

GAHC010066072020



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

Case No. : CrI.A. 121/2020

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

VERSUS

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

Counsel for the appellant : Mr. D. Saikia, Senior Counsel,
Mr. S.C. Keyal,
Standing Counsel, NIA

Counsel for the respondent : Mr. Z. Kamar, Senior Advocate
Mr. S. Borthakur

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

07-04-2020

(Ajai Lamba, CJ)

1. We have heard Mr. D. Saikia, learned senior counsel and Mr. S.C. Keyal, learned Standing Counsel, NIA appearing for the appellant. Also heard Mr. Z. Kamar, learned senior counsel assisted by Mr. S. Borthakur, Advocate appearing for the respondent.

The Court proceedings have been conducted by means of creating a Virtual Court with the help of technology, so as to maintain distance between the staff, Advocates and the Presiding Judge.

This appeal filed at the instance of National Investigation Agency, Ministry of Home Affairs, Government of India, under Section 21(1) of the National Investigation Agency Act, 2008 (for short, 'the Act of 2008'), challenges order dated 16th March, 2020 passed by the Special Judge, NIA, Assam.

Vide the impugned order, the application (No.492 of 2020 dated 12.3.2020) filed by Special Prosecutor, National Investigation Agency (for short 'NIA') under Section 43-D (2)(b) of the Unlawful Activities (Prevention) Act, 1967, (for short, 'the Act of 1967') has been dismissed.

2. Before we proceed further, we would like to make a reference to the prayer made by the NIA through Special Public Prosecutor in the application dated 12th March, 2020, which has been dismissed vide the impugned order.

The prayer in verbatim reads as under :

“ (a) to extend the period of investigation upto 180 days in terms of section 43D(2)(b) of the UA(P) Act in the interest of investigation of this case at this stage;
(b) to extend the period of Judicial Remand of accused Akhil Gogoi upto 180 days in terms of section 43D(2)(b) of the UA(P) Act in the interest of investigation of this case at this stage.”

3. The skeleton of facts that need to be considered for considering the controversy are that –

(a) *Inter alia* it is the case of the NIA that initially FIR No.1688/2019 dated 13th December, 2019 was registered at Chandmari Police Station, District – Kamrup (Metro), Guwahati, Assam. The investigation was conducted in the said Police Station. Subsequently, in compliance of Ministry of Home Affairs, Government of India order dated 14th December, 2019, the NIA re-registered a case

vide the FIR No. RC-13/2019/NIA-GUW dated 14.12.2019 under Sections 120B, 124A, 153A, 153B of IPC and Sections 18 and 39 of the Unlawful Activities (Prevention) Act, 1967.

(b) It is the case of NIA that during course of investigation, it was revealed that the respondent Akhil Gogoi has an association with CPI(Maoist) which stands established from the statement of protected witnesses recorded under Sections 161 and 164 of the Code of Criminal Procedure.

(c) It is further the case of the NIA that the respondent accused and his associates in furtherance of criminal conspiracy to use the passage of Citizenship Amendment Bill in Parliament as an opportunity, with the intention to further the activities and agenda of CPI (Maoist), by arranging meetings secretly, and issuing instructions over phone to the co-accused members, blocked supplies and services which are essential to the life of community in India. With the use of indiscriminate violence in various parts of the State, and further to create disharmony, inciting, abetting hatred and disaffection and enmity between different groups on grounds of religion, race, residence, language and so as to disturb harmony and national integration, endangered security and sovereignty of the State.

(d) It is the case of the NIA that the investigation revealed that the crime is spread over various districts of Assam. Cadres of Krishak Mukti Sangram Samity (KMSS) of which the respondent is the leader on the instructions of respondent-accused carried out several indiscriminate acts of violence in various parts of the State prior to 13th December, 2019 leading to causing of disruption to the essential supplies.

(e) It is the case of the NIA that in the course of investigation one Samsung Tablet was seized from the respondent accused on 15th December, 2019. Data from the gadget was extracted by CERT-In and sent for examination on 4th of March, 2020. The contents thus recovered at this point in time are under scrutiny for translation and verification of the contents.

The respondent/accused is required to be confronted with the material thus recovered, for

effective and fair investigation.

(f) The investigation reveals that the respondent and his gang members were near the place of occurrence during the days preceding such incidents for organizing meetings and giving instructions over mobile phone to the co-accused and each other. The telephonic transcribes have been collected from the Special Branch, Kahilipara, Guwahati, Assam.

The voice sample of the respondent/accused is required to be taken for comparison.

(g) The evidence collected during investigation includes revelation made by key witnesses whose statements have been recorded under Sections 161 and 164 Cr.P.C. The statements clearly reveal that the respondent accused issued directions for complete blockade of highways, rail, transport, etc. leading to disruption of essential supplies.

(h) It is the case of the NIA that the investigation has established the antecedents of respondent accused who issued directions to 5 KMSS members in the year 2009 to undergo training in the unit of frontal CPI (Maoist) at Odisha for a period of one month.

(i) It is the case of the NIA that the respondent accused with his associates of KMSS committed acts of terror to achieve organizational aims of CPI (Maoist) and spread terror and disturb unity in India.

(j) It is the case of the NIA that investigation has established links of the respondent with banned organization CPI (Maoist).

4. In the appeal, it has further been pleaded that the investigation could not be concluded within 90 days and, therefore, in terms of Section 43-D (2)(b), an application/petition No.492/2020 dated 12th March, 2020 was filed by Special Public Prosecutor for NIA to allow the investigating agency further period of 90 days for investigation; and extend the period of judicial remand upto 180 days in

the interest of fair and effective investigation, which has been dismissed vide the impugned order.

5. When the matter came up for hearing before this Court on 17th March, 2020, the following order was passed :

“Heard Mr. S.C. Keyal, learned Standing Counsel, NIA for the appellant as well as Mr. Z Kamar, learned Senior Counsel representing the sole respondent.

This appeal under section 21 (1) of the National Investigation Agency Act, 2008 puts a challenge to the order dated 16.03.2020 passed by the Judge, Special Court, NIA, Assam in NIA Case No.01/2020, arising out of RC-13/2019/NIA-GUW. The said order was passed rejecting the Petition No.492/2020 filed by NIA under the proviso to sub-clause (b) of sub-section (2) of section 43 D of the Unlawful Activities (Prevention) Act, 1967.

The appellant is aggrieved of that part of the order whereby prayer for extension of the remand of the respondent beyond 90 days has been rejected.

*Mr. Kamar, at the very outset objects to the maintainability of the appeal under section 21(1) of the National Investigation Agency Act, 2008 on ground that the order so impugned being in the nature of an interlocutory order, no appeal lies in view of sub-section (3) of section 21 of the aforesaid Act, 2008. To buttress the point, Mr. Kamar also relies upon a Division Bench judgment of this Court in *Jai Kishan Sharma and Anr. V. Union of India*, reported in 2020 (1) GLT 122. Mr. Kamar also submits that the statutory 90 days period having expired yesterday i.e. 16.03.2020, the respondent is entitled to default bail and, in fact, bail order in connection with the case in question has already been passed by the trial court today and bail bond in that regard has also been furnished.*

For the purpose of deciding this appeal, subject to the objection with regard to its maintainability, a deeper consideration would be required as to whether the Report of the Public Prosecutor was adequate and sufficient for allowing the petition with regard to extension of the period of detention of the respondent beyond 90 days.

Having regard to the above, let Notice be issued.

No fresh steps are required to be taken as the sole respondent is already

represented.

Matter be posted for Admission during the 1st week of April, 2020.”

6. A bare perusal of the above extracted order would indicate that essentially two issues have culled out of the contentions of learned counsel for the appellant and learned counsel for the respondent.

The first issue is in regard to maintainability of the appeal under Section 21(1) of the Act of 2008 on the ground that the order passed by the Trial court is in the nature of 'interlocutory order' and no appeal would lie against such order under sub-section (3) of Section 21 of the Act of 2008. For the said proposition of law, learned counsel for the respondent relied on 2020 (1) GLT 122, Jai Kishan Sharma and another Vs. Union of India.

This Court, therefore, at first is required to consider the legal issue viz. whether the impugned order is appealable or not ?

7. Section 21 of the Act of 2008 reads as under :

“21. Appeals - (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

(Emphasized by us)

8. At this juncture, we deal with the legal aspect of the matter first.

9. We have carefully gone through the judgment rendered by this Court in Jai Kishan Sharma's case (supra).

In the said case, the Special Judge at Yupia, Arunachal Pradesh, after hearing the prosecution and the accused vide the order dated 14th November, 2019 "**extended**" the period of detention of the accused from 90 days to 180 days, considering the grounds for such extension. The accused, therefore, preferred an appeal before the High Court in challenge to extension of remand. The Public Prosecutor raised the issue of maintainability of the appeal while referring to Section 21 (supra) of the Act of 2008 on the plea that the order was interlocutory in nature. The Court while referring to judgment of Hon'ble Supreme Court of India in V.C. Shukla Vs. State through C.B.I, 1980 Supp. SCC 92, and another judgment of this Court in 2013(3) GLT 249, Londhoni Devi and others Vs. State, held the order of extension of remand to be an interlocutory order and, consequently, dismissed the appeal as being not maintainable.

10. Learned counsel for the NIA/appellant has vehemently argued that a detailed reference is required to be made to various judgments rendered by Hon'ble Supreme Court of India in regard to the legal issue, as to whether the order such as challenged by virtue of this appeal is an interlocutory order; or is an order which would be appealable under Section 21(1) and (3) of the Act of 2008.

It has been pleaded that since detailed arguments will have to be addressed on the issue, therefore, let this appeal be admitted, because evidently it requires detailed consideration. However, operation of the impugned order be stayed so that investigation can be conducted by the investigating agency/appellant. It has been pleaded in reference to the prayer made in the application (extracted in earlier part of this order) that right to investigate has been taken away by the Trial Court by virtue of the impugned order. If investigation is not allowed to be conducted, it shall defeat the right of the investigating agency to bring the accused to justice through trial.

11. Learned counsel for the respondent, on the other side, contends that judgment rendered by this Court in Jai Kishan Sharma's case (supra) is specifically on the issue and, therefore, the legal issue having been decided by this Court by a Division bench, the appeal be dismissed as being not maintainable.

12. We have given considerable thought to the legal pleas raised, as recorded above. Prima facie on going through order rendered by this Court in Jai Kishan Sharma's case (supra), we find that the order in question before the Court for consideration was vide which the remand period had been **extended** from 90 days to 180 days on the application of the investigating agency. Therefore, the proceedings/investigation by the investigating agency was allowed to continue. In the case in hand, however, we find that the order under challenge is at the instance of the investigating agency by virtue of which the remand period has **not been** extended. Thus, investigation/proceedings have been put to an end by virtue of the order impugned in this appeal. Therefore, prima facie right of the investigating agency to investigate the conduct of the respondent appears to be substantially effected. Thus, the decision by virtue of rejection of the application finally disposed of the matter relating to extension of remand under Section 43-D(2) of the Act, 1967.

We would like to make a reference to the most relevant portions of the judgment rendered by

Hon'ble Supreme Court of India and Gujarat High Court in relation to the issue what is an interlocutory order.

“In the case of Amar Nath v. State of Haryana, (1977) 4 SCC 137 at page 142

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Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code.

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But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.”

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If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial.”

In Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 at page 557(3 Judge Bench)

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“An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely

directs how the declaration of right already given in the final judgment, are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals".

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"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

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The order can be said to be a final order only if, in either event, the action will be determined.

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In such a situation it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case, but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders.

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It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two.

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We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must

be taken to be an order of the type falling in the middle course."

In V.C. Shukla v. State through CBI, 1980 Supp SCC 92 at page 115 (4 judges Bench):

"24. To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia, J. in the case of *Madhu Limaye v. State of Maharashtra* [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : (1978) 1 SCR 749] clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in *Corpus Juris Secundum*, Vol. 60.

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(3) that one of the tests generally accepted by the English courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue, because, in our opinion, the term 'interlocutory order' in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi-final orders;"

In State v. N.M.T. Joy Immaculate, (2004) 5 SCC 729 at page 738 (3 judges Bench):

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*The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in *Madhu Limaye* case [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] it cannot be*

categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable.

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In Girish Kumar Suneja v. CBI, (2017) 14 SCC 809 at page 830, (3 Judges Bench):

"21. The concept of an intermediate order was further elucidated in Madhu Limaye v. State of Maharashtra [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] by contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind—an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour.

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Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue."

In Kandhal Sarman Jadeja vs. State of Gujarat" reported as 2012 SCC OnLineGuj 3104 : 2012 Cri LJ 4165, the Gujarat High Court while dealing with an order similar to the order under consideration in this appeal, framed legal issues, and answered in the following terms :

- i) Whether an order refusing to grant remand has any bearing on the proceedings of the trial itself? Whether an order refusing to grant remand has any effect on the ultimate decision of the case?*
- (ii) Whether an order refusing to grant remand can affect the progress of the trial or its decision in any manner?*

(iii) *Whether an order refusing to grant police remand is an interlocutory order or an intermediate or a final order?*

(iv) *Consequently, whether a revision against an order refusing to grant police remand is maintainable under section 397 Cr.P.C.?"*

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The Conclusion was summarized in Para 17 as under:

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(I) *An order refusing to grant remand has direct bearing on the proceedings of the trial itself and in a given case will definitely have effect on the ultimate decision of the case.*

(II) *An order refusing to grant remand may affect the progress of the trial or its decision in any manner if Investigating Agency is deprived of having custodial interrogation of the accused so as to effectively investigate the offence and gather necessary evidence and material to put the accused to trial.*

(III) *An order refusing to grant police remand would be a final order and a revision under Section 397 read with Section 401 of the Code would be maintainable.*

“8. Thus, what can be culled out from the judgment of the Supreme Court in N.M.T. Joy Immaculate (supra) is that an order granting remand is a pure and simple interlocutory order as it will not terminate the proceedings. In other words, if the objection of the accused of grant of remand is upheld the proceedings so far as remand is concerned would come to an end but not vice versa. We have noticed that the issue before the Supreme Court in N.M.T. Joy Immaculate (supra) was very limited as to whether a revision application at the instance of an accused is maintainable against an order granting police remand. The Apex Court after considering the

land mark decision in the case of Madhu Limaye v. State of Maharashtra reported in AIR 1978 SC 47 and Amar Nath v. State of Haryana reported in 1977 (4) SCC 137, held that an order granting police remand is a purely interlocutory order and revision against it is not maintainable. We are considering exactly the converse situation. What will be the effect if the plea for remand made by police is rejected, thereby, the Court refuses to subject the accused to police custody for the purpose of interrogation. Though this issue was not under consideration, but while answering the issue as to whether granting police remand is an interlocutory order or not, the Supreme Court in Paragraph-10.1 has indirectly answered the question with which we are concerned that if the objection of the accused succeeds then the proceedings could have ended and therefore, such an order can be termed as a final order against which revision would be maintainable.

9. Thus, the principle laid down is that an order which is intended as a step in aid for bringing the prosecution to its ultimate end is an interlocutory order. An order which itself brings the entire proceedings to an end, cannot be considered to be an interlocutory order. As a matter of fact even in Amar Nath's case AIR 1977 SC 2185: (1977 Cri LJ 1891), at the fag-end of Para-6 itself, after referring to an order for bail as interlocutory proceeding, the Supreme Court observed as follows (at p.1895 of Cri LJ):-

“But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory orders so as to be outside the purview of the revisional jurisdiction of the High Court.”

Now, in the instant proceeding, once the application for remand is rejected and once the bail is granted by the learned Magistrate, no proceeding remains pending before him at all. The right of the Department to have the particular facility for further investigation is

finally negated. The proceeding by itself comes to an end. It is difficult to see how the proceeding could be considered to be interlocutory proceeding.

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14. We have given our anxious consideration to the contention of the learned advocate appearing for both the parties. We are of the view that the observation made by the Supreme Court in the case of N.M.T. Joy Immaculate (supra) to the effect that the order of remand has no bearing on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case was in the context of the main issue before the Supreme Court. The main issue before the Supreme Court was as to whether an order of grant of remand is an interlocutory order or a final order so as to make the Revision Application under Section 397 read with Section 401 of the Code maintainable.

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The Supreme Court after considering the true meaning of the term "interlocutory order" and after considering the judgment of the Supreme Court in Madhu Limaye (supra) and Amar Nath (supra) held that if the remand is granted then in that case, the proceedings are not finally culminated, and what the Supreme Court has tried to convey is that the remand is a step in aid of effective and proper investigation. If an accused is subjected to remand all that happens is that he will remain in custody of the police for more than 24 hours, during which the accused is subjected to interrogation so that the Investigating Agency can investigate the offence properly and collect cogent material to put the accused to trial by filing the chargesheet. In this context, the Supreme Court held and observed that if the order of remand is passed, it will have no bearing on the proceedings of the trial itself or will have any effect on the ultimate result of the case. However, in the present case, we are looking into the question as to what will be the effect if remand is refused and thereby, taking away right of the Investigating Agency to have an accused in police custody

for more than 24 hours for the purpose of proper investigation. As we have observed earlier, the Supreme Court has very much answered this issue in Paragraph-10.1 by observing "If objection of the accused succeeded, the proceedings could have been ended but not vice versa and the order can be said to be a final order only if, in either event, the action will be determined".

13. In the considered opinion of the Court, an important issue of law has arisen, which requires detailed consideration. Under the circumstances, we formulate the questions of law as under :

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

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

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

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

14. Admitted.

15. Let the matter be placed before the Hon'ble Chief Justice for constituting a Larger Bench to adjudicate the legal issues framed herein above.

16. Now that we have considered in extenso and ruled that legal issue requires detailed consideration, we are now required to address the issue of stay, as prayed by the learned counsel for

the appellant/NIA.

17. Learned counsel for the appellant has vehemently argued that the investigation is in progress. Some of the evidences have been collected, however, is required to be verified and the accused is required to be confronted with those matters. It has further been argued that an application was filed on 30th January, 2020 for collecting voice sample of the respondent-accused for its comparison with the recordings taken in the course of investigation. While the application has not been decided, right to investigation by the NIA has been taken away by virtue of the impugned order. For the said purpose, remand of the accused respondent is required.

It has further been argued that the statements of the protected witnesses have been recorded under Section 164 Cr.P.C., which indicate serious implication on the security of the country itself. Since it is the case of the prosecuting agency that respondent is one of the main players in such disruption, the respondent is required to be confronted with those statements to extract the truth. It has been argued that some persons were sent to Odisha for Maoist training and for guerilla warfare etc. as per statements of the witnesses. The respondent is required to be confronted with all those facts to extract the truth. In case police remand is denied to the investigating agency, the investigation shall be derailed and frustrated.

18. Mr. Kamar, learned senior counsel assisted by Mr. S. Borthakur, Advocate, on the other hand, contends that bail has already been granted to the respondent, although in view of impugned order and therefore, no such exercise, as suggested by the investigating agency, can be conducted. It has been argued that the stage of the case cannot be reverted in view of the fact that the respondent has been released on bail.

Learned counsel for the respondent, however, admits that 'bail in default' or 'statutory bail' has

been given to the respondent in view of the impugned order and because remand was not extended and period of 90 days has expired. However, the respondent has been taken in custody in another case.

19. It is the conceded position that the respondent is accused in number of cases of criminal nature and, therefore, continues to be in detention.

20. Learned counsel for the respondent has further argued that right to investigation of the appellant/investigating agency has not been taken away as would be evident from paragraph-43 of the impugned order.

21. We have given our considerable thought to the issue of grant of interim relief.

22. At this stage, we may add a word about "what is investigation" ?

"Investigation" is a term defined under Section 2 (h) of the CrPC in the following terms:

"(h) "investigation" includes all the proceedings under this 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;"

The dictionary meaning of **investigation** as per The New Lexicon **Webster's Dictionary** of the English Language is "an examination for the purpose of discovering information about something".

As per **Oxford Advanced Learner's Dictionary** of Current English, **investigation** is "an official examination of the facts about a situation, crime, etc".

"Investigate" has been defined in **Oxford Dictionary** (supra) as, "to carefully examine the facts of a situation, an event, a crime etc to find out the truth about it or how it happened."

"Offence" has been defined under Section 2(n) of the CrPC in the following terms:

“(n)“offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871);”

‘the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under S. 173(2) of the Code’.

The investigating officer is required to examine the facts of a 'situation' or an event/transaction/crime.

23. It is evident that two prayers made by the investigating agency, including the prayer (a), for investigation, have been declined by virtue of the impugned order by way of dismissing the application in totality. Prayer (a) (supra) made in the application through Special Public Prosecutor, NIA has not been allowed. In such circumstances, the only logical conclusion that we can draw is that according to the impugned order, even investigation cannot be carried in regard to the conduct of the respondent/accused.

24. Now, we come to the issue whether at all the respondent should be subjected to investigation.

The grounds on which the Special Public Prosecutor filed the application for extension of period of investigation and remand, have been extracted in paragraphs – 27 and 31 of the impugned order. We have carefully gone through the grounds. One of the grounds is that a petition for collecting voice sample of the accused is pending adjudication. Calls were intercepted. Without the voice sample, voice cannot be compared, which would be a critical piece of evidence. Likewise, data from Samsung Tablet is under scrutiny and translation. The accused is required to be confronted with the same.

There are other aspects of investigation pointed out on behalf of the Investigating Agency in the appeal which we are not referring for brevity's sake.

25. Considering the serious nature of accusations and the alleged nature of evidences collected, the matter appears to be rather serious requiring exhaustive investigation. In such circumstances, in the considered opinion of this Court, the right of the investigating agency to investigate cannot be frustrated, in the interest of effective and fair investigation.

26. In view of the above, we hereby direct that operation of the impugned order 16.03.2020 shall remain stayed.

The appellant/investigating agency would consider the respondent (who is in detention in another case) to be in custody on remand in the case in hand viz. FIR No. RC-13/2019/NIA-GUW dated 14.12.2019 under Sections 120B, 124A, 153A, 153B of IPC and Sections 18 and 39 of the Unlawful Activities (Prevention) Act, 1967.

We direct the Trial Court to forthwith take a decision on the application filed on behalf of the investigating agency for taking voice sample of the respondent Akhil Gogoi.

27. Nothing said hereinabove is an opinion of the Court on merits. Reference to the facts has been made from the pleadings and arguments. No conclusion, either way, has been drawn by this Court.

Since operation of the impugned order has been stayed, we would request the Registry to place the matter before the Chief Justice within a week for appropriate orders.

28. Let the matter be listed immediately after decision is rendered by the Larger Bench.
29. Let a copy of the order be released under signatures of the Court Master.

JUDGE

CHIEF JUSTICE

Comparing Assistant