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Crl.O.P. No.13123 of 2020

P.N. PRAKASH, J.,
V. SIVAGNANAM, J.
and
R.N. MANJULA, J.

ORDER

(made by P.N. PRAKASH, J.)

This Full Bench has been constituted to decide the following questions formulated by A.D. Jagadish Chandira, J., *vide* order dated 16.12.2020, passed in **Jaffar Sathiq @ Babu vs. the State**[1]:

i. *whether an application against the order passed by the District and Sessions Judge in a matter concerning UAP Act shall be numbered as a bail application or an appeal ? and*

ii. *whether, it has to be posted before the Single Judge or a two Judges Bench of this Court?*

2 The case before A.D. Jagadish Chandira, J. arose out of the dismissal of an application for bail for offences under Sections 447, 448, 294(b), 307, 506(II) and 120-B, IPC and Sections 15, 16 and 18 of the Unlawful Activities (Prevention) Act (for short "the UAPA"). Although the accused were released on statutory bail, it was brought to the notice of the learned Judge that by an order dated 13.05.2020 passed in Crl.R.C.No.18 of 2020, P. Rajamanickam, J. had opined that a revision under Section 397 Cr.P.C. against an order of the Sessions

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Court extending the remand of an accused arrayed for offences under the U.A.P. Act, 1967, was not maintainable. P.Rajamanickam, J. concluded that since the UAPA was a scheduled enactment under the National Investigation Agency Act, 2008 (for short "the NIA Act, 2008") the mandate of Section 22(3) required that the procedure contemplated in Chapter IV of the said Act must apply. Consequently, the learned Judge concluded that the appropriate course was to file an appeal under Section 21 of the NIA Act, 2008, which would be heard by a Division Bench of this Court.

3 It was also brought to the notice of A.D. Jagadish Chandira, J. that another learned single Judge (M.V. Muralidaran, J.) had taken a different view in **Abdulla vs. State**[2]. The case of **Abdulla** *(supra)* arose out of the dismissal of an application for discharge by the Special Court for Bomb Blast and NIA Cases. It was observed that a Division Bench of this Court had, *vide* order dated 01.09.2015 passed in Crl.Appeal Nos. 243, 340 and 524 of 2015, observed that once the cases were not investigated by the NIA, the special procedure set out in the NIA Act, 2008, would not apply, and that the trial would proceed in accordance with the provisions of the Cr.P.C. Sustenance was also drawn from a Full Bench judgment of the Patna High Court in **Bahadur Kora vs. State of Bihar**[3]. On the strength of

[2] Crl.R.C.No. 223 of 2017 *vide* order dated 28.04.2018
[3] 2015 (2) MWN (Cr.) 305 (FB) (Pat.)

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the aforesaid decisions, M.V. Muralidaran, J. concluded that the entire proceedings before the Special Court were without jurisdiction, with the result that the order of discharge was amenable to revision under Section 397 Cr.P.C. before a single Judge of the High Court.

4 In view of the conflicting decisions of two learned single Judges, A.D.Jagadish Chandira, J. saw it fit to refer the questions, set out in paragraph 1, (*supra)*, with a request to place the papers before the Hon'ble Chief Justice to constitute a Bench of appropriate strength for an authoritative pronouncement. This Full Bench has been constituted pursuant to the order of the Hon'ble Chief Justice to answer the aforesaid question(s).

5 We have heard Mr. John Sathyan, Advocate for the petitioner, Mr.R.Sankaranarayanan, learned Additional Solicitor General, Mr.R.Shanmugasundaram, learned Advocate General, Mr. Hasan Mohamed Jinnah, learned Public Prosecutor, Mr. K. Srinivasan, learned Special Public Prosecutor for CBI Cases, Mr. C.S.S. Pillai, learned Special Public Prosecutor for NIA Act cases and Mr. B. Mohan, Advocate. Mr. AR.L. Sundaresan, learned Senior Counsel, assisted the Court as *Amicus Curiae*.

6 The learned counsel invited our attention to the decision of the Full Bench of the Patna High Court in **Bahadur Kora** *(supra)*, wherein, it was held

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that merely because offences under the U.A.P Act, 1967 were alleged, it could not be said that the procedure contemplated under Chapter IV of the NIA Act, 2008, must be followed unless the investigation had been transferred to the NIA or in the alternative when the NIA had transferred the case to the State police. The Full Bench concluded thus:

> "(A) the Judgment in *Aasif's* case (*supra*), insofar as it held that Investigating Agency of the State Government can investigate and try offences in accordance with the provisions of the N.I.A. Act, in the cases where offences punishable under the Unlawful Activities (Prevention) Act are alleged, and that such cases must be tried by the Courts of Sessions under sub-section (3) of Section 22 of the N.I.A. Act, cannot be said to have laid the correct law;
>
> (B) the cases even where offences punishable under the provisions of U.A.P. Act are alleged shall be tried by the Courts as provided for under the Cr.P.C. and not in accordance with the special procedure, under the Act unless (i) the investigation of such cases is entrusted by the Central Government to the N.I.A., and (ii) the N.I.A. transfers the same to the Investigating Agency of State Government.
>
> The Appeals shall be treated as Bail Applications, to be heard under Section 439 of Cr.P.C. and the registry shall place the same before the learned Single Judges after requiring the parties to alter the provisions of law"

It was also brought to our notice that a similar view had been taken by a Division Bench of this Court (S. Tamilvanan and C.T Selvam, JJ.) in **A. Raja Mohammed v State**[4] which was later followed by M.V Muralidaran, J. in **Abdulla** (*supra*). On the strength of these decisions, it was submitted that a purposive interpretation of the provisions of the NIA Act, 2008, must be resorted to as the Parliament could

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[4] Criminal Appeal Nos. 243, 340 and 524 of 2015

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not have intended that all and sundry country bomb cases must be equated to terrorist offences to which the scope and ambit of the Act actually relates.

7 In the wake of the unprecedented terror attacks on the City of Mumbai in November 2008, the NIA Act, 2008, was enacted by the Parliament to constitute a special agency at the national level to investigate and prosecute offences which are set out in the Schedule. The Unlawful Activities (Prevention) Act, 1967, finds a place in Serial No.2 of the Schedule appended to the Act. Chapter II empowers the Central Government to constitute an NIA, and vests the superintendence of the NIA with the Central Government (*vide* Section 4). Chapter III then proceeds to set out the mode and manner of investigation by the NIA. Chapter IV provides for the constitution of Special Courts and sets out its jurisdiction, powers and the procedure to be followed.

8 Section 13 of the NIA Act, 2008, which deals with the jurisdiction of the Special Court, reads as follows:

> **"13. Jurisdiction of Special Courts:**
> (1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.
> (2) If, having regard to the exigencies of the situation prevailing in a State if,—
> (a) it is not possible to have a fair, impartial or speedy trial; or
> (b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

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> (c) it is not otherwise in the interests of justice,
> the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.
> (3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation"

9 It is fairly unambiguous that the mandate of Section 13(1) is that every scheduled offence investigated by the Agency shall be tried only by the Special Court within whose jurisdiction it was committed. The word "Agency" occurring in Section 13(1) has been defined in Section 2(a) to mean "*the National Investigation Agency constituted under Section 3*". Thus, the Special Court under Section 13(1) would have exclusive jurisdiction to try all scheduled offences investigated by the NIA. That, however, is not the end of the matter. Section 22(1) of the NIA Act, 2008, empowers the State Government to constitute one or more Special Courts for the trial of scheduled offences under the NIA Act, 2008. Section 22(2) declares that the provisions of Chapter IV would apply to all such Courts constituted by the State Government. More importantly, Section 22(2)(ii) states that the word "*Agency*" occurring in Section 13(1), in the context of Special Courts constituted by the State Government, shall be construed as a reference to "*the investigation agency of the State Government*."

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10 In other words, Section 13(1), when read with the definition of Agency contained in Section 22(2)(ii) of the Act, would read as under:

> *"(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency/the investigation agency of the State, shall be tried only by the Special Court within whose local jurisdiction it was committed."* *(emphasis supplied)*

Section 22(3) then proceeds to state that where a Special Court has not been constituted by a State Government, then, notwithstanding anything contained in the Code, the jurisdiction, powers and procedure of the Special Court under Chapter IV of the NIA Act, 2008, shall be exercised by the respective Courts of Session. Therefore, the inescapable conclusion that follows on a textual reading of Sections 13 and 22 of the NIA Act, 2008, is that the trial of a scheduled offence under the Act, either before the Special Court or before a Court of Session, must be in accordance with the provisions set out in Chapter IV of the Act.

11 In the context of the applicability of the NIA Act, 2008, for trial of offences under the U.A.P.Act, 1967, we find that the issue is no longer *res integra*. Very recently, in **Bikramjit Singh v. State of Punjab[5],** a three Judge Bench of the Supreme Court has opined as under:

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> "24. Section 13(1) of the NIA Act, which again begins with a non obstante clause which is notwithstanding anything contained in the Code, read with Section 22(2)(ii), states that every Scheduled Offence that is

[5] (2020) 10 SCC 616

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investigated by the investigation agency of the State Government is to be tried exclusively by the Special Court within whose local jurisdiction it was committed.

25. When these provisions are read along with Section 2(1)(d) and the provisos in Section 43-D(2) of the UAPA, the scheme of the two Acts, which are to be read together, becomes crystal clear. Under the first proviso in Section 43-D(2)(b), the 90-day period indicated by the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if "the Court" is satisfied with the report of the Public Prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days. "The Court", when read with the extended definition contained in Section 2(1)(d) of the UAPA, now speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is that for all offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence — albeit in a summary way if it thinks it fit to do so. On a conspectus of the abovementioned provisions, Section 13 read with Section 22(2)(ii) of the NIA Act, in particular, the argument of the learned counsel appearing on behalf of the State of Punjab based on Section 10 of the said Act has no legs to stand on since the Special Court has exclusive jurisdiction over every Scheduled Offence investigated by the investigating agency of the State.

26. Before the NIA Act was enacted, offences under the UAPA were of two kinds — those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Session. This scheme has been completely done away with by the NIA Act, 2008 as all Scheduled Offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. In the absence of any designated

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court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone."

(emphasis supplied)

12 In **Bahadur Kora** (*supra*), the Full Bench of the Patna High Court had steered clear of a literal reading of the Act, and had resorted to a purposive interpretation of Sections 7, 13 and 22 of the NIA Act, 2008, to hold that the provisions of Chapter IV would apply only when the NIA had transferred the investigation to the State police under Section 7(b) of the Act. Though the logic and reasoning of the Full Bench did appeal to us, we are, however, of the considered view that in view of the authoritative pronouncement of the Supreme Court in **Bikramjit Singh** (*supra*), the applicability of the NIA Act, 2008 for offences under the UAPA, 1967, is no longer open to doubt. Consequently, the judgment of the Full Bench of the Patna High Court must be taken to be impliedly overruled by the decision of the Supreme Court in **Bikramjit Singh** *(supra)***.**

13 Once it is held that Chapter IV of the NIA Act, 2008, would apply to a Court of Session trying the UAPA offences by virtue of the powers conferred under Section 22(3) of the NIA Act, 2008, the inevitable consequence is that an order of the Court of Session rejecting an application for bail in a matter concerning the UAPA offences can be challenged only by way of an appeal under Section 21 of the NIA Act, 2008, before a Division Bench of this Court, and not

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by way of an application under Section 439 Cr.P.C. The position would remain the same even in cases where composite offences are alleged to have been committed (See **State of A.P. vs Mohd. Hussain**[6]).

14 However, Mr. John Sathyan, learned counsel for the petitioner, pointed out certain anomalous consequences flowing from a literal reading of the provisions of the NIA Act, 2008. He gave the following illustration: A businessman is attacked by a gang of six in the Flower Bazaar area in Chennai with knives and country bombs for refusing to pay them rowdy mamool (protection money). The businessman survives the murderous attack, and lodges a complaint with the Sub Inspector of Police, C-1,Flower Bazaar Police Station. The SHO registers an FIR for the offences under Sections 148, 149 and 307 IPC read with Section 3 of the Explosive Substances Act, 1908 and sends the FIR to the VIII Metropolitan Magistrate, George Town, Chennai. The accused are arrested and several incriminating articles are seized and produced before the said Magistrate. After completing the investigation, a final report for the aforesaid offences is filed before the said Magistrate, who, in turn, commits the case to the Court of the Principal District and Sessions Judge, Chennai, for trial. The Principal District and Sessions Judge, Chennai, can either try the case himself or

[6] (2014) 1 SCC 258

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make over the case to any of the Additional District Courts or Assistant Sessions Court, for trial. Bail applications arising from this case will be dealt with by a single Judge of the High Court routinely. His poser was whether the NIA Act completely changes this scenario merely because the Explosive Substances Act is a scheduled enactment under the NIA Act for which a special procedure is envisaged by Section 16 of the NIA Act, wherein, committal proceedings have been done away with.

15 According to Mr. John Sathyan, textual interpretation of the provisions of the NIA Act would lead to the one and only conclusion that in the hypothetical case cited by him, the Inspector of Police, C-1, Flower Bazaar Police Station should have to send the FIR, produce the accused for remand and also file the final report in the Special Court designated under Section 22(1) of the NIA Act and in its absence, before the Court of Session in the Sessions Division in which the occurrence had taken place, without there being any committal proceedings.

16 Statistics collected by us from the State Crime Records Bureau show that in the State of Tamil Nadu, in the year 2019, 139 FIRs were registered under the Explosive Substances Act, 1908, read with other IPC offences like Sections 307 and 302 IPC. It is common knowledge that ordinary rowdy gangs have now graduated from using knives to country bombs which they find easier to carry and

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hurl than traditional weapons. Out of 139 FIRs, only in two FIRs, the provisions of the UAPA were incorporated. Thus, in effect, in the State of Tamil Nadu alone, for the year 2019, we have 139 FIRs relating to offences under the Explosive Substances Act, 1908, which is a scheduled enactment under the NIA Act. If the State police were to go by the strict mandates of the NIA Act, all the 139 Station House Officers should have to be trained to inform the State Government that the moment an FIR is registered under any of the scheduled offences of the NIA Act, our State should have to intimate the Central Government about the registration of such cases. Thus, the Central Government will be loaded with plethora of such reports from various State Governments all over the country which they have to analyze and take a decision on a case-to-case basis as to which of the cases have to be dealt with by the NIA and which have to be left with the State police to proceed with the investigation.

17 As stated above, the Station House Officers will have to file the final reports directly before the Special Courts or Courts of Session, as the case may be. In view of Section 16(1) of the NIA Act, the Sessions Courts are empowered to directly take cognizance as the bar under Section 193 Cr.P.C has been expressly overridden. The power of the Sessions Judge to make over the case for trial to the Assistant Sessions Judge will not be available as the Court of Session will have to

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be construed as the Special Court under the NIA Act until a Special Court is constituted by the State Government under Section 22. Consequently, bail applications filed in these cases before the Courts of Session will have to be perforce heard as appeals by a Division Bench, at Madurai and in the Principal Seat at Madras.

18 In our considered opinion, the very purpose and object of the NIA Act would stand defeated if all and sundry run of the mill country bomb cases are treated as terrorist offences and sent to Special Courts/Sessions Courts for trial. We cannot lose sight of the fact that apart from routine judicial work, the Principal District and Sessions Judge, Chennai exercises exclusive jurisdiction under several enactments, *viz*., (i) the Benami Transactions (Prohibition) Act, 1988, (ii) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (iii) the Prevention of Money Laundering Act, 2002, (iv) The Electricity Act, (v)Securities and Exchange Board of India Act, 1992, (vi) The Commercial Courts Act, 2015, (vii) the Public Premises (Eviction of Unauthorized Occupants) Act, (viii)The Tamil Nadu Medical Service Persons and Medicare Service Institutions (Prevention of violence and Damage or Loss to Property) Act, (ix) the Municipal Taxation Act, *etc*. This is apart from the usual civil and criminal work he is required to do coupled with burdensome administrative work. The very purpose

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of the NIA Act, 2008 is to expedite the trial of serious offences, enumerated in the schedule, which would be defeated if one Court is jurisdictionally overloaded with several enactments conferring special jurisdiction. This is a practical issue which, if not addressed with reasonable dispatch, would defeat the very purpose of having Special Courts.

19 That apart, we find yet another incongruity, inasmuch as when a scheduled offence is under investigation by the C.B.I., it neither falls under the category of N.I.A. nor under the category of State agency, with the result that the NIA Act would not apply to such cases. The final report of the CBI will have to be filed only before the regular jurisdictional Magistrate when it discloses a scheduled offence in the hypothetical case referred to above. Mr. R. Sankaranarayanan, learned Additional Solicitor General stated that he would invite the attention of the Law Ministry to these aspects. We trust and hope that these issues would be looked at by the relevant stakeholders with the seriousness that they deserve.

20 It was also brought to our notice that in **Sadique and Others vs. The State of Madhya Pradesh**[7], the Supreme Court is examining the issue of the interplay of the NIA Act, 2008, and the definition of "Court" as defined under the

[7] Special Leave to Appeal (Crl.) No.7767 of 2018

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UAPA, 1967. We are informed that the case is now stated to be listed on 15.07.2021.

21 Be that as it may, the decision of the Supreme Court in **Bikramjit Singh** (*supra*) holds the field today. We must, therefore, yield to the wise counsel of St.Augustine who said "*Roma locutaest, causa finitaest* (When Rome has spoken, the case is closed). Consequently, the question(s) referred are answered thus:

> "An order passed by a Court of Session dismissing a bail application in a case involving offence(s) under the Unlawful Activities (Prevention) Act, 1967, must be challenged only by way of an appeal under Section 21 of the National Investigation Agency Act, 2008. Consequently, such an appeal would lie only before a Division Bench *vide* Section 21(2) of the National Investigation Agency Act, 2008. The decision of the Division Bench of this Court in **A. Raja Mohammed** (*supra*) and that of a learned single Judge in **Abdulla** (*supra*) to the contrary, will stand overruled."

The reference is, accordingly, answered on the aforesaid terms.

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(P.N.P., J.) (V.S.G., J.) (R.N.M., J.)
12.07.2021

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P.N. PRAKASH, J.,
V. SIVAGNANAM, J.
and
R.N. MANJULA, J.

cad

To

1 The Additional Solicitor General of India
High Court, Madras, Chennai 600 104

2 The Advocate General
High Court, Madras, Chennai 600 104

3 The Public Prosecutor
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4 The Head of Branch, Anti-Corruption Branch
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