

IN THE COURT OF DR. HARDEEP KAUR,
ADDITIONAL SESSIONS JUDGE-02, NEW DELHI DISTRICT,
PATIALA HOUSE COURTS, NEW DELHI.

In I.A No. 01/2025
Sessions Case No. 63/2025

State

Versus

Ishtiyaque Ahmad

... Applicant/Accused

FIR No. 301/2024
PS Special Cell
U/s 61 BNS, 16/17/18/18A/18B UAPA
& 25 Arms Act

ORDER

1. By this order, this Court shall dispose of application moved on behalf of applicant/accused Ishtiyaque Ahmad under Section 483 BNSS for grant of regular bail.
2. It is submitted by Ld. counsel for applicant/ accused that present application has not been filed on merits but has been filed on the ground of delay in filing requisite sanction u/s 45(2) of UAPA for prosecution. Charge-sheet in the present case has been filed before this Court on 17.02.2025 without the aforementioned sanction and as per the provisions prescribed under Rule 3 and 4 of Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 UAPA, total period of 14 days is prescribed for filing the same

but in the present case, prosecution has failed to comply with the same and for this reason, this Court could not take cognizance of the offence as it is mentioned that “No Court shall take cognizance of any offence without the previous sanction of the Central/State Government.

3. It is further submitted that applicant/accused has been falsely implicated in the present case merely on the basis of disclosure statement of co-accused persons and CDR connectivity between the applicant and the co-accused persons. Nothing incriminating has been recovered from the possession of applicant/accused or at his instance. Applicant/accused is aged about 50 years who is having experience of Senior Radiologist from AIIMS, Delhi. He is having clean antecedents; he has wife and two children who are dependent upon him and there is no likelihood of applicant/accused tampering with the evidence or influencing or threatening the witnesses and he not at all at flight risk. Applicant is also suffering from serious diseases High Blood Pressure, Facet Block in Spine for which he is not getting proper treatment in jail. Applicant/accused is languishing in j.c since 22.08.2024 and no fruitful purpose would be served by keeping him behind the bars as trial in the instant matter is likely to consume considerable time.
4. In support of his submissions, Ld. Counsel for applicant/accused has placed reliance upon the judgments titled **Fuleshwar Gope v. Union of India & Ors (2024) 10 SCR 315**, **Judgebir Singh @ Jasbir Singh Samra @ Jasbir & ors v. National Investigation Agency (2023) 6 SCR 1** and **Manjeet Singh v. State of Punjab, 2023 PHHC 070778-DB decided on 16.05.2023**.

5. Ld. Addl. PP has vehemently opposed the present bail application and submitted that applicant/accused is head of a highly radicalized Jharkhand based group having its other sympathizers based in/around Delhi entrusted with the task of carrying out terror attack and were in advanced stage of procuring sophisticated weapons for the same in furtherance of their conspiracy and applicant/accused also managed some members of the group to go through training in handling and operation of weapons. On the basis of technical surveillance, on 11.08.2024, several raids were conducted at different locations including Bhiwadi, Hazaribagh, Ranchi and Aligarh and during raids, accused persons including the present applicant/accused were arrested. Two swords, suspicious literature and Rs.5.1 lacs were recovered from the house of applicant/accused. There is incriminating evidence available on record to show that applicant/accused was actively involved in the alleged conspiracy; prepared young boys mentally and physically to fight for Jihad; managed to give weapon training to youth to fight for Jihad and provided funds and made necessary arrangements for procuring weapons and even he arranged physical training at Bulandshahar through the person using Telegram ID Big Cat and accused Shahbaz Ansari, Anamul Ansari and Motiur Rehman went through the training.
6. It is further submitted by Ld. Addl. PP that the present bail application is pre-mature and the same deserves to be dismissed being not maintainable. None of the citations relied upon by Ld. Counsel for applicant/accused pertains to the stage at which the present case is. All the citations/judgments pertains to the period when the sanction had already been received and was already part of respective charge-sheet.

The investigating agency has already complied with all necessary steps to obtain requisite sanction u/s 45 of UAPA on 07.02.2025 before filing of the main charge-sheet but till date, no competent authority has been constituted by Government of NCT of Delhi for granting prosecution sanction u/s 45 of UAPA.

7. I have heard and considered the rival submissions made by both the parties and also gone through the material available on record alongwith the judgments relied upon by Ld. Counsel for applicant/accused.
8. Before proceeding ahead, it would be appropriate to reproduce herein the Section 45 (2) of UAPA which reads as under :-

“...(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government...”

Rule 3 and 4 respectively of the 2008 rules are also reproduced herein for ready reference :-

“...3. **Time-limit for making a recommendation by the Authority**—The Authority shall, under sub-section (2) of Section 45 of the Act, make its report containing the recommendations to the Central Government or, as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.

4. **Time-limit for sanction of prosecution**—The Central Government or, as the case may be, the State Government shall under sub-section (2) of Section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority...”

9. The judgment *Judgebir Singh v. NIA (supra)* is not applicable in the present case as in that case, accused had moved application for default bail on the ground that charge-sheet has been filed without the sanction is an incomplete charge-sheet which could be termed as not in consonance with Section 173(5) of CrPC. Hon'ble Supreme Court has denied default bail to the applicant/accused while observing as under :-

“...50. From the aforesaid, it is evident that the order of sanction passed by the competent authority can be produced and placed on record even after the filing of the charge-sheet. It may happen that the inordinate delay in placing the order of sanction before the Special Court may lead to delay in trial because the competent court will not be able to take cognizance of the offence without a valid sanction on record. In such an eventuality, at the most, it may be open for the accused to argue that his right to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution. This may at the most entitle the accused to pray for regular bail on the ground of delay in trial. But the same cannot be a ground to pray for statutory/default bail under the provisions of Section 167(2) CrPC.

51. The charge-sheet is nothing but a final report of police officer under Section 173(2) CrPC. Section 173(2) CrPC provides that on completion of the investigation, the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government, stating therein

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he had been released on his bond and, if so, whether with or without sureties; and
- (g) whether he has been forwarded in custody under Section 170.

61. The aforesaid decision of this Court makes the position of law very clear that once the charge-sheet has been filed within the stipulated time, the question of grant of statutory/default bail does not arise. Whether cognizance has been taken or not taken is not relevant for the purpose of compliance of Section 167 CrPC. The mere filing of the charge-sheet is sufficient...”

10. The issues involved in *Fuleshwar Gope v. Union of India & ors (supra)* were (i) Whether the Validity of the Sanction Order can be challenged at any stage? (ii) Whether a violation of Section 45(2) of the UAPA r/w Rules 3 & 4, if any, vitiates the proceedings? (iii) Whether in the present facts, the argument of the appellant that the transactions in connection with which he has been brought to the book were actually independent of the ones in which Dinesh Gope and other members were arrayed as accused, has any merit? and (iv) Whether, in the facts, the statutory exemption under Section 22A of the UAPA applies to the appellant who claims to be unaware of the affairs of the company? In the present case, sanction has not been received as Government of NCT of Delhi has not constituted the competent authority to grant sanction. Hence, *Fuleshwar Gope case* is distinguishable on facts of the present case as there is no question of validity of sanction in the present case.

11. In the considered view of this Court, the judgment titled as *Manjeet Singh v. State of Punjab (supra)* is distinguishable on facts of the present case as in that case, applicant has moved application for default bail.

12. Charge-sheet in the present case has been filed by the Investigating Officer on 17.02.2025. Sanction u/s 7 of Explosive Substances Act has already been filed but requisite sanction u/s 45 of UAPA is still awaited as no authority/ committee has been constituted by Government of NCT of Delhi till date to conduct an independent review under UAPA and letter for granting prosecution sanction is still pending with GNCT of Delhi. The investigating agency has already complied with all

necessary steps to obtain requisite sanction u/s 45 of UAPA before filing of the main charge-sheet and the investigating agency has no control over the working of the competent authority. This Court is of the considered view that the Sanction Order passed by the competent authority can be produced and placed on record even after the filing of the charge-sheet. It may happen that the delay in placing the order of sanction before this Court may lead to delay in trial because this Court will not be able to take cognizance of the offence without a valid sanction on record. At this stage, it would not be appropriate to say that there is inordinate delay in placing on record the sanction u/s 45 of UAPA.

13. This Court has placed reliance upon the judgment in the matter of **Mahesh Kariman Tirki v. State of Maharashtra SLP (Crl) Nos 11072-11073 of 2022** decided on 19.04.2023 by Hon'ble Supreme Court wherein it has been observed as under :-

“...153. Though the word "shall" no doubt connotes the sense of urgency, but the consequence of non-compliance in strict sense which flows from the wordings in the rule, has not been spelt out under the statute. Neither at an initial stage of the prosecution nor even before us the defence has projected any prejudice from strict non-compliance of time frame.

154. The very purport of the provision is to convey that the process has to be complied with and completed in an expeditious manner. Particularly, we have taken into account the contingency which may occur, if the word "shall" in the context is held mandatory. In that case, even if a single days delay would stifle the prosecution intending to curb the act of terrorism. Certainly, the legislative intent behind incorporating the term "shall" is not to stifle the prosecution on such insignificant technicality, but conveys that the process ought to be completed in an expeditious manner. We are unable to persuade ourselves to accept the contention that the term "shall" is to be strictly treated as a mandatory provision and failure to comply with the timeline strictly vitiates the process. Therefore, we respectfully defer with the view taken by the Kerala High Court in the case of *Roopesh (supra)* in that regard.

155. We are of the view that and accordingly hold that to achieve

legislative intent the dual mandate is to be complied with in its true spirit. Though a minuscule delay would not thwart the legislative intent, but delay if writ large from the record, which is unexplained, would certainly have its own adverse impact on the process of sanction."

The import of the above extract is that the timelines mentioned in Rules 3 and 4 of the 2008 Rules, despite having the word 'shall' in them, are to be taken as directory for, if the timeline is interpreted strictly, it may thwart the purpose of the legislation which is to curb unlawful activities of a specified nature..."

14. In view of the above discussions, this Court is of the opinion that present application has no merits and the same is accordingly dismissed.

15. Application is disposed off accordingly.

16. Copy of this order be given dasti.

**Typed to the dictation directly,
corrected and pronounced in the
open Court on 24.04.2025.**

**(Dr. Hardeep Kaur)
Additional Sessions Judge-02
New Delhi District, New Delhi**