

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APL) NO. 765 OF 2020**

Sanjay Gangaram Avathare

-Vs.-

The State of Maharashtra, thr. PSO, PS Sironcha,  
Tahsil Sironcha, District Gadchiroli

-----  
Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

-----  
Mr. S. V. Sirpurkar, Advocate for the applicant.  
Mr. Sagar Ashirgade, APP for the respondent.

**CORAM : MANISH PITALE, J.**

**DATE OF CLOSING: 22.07.2021**

**DATE OF PRONOUNCING: 29.07.2021.**

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant (original accused) has challenged two orders passed by the Court of Additional Sessions Judge, Gadchiroli, dated 02/09/2020 and 19/09/2020. By the order dated 02/09/2020, the said Court allowed the application for extension of detention of the applicant and another accused person for further period of ninety days under section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA"). By order dated 19/09/2020, the said Court

rejected the application of the applicant seeking default bail under section 167(2) of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”). According to the applicant, the application for extension of detention ought to have been rejected and consequently default bail ought to have been granted to him.

3. On a secret information received, on 02/06/2020, one Ajay Ahirkar, Police Inspector at Police Station Sironcha, District Gadchiroli, lodged a report and a vehicle coming from State of Telangana was apprehended. In the said vehicle, the applicant and a person driving the vehicle were questioned and search of the vehicle led to recovery of bags containing ₹ 1,20,00,000/- (₹ one crore twenty lakhs only). The applicant sought to explain recovery of such huge amount of cash by stating that he was a Manager and that the cash was meant for distribution amongst *tendupatta* labours. The cash was seized and *panchanama* was prepared. An F.I.R. for the offences punishable under sections 17, 18 and 21 of the UAPA bearing Crime No.129 of 2020 stood registered in the matter. On 05/06/2020, the applicant was arrested and investigation was continued. This led to arrest of another accused person Lumaji Waghare. On the basis of the investigation, it was revealed that the said huge cash amount was meant for payment to naxalites engaged

in activities prejudicial to the State. During the course of investigation, names of other accused persons were revealed and the material on record allegedly indicated that the absconding accused were members of a banned organization.

4. At this stage, on 29/08/2020, since the period of ninety days was about to expire, the public prosecutor moved an application for extension of detention of the applicant and the said accused Lumaji Waghare. The said application was moved under section 43-D of the UAPA read with section 167 of the Cr.P.C. The public prosecutor placed on record before the Sessions Court at Gadchiroli, the details of the investigation undertaken till that stage and stated reasons why extension of detention of the said accused persons was necessary. The applicant and the said other accused person were put to notice in respect of the said application and they were heard through their counsel. After hearing the public prosecutor and the counsel representing the accused persons, by the impugned order dated 02/09/2020, the Court of Additional Sessions Judge, Gadchiroli allowed the application and consequently extended the detention of the applicant and accused Lumaji Waghare for a further period of ninety days with effect from the dates of their arrest. As a consequence, the application moved on behalf of the applicant before the Sessions Court under section

167(2) of the Cr.P.C. for grant of default bail stood rejected by the impugned order dated 19/09/2020.

5. The applicant filed the instant application challenging the said orders, wherein notice was issued on 17/11/2020 and the State filed its reply.

6. Mr. S. V. Sirpurkar, learned counsel appearing for the applicant, submitted that in the present case, the mandatory requirement of section 43-D(2) of the UAPA, particularly the requirement under proviso to section 43-D(2)(b) thereof, was violated inasmuch as a proper report indicating satisfaction of the public prosecutor, indicating progress of the investigation and specific reasons for further detention of the accused, was not on record. It was submitted that a copy of the report of the public prosecutor was not served upon the accused and further that the Court of Additional Sessions Judge, Gadchiroli allowed the application in a mechanical manner. It was submitted that the applicant was not given a fair opportunity to contest the application for extension of detention and that a joint application seeking extension of detention of the applicant and the said accused Lumaji Waghare was defective, as separate applications ought to have been filed enumerating independent grounds while seeking extension of detention of each of the accused. It was further submitted that the affidavit of the Investigating Officer was not on record supporting

the application for extension of detention, thereby vitiating the impugned order dated 02/09/2020. It was then submitted that once the impugned order extending the detention was found to be unsustainable, the consequent relief of default bail ought to be granted by this Court by setting aside impugned order dated 19/09/2020. The learned counsel relied upon judgment of the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur and others v. State of Maharashtra and others**, reported in (1994) 4 SCC 602 and judgment of this Court in the case of **Santosh s/o Kisanrao Sonone v. State of Maharashtra (Criminal Bail Application (BA) No.820 of 2014**, decided on 24/12/2014).

7. On the other hand, Mr. Sagar Ashirgade, learned APP for the State, submitted that the impugned orders did not deserve any interference, as the mandatory requirements of law were duly followed in the present case. It was submitted that the public prosecutor had indeed submitted a report before the Sessions Court satisfying the requirements of proviso to section 43-D(2)(b) of the UAPA. In the application for extension of detention also, the public prosecutor had given detailed reasons while seeking extension of detention. A joint application was justified for the two accused persons because the allegations against them were identical. It was further submitted that the applicant was not entitled to the

copy of the report of public prosecutor because the investigation was still under way. On this basis, it was submitted that the mandatory requirements of law, in terms of the relevant provisions of law and the aforesaid judgments of the Hon'ble Supreme Court and this Court were duly complied with and there was no substance in the contentions raised on behalf of the applicant.

8. Having heard the learned counsel for the rival parties, it needs to be examined whether the mandatory requirements of law for seeking extension of detention were satisfied in the present case. If this Court comes to the conclusion that the mandatory requirements were not satisfied, the applicant would certainly be entitled to consequential relief of default bail. The relevant provision for considering the arguments of the rival parties, is section 43-D of the UAPA. The relevant portion of the said provision reads as follows:

**“43-D. Modified application of certain provisions of the Code. —**

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(b) after the proviso, the following provisos shall be inserted, namely:—

“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:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”

9. By the said provision, certain provisions of the Cr.P.C. have been modified under the UAPA. Section 167 of the Cr.P.C. has also been modified in the context of UAPA. A *pari materia* provision found in the Terrorist Destructive Activities (Prevention) Act, 1987 came up for consideration before the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur and others v. State of Maharashtra and others** (*supra*). The law laid down by the Hon'ble Supreme Court in the said judgment has held good for *pari materia* provisions in other enactments, including the UAPA. In paragraph 23 of the said reported judgment, the Hon'ble Supreme Court has elaborated upon the mandatory requirements when extension of detention is sought. It has been held in the said judgment as follows.

“The *report* of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (*bb*). The

request of an investigating officer for extension of time is no substitute for the *report* of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the *report* filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an *accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail* as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the *report* to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the *report* of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by subsection (4) of Section 20 as discussed in the earlier part of this judgment.”

10. Insofar as UAPA is concerned, in the case of **State of Maharashtra v. Surendra Pundlik Gadling and others**, reported in (2019) 5 SCC 178, after



referring to the aforesaid judgment in the case of **Hitendra Vishnu Thakur and others v. State of Maharashtra and others** (*supra*), the Hon'ble Supreme Court has reiterated the said position of law. It has been further held in the said judgment that while analyzing whether the mandatory requirement of law under proviso to section 43-D (2) (b) of the UAPA has been followed or not, the Court is required to emphasize on substance over form. In the said case, the Court found that a separate "report" of the public prosecutor was not available. It was found that the Investigating Officer had submitted an application seeking extension of detention for the purpose of investigation and after referring to such an application, the public prosecutor had in turn moved an application before the Court, wherein the public prosecutor had applied his mind to the reasons stated by the Investigating Officer and there upon, prayed for extension of detention of the accused. The Hon'ble Supreme Court found that even if technically there was absence of a "report" of the public prosecutor, yet the prayer for extension of detention of the accused deserved to be granted because there was sufficient material to show that the public prosecutor had indeed scrutinized the material on record and thereupon stated the progress of investigation and the reasons for seeking extension of detention of the accused. Substance was given precedence over the form and the order of the High

Court was set aside, thereby allowing the appeal of the State and granting extension of detention of the accused persons.

11. Applying the said position of law to the facts of the present case, it is found that the public prosecutor had submitted a report as per proviso to section 43-D(2)(b) of the UAPA. In this report, the public prosecutor not only stated the progress of investigation till the date of submitting the report, but he also stated the reasons for extension of detention. A reference was made to the manner in which the Investigating Officer had proceeded in the matter and the reasons why extension of detention of the applicant and the other accused person Lumaji Waghare was sought. Thus, mandatory requirement of report of the public prosecutor stating reasons for extension of detention is very much satisfied in the facts of the present case.

12. The record also shows that the public prosecutor moved a detailed application dated 29/08/2020, on the basis of the aforesaid report dated 28/08/2020, seeking extension of detention of the applicant and other accused person. The copy of the said application was served upon the applicant and the other accused person. A counsel represented the said accused persons before the Court below when the application was taken up for consideration. A perusal of the impugned order shows that the

aforesaid Court perused the application filed by the public prosecutor as also the report. The Court also looked into the case papers and the manner in which the investigation had progressed. The case diary was also perused and thereupon the Court allowed the application for extension of detention of the applicant and the other accused person. The Court found that the specific reasons putforth on behalf of the prosecution seeking extension of detention were justified.

13. As noted by the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur and others v. State of Maharashtra and others** (*supra*), the purpose of provisos added to section 43-D(2)(b) of the UAPA, is to ensure that the public prosecutor applies his mind to the reasons putforth by the Investigating Officer while seeking extension of detention of the accused persons. The public prosecutor is expected to consider the material placed before him and upon being satisfied about the reasons stated for extension of detention, submit such a report to the Court. The substance of the report and the application moved for extension of detention takes precedence over the form of such a report or application.

14. In the present case, this Court has perused the application for extension of detention moved by the public prosecutor. The application states in detail the progress of the investigation and also the reasons

seeking extension of detention of the said accused persons. The record also shows that the public prosecutor had indeed submitted a report before the Sessions Court. The impugned order shows that the said Court indeed referred to the report, the case papers as also the case diary to record its satisfaction about the specific reasons for extension of detention of the accused persons. Thus, the mandatory requirements of law were satisfied in the present case.

15. Insofar as the contention raised on behalf of the applicant that the order stood vitiated because report of the public prosecutor was not furnished to the accused, suffice it to say that such a requirement cannot be read into proviso to section 43-D(2)(b) of the UAPA, for the reason that investigation was still under progress. The mandatory requirement of the said proviso is that there should be a report of the public prosecutor indicating the progress of investigation and the specific reasons for further detention of the accused and satisfaction of the Court with such a report. It is crucial that the stage when such an application is moved by the public prosecutor, the investigation is still under progress and it is for the Court to be satisfied with the report submitted by the public prosecutor. Thus, requirement of service of copy of the report to the accused cannot be read into the said proviso to

section 43-D(2)(b) of the UAPA.

16. Even otherwise, copy of the application seeking extension of detention was indeed served on the applicant and the other accused person. They were duly represented by the counsel, who opposed such extension of detention. Perusal of the the application seeking extension of detention shows that in the application also details about progress of the investigation thus far were stated and the reasons for seeking extension of detention were also stated in detail. Thus, no prejudice was caused to the accused persons in the facts and circumstances of the present case for opposing the prayer for extension of detention moved by the public prosecutor. Therefore, there is no substance in the aforesaid contention raised on behalf of the applicant.

17. The contention raised on behalf of the applicant that the public prosecutor could not have moved a joint application seeking extension of detention of the applicant and the other accused person is also without any substance. The learned APP is justified in submitting that when the progress of the investigation had demonstrated the role of the said two accused persons being identical and the reasons for seeking the extension of their detention also being identical, there was no error on the part of the public prosecutor in having moved a joint application. The applicant cannot succeed in the

present case only because a separate application for seeking extension of detention of the other accused person was not moved. In this context, the reliance placed on judgment of this Court in the case of ***Santosh s/o Kisanrao Sonone v. State of Maharashtra*** (*supra*), particularly paragraph-11 thereof is also misplaced because in the said judgment, this Court has nowhere laid down that when extension of detention of more than one accused person is sought, the public prosecutor has to move separate applications in the context of each accused person. Hence, the said contention is also rejected.

18. Insofar as the contention raised on behalf of the applicant based on second proviso to section 43-D (2)(b) of the UAPA, to the effect that the impugned orders stood vitiated because the Investigating Officer had not filed his affidavit, suffice it to say that the said contention is misplaced in the facts and circumstances of the present case. The second proviso to section 43-D(2)(b) of the UAPA applies in a case where the Investigating Officer seeks Police custody of the accused from judicial custody. In the present case, neither the Investigating Officer nor the public prosecutor sought Police custody of the applicant and the other accused person. By the application moved before the Sessions Court, the public prosecutor sought extension of detention of the said accused persons, who were already in judicial custody.

Hence, the said contention also deserves to be rejected.

19. Apart from this, a perusal of the impugned order dated 02/09/2020 passed by the Court of Additional Sessions Judge, Gadchiroli, shows that the said Court has not only referred to the reasons put forth by the public prosecutor seeking extension of detention, but the Court has also perused the case diary for ascertaining the progress of the investigation. After looking into the entire material available on record, including the report of the public prosecutor submitted under section 43-D(2)(b) of the UAPA, the said Court came to a considered conclusion that the detention of the applicant deserved to be extended. This Court finds no reason to interfere with the satisfaction expressed by the said Court while allowing the application moved by the public prosecutor.

20. Consequently, no error can be attributed to the aforesaid Court for having passed the impugned order dated 19/09/2020, rejecting the application moved on behalf of the applicant for grant of default bail under section 167(2) of the Cr.P.C. The rejection of the said application was only consequential to the extension of detention of the applicant as per order dated 02/09/2020. The moment, the detention of the applicant stood extended under section 43-D(2)(b) of the UAPA, there was no question of the

applicant being entitled to default bail under the said provision read with section 167(2) of the Cr.P.C.. Hence, there is no error in the impugned order dated 19/09/2020.

21. In view of the above, it is found that the contentions raised on behalf of the applicant cannot be accepted. Consequently, the present application is found without any merit and accordingly, it is dismissed.

**JUDGE**