYED SHAHBAZ
S/O SYED ZAKIR,
AGED ABOUT 24 YEARS,
R/AT NO.96/2, 5TH CROSS,
SEENA LAYOUT, RASHAD NAGAR,
K.G.HALLI, BANGALORE - 560045.
44. ALTAF PASHA
S/O ABDUL SAB,
AGED ABOUT 39 YEARS,
R/AT NO.11, 1ST CROSS, JAFRULLA
LAYOUT, GOVINDPURA,
K.G.HALLI, BANGALORE - 560045.
45. MOHAMMED ASEEF
S/O SHAIK PYAREJAN,
AGED ABOUT 30 YEARS,
R/AT NO.6, 1ST CROSS,
JAFRULLA LAYOUT, GOVINDPURA,
BANGALORE - 560045.
46. ABDUL MAJEED
S/O KHAJA,
AGED ABOUT 19 YEARS,
R/AT 2ND CROSS, GOVINDPURA,
BANGALORE - 560045.
47. ARFATH SHARIFF
S/O ASGAR SHARIFF,
AGED ABOUT 19 YEARS,
R/AT 1ST CROSS, GOVINDPURA,
BANGALORE - 560045.
48. ZABIULLA
S/O ABDUL SATTAR,
AGED ABOUT 36 YEARS,
R/AT NO.218, RAMASWAMYAPALYA,
KAMMANAHALLI, BANGALORE.
49. MUBARAK PASHA
S/O MOHAMMED AKRAM,
AGED ABOUT 30 YEARS,
R/AT 14TH CROSS, GOVINDPURA,

- BANGALORE - 560045.
50. NAYAZULLA
S/O ATHAULLA,
AGED ABOUT 30 YEARS,
R/AT 14TH CROSS, HBR 2ND STAGE,
NEAR INAM MASJID, K.G.HALLI,
BANGALORE - 560045.
51. SAMEER ULLA
S/O ATHAULLA,
AGED ABOUT 25 YEARS,
R/AT 14TH CROS, HBR 2ND STAGE,
NEAR INAM MASJID, K.G.HALLI,
BANGALORE - 560045.
52. ABID ALI
S/O ALUD ALI,
AGED ABOUT 37 YEARS,
R/AT NO.46, 13TH CROSS,
BEHIND FARIDA SHOE FACTORY,
GOVINDPURA, BANGALORE.
53. TOUFEEQ AHMED
S/O IMTIYAZ,
AGED ABOUT 29 YEARS,
R/AT NO.753, GROUND FLOOR,
3RD LOCK, 10TH CROSS, 1ST STAGE,
HBR LAYOUT, BANGALORE - 560043.
54. MUJEEB PASHA
S/C MOHAMMED ISMAIL,
AGED ABOUT 37 YEARS,
R/AT NO 201/8, 6TH MAIN,
10TH CROSS, 1ST STAGE,
HBR LAYOUT, BANGALORE - 560043.
55. SYED FARDEEN
S/O SYED AKMAL,
AGED ABOUT 21 YEARS,
R/AT NO.308, 17TH CROSS,
GOVINDPURA, BANGALORE - 560045.
56. JUBER
S/O RAFIQ,
AGED ABOUT 23 YEARS,
R/AT NO.23, 15TH CROSS,
UMARNAGAR, GOVINDPURA,

BANGALORE - 56005.

57. SHABAZ
S/O AFZAL,
AGED ABOUT 20 YEARS,
R/AT NO.3, 14TH CROSS,
GOVINDPURA,
BANGALORE - 560045.
58. IMAN KHAN
S/O HAMEED KHAN,
AGED ABOUT 33 YEARS,
R/AT NO.309, 4TH CROSS,
SAHUKAR LANE, KUSHALNAGAR,
K.G.HALLI, BANGALORE - 45.
59. SYED SHOHIB
S/O SYED MATEEN,
AGED ABOUT 29 YEARS,
R/AT NO.6, 2ND MAIN ROAD,
AMBEDKAR NAGAR, NEAR LORITA
SCHOOL, COFFEE BOARD COLONY,
K.G HALLI, BANGALORE - 560045.

... PETITIONERS

(By ANEES ALI KHAN, Adv.)

AND:

STATE BY K.G.HALLI P.S.
NATIONAL INVESTIGATING AGENCY
BY ITS SPECIAL PUBLIC PROSECUTOR ... RESPONDENT

(By Sri.M.B.Naragund, ASG for
Sri P. Prasanna Kumar, Spl.P.P.)

WRIT PETITION NO.640/2021

BETWEEN:

1. SAWOOD KHURESHI
S/O LATE LAL KHUESHI,
AGED ABOUT 35 YEARS,
R/AT NEAR BAKERY, DUBAI LAYOUT,
MODI ORAD, D.J.HALLI,
BANGALORE - 560045.
2. IMRAN KHAN @ IMRAN
S/O FAYAZ,

AGED ABOUT 24 YEARS,
R/AT NO.79, 1ST CROSS,
BYASTAR STREET, COLES PARK,
SHIVAJINAGAR, BANGALORE - 560051.

3. JUBERULLA KHAN @ JUBER
S/O AYUB,
AGED ABOUT 27 YEARS,
R/AT OPP. D.J.HALLI POLICE STATION,
MODI ROAD, D.J.HALLI,
BANGALORE - 560045.
4. SYED ARFATH @ ARFATH
S/O NAZEER,
AGED ABOUT 19 YEARS,
R/AT NO.7, 7TH CROSS,
NEAR MULLA TEA HOTEL,
MODI ROAD, D.J.HALLI,
BANGALORE - 560045.
5. SYED SHAHBAZ
S/O NAWAZ,
AGED ABOUT 22 YEARS,
R/AT NEAR AMEEN MASJID,
ANWAR LAYOUT, TANNERY ROAD,
D.J.HALLI, BANGALORE-560045.
6. MUBARAK
S/O SYED JAKRIYA @ DICCHI MUMUBARAK,
AGED ABOUT 21 YEARS,
R/AT NO.41, 2ND CROSS,
MCDI ROAD, D.J.HALLI,
BANGALORE - 560045.
7. ARFATH PASHA
S/O M. BABU,
AGED ABOUT 25 YEARS,
R/AT NO.388, S.R.BLOCK,
1ST CROSS, D.J.HALLI,
BANGALORE - 560045.
8. FAYAZ
S/O SHEIK HUSSAIN,
AGED ABOUT 37 YEARS,
R/AT NO. 43, 7TH CROSS,
PARIJATHA HIGH SCHOOL,
VENKATESHPURA, TANNERY ROAD,

BANGALORE - 560045.

9. NIZAMUDDIN
S/O MOHAMMED ALI,
AGED ABOUT 22 YEARS,
R/AT 3RD CROSS, SAKARE MANDI,
D.J.HALLI,
BANGALORE - 560045.
10. MOHAMMED SHAFIQ
S/O MOHAMMED YUSUF,
AGED ABOUT 19 YEARS,
R/AT NO.8, 7TH CROSS,
A.K.COLONY, MODI ROAD,
BANGALORE - 560045.
11. SYED IMTIYAZ AHMED
S/O SYED JAFFAR,
AGED ABOUT 35 YEARS,
R/AT 3RD CROSS, PILLIANA GARDEN,
BANGALORE - 560045.
12. MOHAMMED SAWOOD
S/O MOHAMMED ANWAR,
AGED ABOUT 35 YEARS,
R/AT NO.10/1, LAL MASJID 'A'
STREET, SHIVAJINAGAR,
BANGALORE - 560051.
13. MOHAMMED IRFAN
S/O MOHAMMED ASLAM,
AGED ABOUT 34 YEARS,
R/AT NO 22, 3RD CROSS,
10TH MAIN, KHB KAVAL BYRASANDRA,
BANGALORE - 560032.
14. MOHAMMED ROASHAN INAYATH
S/O SYED INAYATH,
AGED ABOUT 29 YEARS,
R/AT NO.203, PACIFIC RESIDENCY,
2ND FLOOR, KAVAL BYRASANDRA,
BANGALORE - 560032.
15. SYED ZIBRAN
S/O AMZAD,
AGED ABOUT 19 YEARS,
R/AT NEAR THURA MOSQUE,

SHAMPURA MAIN ROAD,
BANGALORE - 560045.

16. SYED SAFEER AHMED
S/O SYED IMRAN,
AGED ABOUT 23 YEARS,
R/AT NO.11/2,
R.K.HERITAGE APARTMENT,
SHAMPURA, D.J.HALLI,
BANGALORE - 560045.
17. SYED ZAMEER AHMED
S/O SYED IMRAN,
AGED ABOUT 19 YEARS,
R/AT NO.11/2,
R.K.HERITAGE APARTMENT,
SHAMPURA, D.J.HALLI,
BANGALORE - 560045.
18. ARBAAZ KHAN
S/O SHAFI KHAN,
AGED ABOUT 29 YEARS,
R/AT FLAT NO.3, 6TH FLOOR,
R.K.HERITAGE APARTMENT,
SHAMPURA, D.J.HALLI,
BANGALORE - 560045.
19. SAMEER
S/O ABDUL SATTAR,
AGED ABOUT 40 YEARS,
R/AT NO.6, 14TH CROSS,
GOVINDPURA, K.G.HALLI,
BANGALORE - 560045.
20. SYED SHABAZ
S/O SYED AZMATHULLA,
AGED ABOUT 38 YEARS,
R/AT ASHOKA INDUSTRIAL LAYOUT,
BEHIND SOPHIA SCHOOL,
K.G.HALLI, BANGALORE - 560045. NO.20
21. MOHAMMED ARSHAD
S/O MOHAMMED ISHAK,
AGED ABOUT 29 YEARS,
R/AT NO.1049, 6TH CROSS,
R.K.HEGDE NAGAR,
THANISANDRA MAIN ROAD,

BANGALORE - 560077.

22. MUSHTAHK AHMED
S/O ABDUL RASHEED,
AGED ABOUT 44 YEARS,
R/AT NO.1070, 6TH CROSS,
R.K.HEGDE NAGAR ,
THANISANDRA MAIN ROAD,
BANGALORE - 560077.
23. MOHAMMED MUDASEER
S/O ABDUL MAZID,
AGED ABOUT 23 YEARS,
R/AT NO.1412, 12TH CROSS,
R.K.HEGDE NAGAR ,
THANISANDRA MAIN ROAD,
BANGALORE - 560077.
24. SHEIK AMEEN
S/O SYED AREEF @ SYED SADIQ,
AGED ABOUT 25 YEARS,
R/AT 5TH CROSS, 5TH MAIN,
NEAR ALI MASJID,
RACHENE HALLI,
THANISANDRA,
BANGALORE - 560077.
25. MOHAMMED AZHAR
S/O BABU,
MAJOR BY AGE,
R/AT NO.07, AMARJEET LAYOUT,
THANISANDRA, BANGALORE - 560077.
26. JAVEED SHARIFF
S/O MEHBOOB SHARIFF,
AGED ABOUT 28 YEARS,
R/AT NO.148,
SOLLAPURADAMMA TEMPLE,
SOAP FACTORY, D.J.HALLI,
BANGALORE - 560045.
27. RAKIB SHARIFF
S/O AHMED SHARIFF,
AGED ABOUT 33 YEARS,
R/AT NO.15/11, ALLAS ROAD,
NEW EXTENSION, PILLANA GARDEN,
K.G.HALLI, BANGALORE - 560045.

28. MUDASIR AHMED
S/O ASWAK AHMED,
AGED ABOUT 23 YEARS,
R/AT NO.772, GROUND FLOOR,
9TH MAIN, 3RD STAGE,
PILLANA GARDEN,
BANGALORE - 560045.
29. MOHAMMED SIDDIQ
S/O MOHAMMED MUKHTIYAR,
AGED ABOUT 24 YEARS,
R/AT NO.144, 1ST CROSS,
RAJAPPA BLOCK, D.J.HALLI,
BANGALORE - 560045.
30. SYED NAWAZ
S/O GULAB JAN,
AGED ABOUT 19 YEARS,
R/AT 2ND CROSS, SHADABNAGAR,
KAVAL BYRASANDRA, R.T NAGAR,
BANGALORE - 560032.
31. MOHAMMED UMAR FARCOQ
S/O ALEEM,
AGED ABOUT 20 YEARS,
R/AT NO.3284, 30TH CROSS,
NAGAMMA LAYOUT,
KAVAL BYRASANDRA,
R.T.NAGAR POST,
BANGALORE - 560032.

... PETITIONERS

(By ANEES ALI KHAN, Adv.)

AND:

STATE BY D.J.HALLI P.S.
NATIONAL INVESTIGATING AGENCY
REP BY ITS SPECIAL PUBLIC PROSECUTOR.

... RESPONDENT

(By Sri.M.B.Naragund, ASG
For Sri. P. Prasanna Kumar, Spl.P.P.)

WRIT PETITION No.1299 of 2021

BETWEEN:

1. SYED MASOOD
S/O SYED AZAZ,
AGED ABOUT 35 YEARS,
R/AT NO.24/1,
15TH CROSS, DAVIS ROADS,
SAGAYPURAM,
TANNERY ROAD,
BANGALORE - 560045.
2. SYED AYZ
S/O LATE SYED KHALEEL,
AGED ABOUT 43 YEARS,
R/AT NO.58,
KHALEEL COMPLEX MODI ROAD,
DJ HALLI,
BANGALORE - 560045.
3. SYED SHABBIR
S/O LATE SHAFFIQ,
AGED ABOUT 42 YEARS,
R/AT S.R.BLOCK,
1ST CROSS,
SHAMPUR MAIN ROAD,
D.J.HALLI,
BANGALORE 560045.
4. SHABAZ
S/O NAWAZ,
AGED ABOUT 22 YEARS,
R/AT NEAR AMEEN MASJID,
ANWAR LAYOUT,
TANNERY ROAD, D.J.HALLI,
BANGALORE - 560045.
5. SYED PASHA
S/O ABDUL RAZAK,
AGED ABOUT 25 YEARS,
R/AT NO.36 1ST CROSS,
SHAMPUR MAIN ROAD,
D.J.HALLI, BANGALORE - 560045.
6. ABDUL RAHMAN
S/O ANWAR BASHA,

- AGED ABOUT 23 YEARS,
2ND CROSS,
NEAR BILAL MASJID,
TANNERY ROAD,
BANGALORE - 560032.
7. HUSSAIN SHARIFF
S/O LATE AZGAR SHARIFF,
AGED ABOUT 23 YEARS,
R/AT NO.331/22,
OLD MADRAS SOAP FACTORY,
D.J.HALLI, BANGALORE - 560045.
8. TUFAIL AHMED
S/O IRSHAD HAMMED,
AGED ABOUT 26 YEARS,
R/AT NO.11/2,
SHAMPUR MAIN ROAD, BESIDE
RK, HERITAGE APARTMENT,
D.J.HALLI, BANGALORE - 560045.
9. MOHAMMED ROSHAN INAYATH
S/O SYED INANYATH,
AGED ABOUT 29 YEARS
R/AT 203 PESIFIC RESIDENCY,
2ND FLOOR, KAVAL BYRASANDRA
BANGALORE-560032.
10. SYED SAFEER AHMED
S/O SYED IMRAN,
AGED ABOUT 23 YEARS,
R/AT RK HERITAGE APARTMENT,
SHAMPUR DJ HALLI,
BANGALORE-560045.
11. MOHAMMED ARSHAD
S/O MOHAMMED ISHAK,
AGED ABOUT 29 YEARS,
R/AT NO.1049 6TH CROSS,
RK HEGGADE NAGAR,
THANISANDRA MAIN ROAD,
BANGALORE-560045.
12. AYAZUDDUIN
S/O TAJUDDIN,
AGED ABOUT 24 YEARS,
R/AT NO.8, 5TH CROSS,

5TH MAIN RACHENA HALLI,
THANISANDRA,
BANGALORE-560045.

13. MOHAMMED ZAID
S/O MOHAMMED HUSSAIN,
AGED ABOUT 30 YEARS,
R/AT NO.1271,
BEHIND FATHIMA MASJID
FATHIMA LAYOUT,
SARAIPALYA THANISANDRA,
BANGALORE-560045.
14. SYED MUJAHID
S/O SYED NAWAB,
AGED ABOUT 27 YEARS,
R/AT 7TH CROSS MUSLIM COLONY,
AC POST K.G.HALLI,
BANGALORE.
15. SYED ALTAF
S/O SYED CHAND
AGED ABOUT 23 YEARS,
R/AT NO.292, 2ND CROSS,
SRINIVASNAGAR, DJ HALLI,
BANGALORE-560045.
16. MUZAMMIL PASHA
S/O SYED MUMTAZ,
AGED ABOUT 32 YEARS,
R/AT NO.1727,
1ST STAGE 2ND BLOCK,
YASIN NAGAR
BANGALORE-560045.

PETITIONER NO.1-16
ARE REPRESENTED BY
W/O SYED MASOOD
AGED ABOUT 32 YEARS,
R/AT NO.24/1,
15th CROSS DAVIS ROADS,
SAGAYPURAM,
TANNERY ROAD,
BANGALORE - 560045.

... PETITIONERS

(By Sri Shyam Sundar, Adv for
Sri Mohammed Tahir, Adv.)

AND:

NATIONAL INVESTIGATING AGENCY
REP BY THEIR STANDING COUNSEL
OFFICE AT HIGH COURT COMPLEX
OPP TO VIDHAN SABHA,
BANGALORE - 560001.

... RESPONDENT

(By Sri.M.B.Naragund, ASG for
Sri Prasanna Kumar, Spl.P.P.)

WRIT PETITION NO.1706/2021

BETWEEN:

DR. SABEEL AHMED
S/O MAQBOOL AHMED,
AGED ABOUT 39 YEARS,
R/AT NO.1981, 26TH CROSS,
BANSHANKARI, 2ND STAGE,
BANGALORE - 560070.
REP. BY HIS WIFE
SARAH FATHIMA

... PETITIONER

(By Sri Shyam Sundar, Adv for
Sri Mohammed Tahir, Adv.)

AND:

NATIONAL INVESTIGATING AGENCY
REP BY THEIR STANDING COUNSEL
OFFICE AT HIGH COURT COMPLEX
OPP TO VIDHAN SABHA,
BANGALORE - 560001.

... RESPONDENT

(By Sri.M.B.Naragund, ASG for
Sri. P.Prasanna Kumar, Spl.P.P.)

WRIT PETITION NO.1417/2021 IS FILED UNDER ARTICLES
226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH
THE EXTENSION ORDER AT ANNEXURE-H DTD:3.11.2021
ORDERED BY LEARNED SPECIAL NIA COURT IN CONNECTION
UNDER SECTIONS 15, 16, 18, 20 OF THE UA (P) ACT 1967
SECTIONS 143, 147, 148, 353, 333, 332, 436, 427 AND 149 OF TH
IPC 1860 AND SECTION 4 OF HTE PREENTION OF DAMAGE TO
PUBLIC PROPERTY ACT 1984 REGISTERED AGAINST THE CRIME

NO.229/2020 OF D.J.HALLI PS PENDING IN THE FILES OF HON'BLE SPECIAL NIA COURT AT BANGALORE (CCH-50) AT BANGALORE, ETC.

WRIT PETITION NO.637/2021 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 03.11.2020 EXTENDING THE DETENTION OF THE APPELLANTS FROM 90 TO 180 DAYS, PASSED BY THE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, SPECIAL COURT FOR NIA CASES, BENGALURU IN R.C.NO.35/2020 VIDE ANNEXURE-B AND ETC.

WRIT PETITION NO.640/2021 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 03.11.2020 EXTENDING THE DETENTION OF THE APPELLANTS FROM 90 TO 180 DAYS, PASSED BY THE HON'BLE COURT OF XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, SPECIAL COURT FOR NIA CASES AT BENGALURU IN R.C.NO.34/2020 VIDE ANNEXURE-B AND ETC.

WRIT PETITION NO.1299/2021 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE EXTENSION ORDER AT ANNEXURE-H DTD:03.11.2021 ORDER BY LEARNED SPECIAL NIA COURT IN CONNECTION RC-34/2020/NIA/DLI UNDER SECTION 15, 16, 18 AND 20 OF THE UA(P) ACT, 1967 SECTIONS 143, 147, 148, 353, 333, 332, 436, 427 AND 149 OF THE IPC, 1860 AND SECTION 4 OF THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984, REGISTERED AGAINST THE CRIME NO.195/2020 OF D.J.HALLI, P.S. PENDING IN THE FILES OF HON'BLE SPECIAL NIA COURT AT BANGALORE (CCH-50) AT BANGALORE AND ETC.

WRIT PETITION NO.1706/2021 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE EXTENSION ORDER AT ANNEXURE-E DTD:24.11.2020 ORDERED BY LEARNED SPECIAL NIA COURT IN CONNECTION UNDER SECTION 120(B), 121, 121(A), 122, 153(A), 153(B), 307, 379 IPC AND SEC.3 AND 25 OF THE ARMS ACT 1959 AND SEC.10, 12, 13 OF UA(P) ACT 1967 149 OF THE IPC 1860 REGISTERED AGAINST THE CRIME NO.384/2012 OF BASAVESHWARANAGAR PS PENDING IN THE FILES OF HON'BLE SPECIAL NIA COURT AT BANGALORE (CCH-50) AT BANGALORE AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.06.2021 AND COMING ON FOR 'PRONOUNCEMENT OF ORDERS' THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These writ petitions are filed by the accused persons in FIR No.RC-35/2020/NIA/DLI pending before the Special N.I.A. Court, Bangalore (CCH-50) registered for the offences punishable under Sections 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967; Sections 143, 147, 148, 353, 333, 332, 436, 427 and 149 of the Indian Penal Code and Section 4 of the Prevention of Damage to Public Property Act, 1984, arising out of Crime No.229/2020 of Kadugondanahalli Police Station (hereinafter referred to as "the K.G.Halli P.S.") Bengaluru, challenging the order dated 03.11.2020 passed by the said court on an application filed by the respondent - National Investigating Agency under first proviso to Section 43-D(2)(b) of the Unlawful Activities (Prevention) Act, 1967 (for short "the Act of 1967") seeking extension of time for completion of investigation and the order dated 05.01.2021 passed by the said court rejecting the applications filed by the petitioners under Section 167(2) of the Code of Criminal

Procedure, 1973 (for short "the Code") seeking statutory/default bail.

2. These cases are argued together and submitted for decision as one case.

3. Brief facts of the case as revealed from the records are:

The K.G.Halli Police, Bengaluru City have registered a case against 16 named persons and others for the offences punishable under Sections 143, 147, 148, 353, 333, 332, 436, 427 and 149 of the Indian Penal Code and Section 4 of the Prevention of Damage to Public Property Act, 1984. Subsequently the offences under the Act of 1967 were also invoked in the said case and thereafterwards the investigation was taken over by the respondent - Agency and a case was registered in FIR No.RC-35/2020/NIA/DLI.

4. During the course of investigation, the petitioners were arrested on 12.08.2020 and on the very same day, they were remanded to custody. Since the respondent - Agency, which had taken over the investigation in the case,

could not complete the investigation within the stipulated period of 90 days, an application under the first proviso to Section 43-D(2)(b) of the Act of 1967 was filed seeking extension of time by a further period of 90 days for completing the investigation and filing a final report. The said application was filed on 03.11.2020. The period of 90 days from the date of the petitioners' remand was to expire on 09.11.2020. The trial court on receipt of an application from the respondent seeking extension of time for completion of investigation, passed orders on the said application on the very same day i.e., on 03.11.2020.

5. The petitioners thereafter filed an application under Section 167(2) of the Code before the trial court on 11.11.2020 on the ground that the charge sheet was not filed by the respondent - Agency within the period of 90 days from the date of remand and accordingly they had prayed for grant of statutory bail for the default of the prosecution in not filing the charge sheet. The said application was heard and disposed of on 05.01.2021 on the ground that on the application filed by the prosecution

under the first proviso to Section 43-D(2)(b) of the Act of 1967, the court had already extended the time for completion of the investigation by a further period of 90 days and therefore, the petitioners were not entitled for the relief of default bail under Section 167(2) of the Code. Being aggrieved by the aforesaid two orders dated 3.11.2020 and 5.1.2021, the petitioners have approached this court in these writ petitions.

6. Learned Counsel Sri.M.S.Shyam Sundar appearing on behalf of the petitioners submits that the application under Section 43-D(2)(b) of the Act of 1967 seeking extension of time for completion of investigation has been filed much prior to expiry of 90 days from the date of remand of the petitioners and therefore, the said application is premature. He submits that said application is filed only to deny the right to statutory bail of the petitioners. He also submitted that the petitioners were not heard by the trial court before passing orders on application under Section 43-D(2)(b) of the Act of 1967. He submits that the copy of the application was also not

served on the petitioners or on their Advocates. He also submits that petitioners were not even present before the court on the day when the application under Section 43-D(2)(b) of the Act of 1967 was filed and disposed of.

In support of his arguments, he has relied upon the judgments of the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur and Others -vs- State of Maharashtra and Others**¹ and refers to paragraphs-20 and 28 of the said case, which read as follows:

"20. Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency and once such an application is made, the court should issue a notice to

¹ AIR 1994 SC 2623

the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'. Similarly, when a report is submitted by the public prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party. We must as already noticed reiterate that the objection to the grant of bail to an accused on account of the 'default' of the prosecution to complete the investigation and file the challan within the maximum period prescribed under

clause (b) of sub-section (4) of Section 20 TADA or within the extended period as envisaged by clause (bb) has to be limited to cases where either the factual basis for invoking the 'default' clause is not available or the period for completion of investigation has been extended under clause (bb) and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution.

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28. In conclusion, we may (even at the cost of repetition) say that to sum up, an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of 'default' of the prosecution and the court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by Clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released.

Even where the court grants an extension under clause (bb) but the charge-sheet is not filed within the extended period, the court shall have no option but to release the accused on bail, if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (bb) can be granted by the Designated Court except on a report of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (bb), which must be strictly construed."

He has also relied upon the judgment of the Hon'ble Apex Court in the case of **Sanjay Dutt -vs- State Through C.B.I., Bombay²** and refers to para-49 of the said judgment, which reads as follows:

"49. In Hitendra Vishnu Thakur, it was held that the Designated Court would have 'no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bond as directed by the court'; and that a 'notice' to the accused is required to be given by the Designated Court before it grants any extension under the further proviso beyond the prescribed period of 180 days for completing the investigation. Shri Kapil Sibal, learned counsel for the petitioner contended that the requirement of the 'notice' contemplated by the decision in Hitendra Vishnu Thakur before granting the extension for completing the investigation is mere production of the accused before the court and not a written notice to the accused giving reasons for seeking the extension requiring the accused to show cause against it. Learned counsel submitted that mere production of the accused at that time when the prayer for extension of time is made by the Public Prosecutor

² 1994 AIR SCW 3857

and, considered by the court, to enable such a decision being made in accordance with the requirements of Section 167 Cr. P.C., is the only requirement of notice to be read in the decision of the Division Bench in Hitendra Vishnu Thakur. The Grievance of the learned counsel was, that quite often the accused was not even produced before the court at the time of consideration by the court of the prayer of the public prosecutor for extension of the period.

He has also placed reliance on the unreported judgment of this court in the case of **Sayed Majid Ahamed -vs- State of Karnataka**³ and refers to paragraphs-13 and 14 of the said judgment, which read as follows:

"13. It is now well settled that the right of the accused to be released on bail after expiry of the maximum period of detention provided under section 167 of Cr.P.C. can be denied only when the accused does not furnish bail is borne from Explanation I to the said section. It is consistently held by the Hon'ble Apex Court as well as by the various High Courts that the proviso to section (2) of section 167 of Cr.P.C. is a beneficial provision for curing the mischiefs of preliminary investigation and thereby affecting the liberty of the citizen. In S.KASI, referred supra, the Hon'ble Apex Court has noted that, apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right of the accused.

14. This is one of the instance where on account of the order passed by the learned Special Judge mechanically extending the time for filing the charge sheet without even notifying the accused and without insisting on the production of the accused, the indefeasible right of the petitioners / accused has been

³ Criminal Petition Nos.4398/2020 & 4522/2020 DD 5.10.2020

frustrated indirectly. It is really shocking to note that even after the expiry of the extended period of 90 days, neither the charge sheet has been filed nor the accused have been produced before the court. As a result, even the custody of the petitioners after the expiry of the extended period of 90 days has rendered illegal. As laid down by the Hon'ble Supreme Court in the above decision,

Personal liberty is too precious a fundamental right. Article 21 states that no person shall be deprived of his personal liberty except according to procedure established by law. So long as the language of Section 167(2) of Cr.P.C. remains as it is, I have to necessarily hold that denial of compulsive bail to the petitioner herein will definitely amount to violation of his fundamental right under Article 21 of the Constitution of India. The noble object of the Hon'ble Supreme Court's direction is to ensure that no litigant is deprived of his valuable rights.

As the records indicate that the petitioners have already availed their indefeasible right to be released on default bail by making necessary applications and offering surety and charge sheet having not been filed even after the extended period of 90 days, there is no other alternative than to direct the release of the petitioners on default bail subject to each of them furnishing a personal bond of Rs.5,00,000/- with two sureties each to the satisfaction of the trial Court. Ordered accordingly. Petitions allowed."

7. Learned counsel Sri.Anees Ali Khan appearing for the petitioners would submit that in the case of **Sanjay Dutt** (supra), it has been laid down that the accused persons are required to be produced before the court at the time of the court considering the application of the

prosecution seeking extension of the period for completing the investigation and the accused are required to be informed that such an application is under consideration by the court. He submits that none of the accused were present before the court on the date when the application under Section 43-D(2)(b) of the Act of 1967 was filed by the prosecution. He submits that in the event of this court holding that the order passed by the trial court extending the time for investigation is not in accordance with law, then the petitioners' application under Section 167(2) of the Code merits consideration and as a matter of right, they are entitled for statutory bail.

8. Per contra, learned Assistant Solicitor General appearing on behalf of the respondent - Agency submits that a reading of Section 43-D(2)(b) of the Act of 1967 would make it clear that there is no necessity of hearing the accused persons before passing any orders on the application filed by the prosecution seeking extension of time for completion of the investigation. He submits that in the absence of the statute providing any such right to the

accused persons in black and white, on the ground of principles of natural justice, they cannot claim such a right. He submits that the judgment of the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur** (*supra*) could not be applicable in the present case, as the said judgment is rendered under a different Act and not under the Act of 1967. He also refers to Section 16 of the National Investigation Agency Act, 2008 and submits that the said Act being a special enactment over-rides the provisions of the Code and therefore, the petitioners are not entitled for the relief of statutory bail under Section 167(2) of the Code.

He has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra -vs- Surendra Pundlik Gadling and Others**⁴ and refers to paragraphs-32 and 35 of the said judgment, which read as follows:

"32. There is no doubt that the report/application of the public prosecutor, setting out the reasons for extension of ninety (90) days of custody to complete

⁴ (2019) 5 SCC 178

investigation leaves something to be desired. The first document placed before the trial court was an application/report filed by the IO, though that is also stated to contain the signature of the public prosecutor. The second document, which purports to be the report of the public prosecutor, has also been filed in the form of an application. There is repetition of averments that the IO is approaching the court. Para 10 of the second document again mentions that the investigating authority had approached the court for an extension of a further period of ninety (90) days on the grounds set out therein and the trial court also appears to have treated the document in question as an application filed by the IO. A clarity in the form of a proper endorsement by the public prosecutor that he had perused the grounds in the earlier document submitted by the IO and, thus, was satisfied that a case had been made out for extension of time to complete the investigation would have obviated such a controversy. But that is not to be.

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35. Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant/State has rightly contended that there is a material difference in the facts of the present case and those of Hitendra Vishnu Thakur case, inasmuch as the application in that case was in the form of an affidavit of the IO, whose signatures were identified by an endorsement of the public prosecutor. It is in those circumstances it was held that mere identification by the public prosecutor, of the deponent of the affidavit could not justify the application to be treated as a report of the public prosecutor. In the present case, the second document contains a clear endorsement of the public prosecutor in support of the averments made therein.

He submits that the Hon'ble Supreme Court in the said case, in appreciation of the contentions by the accused

persons that they were not heard in the matter, had itself heard the arguments of the accused persons but it did not say that the accused have a right of hearing before considering an application of the prosecution seeking extension of time for completion of investigation.

He has also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Bikramjit Singh -vs- State of Punjab***⁵ and submits that if the court considering an application under the first proviso to Section 43-D(2)(b) of the Act of 1967, is satisfied with the report of Public Prosecutor indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days, the prayer made by the prosecution for extension of time could be considered.

He also submits that during the extended period of time for completion of the investigation, charge sheet has already been filed by the prosecution and therefore, it is not necessary to consider whether the extension granted by the

⁵ (2020) 10 SCC 616

trial court is valid or not and the petitioners can very well seek the relief of regular bail before the trial court since charge sheet has been already filed. He submits that in identical circumstances, a coordinate Bench of this court in the case of **Shoiab Ahmed Mirza and Others -vs- State of Karnataka**⁶ while denying the relief of statutory bail under Section 167(2) of the Code, at para-10 of the judgment has observed as follows:

"10. reading of the impugned order makes it clear that the learned Sessions Judge has neither informed the petitioners nor made them aware about the filing of the application or its consideration thereof. To that extent, the proceedings before the learned Sessions Judge was not in accordance with the principles of law laid down by this Court in the aforesaid decision. However, the question would be, as to whether the impugned order should be quashed on that ground having regard to the certain subsequent developments. Before the expiry of period of 180 days, the Agency under the N.I.A. act have admittedly filed the charge sheet against these petitioners and the said charge sheet is under consideration before the Special Court constituted under the N.I.A. Act. Learned Senior Counsel appearing for the respondent submits that applications have been filed on behalf of some of the accused persons seeking bail and those applications are pending consideration. Having

⁶ CrI.P.No.7697/2012 DD 26.7.2013

regard to the fact that within the extended period of 180 days, the Investigating Agency has already filed charge sheet, at this stage, I am of the considered opinion that there is no need for this court to quash the impugned order. However, it is open to the petitioners to seek the relief of bail at the hands of the Special Court where the charge sheet is now pending. with these observations, the petition is disposed off."

He also refers to the application/report filed by the Prosecutor under Section 43-D(2)(b) of the Act of 1967 and contends that a detailed application has been made by the prosecution giving the particulars of the investigation done and also the particulars of the investigation, which are required to be done for which extension of time was sought for by the prosecution. He submits that the trial court having considered the contents and merits of the application has rightly allowed the application filed by the prosecution under Section 43-D(2)(b) of the Act of 1967 and extended the time for completion of investigation and since the application for statutory bail under Section 167(2) of the Code has been filed by the petitioners much after the application under Section 43-D(2)(b) of the Act of 1967 was allowed, the trial court has rightly dismissed the same and

both these orders are in accordance with law and does not call for any interference at the hands of this court and accordingly he prays to dismiss the petitions.

9. The undisputed facts of the case are as follows:

The petitioners, who were accused before the trial court, have been arrested and remanded to custody on 12.08.2020. The period of 90 days from the said date expires on 09.11.2020. An application under the first proviso to Section 43-E(2)(b) of the Act of 1967 was filed by the prosecution seeking extension of time for completion of investigation on 3.11.2020 and on the very same day, the prayer made in the said application was allowed. The petitioners or the learned counsel appearing for the petitioners before the trial court were neither served with the copy of the said application nor were they given an opportunity of being heard in the matter. The petitioners were also not kept present before the court on the said date of hearing. Subsequently, an application under Section 167(2) of the Code seeking statutory bail was filed by the petitioners before the trial court on 11.11.2020. The said

application was dismissed by the trial court on 05.1.2021 on the ground that the court had already granted extension of time for completion of the investigation on the application filed by the prosecution.

10. The points for consideration that arise in these petitions are follows:

1. *Whether the order passed by the trial court on the application filed by the prosecution under the first proviso to Section 43-D(2)(b) of the Act of 1967 is in accordance with law and legally sustainable?*
2. *Whether the petitioners are entitled for relief of statutory bail as provided under Section 167(2) of the Code?*

11. The Hon'ble Supreme Court in the case of ***Hitendra Vishnu Thakur*** (supra) while considering the validity of an order passed under Clause (bb) of Section 20(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, which is *pari materia* with Section 43-D(2)(b) of

the Act of 1967, wherein the prosecution had sought extension of time for completion of the investigation, has held that even though the provision of law does not provide for issuance of a notice to the accused person before considering the prayer made by the prosecution for extension of time for completion of investigation, issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution, as well as for doing complete justice between the parties. It is further observed that the requirement of the principles of natural justice and issuance of notice to accused would accord with fair play in action, which the courts have always encouraged and even insisted upon. Therefore, submission of the learned ASG that Section 43-D(2)(b) of the Act of 1967 does not provide in black and white a right of hearing to the accused before considering the application filed by the prosecution seeking extension of time, does not merit consideration and same is liable to be rejected.

12. The Hon'ble Supreme Court in the case of **Sanjay Dutt** (supra) has held that requirement of a notice to the

accused before granting extension for completing the investigation as envisaged in **Hitendra Thakur's** case would be held sufficient at least if the accused persons are present in person before the court while the said application is considered by the trial court. The Hon'ble Supreme Court in the said case has held that the requirement of a notice to the accused before granting extension of time for completing the investigation need not be a written notice giving reasons therein, but production of 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 case of **Sanjay Dutt** (supra), the Hon'ble Supreme Court in the conclusion para has held thus:

"57.(2)(a) 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 CrPC 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."

13. A Coordinate Bench of this court in the case of **Sayed Majid Ahamed** (supra) following the aforesaid two judgments of the Hon'ble Supreme Court in a case arising out of Narcotic Drugs and Psychotropic Substances Act, 1985 interpreting the requirement of Section 36A(4) of the NDPS Act having observed that the said provision of law of NDPS Act is in *pari materia* with Section 20(4) of the TADA Act has held that having regard to the fact that prior notice was not issued to the accused nor were they produced before the court on the date of extending the time for completing the investigation, the order granting extension of time for completing the investigation was bad in law and thereafterwards allowed the applications filed by the petitioners therein under Section 167(2) of the Code and granted statutory bail to them.

14. This Court has made a comparative study of Section 20(4)(bb) of the TADA Act, Section 36A(4) of the NDPS Act and Section 43-D(2)(b) of the Act of 1967 and has found that these three provisions of law are *pari materia*.

15. The Hon'ble Supreme Court in the case of **Sanjay Kumar Kedia @ Sanjay Kedia vs- Intelligence Officer, Narcotic Control Bureau and Another**⁷ relying upon the judgment of the Apex Court in **Hitendra Vishnu Thakur's case** (supra) having observed that Section 36A(4) of the NDPS Act is in *pari materia* with Section 20(4)(bb) of TADA Act, has held that extension of time for completion of investigation could be granted subject to satisfaction of certain conditions.

16. A Coordinate Bench of this court in the judgment in **Sayed Majid Ahamed** (supra) while considering the question of validity of an order extending time to the prosecution for completing the investigation granted under Section 36A(4) of the NDPS Act, has relied upon the

⁷ (2009) 17 SCC 631

judgment of the Hon'ble Apex Court in the case of **Hitendra Vishnu Thakur** and in the case of **Sanjay Dutt**. Therefore, the submission of the learned A.S.G. that the law laid down in the case of **Hitendra Vishnu Thakur** cannot be made applicable in the present case having regard to the fact that the such judgment was rendered interpreting the provisions of TADA Act whereas in the present case, the application seeking for extension of time has been filed under Section 43-D(2)(b) of the Act of 1967 does not merit consideration for the simple reason that all these provisions of law in the three enactments which provide for extension of time to the prosecution for completing the investigation are *pari materia*.

17. Section 13 of the National Investigation Agency Act 2008 provides that every scheduled offences investigated by the Agency shall be tried by the Special Court and Section 16 of the said Act provides the procedure to be adopted and powers to be exercised by Special Court for trial of the scheduled offences. The offences under the Act of 1967 being scheduled offences under the N.I.A. Act

2008 shall be tried by Special Court and reading of Section 43D of the Act of 1967 would make it clear that the provisions of the Code of Criminal Procedure as modified therein are applicable to a case involving offences under the Act of 1967 is concerned. Therefore, the submission of the learned ASG that in view of Section 16 of the NIA Act of 2008, the provisions of the Code of Criminal Procedure cannot be made applicable in this case is liable to be rejected.

18. Yet another aspect which this court has taken notice of is, the case was posted before the trial court on 02.11.2020 and on the said date, accused were not produced before the court. However, on the requisition of the Investigating Officer, judicial custody of the accused was extended upto 9.11.2020. On the very next day, the prosecution filed an application under the first proviso to Section 43-D(2)(b) of the Act of 1967 seeking extension of time for completing the investigation. The order sheet would go to show that neither the accused persons nor the Advocates representing them were present before the trial

court on the said date. The filing of such an application by the prosecution was not at all notified either to the accused or to their Advocates. Therefore, even the requirement of law laid down by the Hon'ble Supreme Court in the case of **Sanjay Dutt** has not been complied with in the present case for the reason that the accused were not present before the court on 03.11.2020 when the application seeking extension of time for completion of investigation was filed which was allowed by the trial court on the very same day and they were not even made aware that such an application was filed and considered.

19. Learned ASG has also made a submission that in the case of **Surendra Pundlik Gadling** (*supra*) considering the fact that the accused persons were not heard in the matter, the Hon'ble Supreme Court itself had heard the accused, but it had not recognized the right of the accused to have a right of hearing on the application of prosecution seeking extension of time for completion of investigation. In the said case, though the accused were very much present before the trial court while the application of the

prosecution for extension of time for completion of investigation was considered, they had refused to make any submission, but in the case on hand that is not the fact situation. The petitioners/accused in this case were not kept present in the court nor were they informed that the prosecution has made an application seeking extension of time for completion of investigation and such an application was being considered by the trial court. Since the charge sheet has been already filed, there is no question of hearing the petitioners at this stage on the application filed seeking extension of time and such a hearing cannot be an empty formality.

20. In the case on hand, the facts are totally different. The Hon'ble Supreme Court in the case of ***The State Financial Corporation and Another -vs- M/s.Jagdamba Oil Mills and Another***⁸ has held that whenever the law laid down in a case is made applicable, the courts are required to consider whether the said judgment would apply having regard to the facts of the case. The relevant paragraph-19 reads as follows:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the

⁸ AIR 2002 SC 834

context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at P. 761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge".

21. In my considered opinion, the judgment of the Hon'ble Supreme Court in the case of **Hitendra Thakur** and in the case of **Sanjay Dutt** would be applicable to the facts of the present case. Since the petitioners were not given an opportunity of being heard before passing an order on the application filed by the prosecution for extension of time for completion of the investigation and since the petitioners were not kept present before the court when the application filed by the prosecution for extension of time for completion of the investigation was being considered and

since the petitioners were not notified that such an application filed by the prosecution was being considered by the court for the purpose of extending the time for completion of investigation, I am of the considered opinion that the order passed by the trial court on the application filed by the prosecution under the first proviso to Section 43-D(2)(b) of the Act of 1967 extending the time to complete the investigation is legally unsustainable and accordingly, the point No.1 for consideration is answered in the negative.

22. Now the question that needs consideration would be whether the petitioners are entitled for the relief of statutory bail as provided under Section 167(2) of the Code.

23. The learned ASG has also relied upon the judgment of this court rendered in Criminal Petition No. 7697/2012 and he has submitted that considering the fact that charge sheet was already filed by the prosecution during the extended period, this Court had refused to consider the validity of the order granting extension of time

to the prosecution and also the prayer made by the accused therein for consideration of the application under Section 167(2) of the Code and had observed that the accused can very well apply for a regular bail under Section 439 of the Code having regard to the fact that charge sheet has already been filed.

24. The Hon'ble Supreme Court in the case of **Bikramjit Singh** (supra) has held that a right to default bail becomes complete and indefeasible as soon as application for grant of default bail (regardless of its form, even if it is oral) is made on expiry of the maximum prescribed period before a charge sheet is filed. Thereafter, this indefeasible right, firstly, cannot be defeated by filing of charge sheet; secondly, it cannot be defeated whether there is non-disposal or wrong disposal of the application for default bail, before or after filing of charge sheet and thirdly filing of a subsequent application for default bail will not defeat the indefeasible right already standing accrued to accused based on the first application. The Hon'ble Supreme Court in the case of **M.Ravindran -vs- The**

Intelligence Officer, Directorate of Revenue

Intelligence⁹ has held as under:

"18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court."

25. In the case on hand, immediately after completion of 90 days period prescribed under Section 167(2) of the Code for completion of the investigation, an application has been filed by the petitioners seeking statutory bail, which is also known as "default bail" on the ground that the prosecution had not completed the investigation and filed the charge sheet. In view of the law laid down in **Bikramjit Singh's** case, merely for the reason that the charge sheet

⁹ Criminal Appeal No.699/2020
(arising out of SLP (Crl.) No.2333/2020) DD 26.10.2020

has now been filed, it will not take away the indefeasible right of the petitioners, if it has accrued in their favour. Therefore, there is no merit in the contentions of the learned ASG that the prayer made by the petitioners for grant of statutory bail under Section 167(2) of the Code cannot be considered having regard to the fact that the charge sheet has now been filed during the extended period for completion of the investigation.

26. This Court in the case of **Sayed Majid Ahamed** (supra), in identical circumstances has held that the extension of time for completion of investigation on the application filed by the prosecution passed without notifying the accused and without even insisting on production of the accused would frustrate the indefeasible right of the petitioners/accused for a statutory bail as provided under Section 167(2) of the Code.

27. The right to statutory bail has now been considered as a fundamental right under Article 21 of the Constitution of India, by the Hon'ble Supreme Court in the

case of **Bikramjit Singh**. Article 21 which guarantees the right to life and personal liberty is considered to be *Sacrosanct* of our Constitution. The State has an obligation to follow fair, just and reasonable procedure prior to depriving any person this right guaranteed under Article 21.

28. The fundamental right of an individual recognized under Article 21 of the Constitution of India cannot be defeated other than in accordance with law. Since the order passed by the trial court on the application filed by the prosecution seeking extension of time for completion of the investigation is already held to be bad in law, the statutory right that has accrued to the petitioners/accused immediately after the completion of the first 90 days of period which right has been availed of by them by filing an application under Section 167(2) of the Code, seeking statutory bail and also offering surety cannot be denied to the petitioners/accused. The trial court has dismissed the application filed by the petitioners under Section 167(2) of the Code only on the ground that the application filed by

the prosecution seeking extension of time was already allowed by it. Therefore, since the order passed by the trial court on the application filed by the prosecution for extension of time to complete the investigation is now held to be bad, the application filed by the petitioners under Section 167(2) of the Code immediately after completion of the first 90 days of period is required to be allowed. Therefore, I answer the Point No.2 for consideration in the affirmative.

29. Accordingly, I proceed to pass the following;

ORDER

The Writ Petitions are allowed.

The order dated 03.11.2020 passed on the application filed by the prosecution under the first proviso to Section 43-D(2)(b) of the Unlawful Activities (Prevention) Act, 1967, seeking extension of time for completion of the investigation and also the order dated 05.01.2021 passed by the the Special N.I.A. Court, Bangalore (CCH-50) on the application filed by the petitioners under Section 167(2) of the Code of Criminal Procedure, are hereby set aside.

Consequently, the prayer made by the petitioners in their application filed under Section 167(2) of the Code seeking default bail is allowed, subject to following conditions:

(1) The petitioners shall execute personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs) with two sureties for the likesum to the satisfaction of the trial court;

(2) The petitioners shall appear before the trial court on all hearing dates without fail unless their appearance is exempted by the said court for valid reasons;

(3) The petitioners shall not indulge in tampering the prosecution witnesses either directly or indirectly;

(3) The petitioners shall not indulge in any other similar offence in future;

(4) The petitioners shall not leave the jurisdiction of the trial court without prior permission of the said court till the case registered against them is disposed of;

(5) The petitioners shall appear before the Investigating Officer as and when called upon till the disposal of the case.

**Sd/-
JUDGE**

KNM/-