GAHC010066072020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./121/2020

(THE STATE) THE NATIONAL INVESTIGATION AGENCY,
MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, REPRESENTED BY THE SUPERINTENDENT OF POLICE, NIA, BRANCH OFFICE, GUWAHATI, ASSAM.

VERSUS

SHRI AKHIL GOGOI
S/O LATE BOLU GOGOI, VILLAGE LUKURAKHANGAON, SELENGHAT, P.S. TEOK, DISTRICT JORHAT, ASSAM. (PRESENTLY LODGED IN JUDICIAL CUSTODY).

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : MR Z KAMAR

Linked Case : Crl.A./130/2020

(THE STATE) THE NATIONAL INVESTIGATION AGENCY
MIN OF HOME AFFAIRS
GOVT OF INDIA
REP. BY THE SUPERINTENDENT OF POLICE
NIA
BRANCH OFFICE
GUWAHATI
ASSAM

VERSUS

DHIRJYA KONWAR @ DHAIJYA KONWAR @ DHAJYA KONWAR AND 2 ORS.
S/O- NIREN KONWAR
R/O- VILL- RUPAHIBAM
P.S- DIMOU
DIST- SIVASAGAR
ASSAM

2:MANAS KONWAR @ MANASH PRATIM KONWAR @ BHIM
S/O- DEBEN KONWAR @ DEBENDRA NATH KONWAR
R/O- VILL- CHETIA HANDIQUE GAON
P.O- SILASAKU
P.S- SIMALAGURI
SUB DIV- NAZIRA
DIST- SIVASAGAR
ASSAM
3:BITTU SONOWAL @ BITTU SONWAL @ BITU SONOWAL
S/O- ROBIN SONOWAL
R/O- ASHOK NAGAR
2ND APBN
P.S- MAKUM
DIST- TINSUKIA
ASSAM

Advocate for : MR. S C KEYAL
Advocate for : MR. S BORTHAKUR appearing for DHIRJYA KONWAR @ DHAIJYA KONWAR @ DHAJYA KONWAR AND 2 ORS.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

JUDGMENT & ORDER (CAV)

Date of Judgment: 30.09.2022

(A M Bujor Barua, J)

Heard Mr. D Saikia, learned senior counsel, assisted by Mr. Satyanarayana, learned Public Prosecutor for the appellants National Investigating Agency (for short, the NIA). Also heard Mr. DK Mishra, learned senior counsel assisted by Mr. B Prasad, learned counsel for the respondent Sri Akhil Gogoi (hereinafter referred to as A1) in Crl. Appeal No.121/2020 and Mr. Z Kamar, learned senior counsel for the respondents Dhirjya Konwar @ Dhajya Konwar, Manas Konwar@ Manas Pratim Konwar and Bittu Sonowal @ Bittu Sonowal @ Bitu Sonowal (hereinafter to be referred to as A2, A3 and A4 respectively) in Crl.Appeal No.130/2020.

2. The respondent A1 in Crl.Appeal No.121/2020 was arrested on 13.12.2019 by the investigating authorities in connection with Chandmari Police Station Case corresponding to FIR No.166/2019 registered under Sections 120(B)/124-A/153-A/153-B of the IPC read with Sections 18/39 of the Unlawful Activities (Prevention) Act, 1967(for short, the UAPA-1967). Subsequently, the Central Government as per MHA order No.F.No.11011/62/2019/NIA dated 14.12.2019, in exercise of its power under Section 6(4) of the National Investigation Agency Act, 2008 (for short, the NIA Act- 2008) formed its opinion and directed the NIA to investigate the matter and, accordingly, FIR No.RC-13/2019/NIA-GUW dated 14.12.2019 was registered by the Officer-in-Charge of Police Station NIA, Guwahati.

3. In course of the investigation, the Special Public Prosecutor filed a report under Section 43D(2)(b) of the UAPA-1967 seeking extension of custody of the accused respondent A1 from 90 days up to 180 days for continuation of the investigation. The application of the Special Public Prosecutor under Section

43D(2)(b) of the UAPA-1967 was registered as Petition No.492/2020 in the Court of the learned Special Judge NIA Assam and was given its consideration by the order dated 16.03.2020.

4. In paragraph 32 of its order dated 16.03.2020, the learned Special Judge NIA, Assam was of the view that the Court of the Special Judge has to satisfy with regard to the requirement for further time for completion of the investigation and also about the need for extending the statutory remand period of the accused for the purpose of the investigation. In paragraph 33, the learned Special Judge took note of the report of the Special Public Prosecutor that the examination of some of the crucial witnesses which surfaced during the investigation were not complete and the investigating authorities were looking into the aspect of an alleged conspiracy on the part of the accused persons to destabilize the part of the country by using the platform of the passing of the Citizenship Amendment Act. In paragraph 34, the learned Special Judge was of the considered opinion that the investigating authorities had reasonable and valid grounds for not been able to complete the investigation within the period of 90 days and, therefore, had made out the requirement of additional time for completing the investigation. In paragraph 38, the learned Special Judge took note of a pronouncement of the Supreme Court in *Hitendra Vishnu Thakur Vs. State of Maharastra* reported *in (1994) 4 SCC 602* and was of the view that the Hon'ble Supreme Court while interpreting the *pari materia* conclusion regarding extension of remand for additional period of investigation had held that the report of the learned Public Prosecutor has to be strictly complied and interpreted. In paragraph 39, the learned Special Judge expressed that it is a well settled principle that any law which curtails the liberty of the individual,

specially, at the stage of investigation and or trial, has to be strictly interpreted and any detention as an under trial should be kept minimum to the extent possible.

5. Accordingly in paragraph 40 of the judgment dated 16.03.2020 the learned Special Judge was of the view that the contention of the learned Public Prosecutor in the report for seeking extension of the remand for further investigating into the aspect of the alleged link of A1 with the Maoists was deemed not sufficient in the considered opinion of the court for extending the remand. Further the apprehension indicated in the report that A1 being an influential person will influence upon the witnesses and tamper with the evidence, in the considered view of the learned Special Judge, was not acceptable on its face value without being supported by other details to be made available in the report. Accordingly in paragraph 43, it was provided that even if the prayer of the prosecution for extension of the period for remand was not accepted, but that would not preclude the investigating authority from continuing with the investigation and bringing it to a logical conclusion. In paragraphs 44 and 45 of the judgment, it has been provided that the learned Special Judge was not convinced that the liberty of the accused A1 at that stage of the investigation would be incompatible with the interest of effective investigation of the case. Accordingly the Petition No.492/2020 filed by the prosecution on 12.03.2020 was rejected.

6. Being aggrieved by the judgment and order dated 16.03.2020 in the Petition No.490/2020 in Misc.Case No. (NIA) 01/2020, the authorities under the NIA had preferred Criminal Appeal No.121/2020 under Section 21(1) of the NIA

Act-2008. When the Criminal Appeal No.121/2020 came up for its consideration on 17.03.2020, notice was issued and the matter was ordered to be posted for admission in the first week of April, 2020. On 17.03.2020, the learned senior counsel appearing for A1 raised a question of maintainability of the appeal under Section 21(1) of the NIA Act-2008 on the ground that the order impugned being in the nature of an interlocutory order, no appeal would lie in view of the provisions of Sections 21(1) & 21(3) of the NIA Act-2008. To substantiate the stand on the question of non-maintainability of the appeal, reference was made to a judgment of the Division Bench of this Court in *Jai Kishan Sarma and Another Vs. Union of India* reported in *2020 (1) GLT 122*, wherein it has been held that an order extending the detention in custody of an accused under Section 167 Cr.P.C., read with Section 43D of the UAPA-1967, would be an interlocutory order and hence no appeal under Section 21(1) of the NIA Act-2008 would be maintainable.

7. When the appeal again came before the Division Bench on 07.04.2020, the objection raised by A1 on the question of maintainability of the appeal was heard. By referring to the provisions of Section 21 of the NIA Act 2008 as well as the various pronouncements of the Supreme Court rendered in *Amarnath Vs. State of Haryana* reported in *1977 4 SCC 137*, *Madhu Limaye Vs. State of Maharastra* reported in *1977 4 SCC 551*, *VC Shukla Vs. State though CBI* reported in *1980 Supp.SCC 92*, *State Vs. NMT Joy Immaculate* reported in *(2004) 5 SCC 729*, *Girish Kumar Suneja Vs. CBI* reported in *(2017) 14 SCC 809*, *Kandhal Sarman Jadeja Vs. State of Gujarat* reported in *2012 SCC Online Guj3104*, came to an opinion that an important issue of law has arisen which requires a more detailed consideration and accordingly formulated the following

questions of law to be examined as extracted:

(i). Whether order refusing to extend the period of investigation up to 180 days in terms of Section 43-D (2)(b) of the Unlawful Activities (Prevention) Act, 1967 can be construed as interlocutory order? Whether such an order would have any bearing on the proceedings of the trial itself?

Whether such an order decides the right of one of the party (investigating agency)?

(ii) Whether the order "refusing" to extend judicial remand from 90 days to 180 days in terms of Section 43-D (2)(b) under the Unlawful Activities (Prevention) Act, 1967, would have any effect on ultimate decision of the case/trial?

(iii) Consequently, whether appeal against such an order (impugned order) would be maintainable under Section 21 of the National Investigating Agency Act, 2008?

Accordingly the Division Bench placed the matter before Hon'ble the Chief Justice for constituting a larger Bench to adjudicate the legal issues as framed.

8. As per the questions referred to the larger Bench, one of the questions for determination would be whether an order refusing to extend the period of detention of an accused beyond the period of 90 days up to 180 days under Section 43 D of the UAPA-1967 would be an interlocutory order or such order would be in the nature of a final order and decide the right of one of the parties.

9. Mr. D Saikia, learned senior counsel for the appellant NIA refers to the provisions of Section 21 of the NIA Act-2008 and contends that an appeal against any judgment, sentence or order of a Special Court to the High Court on facts and on law would be maintainable if such judgment, sentence or order would be not an interlocutory order. As a corollary it is the contention that if the judgment, sentence or order is an interlocutory order, an appeal would not be maintainable, whereas if such judgment, sentence or order is not an interlocutory order, such appeal would be maintainable.

10. Accordingly, the question referred would have to be answered as to whether the judgment and order dated 16.03.2020 in the Petition No.490/2020 in Misc. Case No. (NIA) 01/2020 is an interlocutory order or it is not.

11. It is taken note of that in respect of the other accused persons A2, A3 and A4 in NIA Case No.RC-13/2019/NIA/GUW, Petition No.541/2020 was filed by the appellant NIA seeking extension of the detention in custody, which was refused by the order dated 04.04.2020 in Misc. Case No. 04/2020. Against the order dated 04.04.2020, Criminal Appeal No.130/2020 has been preferred by the appellant, NIA.

12. We have been told that during the pendency of the criminal appeals being Crl.A No.121/2020 and Crl. A No.130/2020, the investigation in FIR No.RC-13/2019/NIA-GUW dated 14.12.2019 had been completed and the charge-sheet had also been submitted in the Court of the learned Special Judge Guwahati which had been numbered as Special (NIA) Case No.02/2020 in connection with

NIA Case RC-13/2019/NIA/GUW. At the stage of consideration of charge, A1, A2, A3 and A4 had been discharged by the order dated 01.07.2021 in Special (NIA) Case No.02/2020 and against the order of discharge the NIA had preferred an appeal which is numbered as Crl.Appeal No.121/2021.

13. In the aforesaid circumstance, a submission is made on behalf of A1 that the present Criminal Appeal No.121/2020 has become infructuous and does not require any further adjudication. *Per contra*, it is the submission on behalf of NIA that as an appeal had been filed against the order dated 01.07.2021 discharging A1, which again under the law has the possibility of either being allowed or disallowed, it cannot be said with certainty that as because of the other criminal appeal against the order of discharge the question involved in this criminal appeal would not require any adjudication on its merit.

14. In the instant case, on being referred to a Larger Bench, a question of law requires an adjudication as to whether an order refusing an extension of detention in custody to an accused in a case of investigation by the NIA under Section 43 D of the UAPA-1967 would be an interlocutory order or it would not be an interlocutory order. The relevance of the question of law requiring an adjudication flows from the aspect that if the order refusing an extension of detention in custody is held to be an interlocutory order, no appeal would be maintainable against it under Section 21(1) and Section 21(3) of the NIA Act. But, on the other hand, if the order refusing an extension of detention in custody is held to be not an interlocutory order, an appeal would be maintainable.

15. In the circumstance, without going into the question as to whether the Criminal Appeal 121/2020 requires an adjudication on its own merit in view of the subsequent events as indicated above, we are of the view that the question referred before the Larger Bench as to whether an order refusing an extension of detention in custody in a case of investigation by the NIA under Section 43 D of the UAPA-1967 would be an interlocutory order or not would have its relevance requiring an adjudication, *inasmuch as*, depending upon the manner in which the question is answered, the maintainability of an appeal under Section 21(1) of the NIA Act against an order refusing an extension of detention in custody would follow.

16. In the circumstance, without going into the other aspects of the reference made, we proceed in the reference to adjudicate the question, as to whether an order of refusing an extension of detention in custody of an accused in a case of investigation by the NIA would be an interlocutory order or it would not be an interlocutory order.

17. Mr. D Saikia, learned senior counsel for the appellant NIA by referring to the order dated 16.03.2020 of the learned Special Judge NIA in Misc. Case(NIA)No.01/2020 arising out of NIA Case No.RC-13/2019/NIA/GUW submits that the learned Court had arrived at a conclusion that it would not be justified to extend the detention in custody of the accused A1 beyond the initial statutory period of 90 days merely on the statement and apprehension of the investigation that A1 would misuse his liberty to influence witnesses and tamper with evidences; and that the report of the learned public prosecutor that an extension of detention beyond the statutory period of 90 days is necessary for

investigating into the aspect of the alleged links of A1 with the Maoists and the aspect of a conspiracy on his part, is deemed not sufficient in the opinion of the learned Court for extending the detention in custody for completing the investigation; the report of the learned Public Prosecutor that A1 being an influential person will influence witnesses and tamper with evidence cannot be accepted on face value when such apprehension is merely in the form of a statement rather than it being supported by other complete details, cannot be acceptable reasons for the learned Special Judge to refuse the extension of detention in custody of the accused persons. It is the submission that as regards the aspect of the report of the learned Public Prosecutor that an investigation is necessary into the alleged link of accused A1 with the Maoists and for the purpose more time is required for completing the investigation and therefore the detention in custody be extended, the learned Special Judge, NIA had not given any reason as to why the said aspect was deemed not sufficient in the considered opinion of the Court. It is the submission of Mr. D Saikia, learned senior counsel that the said aspect of the matter having not been given its due consideration, the learned Special Judge by arriving at its conclusion against the extension of the extension of detention in custody had adversely affected the investigation in a matter involving national security. Accordingly it is the submission that the order dated 16.03.2020 refusing the extension of detention in custody requires a reconsideration on appeal and from such point of view also the appeal by the appellant NIA would have to be considered to be maintainable.

18. It is the submission of Mr. D Saikia, learned senior counsel for the NIA, that the learned Special Judge NIA, by the order dated 16.03.2020 having

refused to extend the detention in custody of the accused persons had determined the rights of the parties as regards the extension of the detention period and, therefore, the order dated 16.03.2020 in Misc. Case(NIA)No.01/2020 and the order dated 04.04.2020 in Misc.Case(NIA)No.04/2020 would be a final order in the proceeding.

19. Mr. D Saikia, learned senior counsel for the NIA submits that although the judgment and orders dated 16.03.2020 & 04.04.2020 refusing the extension of detention in custody of the accused persons are incorrect *inasmuch as*, a vital aspect of the matter regarding the links of the accused persons with some of the declared unlawful groups having not been given its due consideration, if neither the remedy under Section 21(1) of the NIA Act-2008 providing for an appeal, nor a revision under Section 482 of the Code of Criminal Procedure (for short, Cr.P.C.), would be made applicable, the investigation by the NIA would remain incomplete and thereby give an undue advantage to the accused, which may not be in the interest of national security. In the circumstance, it is the submission of the learned senior counsel that the right of the investigation to have the accused in custody is affected.

20. It is the submission of Mr. D Saikia, learned senior counsel for the NIA that if an order of extension of detention in custody is allowed and the accused persons remain in custody, they would again have to be produced before the Court for a further consideration as regards as to whether the detention in custody should be extended or refused and, therefore, such order allowing an extension would be an interlocutory order. But on the other hand, by an order refusing an extension of detention in custody there would be no further

requirement to produce the accused before the Court for consideration as regards the extension and, therefore, the refusal of extension itself is a final order. The learned senior counsel submits that the grant of an extension of detention in custody and refusal thereof are distinguishable, where, a grant implies continuity, but a refusal brings an end to the proceeding.

21. Mr. D Saikia learned senior counsel for the appellant NIA relies upon the proposition laid down by the Supreme Court in *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J Kulkarni* reported in (1992) 3 SCC 141, wherein in paragraphs 11 and 13 it has been held that even if an accused is later on found to be involved in a more serious offence in the same case, he cannot be given the custody of the police after expiry of the initial 15 days, but at the same time, if the involvement in the other offence is connected in a different case, the Magistrate can under Section 167(2) of the Cr.P.C., remand him to such custody during the first period of 15 days of the investigation.

Mr. D Saikia, learned senior counsel also refers to the proposition of the Supreme Court in *Uday Mohanlal Acharya Vs. State of Maharastra* reported in *(2001) 5 SCC 453*, wherein in paragraph 13, it has been held that on the expiry of the period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in completing the investigation within the period prescribed.

22. Mr. D Saikia, learned senior counsel for the appellant NIA also relies upon

the pronouncement of the Supreme Court in Joy Immaculate, (supra), wherein in paragraph 8 the expression 'interlocutory order' has been discussed and the conclusion arrived that the test would be that if the objection of the accused succeeded, the proceeding could have ended, but not vice versa and the order can be said to be a final order only if, in either event, the action will be determined.

23. Reference is also made by Mr. D Saikia, learned senior counsel to the pronouncement in Kandhalal Sarman (supra) wherein it has been held that an order of refusal of an extension of detention in custody is not an interlocutory but a final order.

24. Reference is also made to the proposition laid down by the Supreme Court in *S Kuppuswami Vs. R* reported in *AIR 1949 FC 1*, wherein in paragraph 3 it had been held that if the decision given in one way finally dispose of the matter in dispute, it would be a final order and on the other hand, if it allows the action to go on, it is not final but interlocutory.

25. Mr. DK Mishra learned senior counsel for the accused A1, *per contra*, raises the contention that judicial custody is not a custody of the appellant NIA as per Section 3 of the Prisoners' Act and further that the appellant NIA cannot claim that they have a right to have the custody of the accused. Accordingly, it is the submission that as the NIA does not have a right to have the accused A1 in custody, therefore, the learned Special Judge by refusing the prayer of the NIA for extension of detention in custody had not finally decided any right of the

appellant NIA. As no right of the appellant NIA had been finally decided therefore, the order impugned by which the extension was refused is an interlocutory order and therefore under Section 21(1) of the NIA Act no appeal would be maintainable.

26. By referring to the provisions of 167(5) of the Cr.P.C., read with the proviso to Section 43 D(2)(b) of the UAPA-1967, it is the submission of Mr. DK Mishra, learned senior counsel that the provisions thereof, merely refers to the maximum period of custody of an accused and it has nothing to do with the stage or the requirement of the investigation.

27. It is also the submission of Mr. DK Mishra, learned senior counsel that unless an order culminates in a discharge, conviction or acquittal of an accused, it cannot be said to be a final order and it being converse to a final order, such order would be an interlocutory order. It is the further submission that by the impugned order of refusal of extension of detention in custody dated 16.03.2020 the connected GR Case had not come to an end, and, therefore, it would be an interlocutory order. Mr. DK Mishra, draws a parallel to an order refusing to frame charges, which according to the learned senior counsel would be a final order, but if the charges are framed the proceedings would continue and, therefore, it would be an interlocutory order.

28. Mr. DK Mishra, learned senior counsel refers to the pronouncement of the Supreme Court in *Amarnath and others Vs. State of Haryana and Others* reported in *(1977) 4 SCC 137,* wherein in paragraph 6 it has been held that any

order which do not decide or touch the important liabilities of the parties or which substantially affects the rights of the accused, or decide certain rights of the parties, cannot be said to be an interlocutory order so as to bar a revision to the High Court against such order.

Reliance is also placed in the pronouncement of the Supreme Court in Madhu Limaye (supra), wherein in paragraph 13 it has been held that the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order', and by referring to Halsbury's Laws of England it was accepted that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to another part and that in general a judgment or order which determines the principal matter in question is termed 'final'.

The learned senior counsel also seeks to explain the proposition in Kuppuswami (supra) that the circumstance in which the said proposition was laid is not applicable to the present case.

Mr. DK Mishra, learned senior counsel also refers to the proposition laid down in *Usmanbhai Dawoodbhai Menon & Ors. Vs. State Of Gujarat* reported in (*1988) 2 SCC 271,* wherein paragraph 24, it has been held that a final order has to be interpreted in contra-distinction to an interlocutory order and that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

29. Mr. DK Mishra, learned senior counsel refers to the proposition in *V.C. Shukla Vs. State through C.B.I.* reported in 1980 Supp SCC 92, wherein:

(i). In paragraph 7, it is provided by reiterating even at the risk of repetition

that although the term 'interlocutory order' used in the Cr.P.C., has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial, but the same, in the opinion of the court cannot be applicable under the Special Courts Act which was meant to cover only specified number of crimes and criminals and the objective to be attained was quickest despatch and speediest disposal. The relevant paragraph is extracted as below:

> "*7. We might reiterate here even at the risk. of repetition that the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in Section 397(3) of the Code would apply to a variety of cases coming up before the courts not only being offences under the Penal Code but under numerous Acts……."*
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> "……*The same, however, in our opinion, could not be said of the Special Courts Act which was meant to cover only specified number of crimes and criminals and the objective attained was quickest despatch and speediest disposal."*

(ii). In paragraph 9, it is provided that Section 11 of the Special Courts Act starts with a non-obstante clause which completely excludes the application of the provisions of the Cr.P.C., and therefore, the decisions rendered by the Supreme Court in interpreting the expression 'interlocutory order' under Section 397(2) of the Cr.P.C., would have no application whatsoever, while considering the scope and ambit of Section 11. The relevant paragraph is extracted as below:

> "*9. This brings as to the discussion of the main preliminary objection taken by the Solicitor-General. The Solicitor-General submitted that Section 11, which is extracted below starts with a non obstante clause which completely excludes the application of the provisions of the Code of Criminal Procedure and therefore the decisions of this Court rendered on an interpretation of Section 397(2) of the Code would have no application whatsoever in considering the scope and ambit of Section 11."*

(iii). In paragraph 24, it has been held that the essential attribute of an

interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issue sought, but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. By referring to Madhu Limaye (supra), it is clarified that an order framing charge is not an interlocutory order, but an intermediate order as defined in Vol.49 page 35 of *Corpus Juris Secondum*. Therefore, framing of charge being an intermediate order falls within the ordinary and natural meaning of the term interlocutory order as used in Section 11(1) of Special Courts Act. It has further been concluded that an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a suit or trial, but which does not however conclude the trial at all. It was held that if we construe interlocutory order in ordinary parlance, it would indicate the attributes mentioned above and this is what the term interlocutory order means when used in Section 11(1) of the Act without having resort to the Cr.P.C. or any other statute. The relevant paragraph is extracted as below:

> "*24. To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia, J. in the case of Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : (1978) 1 SCR 749] clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in* CORPUS JURIS SECUNDUM, *Vol. 60. We find ourselves in complete agreement with the observations made in* CORPUS JURIS SECUNDUM. *It is obvious that an order framing of the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term "interlocutory order" as used in Section 11(1) of the Act.* WHARTON'S LAW LEXICON *(14th Edn., p. 529) defines interlocutory order thus:*
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> "*An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."*
>
> *Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or*

finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute. That is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in Section 11(1) of the Act."

(iv). In paragraph 30, the Supreme Court referred to the decision in Soloman Vs. Warner reported in (1885) 14 QBD 627 wherein the test to judge whether an order was interlocutory or final had been laid down. The test provided in Soloman Vs. Warner is that if the decision, if given in one way will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then it would not be final but interlocutory. While examining the said proposition by Lord Esher, in Solomon Vs. Warner, Kania CJ, in Kuppuswami (supra) observed that an order is final if it finally disposes the rights of the parties, but in the case at hand in Kuppuswami (supra) the orders under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way. By referring to the judgment of the Privy Council in *Ramchand Manjimal Vs. Goverdhandas Vishindas*, reported in *(1920) 47 IA 124,* it had been held that the test of finality was whether the order finally disposes of the right of the parties and that the order, in question, would not be a final order if the rights of the parties were left to be determined by the Courts in the ordinary way. It was further held that the term 'judgment' itself indicates a judicial decision given on the merits of the dispute brought before the Court and in a criminal case, it cannot cover a preliminary or interlocutory order. The relevant paragraph is extracted as below:

"*30. After referring to a number of decisions the learned Chief Justice observed as*

follows:

The effect of those and other judgments in that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the courts in the ordinary way……."

"…….*To the same effect was a decision of the Privy Council in Ramchand Manjimal case where after examining the decisions of the English Court, it was held that the test of finality was whether the order finally disposes of the rights of the parties and held that the order in question was not a final order because the rights of the parties were left to be determined by the courts in the ordinary way. ……."*

…..*"In our opinion, the term 'judgment' itself indicates a judicial decision given on the merits of the dispute brought before the court. In a criminal case it cannot cover a preliminary or interlocutory order."*

(v). In paragraph 31 it has been held by referring to the decision in *Mohd. Amin Bros. Vs. Dominion of India,* reported in *(1949) XI FCR 842* that the Supreme Court in Kuppuswami (supra) had settled the issue and Mukherjea J, had observed that the expression 'final order' has been used in contradistinction to what is known as interlocutory order and the test of determining the finality is whether the judgment or order had finally disposed of the rights of the parties. The relevant paragraph is extracted as below:

"*31. This case was followed in the case of Mohd. Amin Bros. v. Dominion of India [AIR 1950 FC 77, 78, 79 : (1949) XI FCR 842 : 1950 SCJ 139] where it was held that so far as this Court is concerned the principles laid downin Kuppuswami case [1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625] settled the law. In this connection, in the aforesaid case, Mukherjea, J., speaking for the court observed as follows:*

"*The expression 'final order' has been used in contradistinction to what is known as 'interlocutory order' and the essential test to distinguish the one from the other has been discussed and formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this Court in their recent pronouncement in S. Kuppuswami Rao v. King [1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625] and the law on point, so far as this Court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial Committee in Ramchand Manjimal v. Goverdhandas Vishandas [Ramchand Manjimal v. Goverdhandas Vishindas, AIR 1920 PC 86 : (1920) 47 IA 124 : 22 Bom LR 606 : 39 MLJ 27] and Abdul Rahman v. D.K. Cassim and Sons [AIR 1933 PC 58 : (1933) 60 IA 76] and the authorities of the English courts upon which these pronouncements*

were based, it has been held by this Court that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties."

Thus, the Federal Court in its decision seems to have accepted two principles, namely:

"*(1) that a final order has to be interpreted in contradistinction to an interlocutory order; and*

(2) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties."

(vi) In paragraph 35, it has been provided that the order framing of the charges is purely an interlocutory order as it does not terminate the proceedings, but the trial goes on until it culminates in acquittal or conviction. It further provided that if the Special Court would have refused to frame charges and discharged the accused the proceedings would have terminated, but that is only one side of the picture. The other side of the picture was that if the Special Court refused to discharge the accused and framed charges against him then the order would be interlocutory because the trial would still be alive. The relevant paragraph is extracted as below:

"*35. Applying these tests to the order impugned we find that the order framing of the charges is purely an interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction. It is true that if the Special Court would have refused to frame charges and discharged the accused, the proceedings would have terminated but that is only one side of the picture. The other side of the picture is that if the Special Court refused to discharge the accused and framed charges against him, then the order would be interlocutory because the trial would still be alive…..*

"*….. Furthermore, as already indicated, it is impossible to spell out the concept of an interlocutory order unless it is understood in contradistinction to or in contrast with a final order. This was held in a number of cases referred to, including Madhu Limaye case……"*

(vii). In paragraph 45, it has been held that although the natural meaning of the expression 'interlocutory order' is an order which neither terminated the

proceedings nor finally decided the rights of the parties, but taking into consideration the non-obstante clause in Section 11 of the Special Courts Act, the position is that the provisions of the Cr.P.C., are expressly excluded by the non-obstante clause and therefore, Section 397(2) of the Cr.P.C., cannot be called into aid to hold that the order impugned therein passed by the Special Judge under the Special Courts Act 1979 directing framing of charge under Section 120(B) of the IPC read with Sections 5(1)(d), 5(2) of the Prevention of Corruption Act 1947 (for short, the Act of 1947), is not an interlocutory order. The relevant paragraph is extracted as below:

> *"45. On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression "interlocutory order", there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kuppuswami case [1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625] the order impugned was undoubtedly an interlocutory order. Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order.'*

(viii) In paragraph 47, it has been held that giving the expression 'interlocutory order' its natural meaning according to the test laid down in Kuppuswami (supra) and applying the non-obstante clause, the expression 'interlocutory order' appearing in Section 11(1) of the Special Courts Act has been used in the natural sense and not in a special or wider sense as used in Section 397(2) of the Cr.P.C. The natural sense, as provided in paragraph 24, is that summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory

order, which in other words, in the ordinary sense of the term, is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding suit or trial, but which does not conclude the trial at all. The relevant paragraph is extracted as below:

"*47. Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression "interlocutory order" its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswami case [1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625] and applying the non obstante clause, we are satisfied that so far as the expression "interlocutory order" appearing in Section 11(1) of the Act is concerned, it has been used in the natural sense and not in a special or a wider sense as used by the Code in Section 397(2). The view taken by us appears to be in complete consonance with the avowed object of the Act to provide for a most expeditious trial and quick dispatch of the case tried by the Special Court, which appears to be the paramount intention in passing the Act."*

30. By referring to the aforesaid submissions in VC Shukla (supra) Mr. DK Mishra, learned senior counsel for the respondent A1 submits that:

(i). The order dated 16.03.2020, by which remand was refused to A1, is an interlocutory order by taking into consideration the natural meaning of the expression 'interlocutory order', *inasmuch as*, it did not terminate the proceedings or finally decided the rights of the parties. According to the learned senior counsel, the proceedings against accused A1 would be terminated either upon a discharge or the final conviction or acquittal in the proceedings against him.

(ii). The provisions of Section 21(1) of the NIA Act-2008 is *pari materia* with that of Section 11 of the Special Courts Act and, therefore, the interpretation given to the expression 'interlocutory order' in VC Shukla (supra) would govern Section 21(1) also and therefore, not the special or wider sense used in Section 397(2) of the Cr.P.C.

31. It is also the submission of Mr. DK Mishra, learned senior counsel that the order impugned dated 16.03.2020 as to whether it is an interlocutory order or a final order would have to be examined and understood from the propositions of the Supreme Court in VC Shukla (supra) and Usmanbhai Dawoodbhai (supra) and not as per the propositions in Joy Immaculate (supra) and Madhu Limaye (supra). According to the learned senior counsel, the propositions in Joy Immaculate (supra) and Madhu Limaye (supra) are on an interpretation of the Cr.P.C., whereas the propositions in VC Shukla (supra) and Usmanbhai Dawoodbhai (supra) are in respect of the Special Acts being the Special Courts Act and the Terrorist and Disruptive Activities (Prevention) Act 1987. Accordingly, it is the submission that the Special Acts providing for a non-obstante clause, any interpretation of the expression 'interlocutory order' in relation to the provisions in Cr.P.C. would be inapplicable in respect of an interpretation of the same expression 'interlocutory order' under the Special Acts.

32. Mr. Z Kamar, learned senior counsel for the accused A2, A3 and A4, in the background of the submissions of Mr. DK Mishra, learned senior counsel, seeks to give a meaning to the expression 'proceeding'. As the proposition already referred leads to a situation, where if the proceedings come to an end pursuant to a given order, such order would be a final order, whereas, on the other hand, if the proceedings do not come to an end pursuant to an order, such order would be an interlocutory order, it is the submission of learned senior counsel Mr. Z Kamar, that for an effective adjudication on the referred question, the meaning of the expression 'proceeding' would have to be appropriately examined.

33. In order to answer the question under reference as to whether an order refusing the extension of detention in custody under Section 43 D of the UAPA-1967 would be appealable under Section 21(1) of the NIA Act, as per the contentions and submissions of the learned counsel for the parties, two relevant questions for determination would be:

(i). What would be the meaning of the expression 'interlocutory order' in the context of NIA Act 2008 and UAPA-1967?

(ii). What would be the meaning of the expression 'proceeding' in the context of an order refusing extension of detention in custody in terms of Section 43D of the UAPA-1967?

34. Before examining the question as to what would be the meaning of 'interlocutory order' in the context of NIA Act-2008 and UAPA-1967, we take note that the expression 'interlocutory order' had been examined in many of the matters including that of the pronouncements in Amarnath (supra), Madhu Limaye (supra) and Joy Immaculate (supra). But in all the aforesaid propositions the expression 'interlocutory order' was examined in the context of Section 397(2) of the Cr.P.C., wherein the powers of revision were not made applicable in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. But in paragraph 45 of its pronouncement in VC Shukla (supra), by referring to the provisions of Section 11(1) of the Special Courts Act which begins with a non-obstante clause, it has been provided that by applying the non-obstante clause the position is that the provisions of the Cr.P.C., are expressly excluded and, therefore, Section 397(2) of the Cr.P.C., cannot be called into aid in order to hold that the order impugned is not an interlocutory

order. In view of such provisions in paragraph 45 of VC Shukla (supra) we also have to understand that the meaning given to the expression 'interlocutory order' in the context of Section 397(2) of the Cr.P.C., cannot be brought into effect to also give a meaning to the expression 'interlocutory order' in relation to Section 21(1) of the NIA Act-2008, which also begins with the same non-obstante clause 'not withstanding anything contained in the Code'.

35. In paragraph 24 of its pronouncement in VC Shukla (supra), the Supreme Court provided that an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit, or a trial, but which does not, however, conclude the trial at all. Accordingly, it has to be understood that in case of a proceeding other than a suit or a trial if an order decides a particular aspect or a particular issue or a particular matter in a proceeding such order would be an interlocutory order. As a corollary, it has to be understood that if an order decides the entire aspect or the issue or the matter involved in a proceeding it would not be an interlocutory order, but a final order for such proceeding.

36. For the purpose, to understand, as to whether the order impugned dated 16.03.2020 refusing an extension of detention in custody to the accused A1 and the order dated 04.04.2020 also refusing an extension of detention in custody to accused A2, A3 and A4 would be an interlocutory order or a final order, we have to understand as to what is the meaning and scope of the expression 'proceeding' and whether the proceeding in which the Special NIA Court had considered whether to grant extension of detention in custody to the aforesaid accused persons or not to grant extension, were itself a proceeding or it was a

part of a proceeding in a larger context.

37. Mr. DK Mishra, learned senior counsel for A1 had made a submission that from the stage of lodging of an FIR, carrying forward the process of investigation, thereafter to file the charge sheet, framing of charges or discharging the accused, conducting the trial and the conclusion thereof would be a part of one proceeding. By adverting to such submission, it is the further submission of the learned senior counsel that the process of examining the aspect as to whether an extension of detention in custody is required to be allowed or refused in case of the accused persons is a part of the proceeding at the stage of the investigation itself and therefore, any order refusing the extension of detention in custody of the accused persons would not bring the proceeding itself to an end, inasmuch as, the proceeding would come to an end only at the conclusion of the trial, and accordingly, the order refusing the extension of detention in custody would be an interlocutory order.

38. In the context of the aforesaid submission of the learned senior counsel, we have to examine as to whether the meaning and scope of the expression 'proceeding' would render it acceptable that the various stages from the lodging of the FIR up to the conclusion of the trial would be one proceeding or whether the meaning and scope of 'proceeding' would allow it to be fragmented so as to render the various individual stages from the stage of lodging of the FIR up to the conclusion of the trial to be proceedings of its own.

39. In *Babu Lal Vs. Hazari Lal Kishori Lal* & *Ors.* reported in *(1982) 5 SCC 525*,

the Supreme Court while examining the word 'proceeding' in Section 22 of the Specific Relief Act 1963 arrived at its proposition that the term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right and it is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute concerned. In paragraph 17 of Babu Lal (supra), it has been held as extracted:

> ***17.*** *The word "proceeding" is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted.*

40. The meaning given by the Supreme Court to the term 'proceeding' in Babu Lal (supra) is a general meaning given, irrespective of the statute which was under consideration of the Supreme Court where the word 'proceeding' may have appeared. The meaning given that it is a very comprehensive term gives the indication that the concept of proceeding is of a larger content or scope, which is wide ranging and includes nearly all elements or aspects of something. Secondly, the meaning given is that it means a prescribed course of action for enforcing a legal right.

41. From the meaning given to the expression 'proceeding' in Babu Lal (supra), it has to be understood that the concept 'proceeding' is of a large content or scope and includes nearly all elements or aspects of something. One such aspect may be to look at it from the point of view that from the stage of lodging

of the FIR, carried through the investigation stage, thereafter filing a charge sheet, framing of charges, resulting in a trial, and conclusion thereof, would be one proceeding. But going by the concept 'proceeding', if that is one way of looking at the concept, it cannot be said that it would be the only way to look at it to the exclusion of any other way of looking at it.

42. Going by the other meaning of the concept 'proceeding' as provided in paragraph 17 of Babu Lal (supra), 'proceeding' also means a prescribed course of action for enforcing a legal right. To understand the concept, if a course is adopted by any person for enforcing a legal right, such course so adopted would also be a proceeding of its own.

43. In the instant case, the appellant NIA had filed petition No. 492/2020 under Section 43 D(2)(b) of the UAPA-1967 in respect of accused A1 and petition No.541/2020 also under the same Section in respect of accused A2, A3 and A4 for extension of the period of investigation and detention in custody leading to the registration of Misc.Case(NIA) No.01/2020 and Misc.Case(NIA) No.04/2020, respectively.

44. According to the appellant NIA, the petitions for extension of the period of investigation and detention in custody were in furtherance of their legal right to conduct the investigation in the required manner as provided under the law. On the other hand, the accused persons opposed such petition claiming their respective legal rights to be not further detained in custody. Going by the respective claims of the appellant and the accused persons, both the parties by

means of the petition No. 492/2020 and petition No.541/2020 leading to Misc.Case(NIA) No.01/2020 and Misc.Case(NIA) No.04/2020, respectively, adopted a prescribed course of action for enforcing a legal right.

45. Going by the meaning of the expression 'proceeding' in Babu Lal (supra), it can be accepted that the respective parties having adopted a prescribed course of action for enforcing a legal right, the petition No. 492/2020 and petition No.541/2020 leading to Misc.Case(NIA) No.01/2020 and Misc.Case(NIA) No.04/2020, respectively were itself proceedings. In paragraph 24 of the pronouncement in VC Shukla (supra), the provision that an interlocutory order is one which only decides a particular aspect or a particular issue, or a particular matter in a proceeding, suit or trial also makes it discernible that the Supreme Court distinguishes between a proceeding, a suit or a trial and, therefore, it cannot be that only at the conclusion of a trial would make it to be a proceeding.

46. In order to understand as to whether the orders impugned dated 16.03.2020 and 04.04.2020 refusing an extension of detention in custody are interlocutory orders, we examine the concept 'interlocutory order' as appearing in Section 21(1) of the NIA Act of 2008. In doing so, we also take note that the meaning given to the expression 'interlocutory order' in the context of Section 397(2) of the Cr.P.C., in Amarnath (supra), Madhu Limaye (supra) and Joy Immaculate (supra) cannot be the basis to understand the meaning of the expression 'interlocutory order' in Section 21(1) of the NIA Act-2008, in view of the provisions of paragraph 45 in VC Shukla (supra), *inasmuch as*, Section 21(1) also begins with a non-obstante clause.

47. On the concept of as to whether a judgment or an order is final or not, had been given a consideration by the Constitution Bench of the Supreme Court in *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*, reported in *AIR 1968 SC 733*, wherein in paragraph 4, it is provided that on the question as to whether a judgment or an order is final or not has been a subject matter of a number of decisions, but yet no single general test has been laid down. The reason probably is that a judgment or an order may be final for one purpose, and interlocutory for another or final and interlocutory in parts. Accordingly, the meaning of the words 'final' and 'interlocutory' has to be considered separately in relation to the particular purpose for which it is required, but however, generally speaking, a judgment or order which determines the principal matter in question is termed 'final'. By referring to certain English decisions, one or other of the following four tests were applied to understand as to whether a judgment or an order is final. One test was whether upon an application being made, a decision in favour of either of the parties would determine the main dispute and another test was whether if the order in question is reversed would the action have to go on. Paragraph 4 in Mohan Lal (supra) is extracted as below:

> *4. The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply [Halsbury's Laws of England (3rd Edn.) Vol. 22, 742-43] . In some of the English decisions where this question arose, one or the other of the following four tests was applied.*
>
> *1. Was the order made upon an application such that a decision in favour of either*

party would determine the main dispute?
2. Was it made upon an application upon which the main dispute could have been decided?
3. Does the order as made determine the dispute?
4. If the order in question is reversed, would the action have to go on?

48. The proposition laid down in Mohal Lal (supra) was considered by the Supreme Court in VC Shukla (supra) wherein in paragraph 41, the proposition that an order may be final for one purpose and interlocutory for another was taken note of. But without expressing any view on the applicability of the said proposition in the matter in VC Shukla (supra), the conclusion arrived was that the decision in Mohal Lal (supra) as to whether the order passed by the High Court in revision in respect of the complaint for the remaining offence under Section 205 read with Section 114 of the Cr.P.C., as was applicable at that relevant point of time, was a final order within the meaning of the certificate given under Article 134(1)(c) was not applicable in the matter of VC Shukla (supra).

49. We have already noted that the Constitution Bench in Mohal Lal (supra) had proceeded to examine the concept final order with the preceding expression 'generally speaking', meaning thereby that the view expressed was not in the context of the particular statutory provision, but would have a general application.

50. In paragraph 7 in VC Shukla (supra) it has been reiterated that the term 'interlocutory order' used in the Cr.P.C., has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the

trial, but the same however, cannot be said of the Special Courts Act which was meant to cover only specified numbers of crimes and criminals and the objective to be attained was quickest despatch and speediest disposal. The provision of paragraph 17 in VC Shukla (supra), envisages a more restrictive meaning to the term 'interlocutory order' in order to avoid revisions at the interlocutory stage so as to adversely affect the objective of quickest despatch and speediest disposal. To understand the proposition, reference was also made in VC Shukla (supra) to the decision of the Supreme Court in *In re The Special Courts Bill 1978*[10], reported in *(1979) 1 SCC 380*, wherein it has been provided that speedy termination of prosecutions under the Special Courts Bill was the heart and soul of the Bill.

51. Accordingly, it was the view of the Supreme Court in VC Shukla (supra) that the meaning given to the term interlocutory order under the Cr.P.C., which was a very liberal construction in favour of the accused, would not be applicable to the term interlocutory order under the Special Courts Act where the essence is of a speedy disposal and bringing an end to the trial. In other words, it has to be understood that the proposition laid down was that in a matter of a trial under the Special Courts Act, the accused should not be given the indulgence to approach the higher Courts in revision by giving a liberal construction to the bar, as had been done under Section 397(2) of the Cr.P.C.

52. In paragraph 24 of the pronouncement of the Supreme Court in VC Shukla (supra) it has been laid down that the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of

the suit or collateral to the issue sought, but not a final decision or judgment on the matter in issue. Accordingly, it was held that framing of the charge is an intermediate order falling squarely within the ordinary and natural meaning of the term interlocutory order. Again reference has been made to the Wharton's Law Lexicon 14th Edition P. 529 which defines interlocutory order to be one made or given during the progress of an action, but which does not finally dispose of the rights of the parties. The definition of interlocutory order in Wharton's Law is extracted as below:

> "*An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties.*"

53. In paragraph 24 of VC Shukla (supra) it has been summed up that the natural and logical meaning of an interlocutory order is to be an order which does not terminate the proceedings or finally decides the rights of the parties and in other words, in ordinary sense of the term, it decides a particular aspect or a particular issue or a particular matter in a proceeding or suit or trial.

54. In paragraph 30 of VC Shukla (supra), the Supreme Court by referring to the pronouncement in *Ram Chand Manjimal Vs. Goverdhandas Vishindas* reported in *(1920) 47 IA 124* held that the test of finality was whether the order finally disposes the rights of the parties and if the rights of the parties were left to be determined by the Courts in the ordinary way, such order would not be a final order.

55. In paragraph 31 of VC Shukla (supra), the Supreme Court by referring to

the principles laid down in Kuppuswami (supra), that the expression 'final order' has been used in contradistinction to what is known as 'interlocutory order' and that the test for determining the finality of an order is whether the judgment or order had finally disposed the rights of the parties, arrived at its conclusion that two principles would govern the aspect which are:

> *(1) that a final order has to be interpreted in contradistinction to an interlocutory order; and*
>
> *(2) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.*

56. In paragraph 33 of VC Shukla, the Supreme Court by referring to Kuppuswamy (supra) and Mohan Lal (supra) was of the view that generally speaking a judgment or order which determines the principal matter in question is termed final.

57. In paragraph 47 in VC Shukla (supra) by summing up the entire position arrived at an inescapable conclusion that giving the expression 'interlocutory order' its natural meaning and applying the non-obstante clause, in the Special Courts Act, the expression 'interlocutory order' in Section 11(1) of the Act would have to be used in the natural sense and not in a special or wider sense as used in Section 397(2) of the Cr.P.C.

58. The natural meaning of the expression 'interlocutory order' as provided in paragraph 24 of the judgment in VC Shukla (supra) is that an interlocutory order or judgment is one made or given during the progress of an action, but does

not finally dispose of the rights of the parties and which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit, or trial, but which does not, however, conclude the proceeding.

59. Mr. DK Mishra learned senior counsel for the accused A1 also relied upon the judgment of the Federal Court in Kuppuswami (supra), wherein it was provided as:

> (i). It was argued on behalf of the appellant Kuppuswami that the words judgment or final order should be given a wider interpretation so as to enable the Court to entertain that appeal, but the Federal Court was of the view that such contention was unacceptable.
>
> (ii). In the final paragraph of the judgment in Kuppuswami it was provided that the order under appeal in the said matter is not a judgment but an interlocutory order made on a preliminary objection in course of a criminal trial and as the order was not on a point, which decided either way, would have terminated the matter before the Court finally, therefore, it was not a final order.

60. In our view, the aforesaid submission of the learned senior counsel based upon the aforesaid proposition in Kuppuswami (supra) would be inapplicable to decide the question as to whether the orders dated 16.03.2020 and 04.04.2020 by which an extension of detention in custody was refused in respect of the accused persons, inasmuch as, the said proposition was in respect of a criminal trial where certain preliminary objections had been raised, but in the instant case, the concept of interlocutory order has to be examined from the context as

to whether by refusing an extension of detention in custody the proceedings that were before the Court came to an end and whether the rights of the parties raised in such proceedings were finally decided.

61. To answer the question as to whether the two orders dated 16.03.2020 and 04.04.2020, by which an extension of detention in custody in respect of the accused A1 and accused A2, A3 and A4 respectively, were refused, would be an interlocutory order or a final order, we refer to the propositions laid down in VC Shukla (supra) as to what would constitute an interlocutory order or a final order in case of a proceeding under a statute where the restrictions in a provision for an appeal in respect of an interlocutory order begins with a non-obstante clause.

62. The propositions laid down in VC Shukla (supra) as to what would constitute an 'interlocutory order' or a 'final order' in respect of a provision for an appeal beginning with a non-obstante clause, broadly speaking, as discussed and referred hereinabove, are:

(i) Whether the judgment or order under consideration determines the rights of the parties in the proceeding and;

(ii) Whether by such judgment or order the proceedings in which the judgment or order was passed came to an end.

63. The aforesaid two propositions culled out from the judgment in VC Shukla (supra) are also consistent and in conformity with the general proposition as regards an 'interlocutory order' or a 'final order' laid down by the Supreme Court

in paragraph 4 of the judgment in Mohan Lal (supra).

64. The order dated 16.03.2020 passed in Misc. Case (NIA)No.01/2020 in respect of the accused A1 and the order dated 04.04.2020 passed in Misc. Case (NIA)No.04/2020 in respect of the accused A2, A3 and A4 were passed in Petition No.492/2020 filed by the appellant NIA seeking extension of the period of investigation and detention in custody of the accused A1 and Petition No.541/2020 filed by the appellant NIA also seeking extension of the period of investigation and detention in custody of the accused A2, A3 and A4.

65. The two petitions being Petition No.492/2020 and Petition No.541/2020 were filed in the circumstance where the earlier period of detention in custody for 90 days under Section 167 of the Cr.P.C., was to be over and the appellant NIA sought for an extension of the period of investigation and detention in custody up to a period of 180 days in view of the provisions of Section 43 D of the UAPA-1967.

66. Admittedly the subject matter of the two petitions related to the stage of investigation of the NIA Case No.RC-13/2019/NIA/GUW, where the investigation, beginning from the lodging of the first information in cognizable cases under Section 154 of the Cr.P.C., leading to the report of police officer on completion of investigation under Section 173, are governed by Chapter XII of the Cr.P.C.

67. Section 167 of the Cr.P.C., provides for the procedure when investigation cannot be completed in 24 hours, where it is also provided that an accused

person shall not be authorized for detention in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years and in respect of other offences the authorized period for detention would be a total of 60 days.

68. In case of offence also under the UAPA-1967, the provisions of Section 167 Cr.P.C., have been suitably modified by Section 43 D thereof by providing that the references to '15 days' '90 days' and '60 days' be construed to be a reference to '30 days', '90 days', and '90 days' respectively, with a proviso that where it is not possible to complete the investigation within the period of 90 days, the Court, 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 90 days, may extend the period up to 180 days.

69. The modification incorporated by Section 43 D of the UAPA-1967 upon Section 167 of the Cr.P.C., *inter alia*, would have its effect that on a report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the period of 90 days, the said period may be extended upto 180 days.

70. In view of the aforesaid provisions of Section 167 Cr.P.C. as modified by Section 43 D of the UAPA-1967, the Petition No.492/2020 in respect of accused A1 and petition No.541/2020/2020 in respect of accused A2, A3 and A4 would

be the report of the Public Prosecutor contemplated in the proviso to Section 43 D where the progress of the investigation would be indicated and the specific reason seeking for detention of the accused beyond 90 days would be provided.

71. Although seeking the detention of the accused beyond 90 days by providing the specific reason cannot strictly be construed to be a right of the investigation, but again, as there is also a requirement under the proviso of Section 43 D to indicate the progress of the investigation by the Public Prosecutor, it cannot be wholly said that there is no requirement on the part of the investigation to seek for extension of the period of detention of the accused by providing for the specific reasons therefor.

72. But, under the law, as well as under the circumstance, if there is a requirement of the investigation to seek for an extension of the detention of the accused, which again would be for the interest of the investigation, there would be a very thin line differentiating the concept of right and that of a requirement.

73. In the Petition No.492/2020 in respect of accused A1 and petition No.541/2020 in respect of accused A2, A3 and A4, the Public Prosecutor had provided for the progress of the investigation and the specific reasons as to why the accused persons are required for further detention upto 180 days, which has to be understood to indicate the requirement of the investigation. On the other hand, the accused persons by filing their respective objections opposed the seeking of extension of the period of detention of the accused persons by taking the stand that the progress of the investigation, the subject matter of the

investigation and the specific reasons seeking for extension of the period of detention did not justify the extension. In other words, the accused persons by raising their respective objections take the stand that the facts and circumstances referred in the petitions of the investigation did not warrant an interference with their fundamental and legal right to remain not in custody in connection with the investigation in NIA Case No.RC-13/2019/NIA/GUW, otherwise than by following the due procedure of law.

74. In the Misc. Case (NIA)No.01/2020 in Petition No.492/2020 and Misc.Case (NIA)No.04/2020 in Petition No.541/2020, the subject matter involved is whether the facts and circumstances stated therein, the detention of the accused persons are required to be extended beyond 90 days upto 180 days. The said subject matter, as already concluded in paragraph 45 would itself be a proceeding and any decision which may conclusively decide the subject matter would bring the proceeding to its end.

75. The two orders dated 16.03.2020 in Misc. Case (NIA)No.01/2020 and dated 04.04.2020 in Misc.Case (NIA)No.04/2020 had provided for a refusal of extension of detention of the accused persons as sought for by the investigation. By such refusal, the requirement of the investigation for extension of the period of detention beyond 90 days up to 180 days had been finally determined in respect of the investigation in NIA Case No.RC-13/2019/NIA/GUW. Further the fundamental and legal right of the respondents not to remain in custody in connection with the investigation in NIA Case No.RC-13/2019/NIA/GUW by following the procedure of law had also been finally determined. In other words, for the purpose of the investigation in NIA Case

No.RC-13/2019/NIA/GUW it has been finally decided by the orders dated 16.03.2020 and 04.04.2020 that the accused A1 and accused A2, A3 and A4 would not be required to be detained in custody any further.

76. From the aforesaid conclusions, as regards the proceedings on the subject matter of extension of detention in custody of the accused persons for the purpose of the investigation, it can be concluded that by the orders of refusal of extension of detention in custody dated 16.03.2020 and 04.04.2020 the proceedings itself came to an end. Further by the orders of refusal of extension of detention in custody dated 16.03.2020 and 04.04.2020 the fundamental and legal rights of accused A1 and accused A2, A3 and A4 to remain not in custody any further in connection with the investigation in NIA Case No.RC-13/2019/NIA/GUW had also been finally determined. As such, there is a final determination of the rights of one of the parties to the proceedings i.e. the accused persons. Also the requirement of the investigation being the appellant NIA to have the detention of the accused persons extended beyond 90 days upto 180 days had also been finally determined by the two orders dated 16.03.2020 and 04.04.2020.

77. In view of such conclusion, the orders dated 16.03.2020 in Misc. Case (NIA)No.01/2020 and dated 04.04.2020 in Misc.Case (NIA)No.04/2020 cannot be said to be 'interlocutory order', but a 'final order', inasmuch as, the proceedings in which such orders were passed came to an end and the rights of one of the parties had been finally determined and also the requirement of the other party had also been finally determined.

78. The reference on the question as to whether the orders dated 16.03.2020 in Misc. Case (NIA)No.01/2020 and dated 04.04.2020 in Misc.Case (NIA)No.04/2020 are 'interlocutory order' or 'final order' is answered accordingly.

79. We further provide that the judgment and order dated 20.12.2019 of the Division Bench rendered in *Jai Kishan Sarma and Another Vs. Union of India* reported in *2020 (1) GLT 122* providing that the order allowing for extension of detention in custody of the accused persons is an 'interlocutory order' is accepted to be the correct proposition of law. In a situation, where extension of detention in custody of the accused persons is allowed, firstly, the proceeding on the subject matter whether such detention is to be allowed or not does not come to an end and secondly, the right of one of the parties i.e., the accused persons, to remain not in custody in connection with the investigation, otherwise, than by following the due procedure of law, had also not been finally determined inasmuch as, after the end of the extended period of detention there would be a further consideration as to whether the detention requires to be further extended or not.

80. Accordingly, the Crl. Appeal No.121/2020 and Crl. Appeal No.130/2020 under Section 21 (1) of the NIA Act-2008 are held to be maintainable. The appeals be now placed before the appropriate Bench for its adjudication on merit.

81. Reference answered accordingly.

JUDGE **JUDGE** **JUDGE**

Comparing Assistant