Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1165 of 2021

Naser Bin Abu Bakr Yafai **… Appellant**

Versus

The State of Maharashtra & Anr. **… Respondents**

With

Criminal Appeal No 1166 of 2021

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into sections to facilitate analysis. They are:

A Facts

B Submissions

C Provisions of the NIA Act

D Continuation of investigation by the ATS Nanded

E CJM, Nanded's jurisdiction for remand and committal to trial

F Conclusion

A Facts

1 This batch of two appeals arises from a judgment dated 5 July 2018 of a Division Bench of the High Court of Judicature at Bombay.

2 On 14 July 2016, an FIR[1] was registered under Sections 120-B and 471 of the Indian Penal Code 1860[2] read with Sections 13, 16, 18, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act 1967[3] and Sections 4, 5 and 6 of the Explosive Substances Act 1908[4]. It was registered with the Anti-Terrorism Squad[5] at the Kala Chowki Police Station Mumbai on the basis of written information provided by Manik Vitthal Rao Bedre[6], against two persons: *(i)* Naser Bin Abu Bakr Yafai (the appellant in the first of the two appeals[7]); and *(ii)* Farooq (who was residing in Syria). The complaint alleged that the ATS had received source information that Naser Bin Abu Bakr Yafai was in contact through the internet with members of the Islamic State[8]/Islamic State of Iraq and Syria[9]/Islamic State of Iraq and Levant[10]/Daesh, terrorist organizations banned by the United Nations and the Indian Government. He was alleged to have been planning to assist Farooq (a member of IS/ISIS/ISIL/Daesh) in making bombs/IEDs to cause a blast during the month of Ramzan, for which he had procured the required material in July 2016. The ATS

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[1] CR No 8 of 2016
[2] "**IPC**"
[3] "**UAPA**"
[4] "**ES Act**"
[5] "**ATS**"
[6] A Police Inspector in ATS, Nanded Unit, Nanded, Maharashtra
[7] Criminal Appeal No 1165 of 2021
[8] "**IS**"
[9] "**ISIS**"
[10] "**ISIL**"

arrested four persons from Parbhani, namely: *(i)* Naser Bin Abu Bakr Yafai; *(ii)* Mohammad Shahed Khan (the appellant in the companion appeal[11]); *(iii)* Iqbal Ahmed; and *(iv)* Mohammad Raisuddin.

3 On 26 August 2016, the Government of Maharashtra, in exercise of powers conferred by Section 11 read with Section 185 of the Code of Criminal Procedure 1973[12] issued a notification designating the Chief Judicial Magistrate[13], Nanded, as a Court of remand and the Court of Additional Sessions Judge[14], Nanded, as a Special Court to try cases filed by the ATS Nanded.

4 On 8 September 2016, the Ministry of Home Affairs of the Union government[15] directed the National Investigation Agency[16] to take over further investigation in the present case by exercising powers under Section 6(4) of the National Investigation Agency Act 2008[17]. On 14 September 2016, the NIA Mumbai renumbered the case[18] for taking up further investigation.

5 The ATS continued with the investigation and filed a charge-sheet on 7 October 2016 against the aforesaid accused persons under Sections 120-B and 471 of the IPC read with Sections 13, 16, 18, 18-B, 20, 38 and 39 of the UAPA and Sections 4, 5 and 6 of the ES Act before the CJM, Nanded. The CJM, Nanded took

[11] Criminal Appeal No 1166 of 2021
[12] "**CrPC**"
[13] "**CJM**"
[14] "**ASJ**"
[15] F.No. 11011/24/2016-IS.IV
[16] "**NIA**"
[17] "**NIA Act**"
[18] RC-03/2016/NIA/MUM

cognizance of the offence and on 18 October 2016 committed the case[19] to the Court of ASJ, Nanded.

6 On 23 November 2016, the NIA Mumbai informed the ATS Nanded of having taken over the investigation and sought the papers/records of the case. On 8 December 2016, the ATS Nanded handed over the case papers to the NIA Mumbai. At present, the NIA Mumbai is seized of the matter and is conducting further investigation.

7 During the course of the above events, Naser Bin Abu Bakr Yafai had filed an application on 21 October 2016 before the ASJ, Nanded, under Section 167(2) of the CrPC. In his application, he contended that the offences under the UAPA are scheduled offences under the NIA Act, and hence, the CJM, Nanded had no jurisdiction to pass an order on remand, to take cognizance and pass an order of committal of the proceedings to the ASJ, Nanded since it was not a "Court" established under Sections 11 or 22 of the NIA Act. On 14 November 2016, the ASJ, Nanded rejected Naser Bin Abu Bakr Yafai's application since, at that time, the NIA Mumbai had not taken over the investigation from the ATS Nanded and hence, the ATS Nanded had to continue with the investigation under Section 6(7) of the NIA Act. Therefore, the ATS Nanded, in light of the notifications issued by the Government of Maharashtra, was held to have correctly filed the charge-sheet before the CJM, Nanded who committed the case to trial before the ASJ, Nanded.

[19] Sessions Case No 106 of 2016

8 The appellant filed a criminal writ petition[20] before the High Court of Judicature at Bombay to challenge the order of the ASJ, Nanded. During the pendency of the petition, the NIA Mumbai filed an application[21] under Section 407(2) of the CrPC before the High Court seeking transfer of the records and proceedings in the trial from the ASJ, Nanded to the NIA Special Court, Mumbai on the ground that the NIA Mumbai was taking up further investigation of the case.

9 By judgment and order dated 5 July 2018, a Division Bench of the High Court dismissed the writ petition filed by Naser Bin Abu Bakr Yafai and allowed the application filed by NIA Mumbai and transferred the case from the Court of the ASJ, Nanded to the NIA Special Court, Mumbai. The High Court observed that the power of investigation by the police officer of the State government would cease only after the NIA takes over the investigation of a scheduled offence. Further, in the view of the High Court, the NIA Mumbai had taken over the investigation in the present case only on 8 December 2016, when it had received the papers from ATS Nanded. The High Court also held that the ASJ, Nanded had jurisdiction under the CrPC to try the offences under the UAPA, even though they were scheduled offences under the NIA Act, until the investigation was entrusted to and taken over by the NIA, after which the Special Court constituted under Section 11 of the NIA Act would exclusively try such scheduled offences. Naser Bin Abu Bakr Yafai then filed a special leave petition[22] before this Court challenging the order of the Bombay High Court.

[20] Criminal Writ Petition No 5022 of 2017
[21] Criminal Application No 27 of 2017
[22] "**SLP**"

10 On the other hand, on 4 September 2017, Mohammad Shahed Khan (the appellant in the companion appeal) had written a letter to the Chief Justice of the Bombay High Court for his release and arguing that his detention was illegal since the ATS Nanded could not have filed the charge-sheet once the NIA Mumbai had taken over the investigation. The letter was converted into a writ petition, and is pending before the Bombay High Court.

11 Mohammad Shahed Khan also filed an application for bail before the NIA Special Court, Mumbai on 27 April 2021, which was rejected by an order dated 22 June 2021. While dismissing Mohammad Shahed Khan's application, the NIA Special Court, Mumbai observed that:

> "15. Considering the fact that the issue in respect of jurisdiction for remand, cognizance and committal of the case has already been decided by the Learned Sessions Judge, Nanded and that the same has been confirmed by the Hon'ble Bombay High Court, wherein the applicant was also one of the parties, he cannot be allowed to reopen said issue before this court. Therefore, I am of the view that the application being devoid of substance, deserves to be rejected."

12 Mohammad Shahed Khan then filed an SLP to challenge the judgment and order dated 5 July 2018, though he was not a party to the proceedings before the Bombay High Court.

B Submissions

13 The SLPs which invoke the jurisdiction of this Court under Article 136 have been instituted essentially on two grounds. The first ground is that once the Central government entrusted the investigation to the NIA under Section 6(4) of the NIA Act, ATS Nanded had no jurisdiction to continue with the investigation into a scheduled offence under the NIA Act. The second ground is that since the offences under the UAPA are scheduled offences under the NIA Act, even if investigated by the State Investigating Agency, they would be exclusively triable by a Special Court constituted under the NIA Act and the CJM, Nanded had no jurisdiction to remand the accused persons and commit the case for trial before the ASJ, Nanded.

14 The above submissions have been advanced during the course of arguments by Mr Farrukh Rasheed, Counsel appearing on behalf of Naser Bin Abu Bakr Yafai. Buttressing the submissions, Mr Rasheed urged that:

(i) The expression “Special Court” as defined in Section 2(h) of the NIA Act is to mean a Special Court constituted under Section 11 or, as the case may be, under Section 22;

(ii) Where the Central government issues a direction, upon the formation of an opinion that the offence is a scheduled offence and is fit to be investigated by the NIA, the consequence is provided by sub-Section (6) of Section 6;

(iii) Upon the issuance of a direction under sub-Section (4) or sub-Section (5) of Section 6, neither the State government nor a police officer of the State

Agency investigating the offence can proceed with the investigation and must forthwith transmit the relevant documents and records to the NIA;

(iv) Section 11 empowers the Central government to constitute Special Courts for the trial of scheduled offences, while Section 22 empowers the State governments to constitute Special Courts for the trial of offences specified in the Schedule to the NIA Act;

(v) In the present case, in spite of a direction under Section 6(4), the ATS Nanded continued with its investigation and filed a charge-sheet in breach of the provisions of sub-Section (6) of Section 6; and

(vi) Since all offences punishable under the UAPA are scheduled offences under the NIA Act, the CJM, Nanded is divested of their jurisdiction. Further, since a Special Court was designated by the Government of Maharashtra under Section 22, only that Court had jurisdiction in the present case.

15 Advancing his submissions in the companion appeal, Mr Colin Gonsalves, Senior Counsel appearing on behalf of Mohammad Shahed Khan submitted that:

(i) The registration of an FIR on 14 September 2016 by NIA Mumbai was the beginning of the investigation by them;

(ii) After the FIR was renumbered by the NIA on 14 September 2016, the ATS Nanded continued to investigate and filed a charge-sheet before the CJM, Nanded on 7 October 2016;

(iii) Sub-Sections (4) and (6) of Section 6 of the NIA Act contain three stipulations:

(a) The Central government, where it is of the opinion that the offence is a scheduled offence and is fit to be investigated by the NIA, shall direct the NIA to investigate the offence;

(b) Upon the issuance of such a direction under sub-Section (4), the State government and its Police Officers shall not proceed with the investigation any further; and

(c) The relevant documents and records must be transmitted to the NIA forthwith;

(iv) The NIA Act and the UAPA are criminal statutes of the utmost severity, and there is a statutory obligation upon the NIA and the State Police Agency to collect papers immediately and transmit them to the NIA, respectively;

(v) In the alternative, and even assuming that the State Police could have investigated, the charge-sheet filed before the CJM, Nanded is a nullity because it could have been filed only in the Special Court constituted under Section 22 of the NIA Act; and

(vi) The committal proceedings are also a nullity because Section 16(1) empowers the Special Court to take cognizance of any offence without the committal of the accused to it for trial, and hence the charge-sheet ought to have been filed by the ATS Nanded in a Special Court in view of the provisions of Section 22.

On the basis of the above submissions, Mr Gonsalves, urged that since the charge-sheet was not filed within the stipulated period in a proper court entrusted with

jurisdiction, the accused have an indefeasible right to bail under the provisions of Section 43D of the UAPA.

16 The above submissions have been contested by Mr K M Nataraj, Additional Solicitor General[23] appearing on behalf of the NIA. The ASG urged that:

(i) Sub-Section (7) of Section 6 of the NIA Act declares, for the removal of doubts, that till the NIA takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation;

(ii) The expression "it shall be the duty" connotes that it is obligatory for the officer-in-charge of the police station to continue with the investigation till the investigation is taken up by the NIA;

(iii) In other words, until the State Police is informed or intimated by the NIA of the case having been taken up for investigation, the officer-in-charge of the police station is under a mandate to investigate;

(iv) If the submission which is urged by the appellants is accepted, that would result in a vacuum in the investigation between the date of the issuance of a direction under Section 6(4) and the actual taking over of the investigation by the NIA;

(v) Section 10 of the NIA Act recognises the powers of the State government to investigate scheduled offences;

(vi) Section 13 prescribes that every scheduled offence investigated by the "Agency" shall be tried only by the Special Court within whose local

[23] "**ASG**"

jurisdiction it was committed. The expression “Agency” is defined in Section 2(a) as the “National Investigation Agency” and as a consequence of Section 13, no embargo is placed on any other Court until such time as the scheduled offence is investigated by the NIA;

(vii) The provisions of the NIA Act have to be construed harmoniously so as to achieve its purposes;

(viii) Sections 13 and Section 22 only govern the trial of offences and not pre-trial procedures;

(ix) The enabling provisions under Section 16(1) for a Special Court to take cognizance of any offence without the accused being committed to it for trial would not render the order of the CJM, Nanded a nullity in the present case; and

(x) In this context, the principles which are enunciated in Section 465 of the CrPC would stand attracted.

17 Adopting the submissions of Mr K M Nataraj, Mr Rahul Chitnis, Standing Counsel for the State of Maharashtra urged that:

(i) The mandate of Section 6 is that unless relevant documents and records are transmitted, the NIA would not be construed to have taken up the investigation;

(ii) On 23 November 2016, NIA Mumbai intimated the ATS Nanded to transfer the case records, following which on 8 December 2016, the papers and records were transmitted; and

(iii) While construing the provisions of the NIA Act, which deals with serious offences bearing on national security, no vacuum can be allowed to exist in the investigation. Hence, both the investigation by the ATS Nanded and the filing of the charge-sheet before the CJM, Nanded on 7 October 2016, were before the investigation was handed over to the NIA Mumbai. Therefore, there was no illegality and the appeals should be dismissed.

18 The rival submissions now fall for consideration.

C Provisions of the NIA Act

19 The long title to the NIA Act elaborates upon its object, and the intent of Parliament in enacting the law. According to the long title, the NIA Act is:

> "An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto."

20 Section 2(a) of the NIA Act defines the expression "Agency" to mean the "National Investigation Agency" constituted under Section 3. The expression "Scheduled Offence" is defined in Section 2(g) to mean offences specified in the Schedule to the NIA Act. Section 2(h) defines the expression "Special Court" to mean a Special Court constituted under Section 11, or as the case may be, under

Section 22. Further, words and expressions used but not defined in the NIA Act, but defined in the CrPC, have the meaning assigned to them in the CrPC. The NIA has been constituted as "a special agency" under Section 3(1) for the investigation and prosecution of offences under the enactments specified in the Schedule to the NIA Act. The Schedule to the Act is extracted below:

> "1. The Atomic Energy Act, 1962 (33 of 1962);
>
> 2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
>
> 3. The Anti-Hijacking Act, 1982 (65 of 1982);
>
> 4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
>
> 5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
>
> 6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
>
> 7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
>
> 8. Offences under—
>
> (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
>
> (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860)."

21 The controversy in the batch of appeals before this Court revolves substantially on the interpretation of Section 6 of the NIA Act. Section 6 is extracted below, as it stood before its amendment with effect from 2 August 2019:

> "6. Investigation of Scheduled Offences.—(1) On receipt of information and recording thereof under Section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.
>
> (2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.
>
> (3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.
>
> (4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.
>
> (5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.
>
> (6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.
>
> (7) For the removal of doubts it is hereby declared that till the Agency takes up the investigation of the case it shall be the duty of the officer-in-charge of the police station to continue the investigation."

22 The salient aspects which emerge from the provisions of Section 6 need to be formulated at this stage. They are:

(i) On the receipt and recording of information under Section 154 of the CrPC relating to a scheduled offence under the NIA Act, a report must be forwarded to the State government by the officer in-charge of the police station (sub-Section (1) of Section 6);

(ii) The State government on receipt of the report under sub-Section (1) must, as expeditiously as possible, forward it to the Central government (sub-Section (2) of Section 6);

(iii) The purpose of the first and second steps embodied in sub-Sections (1) and (2) of Section 6 is to enable the Central government to make a decision in terms of sub-Section (3);

(iv) Upon receiving a report from the State government, the Central government must determine within fifteen days, on the basis of the information made available by the State government or received from other sources, whether: *(a)* the offence is a scheduled offence; and *(b)* if it is fit case to be investigated by the NIA, having regard to the gravity of the offence and other relevant factors (sub-Section (3) of Section 6);

(v) If the Central government is of the opinion that the offence is a scheduled offence and it is a fit case to be investigated by the NIA, it shall direct the NIA to investigate the offence (sub-Section (4) of Section 6);

(vi) An overriding power is entrusted to the Central government (evident from the incorporation of a non-obstante provision in sub-Section (5)) to *suo motu* direct the NIA to investigate the offence if it is of the opinion that: *(a)* a

scheduled offence has been committed under the NIA Act; and *(b)* that it is required to be investigated by the NIA (sub-Section (5) of Section 6);

(vii) Upon the issuance of a direction by the Central government under sub-Sections (4) or (5) of Section 6, two consequences emanate under sub-Section (6) of Section 6: *(a)* the State government and any police officer of the State government investigating the offence shall not proceed with the investigation; and *(b)* the relevant documents and records must be transmitted to the NIA forthwith (sub-Section (6) of Section 6);

(viii) By way of abundant caution ("for the removal of doubts"), sub-Section (7) of Section 6 contains a declaration that till the NIA "takes up the investigation of the case", it shall be the duty of the office in-charge of the police station to continue the investigation (sub-Section (7) of Section 6);

(ix) The provisions of sub-Sections (6) and (7) of Section 6 must be read together and in harmony in order to fulfill the purpose and intent of the Parliament in a holistic manner;

(x) The object and underlying purpose of sub-Section (7) is to ensure that there is no hiatus in the course of the investigation. Hence, while sub-Section (6) stipulates a two-fold requirement, that upon the issuance of a direction under sub-Sections (4) or (5) of Section 6 neither the State government nor the police shall proceed with the investigation and must transmit the documents and records to the NIA forthwith, sub-Section (7) imposes a statutory obligation on the officer in-charge of the police station to continue the investigation till the NIA actually takes over; and

(xi) While enacting the provisions of sub-Section (7) of Section 6, the Parliament was conscious of the fact that an interlude may occur between the date of the issuance of a direction and the actual taking up of the investigation by the NIA. However, between the issuance of a direction under sub-Sections (4) or (5) of Section 6 and the actual taking up of the investigation by the NIA, there should be no hiatus in the investigation to the detriment of the interests of national security involved in the enactment of the legislation.

23 As a consequence, sub-Section (7) of Section 6 imposes a duty on the officer in-charge of the police station to continue the investigation till the NIA actually takes up the investigation of the case. The taking up of the investigation by the NIA is evidently in pursuance of the directions issued under sub-Sections (4) or (5) of Section 6. Having regard to the seriousness and gravity of the scheduled offences under the NIA Act, the continuation of the investigation by the officer in-charge of the police station is not a matter of discretion but a mandate imposed by the peremptory words employed in sub-Section (7) of Section 6.

24 Now it is in this backdrop that it would be material to advert to the relationship between the State Investigation Agencies and the NIA, contemplated by the provisions of the enactment. Section 7[24] indicates that while investigating an offence under the NIA Act, the NIA may, having regard to the gravity of the offence and other relevant factors, either:

[24] "7. Power to transfer investigation to State Government.— While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—
(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or
(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence."

(i) Request the State government to associate itself with the investigation, if it is expedient to do so; or

(ii) Transfer the case to the State government for investigation and trial of the offence with the previous approval of the Central government.

25 Section 9[25] mandates that the State government shall extend all assistance and cooperation to the NIA for the investigation of scheduled offences.

26 Further, Section 10 is in the following terms:

> "10. Power of State Government to investigate Scheduled Offences.—Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force."

The plain language of Section 10 indicates that unless there is a contrary provision in the NIA Act, nothing contained in it would affect the powers of the State government to investigate and prosecute any scheduled offence or other offences under any law for the time being in force. Hence, unless the power which is entrusted to the State government by Section 10 to investigate (and prosecute) a scheduled offence under the NIA Act is taken away by a provision of the same statute, that power is preserved by Section 10.

27 Therefore, what emerges is that upon the issuance of a direction under sub-Sections (4) and (5) of Section 6, the State government and a police officer of the

[25] "9. State Government to extend assistance to National Investigation Agency.—The State Government shall extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences."

State government investigating the offence are not to proceed with the investigation and have to forthwith transmit the documents and records to the NIA (Section 6(6)) but equally, it is the duty of the officer in-charge of the police station to continue the investigation till the NIA actually takes up the investigation of the case (Section 6(7)). In other words, the power of the officer in-charge of the police station to continue with the investigation is denuded upon the issuance of a direction under sub-Sections (4) or (5) of Section 6 and the NIA actually taking up the investigation of the case. Thus, both the issuance of directions under sub-Sections (4) and (5) of Section 6 and the NIA actually taking up the investigation of the case would result in the power of the officer in-charge of the police station being denuded. Until then, the power of the State government to investigate and prosecute any scheduled offence, by virtue of the provisions of Section 10, is preserved.

28 Sections 11 to 22 of the NIA Act are comprised in Chapter IV which is titled "Special Courts". Sub-Section (1) of Section 11 provided as follows, before its amendment with effect from 2 August 2019:

> "11. Power of Central Government to constitute Special Courts.—
>
> (1) The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled Offences, constitute one or more Special Courts."

29 Section 13 provides for the jurisdiction of the Special Courts. Sub-Section (1) of Section 13 is in the following terms:

> "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."

30 Section 16 provides for the procedure and powers of the Special Courts. Sub-Section (1) of Section 16 is in the following terms:

> "16. Procedure and powers of Special Courts.—
>
> (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts."

31 Under Section 22, the State government is empowered to constitute one or more Special Courts for the trial of offences under the enactments specified in the Schedule to the NIA Act. Section 22 is in the following terms:

> "22. Power of State Government to constitute Special Courts.—
>
> (1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.
>
> (2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—
>
> (i) references to "Central Government" in Sections 11 and 15 shall be construed as references to State Government;
>
> (ii) reference to "Agency" in sub-section (1) of Section 13 shall be construed as a reference to the "investigation agency of the State Government";

> (iii) reference to "Attorney-General for India" in sub-section (3) of Section 13 shall be construed as reference to "Advocate-General of the State".
>
> (3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.
>
> (4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted."

32 Section 11(1) of the NIA Act empowers the Central government to constitute Special Courts "for the trial of scheduled offences". Under sub-Section (1) of Section 13, every scheduled offence which has been investigated by the NIA shall be tried only by the Special Court within whose local jurisdiction the offence was committed. The exclusive jurisdiction which is conferred on the Special Court to try a scheduled offence investigated by the NIA is amplified by the non-obstante provision which overrides the provisions contained in the CrPC. Section 22(1) empowers the State government to constitute Special Courts for the trial of offences under the enactments which have been specified in the Schedule to the NIA Act, and which have been investigated by the State Investigative Agency.

D Continuation of investigation by the ATS Nanded

33 Having analysed the interplay of the provisions of the NIA Act, we come to the first ground raised in the present appeals. The submission of the appellants is that once the Central government directed the NIA Mumbai to take over the investigation under Section 6(4), the consequence under Section 6(6) was that ATS Nanded could not continue with the investigation (and file a charge-sheet) thereafter. The plain text of Section 6 indicates that the above proposition is incorrect. Sub-Section (4) of Section 6 contemplates a direction by the Central government to the NIA to investigate an offence, where it is of the opinion that the offence is a scheduled offence and that it is fit to be investigated by the NIA. Sub-Section (5) also confers a *suo motu* power on the Central government to direct the NIA to investigate a scheduled offence. Under sub-Section (6), upon the issuance of a direction under sub-Sections (4) or (5) of Section 6, the State government and the officer in-charge of the police station investigating the offence "shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the [NIA]". However, this stipulation has to be read in the context of sub-Section (7), under which the investigation by the officer in-charge of the police station has to continue till the NIA takes up the investigation of the case. Sub-Section (7) is a provision for the "removal of doubts". Such a provision clarifies the intent of the law-maker so as to place it beyond the realm of ambiguity. Hence, on a conjoint reading of sub-Sections (4), (5), (6) and (7) of Section 6, what emerges is that the ATS Nanded had a duty to continue with the investigation till the NIA Mumbai actually

took over the investigation from it. Therefore, we must now determine when did the NIA Mumbai <u>actually</u> commence the investigation in the present case.

34 In order to appreciate when the NIA Mumbai began its investigation, we must first understand the meaning of the term. A three Judge Bench of this Court in **H N Rishbud and Inder Singh** v. **State of Delhi**[26] ("**H N Rishbud**") outlined the various steps of an investigation under the CrPC, while noting that investigation begins once the police receives information that discloses the commission of a cognizable offence. The Court held that investigation encompasses the steps taken by the police to ascertain facts of the case and ends either with the filing of a charge-sheet or a closure report based on such facts. Justice Jagannadhadas held thus:

> "5…**Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case.** By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for

[26] (1955) 1 SCR 1150

use in the manner provided in this behalf in Section 162. Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details. **Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so**

> **taking the necessary steps for the same by the filing of a charge-sheet under Section 173**…"
>
> (**emphasis supplied**)

35 In **Ramsinh Bavaji Jadeja** v. **State of Gujarat**[27], a two Judge Bench of this Court held that the question as to when an investigation commences has to be answered based upon the facts and circumstances of each case, with one of the factors to be considered being whether the actions of the police were guided by information which disclosed the commission of a cognizable offence. Justice N P Singh held:

> "7. **From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case,** especially, when the information of a cognizable offence has been given on telephone. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including details about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of an investigation", covered by Section 162 of the Code. That statement cannot be treated as first information report…"

[27] (1994) 2 SCC 685

36 In **Union of India** v. **Prakash P. Hinduja**[28], another two Judge Bench held that investigation includes all proceedings under the CrPC for the collection of evidence by the police, which ends when there is enough evidence to determine whether to place the accused person before a Magistrate. Justice G P Mathur observed:

> "11…Section 2(h) CrPC defines "investigation" and it includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173 [see State of U.P. v. Bhagwant Kishore Joshi [AIR 1964 SC 221 : (1964) 1 Cri LJ 140] , AIR (para 8) and H.N. Rishbud v. State of Delhi [AIR 1955 SC 196 : (1955) 1 SCR 1150 : 1955 Cri LJ 526] , SCR at p. 1157]."

37 From the above line of cases, what emerges is that an investigation commences upon the receipt of information by the police which discloses the commission of a cognizable offence. However, the mere receipt and recording of such information (through an FIR) by itself does not mean that the investigation has also commenced. Rather, the investigation commences when the police takes the first step (of proceeding to the spot or collecting evidence or speaking to a witness or arresting the accused person) on the basis of such information.

38 In the present case, the investigation was initiated by the ATS Nanded following the registration of the FIR on 14 July 2016, on receipt of source information

[28] (2003) 6 SCC 195

that Naser Bin Abu Bakr Yafai was in contact over the internet with members of IS/ISIS/ISIL/Daesh. This led to the arrest of four accused persons, including Naser Bin Abu Bakr Yafai and Mohammad Shahed Khan. Thereafter, considering the gravity of the offence involved, the Central government directed the NIA Mumbai to take up further investigation of the case on 8 September 2016, exercising its powers under Section 6(4) of the NIA Act. The NIA Mumbai re-numbered the case on 14 September 2016. However, the NIA Mumbai intimated the ATS Nanded to transfer the case records to them on 23 November 2016, and it was only on 8 December 2016 that the records were handed over to the NIA Mumbai by the ATS Nanded. ATS Nanded filed the charge-sheet before the CJM, Nanded on 7 October 2016 (which was prior to even the letter of the NIA Mumbai dated 23 November 2016 for the handing over of the case records). Likewise, the CJM, Nanded took cognizance of the offence and committed the case to trial before the ASJ, Nanded on 18 October 2016.

39 The contention of the ATS Nanded is that the investigation by them until the NIA Mumbai took up the investigation of the case was in terms of the mandate of sub-Section (7) of Section 6 since the provision states that "till the [NIA] takes up the investigation of the case, it shall be the duty of the officer in-charge of the Police Station to continue the investigation". In the present case, the NIA Mumbai intimated the ATS Nanded to transfer the case papers on 23 November 2016, following which the ATS Nanded sent the papers on 8 December 2016. While the NIA Mumbai may have re-numbered the case file on 14 September 2016, it could not have taken the

initial step of its investigation into the case till it had access to the case papers, which it only received from the ATS Nanded on 8 December 2016. Thus, the mere renumbering of the case filed by the NIA Mumbai did not take away the power of the ATS Nanded to continue the investigation. The said authority could do so till the records of the case were received by the NIA Mumbai. Hence, the investigation conducted by the ATS Nanded prior to this was within the mandate of sub-Section (7) of Section 6 of the NIA Act. The said provision is clarificatory in nature so as to remove any doubt about the duty of the officer in-charge of the police station to continue the investigation till the 'Agency', *i.e.*, the NIA Mumbai in the instant case, took up the investigation on receipt of the case papers. Therefore, the continuation of the investigation, and the filing of the charge-sheet upon its conclusion, by the ATS Nanded was in terms of the statutory mandate under Section 6(7) of the NIA Act.

E CJM, Nanded's jurisdiction for remand and committal to trial

40 The second ground which has been urged on behalf of the appellants is that the submission of the charge-sheet before the CJM, Nanded and the order of committal are a nullity since the jurisdiction to investigate the offence was entrusted to the NIA Mumbai and the jurisdiction was vested with the Special Court. The continuation of the investigation by the ATS Nanded has been analysed above and it has been held to be in accordance with the mandate of Section 6(7) of the NIA Act. Now, sub-Section (1) of Section 11 empowers the Central government to constitute

Special Courts "for the trial of scheduled offence". Sub-Section (1) of Section 13 provides that, notwithstanding anything contained in the CrPC, every scheduled offence investigated by the NIA shall be tried only by the Special Court. Hence, the exclusive jurisdiction of the Special Court to try a scheduled offence under sub-Section (1) of Section 13 attaches where the scheduled offence has been "investigated by the [NIA]". Further, sub-Section (1) of Section 16 is an enabling provision which empowers a Special Court to take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such offence. However, this clearly would not affect either the antecedent investigation by the ATS Nanded prior to the NIA Mumbai having taken up the investigation or the submission of the charge-sheet as a logical consequence of the investigation which was conducted by the ATS Nanded. The enabling provisions of sub-Section (1) of Section 16 would not invalidate the submission of the charge-sheet to the CJM, Nanded or the order of committal made to the ASJ, Nanded.

41 In this context, it would be worthwhile to revisit the fundamental principle which was enunciated by the Bench of three learned Judges in **H N Rishbud** (supra). It was held that the cognizance or trial based on it would not necessarily be nullified even in a case where the investigation was found to be invalid. The Court, speaking through Justice Jagannadhadas, held:

> "9...Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not

> necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial…"

The Court held that if therefore cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to an investigation, "there can be no doubt that the result of the trial which follows cannot be set aside unless illegality in the investigation can be shown to have brought about a miscarriage of justice":

> "9… If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Prabhu v. Emperor [AIR 1944 Privy Council 73] and Lumbhardar Zutshi v. King [AIR 1950 Privy Council 26] . These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

42 We must of course clarify that in the present case, the Court is dealing with a situation where the investigation by the ATS Nanded was valid in terms of the provisions of Section 6(7) of the NIA Act.

43 However, a second argument which has been urged by the appellants is that even if the ATS Nanded had the power to continue with its investigation and file a charge-sheet, it could only be before a Special Court under the NIA Act since the appellants have been charged under the UAPA, which is a scheduled offence under the NIA Act.

44 In support of this proposition, reliance has been placed upon a judgment of a three Judge Bench of this Court in **Bikramjit Singh** v. **State of Punjab**[29] ("**Bikramjit Singh**"). In **Bikramjit Singh** (supra), an FIR was registered on 18 November 2018 implicating offences under Sections 302, 307, 452, 427, 341 and 34 of the IPC together with Section 25 of the Arms Act 1959, Sections 3 to 6 of the ES Act and Section 13 of the UAPA. The appellant was arrested on 22 November 2018. After the 90 days period expired on 31 December 2019, the appellant submitted an application for default bail to the Sub-Divisional Judicial Magistrate[30], which was dismissed by an order dated 25 February 2019, on the ground that by an order dated 13 February 2019, the SDJM had already extended time from 90 to 180 days under Section 167 of the CrPC, as amended by Section 43D(2) of the UAPA. The revision petition filed by the petitioner, against the SDJM's order dated 12 February 2019, before the ASJ, which was the Special Court designated under Section 22 of the NIA Act, succeeded on 25 March 2019 with the finding that only the Special Court was competent to pass an order on an application moved under Section 43D(2) of the UAPA. A day subsequent to it, on 26 March 2019, a charge-sheet was

[29] (2020) 10 SCC 616
[30] "**SDJM**"

filed before the Special Court. Thereafter, despite the order dated 25 March 2019, a revision petition filed by the appellant against the order dated 25 February 2019 was dismissed by the Special Court on 11 April 2019, thereby refusing to grant default bail. The High Court then observed that since the investigation was being carried out by the State Police, the Magistrate had the power under Section 167(2) of the CrPC read with Section 43A of the UAPA to extend the period of investigation up to 180 days and then commit the case to the Court of Sessions. In this backdrop, Justice Rohinton F Nariman, speaking for the three Judge Bench, held that a notification by the Government of Punjab had been issued under Section 22 for setting up Special Courts within the State of Punjab on 10 June 2014. After adverting to Sections 13(1) and Section 22(2) of the NIA Act, the Court observed:

> "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 court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone. Thus, under the aforesaid scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself.** The impugned judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts."

(**emphasis supplied**)

The above narration would indicate that the power to extend the 90 days period, indicated by the first proviso to Section 167(2) of the CrPC, up to a maximum of 180 days was vested with "the Court". "The Court", read with the definition contained in Section 2(1)(d) of the UAPA, was held to refer to the Special Court constituted under Section 22 of the NIA Act. Hence, this Court held that the Special Court constituted under Section 22 of the NIA Act had exclusive jurisdiction over every scheduled offence under the NIA Act investigated by the investigating agency of the State.

45 The judgment in **Bikramjit Singh** (supra) has been cited in another three Judge Bench in **M Ravindran** v. **Intelligence Officer, Directorate of Revenue Intelligence**[31]. In that case, the appellant was arrested and remanded to judicial custody on 4 August 2018, for alleged offences punishable under the Narcotic Drugs and Psychotropic Substances Act 1985[32]. After the completion of 180 days from the remand day (31 January 2019), an application for bail was filed on 1 February 2019 under Section 167(2) of the CrPC before the Special Court for exclusive trial of cases under the NDPS Act. After the completion of the arguments of the appellant on the application for bail, the respondent-complainant filed an additional complaint on 1 February 2019, and sought the dismissal of the bail petition on the basis that the investigation was not complete and the charge-sheet had not been filed. The trial Court allowed the application for bail but this was set aside by the High Court, since the additional complaint was filed on 1 February 2019 and the application for bail under Section 167(2) was not disposed of by the time the additional complaint was

[31] (2021) 2 SCC 485
[32] "**NDPS Act**"

filed. Justice M M Shantanagoudar, speaking for the three Judge Bench, referred to the judgment in **Bikramjit Singh** (supra) and observed that so long as the application for the grant of default bail was made on the expiry of the period of 90 days before a charge-sheet has filed, the right to default bail becomes complete. Hence, the Court held that so long as an application has been made for default bail on the expiry of the stated period (before time is further extended to a maximum of 180 days) default bail being an indefeasible right of the accused under the first proviso to Section 167(2) of the CrPC kicks in and must be granted. Applying the law to the facts, the Court held:

> "25. Therefore, in conclusion:
>
> 25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have "availed of" or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.
>
> 25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.
>
> 25.3. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking

> extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.
>
> 25.4. Notwithstanding the order of default bail passed by the court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid."

46 The judgment in **Bikramjit Singh** (supra) has been followed in another recent decision by a three Judge Bench in **Sadique** v. **State of Madhya Pradesh**[33], where it was held that the appellants were entitled to default bail since the CJM, Bhopal had no jurisdiction to extend time for investigation under Section 43D(2)(b) of the UAPA, as such jurisdiction vested only with Special Courts. In **Fakhrey Alam** v. **State of Uttar Pradesh**[34], a two Judge Bench of this Court distinguished **Bikramjit Singh** (supra) in a case where the CJM had granted 180 days for the filing of charge-sheet by accepting the submission that "in State of Uttar Pradesh the competent Court was of the special Chief Judicial Magistrate and it is only recently now about a month back that special Courts had been notified" and by holding that "the situation in the State of Uttar Pradesh is different and it is not as if there were any notified special courts in existence".

[33] Criminal Appeal No 963 of 2021, order dated 7 September 2021
[34] 2021 SCC OnLine SC 532

47 In the present case, the appellants were arrested on 14 July 2016. The charge-sheet was submitted on 7 October 2016. The 90 days period of remand would have been completed on 14 October 2016. Applying the principles enunciated in **Bikramjit Singh** (supra) (in relation to the power of the CJM to extend investigation up to 180 days) to the present case (in relation to the jurisdiction of the CJM in relation to remand and committal of case to trial), the first consideration would be whether there existed a Special Court under Section 22 of the NIA Act to divest the CJM, Nanded of its jurisdiction. The appellants have produced before us various notifications issued by the Government of Maharashtra designating Special Courts under Section 22 for trial of schedules offences under the NIA Act. The earliest of those notifications is dated 13 April 2017. In its counter-affidavit before this Court, the State of Maharashtra has stated that:

> "8…the present Crime No. i.e. 08/2016 has been registered against accused/Petitioner on 14/07/2016. As per record of the office of deponent it appears that till the date of registration of Crime No. 08/2016, the State Government has not established Special Court under Section 22 National Investigation Act, 2008 at Nanded."

Hence, the principle enunciated by this Court in **Bikramjit Singh** (supra) would not apply to the present case since there existed no Special Courts in the State of Maharashtra designated under Section 22 of the NIA Act (since the investigation was being conducted by the ATS Nanded, which had the jurisdiction over the case).

48 We have already held that the continuance of the investigation by the ATS Nanded in terms of Section 6(7) of the NIA Act, till the investigation had been taken up by the NIA Mumbai, was legitimate. A reading of Section 10 of the NIA Act indicates that there is no embargo on the State Investigating Agency to investigate a scheduled offence, which would include offences under the UAPA. Consequently, till the investigation was taken up by the NIA Mumbai, the ATS Nanded was acting within jurisdiction in investigating the offence and filing the charge-sheet in the present case. Both of these took place prior to 8 December 2016, which is when the investigation was handed over to the NIA Mumbai. Admittedly, once the NIA Mumbai took up the investigation, the Special Court designated under Section 11 of the NIA Act would have sole jurisdiction to try the case. In the present case, the NIA Mumbai took up the investigation only on 8 December 2016 after receiving the records from the ATS Nanded, and thereupon it filed an application for transfer of the case from the ASJ, Nanded to the NIA Special Court, Mumbai constituted under Section 11 of the NIA Act.

49 However, till the NIA Mumbai took over the investigation, jurisdiction would reside with a Court which ordinarily had it. The Government of Maharashtra in exercise of powers conferred by Section 11 read with Section 185 of the CrPC issued a notification dated 26 August 2016 designating the CJM, Nanded as the remand court and the ASJ, Nanded as a Special Court for the trial of cases filed by the ATS Nanded. There is no challenge to the notification dated 26 August 2016. In

this backdrop, the CJM, Nanded has been designated as a Court of remand and the ASJ, Nanded as a Special Court under the CrPC for the trial of cases filed by the ATS Nanded. Hence, they both had the jurisdiction to entertain the present case under the UAPA till the NIA Mumbai took over the investigation on 8 December 2016, and sought a transfer of the case to the NIA Special Court at Mumbai constituted under Section 11 of the NIA Act.

F Conclusion

50 For the above reasons, we affirm the judgment and order of the High Court dated 5 July 2018. We hold that, in accordance with Section 6(7), the ATS Nanded was not barred from continuing with its investigation till the NIA Mumbai actually took up the investigation. Further, we hold that the CJM, Nanded could have committed the case to trial before the ASJ, Nanded upon the filing of charge-sheet by the ATS Nanded since they were the designated Courts for the ATS Nanded and no Special Court had been designated by the Government of Maharashtra under Section 22 of the NIA Act.

51 The appeals shall, accordingly, stand dismissed.

52 Pending application(s), if any, stand disposed of.

…..……………………………………...........................J.
[Dr Dhananjaya Y Chandrachud]

…..……………………………………...........................J.
[Vikram Nath]

…..……………………………………...........................J.
[BV Nagarathna]

New Delhi;
October 20, 2021.