IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

WRIT PETITION NO. 7897 OF 2023 (GM-RES)

Between:

Roshan A.,
S/o Abdul Rafeeq,
Aged about 27 years,
R/at No 35, Hosa Beedi,
Behind Manjunatha Talkies,
Kumbara Gundi, Shivamogga
(Petitioner is in JC)

…Petitioner

(By Sri Aditya Sondhi, Senior Counsel for
Sri Mohammed Tahir, Advocate)

And:

1. Union of India
Rep. by Under Secretary,
Ministry of Home Affairs,
North Block, New Delhi – 110001.

2. Authority
(Appointed u/s 45(2) of UAPA)
Office not allotted,
C/o Ministry of Home Affairs,
North Block, New Delhi – 110001.
Represented by Under
Secretary

3. State of Karnataka
Rep. by Additional Chief Secretary,
Home Department, State of Karnataka,
Vidhana Soudha, Bengaluru – 560001.

4. National Investigating Agency
Ministry of Home Affairs GOI,
Rep. by SPP. High Court Complex,
Opposite to Vidhana Soudha,
High Court of Karnataka,,
Bengaluru – 560001.

5. Smt. Padma
W/o Nagaraja,
Aged about 53 years,
R/at Kumbara Beedi,
Sigehatti, Shivamogga-577202.

(R5 amended as per order dated 04.01.2024)

…Respondents

(By Sri S.V.Raju, ASGI and
Sri Shanthi Bhushan H., DSGI for R1 & R2;
Sri Vijay Kumar Majage, SPP-II for R3;
Sri S.V.Raju, ASGI and
Sri P.Prasanna Kumar, Advocate for R4;
Sri J.P.Shivappa Gowda, Advocate for
Sri Pavan Sagar, Advocate for R5)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India read with under section 482 of Cr.P.C. praying to the quash order dated 21.03.2022 of respondent No. 1 at Annexure D, and also the sanction order dated 16.08.2022, issued by respondent No.1, under section 45 of UAPA at Annexure E and etc.,

Date on which the petition was reserved for orders	04.07.2024
Date on which the order was pronounced	20.09.2024

This Writ Petition having been heard & reserved, coming on for pronouncement this day, order was made therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MS JUSTICE J.M.KHAZI

CAV ORDER

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

Accused No.7 in Special C.C.No.2000/2022 on the file of XLIX Additional City Civil and Sessions Judge and the Special Court for Trial of NIA Cases, Bengaluru, is the writ petitioner. The petitioner and other accused are facing trial for the offences punishable under sections 143, 201, 204, 212, 302, 341 read with section 34 of IPC and sections 16, 18, 19 and 20 of Unlawful Activities (Prevention) Act ('UA(P)A' for short) on the allegations of killing one Harsha at Shivamogga around the time 8.45 to

9.15 p.m on 20.02.2022. FIR was registered at Doddapete Police Station, Shivamogga, in Crime No.077/2022 for the offence under section 302 read with section 34 of IPC and investigation undertaken. After the arrest of some accused persons, the other offences under IPC as mentioned above were added in the FIR. Later on the Central Government, by its order dated 21.03.2022 vide Annexure-D, directed the National Investigation Agency (NIA) to take up investigation. The NIA, having registered the crime invoked sections 16, 19 and 20 of UA(P)A in the FIR, held investigation and filed charge sheet for the said offences.

2. The petitioner has filed this writ petition seeking to quash the order dated 21.03.2022, Annexure-D, issued under section 6 (5) read with section 8 of the National Investigation Agency Act ('the NIA Act' for short) entrusting the investigation to the NIA, the sanction order dated 16.08.2022 vide Annexure-E issued under section 45 of UA(P)A and the order of the Special Court vide

Annexure-G taking cognizance for the offences under sections 143, 201, 204, 212, 302, 341 read with section 34 of IPC and sections 16, 18, 19 and 20 of UA(P)A. [But the order sheet of the Special Court dated 01.09.2022 shows that cognizance was taken for the offences under sections 120B, 153A, 201, 212, 302 read with section 34 of IPC and sections 16, 18, 18B and 20 of UA(P)A].

3. We have heard the arguments of Sri. Aditya Sondhi, Senior Counsel for Sri. Mohammed Tahir, learned counsel for the petitioner and Sri. S.V.Raju, Additional Solicitor General of India, for respondents 1, 2 and 4.

4. The main points of arguments of Sri Aditya Sondhi are:

(i) In the first instance, FIR was registered by the local police for the offence under section 302 of IPC, against unknown accused.

(ii) After the arrest of some of the accused, other offences of IPC such as 143, 201, 204, 212 and 341, and sections

18, 19, and 20 of UA(P)A were invoked, but for invoking the offences under UA(P)A, permission of the court was not taken.

(iii) The incident was one of murder, but without any valid reasons, the stringent provisions of UA(P)A were invoked on the guise that a terrorist act had been committed. There were no grounds to invoke sections 16, 18, 19 and 20 of UA(P)A. This was only to target minority community.

(iv) Entrustment of investigation to the NIA under section 6(5) of the NIA Act was without any application of mind.

(v) Registration of FIR by the NIA was illegal.

(vi) Several murders of the type on hand have taken place all over the country, there is no instance of any one of such cases being referred to the NIA, and if the case on hand was referred to the NIA, the intention was to harass minority community.

(vii) The Central Government accorded sanction under section 45(2) of UA(P)A without application of mind. While according sanction, the Central Government appears to have mechanically relied on the opinion of the Authority constituted under section 45(2) of UA(P)A, without applying mind independently. It is doubtful that all the materials collected during investigation were placed before the sanctioning authority. The Authority has also failed in discharging its obligation. It appears that the Authority has not examined the entire evidence collected during investigation. Even otherwise, the Central Government was supposed to apply its mind independently without relying on the report of the Authority. Therefore according sanction arriving at a satisfaction about a terrorist act being committed was erroneous.

(viii) As it is apparent that taking over of investigation by NIA is without any justification, and according of sanction is mechanical the High Court can exercise jurisdiction under Article 226 of the Constitution of India and section

482 of Cr.P.C for quashing the sanction order and the order of taking of cognizance. And therefore the writ petition is to be allowed.

5. Meeting the argument of Sri Aditya Sondhi, Sri S.V.Raju, the Additional Solicitor General, argued that there was no infirmity in entrusting the investigation to NIA inasmuch as the incident of killing Harsha was found to be a terrorist act. The intention of the accused was to strike terror in a section of society. The deceased was a cow protection activist and a member of Bhajarangadal. Irked by the activities of the deceased, the accused hatched a conspiracy to kill him, as that one killing would terrorize the section of society. Only after arriving at a conclusion that scheduled offence had been committed, an order under section 8(5) of the NIA Act was passed by the Central Government entrusting the investigation to NIA. There are materials to this effect and hence it cannot be said that entrustment of investigation to NIA was bad in law.

5.1. His next point of argument was that the High Court cannot quash the sanction order because the question as to validity of the sanction has to be decided by the trial court. If the court takes cognizance in the absence of sanction order, the order of taking cognizance can be quashed, but if sanction was obtained before initiating prosecution, there cannot be interference either under Article 226 of the Constitution of India or section 482 of Cr.P.C. In the case on hand sanction as required under section 45 of UA(P)A was obtained. It is not the case of the petitioner that NIA did not obtain sanction, but has contended that all the materials collected during investigation were not placed before the sanctioning authority and therefore the sanction order is bad. If this were to be the ground, it can be decided only after trial. And even if there is any error in the sanction, it does not vitiate trial. In this view, the writ petition has no merits and it has to be dismissed.

6. On 30.05.2024, a request was made by the petitioner's advocate to direct the NIA to produce documents relating to Annexure-D and Annexure-E. The Deputy Solicitor General of India was directed to produce those documents in a sealed cover, and on 25.06.2024, Sri Mukesh Kumar, Assistant Section Officer, Ministry of Home Affairs, produced the records in a sealed cover. We have perused the same.

7. The first point to be examined is as to when the NIA may be directed to take over investigation. Section 6 of the NIA Act deals with it. Sub-section (1) states that an FIR should be registered under section 154 of Cr.P.C in relation to scheduled offence and a report of registration of FIR for scheduled offence must be forwarded to the State Government. Sub-section (2) requires the report under sub-section (1) to be forwarded to the Central Government very expeditiously. Then according to sub-section (3), the Central Government has to take a decision based on the report of the State Government or from

other source whether a scheduled offence has been committed or not. If it is found that a scheduled offence has been committed, a decision whether investigation is to be entrusted to NIA has to be taken considering the gravity of the offence and other relevant factors. This process must be completed within fifteen days from the date of receipt of report from the State Government. If this satisfaction is recorded, the Central Government can exercise power under sub-section (4) and direct investigation by the NIA.

8. If sub-sections (1) to (4) of section 6 envisage one type of procedure for entrustment of investigation to the NIA, sub-section (5) empowers the Central Government to suo-motu direct the NIA to undertake investigation, if it is of the opinion that a scheduled offence has been committed and it requires investigation under NIA Act. That means, under sub-section (5), the Central Government can take a decision to order for

investigation by NIA even without a report from the State Government.

9. Sub-section (10) deals with the powers of the State Government to investigate into scheduled offences and other offences and to initiate prosecution. In other words the State Government can also initiate investigation and prosecution relating to scheduled offences.

10. The offences under UA(P)A are included in the schedule of the NIA Act.

11. The indisputable facts in this case are that the incident of killing Harsha occurred in between 20.45 and 21.15 hours on 20.02.2022, that the first information was lodged by Smt. Padma, the mother of Harsha and that the FIR was registered in Crime No.77/2022 for the offence under section 302 read with section 34 of IPC against unknown persons, the first informant complained that her son might have been killed by Muslim miscreants. After the arrest of some accused, the offences under sections 143, 201, 204, 212 and 341 of IPC and sections 16, 18, 19

and 20 of UA(P)A were also invoked in the FIR. It is also not in dispute that the Central Government exercised its suo-motu power under section 6(5) of the NIA Act to direct investigation by NIA.

12. After the investigation was taken over by the NIA, FIR was registered by it as case No.RC-10/2022/NIA/DLI. About this, the argument from the petitioner's side was that registration of FIR by NIA was not permitted; it was a new FIR or a second FIR for the same incident. This argument cannot be accepted at all, for it is neither a new FIR nor a second FIR. Section 6(1) of the NIA Act clearly states that FIR has to be registered by the officer-in-charge of the police station and according to sub-section (6), once a direction is given under sub-section (4) or sub-section (5), the police officer of the State Government shall transmit the relevant documents and records to the NIA. That means while transmitting, FIR already registered at the police station is to be forwarded to the NIA, and if the NIA gives another

number, it is for its record purposes. In this context, Sri S.V.Raju has placed reliance on the judgment of the Supreme Court in ***Pradeep Ram vs State of Jharkhand and Another [(2019) 17 SCC 326]*** which clarifies the position. It is held :

> *"45. Sub-section (6) of Section 6 prohibits State Government or any police officer of the State Government to proceed with the investigation. In the present case, when order was issued by Central Government on 13.02.2018, it was not competent for police officer of the State Government to proceed with the investigation. We, thus, are of the opinion that FIR, which was re-registered by NIA on 16.02.2018 cannot be held to be second FIR of the offences rather it was re-registration of the FIR to give effect to the provisions of the NIA Act and re-registration of the FIR is only procedural Act to initiate the investigation and the trial under the NIA Act. The re-registration of the FIR, thus, is neither barred nor can be held that it is second FIR."*

13. The second aspect to be examined is whether entrustment of investigation to the NIA under section 6 (5) of the NIA Act was without application of mind. It is pleaded that the incident was just a case of murder punishable under section 302 of IPC. The language of sub-section (3) of section 6 of the NIA Act makes it very clear that Central Government shall determine two aspects, firstly the report submitted by the State Government must disclose commission of a scheduled offence and secondly that the gravity of the offence is such that investigation is to be held by the NIA. That means even if the report of the State Government discloses scheduled offence being committed, if there is no gravity in it or other relevant factors do not warrant investigation by the NIA, the Central Government cannot direct investigation by the NIA. In sub-section (5) the word 'gravity' is not there, and plain reading of this sub-section indicates that the Central Government can suo-motu exercise power the moment it is of the opinion that scheduled offence is committed. But this kind of

interpretation cannot be given; oblivious of the mandate of recording satisfaction under sub-sections (3) and (4) of section 6, the Central Government cannot exercise suo-motu power under sub-section (5).

14. Sri. Aditya Sondhi has referred to a decision of the Division Bench of the Bombay High Court in ***Pragyasingh Chandrapalsingh Thakur vs. State of Maharashtra [(2013) 6 AIR BomR 1171]*** where it is held as below:

> *"107. Even if a suo-motu exercise of the above noted power is permitted even then the Central Government is not discharged or relieved from its obligation and duty of recording the requisite opinion and satisfaction. To enable it to exercise the suo motu power as well, the Central Government must have material before it. That the suo motu power is unfettered and will not be guided by sub-sections (3) and (4) of Section 6 of the NIA Act, is not a proper and correct reading of the statute and its scheme. Even for suo motu power to be exercised, the Central Government must have before it some*

definite material and which would enable it to hold that the offence is scheduled offence and having regard to its gravity and other relevant factors it is fit to be investigated by the NIA. Merely because suo motu power can be exercised without any report from the State Government does not mean that the same can be exercised without any material or information at all. Further, the information that is made available to the Central Government and from varied sources will enable and guide the exercise of the suo motu power, still the Central Government is obliged to record an opinion that the scheduled offence has been committed which is required to be investigated under the NIA Act. That opinion will have to be recorded by taking into consideration the gravity of the offence and other relevant factors. Besides that the Central Government will have to record that it is fit enough to be investigated by the NIA. Therefore, the exercise of suo motu power will also be guided by what has been stated and provided in sub-sections (3) and (4) of Section 6 of the NIA Act. That is the interpretation which will have to be placed on the words "if the Central Government is of the opinion that the

scheduled offence has been committed which is required to be investigated under this Act". Once we are of the opinion that even sub-sections or parts of a section or parts of sub-sections have to be read together and harmoniously, then, there is no room for the apprehension voiced by Mr. Jethmalani that the Central Government will exercise suo motu powers vide Section 6(5) by ignoring and brushing aside the mandate flowing from the NIA Act or from sub-sections (3) and (4) of Section 6. ……."

15. Sri. Aditya Sondhi has placed reliance on two more decisions of the Hon'ble Supreme court in ***Hitendra Vishnu Thakur and others Vs. State of Maharastra and Others [(1994) 4 SCC 602]*** and ***Seeni Nainar Mohammed Vs. State represented by Deputy Superintendent of Police [(2017) AIR (SCW) 3035]***. In ***Seeni Nainar*** there is reference to ***Hitendra Vishnu Thakur*** where meanings of the words 'Terrorism' and 'Terrorist Act' have been described; reliance on these two decisions is with a view to demonstrating that the act relating to the incident does not fall within the meaning of

section 15 of UA(P)A. It has to be stated that it is the trial court which has to take a decision in this regard based on the evidence placed by the prosecution. It is not inappropriate to opine here that a decision as to existence of commission of scheduled offence of such gravity that requires investigation by the NIA must be viewed from the perspective of the Central Government and not from the perspective of the accused, for any accused for that matter does not readily accept investigation by a specialized agency like NIA. Therefore what remains for examination here is whether the Central Government has recorded satisfaction or not. The records submitted by the Central Government show such a satisfaction being arrived at after examining related documents before passing order under section 6 (5) of NIA Act. No infirmity is seen in the order dated 21.03.2022 (Annexure-D).

16. But the petitioner has projected another reason that entrustment of investigation to the NIA was to target members of minority community. This is fallacious.

Terrorism has no territorial bounds; though it has nothing to do with any particular religion, if terrorist activities are perpetrated by fanatics to achieve religious supremacy decrying the other religions and thereby pose a threat to integrity, unity and stability of the nation, people of such mind set have to blame themselves if they get into trouble. The initial burden is on the prosecution to establish its case, and if the petitioner or any other accused of this case has the feeling that members of minority community are targeted even though scheduled offence is not committed, the prosecution witnesses can be discredited in the cross-examination. In other words it is a matter of trial, therefore the argument based on this ground also fails.

17. Now about the sanction, section 45 deals with it. The offences punishable under sections 16, 18, 19 and 20 of UA(P)A fall under Chapter IV, and therefore in accordance with clause (ii) of sub-section (1) of section 45, the sanctioning authority is the Central Government or

the State Government as the case may be. Sub-section (2) envisages that an authority has to be constituted for the purpose of independently reviewing the evidence gathered during investigation and the authority shall make a recommendation within the time prescribed. The authority may or may not recommend.

18. Here the Central Government has accorded sanction; and the independent authority constituted also recommended for granting sanction which is a prerequisite for taking cognizance of the offences by the court. The argument on behalf of the petitioner is that entire evidence collected during investigation appears to have not been placed before the sanctioning authority, and it also appears that the sanctioning authority appears to have relied upon the report of the independent authority only and hence there is no valid sanction. Sri Aditya Sondhi has garnered support from the following decided cases. In ***CBI vs Ashok Kumar Aggarwal [(2014) 14 SCC 295]*** it has been held :

"7. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an

acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in

accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind. ……"

Then the legal proposition was summarized which is found in para 8 :

"8. In view of the above, the legal propositions can be summarised as under:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration

all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

19. ***Roopesh vs State of Kerala and Others [2022 (2) AICLR (Ker) 269]*** is the judgment of Division Bench of Kerala High Court which discusses the purpose of obtaining sanction and the effect of defective sanction. Actual question in the cited case is with regard

to validity of sanction which was accorded beyond the time prescribed in UA(P)A and the following is the observation :

> *"14. The Parliament, in 2008, while enacting Amending Act 35 of 2008 had consciously incorporated the provision requiring a recommendation from an Authority and retained the requirement of sanction from the appropriate Government, as provided in sub-section (1). It was by sub-section (2) that an Authority was contemplated, to make recommendations after reviewing the evidence gathered and a specific time was permitted to be prescribed by rules. The Central Government having brought out the Rules of 2008 specifying the time, within which the recommendation and sanction has to be made, the time is sacrosanct and according to us, mandatory. It cannot at all be held that the stipulation of time is directory, nor can it be waived as a mere irregularity under S.460 (e) or under S.465 Cr.P.C. S.460 saves any erroneous proceeding, inter-alia of taking cognizance; if done in good faith. When sanction is statutorily mandated for taking*

cognizance and if cognizance is taken without a sanction or on the strength of an invalid one, it cannot be said to be an erroneous proceeding taken in good faith and the act of taking cognizance itself would stand vitiated. The defect is in the sanction issued, which cannot be saved under S.460(e). As for S.465, we shall deal with it, a little later."

In the same judgment, it is further observed that :

"24. It is to be emphasized that S.45(2) of the UA(P)A makes it mandatory for the Authority to make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as prescribed, to the appropriate Government. This does not absolve the appropriate Government from applying its mind since otherwise there was no requirement for a further sanction from the appropriate Government. We have seen from the precedents that sanction for prosecution is a solemn and sacrosanct act which requires the sanctioning authority to look at the facts and arrive at the satisfaction, of requirement of a prosecution. It was held in Anirudh Singhji

Karan Singhji Jadeja [supra] that despite the letter of the DSP being exhaustive, the Government ought to have verified that the allegations as stated by the DSP were borne out from the records. In the case of UA(P)A despite the independent review made by the Authority constituted under S.45, the Government has to arrive at a satisfaction without merely adopting the recommendation of the Authority. The Government, it is to be emphasized, has no obligation to act in accordance with the recommendation of the Authority. The sanction is of the Government and not the Authority and the recommendation of the Authority only aids or assists the Government in arriving at the satisfaction. In the present case there is no such application of mind discernible, but for the reference to the recommendation of the Authority and the laconic statement of the Government, that details have been verified, on which satisfaction is recorded as to the offence having been committed by the accused, for which prosecution has to be initiated. We find the sanction order of the UA(P)A to be not brought out in time, as statutorily mandated and bereft of any application of mind; both

vitiating the cognizance taken by the Special Court."

20. Sri S.V.Raju, the Additional Solicitor General of India, has relied upon certain decisions of the Supreme Court to demonstrate the instances where there can be interference at the threshold and where such an interference is not permitted.

21. In ***Mansukhlal Vithaldas Chauhan vs State of Gujarat [(1997) 7 SCC 622],*** as has been observed in para 32, the High Court issued a direction to the Secretary of concerned department to grant sanction who was not allowed to verify about feasibility of prosecuting the appellant therein. Noticing this kind of a situation, the Supreme Court held as below :

"33. The High Court put the Secretary in a piquant situation. While that Act gave him the discretion to sanction or not to sanction the prosecution of the appellant, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to action in contempt for not

obeying the mandamus issued by the High Court. The High Court assumed that role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction under Section 6 of the Act, it directed the Secretary to sanction the prosecution so that the sanction order may be created to be an order passed by the Secretary and not that of the High Court. This is a classic case where a Brand name is changed to give a new colour to the package without changing the contents thereof. In these circumstances the sanction order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court."

22. In ***Central Bureau of Investigation and Others vs Pramila Virendra Kumar Agarwal and Another [(2020) 17 SCC 664],*** discussing the issue relating to failure of justice on account of error in granting sanction, the following is the observation :

"11. Further the issue relating to validity of the sanction for prosecution could have been

considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of Dinesh Kumar vs. Airport Authority of India, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial."

23. ***Prakash Singh Badal and Another vs State of Punjab and Others [2007) 1 SCC 1]*** distinguishes

between absence of sanction and invalidity of sanction on account of non-application of mind. It is held :

> *"48. The sanction in the instant case related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."*

24. So the conspectuses of the above decisions are:-

(i) Without sanction cognizance of an offence or offences under Part III UA(P)A cannot be taken by court.

(ii) All the materials and evidence collected during investigation must be placed before the sanctioning authority.

(iii) The independent authority must recommend for according sanction.

(iv) The sanctioning authority must apply his/its mind to all the materials and evidence and sanction cannot

be issued mechanically just because the independent authority has made recommendation.

(v) There is subtle distinction between launching prosecution in the absence of sanction and, defective or irregularity in sanction.

(vi) The appropriate stage to examine the validity of sanction is during trial.

25. Keeping the above principles in mind, the present case has to be examined. In this case sanction order has been obtained. The contention of the petitioner is that the sanction order does not depict application of mind in as much as all the materials and evidence collected during investigation were not placed before the sanctioning authority. But para 7 of the sanction order reads as below:

> *"7. And now therefore, the Central Government, after carefully examining the material placed on record and the recommendations of the Authority, is satisfied*

that a prima facie case is made out against the accused persons under the relevant sections of law; and hereby accords the sanction for prosecution under section 45 (1) of the Unlawful Activities (Prevention) Act, 1967 and section 196 of CrPC for prosecuting the following accused persons, in the Crime No. RC-10/2022/NIA/DLI of NIA for taking cognizance of the said offence by a court of competent jurisdiction as under :- …….”

26. In the file submitted by the officer of the NIA, there is a list of statements of witnesses and other materials placed before the sanctioning authority besides the report of the independent authority which has recommended for according sanction. At this stage, all that can be stated is prosecution was launched after obtaining sanction, and cognizance of offences under UA(P)A was taken having noticed sanction order being available. If according to the petitioner, the sanction order was issued without applying mind or is invalid for any other reason, the same has to be thrashed out by the trial

court after recording evidence. This is not a case of absence of sanction. Therefore this contention also fails.

27. The last contention of the petitioner is that in some other cases of murder similar to the incident in this case, investigation was not handed over to the NIA and therefore prosecuting the petitioner for stringent offences under UA(P)A is violative of equality before law. As an answer to this contention the Additional Solicitor General of India has placed reliance on the judgment of the Supreme Court in ***R. Muthukumar and Others vs Chairman and Managing Director TANGEDCO and Others [2022 SCC Online 151]*** where it is held as below :

> *"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.*

In Basawaraj & Anr. v. Special Land Acquisition Officer, this court ruled that:

> *"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."*

28. Without having details of other cases, the contention of the petitioner cannot be appreciated. Even otherwise, decision as to invocation of offences under UA(P)A has to be taken in the background of facts and circumstances of each case, general inference cannot be drawn.

29. Therefore from the above discussion, the final conclusion is that the writ petition should fail and therefore writ petition is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(J.M.KHAZI)
JUDGE

CKL
List No.: 19 Sl No.: 3