



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1208 OF 2022

1. MAHESH RAUT
Aged 36 Years, Indian Inhabitant,
having address at Plot No. 83,
Dhangavdi, Pimpal Road, Nagpur
 2. SUDHIR PRAHLAD DHAWALE
Aged 53 Years, Indian Inhabitant,
having address at Sarnath Tower, A-Wing
7th Floor, Room No. 707, Buddha Nagar
Co-op Housing Society, Nimonibaug,
Govandi, Mumbai
 3. RONA WILSON
Aged 51 Years, Indian Inhabitant,
having address at G-1/H, DDA Flats,
Munirka, New Delhi 110067
(Applicants 1 to 3 are lodged in Taloja Central Prison,
Navi Mumbai)
 4. DR. SHOMA SEN
Aged 64 Years, Indian Inhabitant,
having address at S/5, 2nd Floor,
Ruturaj Apartment, Bharat Nagar,
Amravati Road, Nagpur - 440033.
- Appellants

JYOTI
RAJESH
MANE

Digitally signed by
JYOTI RAJESH
MANE
Date: 2024.07.27
17:40:58 +0530

v/s.

1. National Investigation Agency,
through its Superintendent having
office at Cambala Hills, Peddar Road,
Mumbai.
 2. State of Maharashtra
- Respondents

**ALONGWITH
CRIMINAL APPEAL NO. 1272 OF 2023**

Surendra Pundlik Gadling
Aged 54 years, Occu: Lawyer,
R/o. 79, Misal Layout, Bhim Chauk
Nagpur, Maharashtra.
Currently lodged at Taloja Central
Prison, Navi Mumbai

.... Appellant

v/s.

National Investigation Agency,
through its Superintendent having
office at Cambala Hills, Peddar Road,
Mumbai.

.... Respondent

Mr. Anand Grover, Senior Advocate a/w. Mr. Nihal Singh, Mr. Neeraj Yadav,
Adv. Suson Abhram and Mr. Prathamesh Naik i/b. Mr. R. Sathyanarayanan
Iyer for the Appellant in APEAL/1208/2022.

Mr. Yashodeep Deshmukh, Appointed Advocate a/w. Ms. Vaidehi Pradeep
and Mr. Ameya Tawde for the Appellant in APEAL/1272/2023.

Mr. Devang Vyas, Additional Solicitor General of India a/w. Mr. Sandesh
Patil, Mr. Chintan Shah and Adv. Sheelang Shah for the Respondent -
NIA in both the Appeals.

Dr. Ms. A.A. Takalkar, APP for the Respondent – State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 03rd MAY, 2024.
PRONOUNCED ON : 26th JULY, 2024.**

JUDGMENT :- (PER:- SHYAM C. CHANDAK, J.)

1) Impugned in both Appeals is a common Order dated 28th June
2022, passed by the learned Special Judge, National Investigating Agency,

at Greater Mumbai, below Applications at Exhibits-48 and 49 in Special Case No.414 of 2020, whereby said Applications seeking default bail under Section 167(2) of the Criminal Procedure Code have been rejected. The Application at Exhibit-49 was filed by the Appellants in Appeal No.1208 of 2022 and the Application at Exhibit-48 was filed by the Appellant in Appeal No.1272 of 2023. Hence, both the Appeals have been taken up for disposal by this common Judgment and Order.

2) During pendency of the Appeals, Appellant-Mahesh Raut has been granted bail by this Court. As informed by Mr. Vyas, Appellant-Dr. Shoma Sen has been granted bail by the Hon'ble Supreme Court.

3) Heard Mr. Anand Grover, learned Senior Advocate for the Appellants in Criminal Appeal No.1208 of 2022, Mr. Yashodeep Deshmukh, learned appointed Advocate for the Appellant in Criminal Appeal No.1272 of 2023, Mr. Devang Vyas, learned Additional Solicitor General of India for Respondent-NIA and Dr. Ms. A.A. Takalkar, APP for the Respondent-State. Perused the record and the Affidavits in Reply dated 13th December 2023, additional Affidavits dated 20th and 29th February 2024 by the National Investigation Agency and the Rejoinder on behalf of the Appellant Surendra P Gadling dated 1st March 2024.

4) The facts giving rise to these Appeals are as under :-

4.1) That, on 8th January, 2018 F.I.R. bearing Crime No.04 of 2018 was registered at Vishrambaug Police Station, Pune, under Sections 153A,

505 (1)(b), 117 read with 34 of the Indian Penal Code ('I.P.C.', for short). Offence under Section 120-B of I.P.C. was added to the crime on 6th March, 2018. On 19th May, 2018 offences under Sections 13, 16, 17, 18, 18-B, 20, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 ('U.A.P Act' for short) were also added by the Investigating Agency.

4.2) On 6th June, 2018 all the Appellants came to be arrested in the aforesaid crime. They were produced for 1st remand on 7th June, 2018.

4.3) On 28th August, 2018 four more accused viz., Dr. P. Vara Vara Rao, Vernon Gonsalves, Arun Fereirra and Sudha Bhardwaj were arrested.

4.4) On 30th August, 2018 first Application/report at Exhibit-29 under Section 43D(2)(b) of U.A.P Act was filed by the then Investigating Officer through and containing signature of the Public Prosecutor, seeking extension of time to file charge-sheet against the Appellants. Similar Application at Exhibit-30, purporting to be a report of the Public Prosecutor under Section 43D(2)(b) of U.A.P Act was also filed by the Investigating Officer through and containing signature of the Public Prosecutor. On 2nd September, 2018, the learned Additional Sessions Judge Shri.K.D.Vadane granted the report/Application at Exhibit-30 and extended the time to file the charge-sheet by 90 days. In this regard, the learned Judge considered that, the investigation is in progress. Certain forensic report of electronic record was awaited which was required to investigate the widespread of the crime.

4.5) On 21st September, 2018 all the Appellants filed a Criminal Writ Petition No.4148/2018 before this Court challenging the Order of the Sessions Court dated 2nd September, 2018, whereby time to file charge-sheet was extended by 90 days. This challenge was on the ground that, the Application (Exh.30) for extension of time to file charge-sheet was not strictly a Report under Section 43D(2) of the U.A.P. Act to be filed by the Public Prosecutor. Accordingly, it was prayed (a) to exercise the powers under Section 482 of Cr.PC. and quash and set-aside the Order dated 02nd September, 2018 passed by the learned Special Judge, Pune in C.R. No.04/2018 and (b) consequently Petitioners be released on bail as the Respondents failed to file the charge-sheet within 90 days.

4.6) On 27th September, 2018 the Appellants filed the Applications at Exhibit-49 and 48 respectively for bail under Section 167(2) of Cr.PC. on the ground that, the Application (Exhibit-30) dose not qualify the mandate of Section 43D of the U.A.P. Act. As such it is fact that, till date no Report as per Section 43D of U.A.P. Act r/w. Section 167 of Cr.PC. has been forwarded by the Public Prosecutor. Hence, an indefeasible right of the Applicant/s arisen after the lapse of 1st 90 days i.e., on 5th September, 2018 as per the mandate of Section 43D of U.A.P. Act r/w. Section 167 of Cr.PC., as no charge-sheet was filed within 90 days.

4.7) On 24th October 2018, a learned Single Judge of this Court allowed the Criminal Writ Petition No.4148/2018 but only in terms of

prayer clause (a) holding that, the Application at Exhibit-30 for extension of time to file the charge-sheet was not a Report under Section 43D(2) of the U.A.P. Act to be filed by the Public Prosecutor and hence set-aside the Order passed by the Sessions Court dated 2nd September, 2018.

4.8) On 25th October, 2018, the State of Maharashtra filed a S.L.P. No.9199 of 2019 and challenged the said Order of the learned Single Judge passed on dated 24th October, 2018 in the Writ Petition No.4148 of 2018.

4.9) On 15th November, 2018, the charge-sheet came to be filed against all the Appellants.

4.10) On 22nd November, 2018 Respondent No.1 filed an Application below Exhibit-33, seeking extension of time to file charge-sheet against co-accused Dr. P. V.V. Rao, Vernon Gonsalves, Arun Fereirra and Sudha Bhardwaj.

4.11) On 26th November, 2018 accused Sudha Bhardwaj filed an application at Exhibit-43 for bail under Section 167(2) of Cr.P.C. as 90 days period from the date of her arrest and production before Court had expired, however no charge-sheet was filed against her. Her co-accused Dr. P. V.V. Rao, Vernon Gonsalves and Arun Fereirra also filed separate Applications for bail on the same ground *vide* Bail Application No.4965/2018, Bail Application No.4966/2018 and Bail Application No.4967/2018.

4.12) On 26th November, 2018 itself the learned Additional Sessions Judge, allowed the Application at Exhibit-33 and extended the time period

to file charge-sheet by 90 days against the said four accused and also extended their period of detention.

4.13) On 13th February, 2019 the Hon'ble Supreme Court allowed the S.L.P. No.9199 of 2019. The Hon'ble Supreme Court observed that, the first document (Application at Exhibit-29), purporting to be the Application of the IO, contains the reasons for such extended period of investigation but the second document (Application at Exhibit-30) details out the grounds in extenso and cannot be said to be only a mere reproduction of what is stated in the first document. It cannot, thus, be said that there has been complete absence of application of mind by the public prosecutor. The second document in the form of an application has been filed on the same day. It is on the analysis of the first document that, the second document was filed. There were averments in the second application referring to the progress of the investigation and the public prosecutor had the benefit of scrutinising the papers. There were additional and expanded grounds set out in the second document. The second document contains a clear endorsement of the public prosecutor in support of the averments made therein.

4.13.1) In view thereof, the Hon'ble Supreme Court held that, there has been, as per the comparison of the two documents, an application of mind by the public prosecutor as well as an endorsement by him. The infirmities in the form should not entitle the Respondents (Appellants) to the benefit of a default bail, when in substance there was application of

mind. The detailed grounds certainly fall within the category of “compelling reasons”. Therefore, their Lordships set aside the Judgment and Order of the learned Single Judge of this Court passed on 24th October 2018, in Criminal Writ Petition No.4148/2018 and held that, the Respondents would not be entitled to the benefit of default bail.

4.13.2) Thus, the Apex Court restored the Order dated 2nd September, 2018 passed by learned Additional Sessions Judge thereby granting extension of time to file charge-sheet against the Appellants. However, it was clarified that since the charge-sheet has been filed, any observations made in the said Order, would not, in any manner, affect the right of the Respondents (Appellants) to seek regular bail from the trial Court, if so advised, which would be decided on its own merits by the trial court.

4.14) On 17th May, 2019 all the nine accused filed two Applications *vide* Exhibits-163 and 164 for their release on statutory bail under Section 167(2) of Cr.P.C. on the ground of filing incomplete charge-sheets on 15th November, 2018 and 21st February, 2019 respectively.

4.15) On 21st June, 2019 all the said 9 accused filed a common application at Exhibit-169 for bail under Section 167(2) of Cr.P.C. read with 43(D)(2) of U.A.P Act on the ground that, the learned Additional Sessions Judge, Pune had no jurisdiction to take cognizance of the report of police/crime.

4.16) On 5th September, 2019 the learned Additional Sessions Judge,

Pune rejected the application at Exhibit-169.

4.17) On 16th October, 2019 except accused Sudha Bhardwaj, the rest eight accused challenged the Order below Application Exhibit-169 by filing Criminal Application No. 1458 of 2019.

4.18) On 6th November, 2019, by way of a common Order, the learned Additional Sessions Judge, Pune rejected the Application at Exhibits-163 and 164 alongwith default bail application of co-accused Dr. P. V.V. Rao, Vernon Gonsalves, Arun Fereirra & Sudha Bhardwaj i.e., B.A.Nos. 4965/2018, 4966/2018, 4967/2018 and Bail Appln. Exhibit-43.

4.19) On 2nd June, 2021 accused Sudha Bhardwaj filed Criminal Bail Application No.2024/2021 before this Court challenging the Order dated 6th November, 2019, thereby rejecting her application for bail at Exhibit-43 and sought quashing and setting aside the Order dated 26th November 2018, Order dated 21st February, 2019 of taking cognizance of the charge-sheet filed against her and for default bail under Section 167 (2) of Cr.PC. It also challenged the order dated 5th September, 2019 whereby the Court of Additional Sessions Judge rejected the Application at Exhibit-169. Said prayers were mainly based on two grounds viz., (i) the Order dated 26th November 2018 was without jurisdiction as only notified Special Judge was competent to pass such Order and (ii) the said Court of Additional Sessions Judge was not competent to take cognizance of the charge-sheet/crime.

4.20) On 1st December, 2021 a Division Bench of this Court passed a

common Judgment and Order whereby Criminal Bail Application No.2024/2021 filed by Sudha Bhardwaj for default bail was allowed for the reason that the Order dated 26th November, 2018 passed by the learned Additional Sessions Judge below the Report at Exhibit-33 was without jurisdiction. Till that date, no charge-sheet was filed against the said four accused (second group). There was no lawful Order of extension of the period of detention. However, the plea for default bail of the accused No.1 to 8 including the Appellants in Criminal Application No. 1458/2019 came to be rejected by the Division Bench holding that, other than accused Sudha Bhardwaj no Applicants had availed the right by filing the Application after expiry of initial period of 90 days and before filing of the charge-sheet.

4.21) The Order in respect of accused Sudha Bhardwaj was challenged by the Respondents in S.L.P No. 9423 of 2021 before Hon'ble Supreme Court. However, the same came to be dismissed.

4.22) On 14th January, 2022 Interim Application No.162/2022 in Criminal Application No. 1458/2019 was moved by co-accused Vara Vara Rao, Vernon Gonsalves and Arun Fereirra seeking for review/modification of the common Judgment and Order dated 1st December, 2021 by bringing on record the fact that, they had filed the Applications for default bail on 30th November, 2018 *vide* B.A.No.4965/2018, B.A.No.4966/2018 and B.A. No.4967/2018 prior to the filing of the supplementary charge-sheet on 21st February, 2019. In this regard they highlighted the observations in

paragraph Nos.146 & 149 of the said common Judgment and Order dated 1st December, 2021 and prayed that the said Applicants be released on default bail on parity with Sudha Bhardwaj. Said paragraphs 146 and 149 read as under :-

“ 146. Evidently, neither applicant Nos.1 to 5 claimed to have filed an application for default bail under section 167(2) of the Code, after the expiry of initial period of 90 days from the date of their production before the learned Additional Sessions Judge on 7th June 2018 till the filing of the charge-sheet on 15th November 2018. Nor the applicant Nos.6 to 8 preferred such application till the filing of the supplementary charge-sheet, qua them on 21st February 2019, after the expiry of initial period of 90 days.

149. In this view of the matter, so far as the applicant Nos. 1 to 5 in Application No.1458 of 2019, the aspect of legality or otherwise of the extension of period of detention is of no relevance as the applicants did not avail of the said right to be released on default bail before the charge-sheet was filed against them on 15th November 2018. In the case of applicant Nos. 6 to 8, though we have held that the order passed by the learned Additional Sessions Judge on the report (Exh.33) on 26th November 2018 was without jurisdiction, yet the said declaration is of no assistance to the applicant Nos.6 to 8 as they did not avail of the right to be released on default bail by filing an application, after the expiry of the initial period of 90 days and before the lodging of the charge-sheet on 21st February 2019. Resultantly, a crucial condition of ‘availing of’ the right so as to cement it as an indefeasible right, has not been fulfilled and the right stood extinguished by the filing of the charge-sheet on 21st February 2019. Failure to take cognizance or defect in jurisdiction in taking cognizance, once the charge-

sheet was laid, does not entail the consequence of default bail. ”

4.22.1) On 4th May 2022, Interim Application No. 162/2022 was rejected by the Division Bench of this Court with following observation :-

“ 31. The situation which thus emerges is that the case now sought to be urged in the review application was nowhere pleaded or canvassed before the Court till the application came to be decided.

32. On the basis of the material which was placed before us, over which there is no controversy, we observed in paragraph 146 of the judgment (common judgment) that neither applicant Nos. 1 to 5 claimed to have filed an application for default bail.....nor the applicant Nos.6 to 8 preferred such application till filing of the supplementary charge-sheet. In our view, our observations in paragraph Nos.146 to 149 to the extent they reflect upon the applicants herein having not availed of right to be released on default bail, are based on the record which the applicants had placed before us.

33. To put it in other words, the case now sought to be urged was not at all argued, much less, pleaded before the Court. The copies of bail application Nos.4965 of 2018, 4966 of 2018 and 4967 of 2018, which are annexed to the Review Application, were neither placed before the Court nor referred to in Criminal Application No.1458 of 2019. We, therefore, find it difficult to accede to the submission on behalf of the applicants that a factual error had crept in. A re-hearing of the matter on a point which was not at all urged, is impermissible in law, under the guise of review. Nor can review be claimed or asked for merely for a fresh hearing or canvassing a totally new

submission. It is trite that disguised as a review, it is not permissible even for an erroneous decision to be, "re-heard and corrected".

34. Thus, in our view, no case for exercise of review jurisdiction is made out. Since an apprehension was expressed that the observations in paragraph No.146 and 149 of the judgment and order, under review, extracted above, may operate to the prejudice of the applicants, we clarify that the observations were based on the case pleaded, documents placed and submissions canvassed before us, while deciding the said application. ”

4.22.2) On 28th June, 2022 the Applications for default bail at Exhibit-49 and 48 were dismissed by the learned Special Judge, NIA for the reason that, the ground on which the present applications are seeking default bail has been already considered by this Court when it decided the Criminal Application No.1458/2019. The Appellants have no proprietary right to raise and agitate the same ground in the present application. Certain grounds raised do not find place in the said Applications. The issue raised was already decided by the learned Special Judge Pune while deciding the applications at Exhibit 163 and 169. The Interim Application No. 162/2022 has been rejected by this Court.

Submissions :-

5) Learned Senior Advocate Mr. Grover submitted that, after their arrest when the Appellants were produced for the 1st and 2nd Remand before the learned Additional Sessions Judge, on those occasions itself the

Appellants had raised the issue of jurisdiction. The Order of extending the custody of the Appellants and their four co-accused beyond the period of 90 days and the Order of extension of time to file charge-sheet against them were passed by the same Additional Sessions Judge Mr. K. D. Vadane, at Pune. Admittedly, at that time, the Special Court having jurisdictional competence to extend the said period of custody beyond 90 days period to facilitate submission of charge-sheet and try the said crime was very much available at Pune District Court. In view of this fact, by the common Order dated 1st December 2021, the Order dated 26th November, 2018 of extending the time by 90 days to file charge-sheet against Sudha Bhardwaj and 3 co-accused and extending their custody period beyond the period of 90 days was held as illegal by the co-ordinate bench of this Court. Accordingly, Sudha Bhardwaj was granted bail in Criminal Bail Application No.2024/2021. However, the said co-accused with her, whose case was similar to her as they also had filed their Application for default bail before filing of the charge-sheet within the extended period of 90 days, were not granted the same relief of bail by this Court holding that, they failed to avail that right. The factual position, however, was to the contrary. Yet, for not pleading that fact in Criminal Application No.1458 of 2019, the Interim Application No.162/2022, filed by the 3 co-accused of Sudha Bhardwaj, seeking for review of the Common Order in Criminal Application No.1458/2019 and Criminal Bail Application No. 2024/2021 was rejected.

5.1) Learned Senior Advocate submitted that, when the Division Bench of this Court passed the common Order on 1st December 2021, the Application of the Appellants at Exhibits 48 and 49 were pending. The jurisdictional competence of the learned Additional Sessions Judge to extend the time by 90 days to file the charge-sheet against them and to extend their custody period, was not in question till the decision of the Hon'ble Supreme Court was passed On 13th February, 2019 in S.L.P. No.9199 of 2019. Thereafter, the Hon'ble Supreme Court in the case of Bikramjit Singh v/s. State of Punjab, reported in (2020) 10 SCC 616 held that, in the absence of any designated Court by notification issued by either the Central Government or the State Government, the fall back is upon the Court of Sessions alone. The Hon'ble Supreme Court also held that, filing of another application seeking default bail, does not wipe out the earlier application even if it is decided (subsequent application). In this background, the Appellants deserve for bail, submits the learned Senior Advocate.

5.2) Learned appointed Advocate Mr. Deshmukh for the Appellants in Criminal Appeal No.1272/2023 has adopted the above arguments by Mr. Grover.

5.3) Learned Additional Solicitor General, Mr. Vyas submitted that, after the Hon'ble Supreme Court restored the Order dated 2nd September, 2018 passed by the learned Additional Sessions Judge, the applicants have

not followed up with the Applications at Exhibit-48 and 49. The same were requested to be taken up only after this Court granted the bail to accused Sudha Bhardwaj by the common Order dated 1st December, 2021. Thus, the facts of the case in hand are materially distinct from the facts of case of Bikramjeet (*supra*). In the Criminal Application 1458 of 2019 these Appellants had not pleaded that, their Applications at Exhibit-48 and 49 were pending. As such, allowing the present Appeals would amount to reviewing the said common Order dated 1st December, 2021 of this Court, which plea has been already rejected *vide* Order dated 4th May, 2022. He submitted that, in this background both the Appeals fail and hence the same be dismissed.

5.4) Learned APP Dr. Ms. Takalkar for Respondent-State has adopted the above submissions by Mr. Vyas.

6) Before advertng to the question that surfaced from the rival submissions in the case in hand, first, we deem it appropriate to refer to the decision in *Bikramjit Singh* (*supra*). In this reported case, pursuant to F.I.R. dated 18.11.2018, involving Sections 302, 307, 452, 427, 341, 34 of the I.P.C. read with Section 25 of the Arms Act, 1959, Sections 3, 4, 5, 6 of the Explosive Substances Act, 1908 and Section 13 of the U.A.P Act, the Punjab State Police apprehended the Appellant Bikramjit Singh, on 22.11.2018. The Application for default bail filed by the Appellant was dismissed on 25.02.2019 on the ground that the learned Sub-Divisional Judicial

Magistrate, Ajnala had, by an Order dated 13.02.2019, already extended time from 90 days to 180 days under Section 167 of Cr.PC. as amended by Section 43-D (2) of the U.A.P. Act. This Order dated 13.02.2019 was set aside in a revision petition, by an Order dated 25.03.2019, passed by the learned Additional Sessions Judge being the Special Court set up under the N.I.A. Act, and as the State Government had notified the Court of Sessions or Court of Additional Sessions Judge, in every district to try the said cases. Therefore, the Application for seeking extension of time for filing challan was not maintainable before the *Ilaqa* Magistrate.

6.1) By the impugned Judgment dated 30.10.2019, the High Court held that It is not the case that the investigation was conducted by the agency under Section 6 of the N.I.A. Act and till committal of the case to the Court of Sessions, as per Section 22 (3) of N.I.A. Act, it cannot be said that the Magistrate has no power and therefore, the order dated 25.03.2019 suffers from illegal infirmity. Additionally, the High Court also considered that the challan was already presented.

6.2) In view of the aforesaid facts, the Hon'ble Supreme Court held that, all scheduled offences under the U.A.P. Act, 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 fall back is

upon the Court of Sessions alone. Thus, under the aforesaid Scheme what becomes clear is that, so far as all offences under the U.A.P. Act are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43D(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 N.I.A. Act. Also, the impugned Judgment has missed Section 16(1) of the N.I.A. 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.

7) In the case in hand, it is an admitted fact that, the Applications at Exhibits-48 and 49 were filed after passing of the Order dated 2nd September, 2018 by the learned Judge whereby he extended the time by 90 days to file the charge-sheet against the present Appellants and extended their remand on expiration of the 1st 90 days period, after their 1st remand. It is also admitted fact that, since inception the notified Court of the Special Judge was available at Pune to deal with the aspects of remand of the accused, extension of time to file charge-sheet against them and trial of this crime. Nevertheless, till the crucial stage *i.e.*, extension of time to file charge-sheet against both the groups of accused (5 + 4), the business was handled by the Court of the regular Additional Sessions Judge, not by the

Special Judge notified for the said judicial functions.

8) Yet, with respect, we find it difficult to apply to the case in hand the principle laid down in the case of *Bikramjit Singh* (supra) and the observations of the Division Bench of this Court in the said common Judgment and Order, which is obviously very elaborate and painstaking. In other words, applying the ratio in the aforesaid decision, these Appeals cannot be considered in favour of the Appellants because, when this Court heard the Criminal Application No.1458 of 2019 along with Criminal Bail Application 2024 of 2021, the parties appeared in the matter, did not point out to the Division Bench the Judgment and Order dated 13th February, 2019 passed by the Hon'ble Supreme Court whereby the Order dated 2nd September, 2018 passed by the learned Additional Sessions Judge below the report Exhibit-30, was restored and thus, the extension of time by 90 days to file charge against the Appellants was held valid. Consequently, after expiration of the 1st 90 days from their 1st remand, their further remand cannot be termed as illegal. And most importantly, meanwhile the charge-sheet came to be filed on 15th November, 2018. As a necessary corollary thereof, the Hon'ble Supreme Court held that, the Appellants were not entitled for default bail.

9) No doubt, in the Judgment and Order dated 13th February, 2019, the jurisdictional competence of the learned Additional Sessions Judge to pass the said Order dated 2nd September, 2018 was neither in

question nor it was co-incidentally examined. Yet, this circumstance will not be sufficient to reopen the question as to whether the Appellants were entitled for default bail or not. Because, principally, the Application at Exhibit-48 and 49 were not based on the jurisdictional incompetence of the learned Additional Sessions Judge thereby prohibiting him from entertaining the Application-cum-Report under Section 43-D(2)(b) at Exhibit-30 but the said Applications were based on the premise that, the said report at Exhibit-30 was not equal to a report under Section 43-D(2)(b) expected from the Public Prosecutor appearing in the matter.

10) It is significant to note that, when this Court heard the Criminal Application No.1458 of 2019 along with Criminal Bail Application 2024 of 2021 and decided it by a common Judgment and Order dated 4th May 2022, the fact that the Applications at Exhibit-48 and 49 were pending was not brought to the notice of this Court. As noted above, only because the Applicants in I.A. No.162 of 2022 did not plead the fact of rejection of their B.A.Nos. 4965/2018, 4966/2018 and 4967/2018 seeking default bail, the same Division Bench of this Court declined to entertain their prayer in the said Application to review the said common Judgment and Order. As such, allowing these Appeals would not only amount to reviewing the Judgment and Order dated 13th February, 2019 but also the said Judgment and Order in IA No.162 of 2022. This, in our considered opinion, would be judicial impropriety. Moreover, with the restoration of the Order dated 2nd

September, 2018 by the Hon'ble Supreme Court, the Application at Exhibits 48 and 49 had become infructuous.

11) Summary of the aforesaid discussion is that, the validity of the Order dated 2nd September, 2018 has been upheld by the Hon'ble Supreme Court by its Judgment and Order dated 13th February, 2019 and thereby declined the request of the Appellants to grant the relief of default bail. The Appellants, therefore, cannot claim parity based on the said common Judgment and Order dated 1st December, 2021 as at that time, the parties did not point out to the Division Bench the said Judgment and Order dated 13th February, 2019. As such, we find no illegality or any perversity in the impugned common Order so as to interfere with the same.

12) In view thereof, there is no substance in the Appeals. As a result, both the Appeals are liable to be dismissed and are accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)