The State Of Maharashtra vs Surendra Pundlik Gadling on 13 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 975, 2019 (5) SCC 178, AIRONLINE 2019 SC 77, 2019 CRI LJ 1588, 2019 ALLMR(CRI) 1684, (2019) 197 ALLINDCAS 18 (SC), (2019) 107 ALLCRIC 706, (2019) 197 ALLINDCAS 18, 2019 (1) ABR(CRI) 859, (2019) 1 CRIMES 134, (2019) 2 ALD(CRL) 616, (2019) 2 ALLCRILR 247, (2019) 2 MAD LJ(CRI) 574, (2019) 2 PAT LJR 69, 2019 (2) SCC (CRI) 472, (2019) 3 SCALE 379, (2019) 74 OCR 154, AIR 2019 SC(CRI) 498

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Bench: Sanjay Kishan Kaul, L. Nageswara Rao, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.264 of 2019
[Arising out of SLP (CRL.) No.9199 of 2018]

THE STATE OF MAHARASHTRA ….Appellant

versus

SURENDRA PUNDLIK GADLING & ORS. ….Respon

JUDGMENT

SANJAY KISHAN KAUL, J.

1. Leave granted.

2. The respondents/detenues claimed default bail in view of the failure of the appellant/State to file a charge-sheet within ninety (90) days, under the provisions of Section 43D of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'said Act') and also for seeking

extension for completion of investigation, for a period of ninety (90) further days, in a manner that did not meet with the requirements of the proviso to sub-section (2)(b) of Section 43D of the said Act. The latter has become an issue of contention inasmuch as it has been argued that the endeavour of the State Government cannot be said to indicate the submission of a 'report of the Public Prosecutor', specifying reasons for detention beyond the period of ninety (90) days.

3. An F.I.R. was lodged by one Tushar Ramesh Damgude on 8.1.2018 at Vishrambaug Police Station, Pune under Sections 153-A, 505(1)(b), 117, & 34 of the Indian Penal Code, 1860, seeking to report an incident that occurred at Shaniwarwada, Pune on 31.12.2017. It has been alleged that between 2:00 p.m. and 10:00 p.m., on 31.12.2017, at Shaniwarwada, Pune, members of the 'Kabir Kala Manch', under the head 'Bhima Koregaon Shouryadin Prerna Abhiyan', held a meeting of the Elgar Parishad, where active members of CPI (Maoist) supposedly raised inflammatory slogans and engaged in certain other allied activities, with the intention to conspire, incite and abet the commission of terrorist acts and other unlawful activities by using violent means, thus, promoting enmity between different groups, which ultimately culminated in the break-out of violent riots on 1.1.2018, at a place popularly known as Bhima Koregaon, where a large population of people was said to have gathered to celebrate the 200th anniversary of the battle at Bhima Koregaon. In the process of investigation, the police alleged that the accused persons, along with other accused are active members of the banned organisation, CPI (Maoist), and that it was under the connivance, guidance and directions of this banned organisation that the event of the nature, as occurred on 31.12.2017, was organised through a frontal organisation going by the name of 'Kabir Kala Manch'. In the search and seizure operations conducted, respondents were found to be in possession of Naxalite literature, pamphlets, letters, correspondence, audio-video electronic devices and other material, which were alleged to be used for inciting people, to create violence and cause public disorder. Some of the respondents were also stated to be financiers of the illegal activity and it was also alleged that students from an eminent educational institution were taken to the forest area, occupied by Maoist Guerrilla, to meet underground Naxalites and indoctrinate and train them. The entire endeavour was alleged to be an attempt to create an atmosphere that would motivate minority groups against the Union of India and the State of Maharashtra and create public disorder, aimed at vilifying the sovereignty, security and integrity of the nation and striking terror in the heart of peaceful citizens. It is in pursuance of such investigation and material found that offences under Section 120B of the IPC along with Sections 13, 16, 17, 18, 18B, 20, 38, 39 & 40 of the said Act came to be added to the charges.

4. After the initial police custody, judicial custody of the respondents was sought, for a period of 90 days, for completion of investigation, which period came to an end on 3.9.2018. The proviso to Section 43D(2)

(b) of the said Act was pressed into service for seeking an extension of custody by another 90 days. The relevant provision reads as under:

> "43D. Modified application of certain provisions of the Code.— xxxx xxxx xxxx xxxx xxxx (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),— xxxx xxxx xxxx xxxx xxxx

(b) after the proviso, the following provisos shall be inserted, namely:

— "Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:"

5. An application was purportedly preferred by the Investigating Officer (herein referred to as the 'IO'), Dr. Shivaji Panditrao Pawar, on 30.8.2018, which was submitted through the District Government Pleader, Shivajinagar. Reasons for extension of time were set out, i.e., non-receipt of some mirror images from the FSL in respect of electronic devices, large-scale data collected requiring more time for analysis, bank details of the accused and some other details not being received, further inquiry required about objectionable contents of documents and correspondence seized, further time required for investigation about funds, further time also required to investigate whether there were some other accused, etc. It appears that there was a realisation that the application may not meet the legal requirements for seeking an extension of time for investigation and thus, on the same day itself, another application was submitted. The title of the application suggests that it was submitted by the State of Maharashtra (through the Assistant Commissioner of Police, Swargate Division, Pune City). A perusal of the document suggests that it is an application under Section 43D of the said Act, for an extension of a period of 90 days, for further investigation and filing of charge-sheet in the said crime. The grounds have been set out in detail from sub-para (a) to (l). At the end of the application, it has been stated that it is filed by the applicant, and on the left side it is written "Smt. Ujwala S. Pawar, District Govt. Pleader & Public Prosecutor, Pune", who has appended her signature thereto.

6. An order regarding this application was passed by the Special Judge and the Additional Sessions Judge on 2.9.2018, acceding to the request made in the application. The order records that all the accused persons and their counsel, the IO and the DGP were present in the Court and that arguments were submitted on behalf of the prosecution. The following was recorded with respect to the accused, "However, the accused persons and their counsels submitted that they are not willing to submit anything." The case diary was perused and prima facie it is stated to have revealed a collection of voluminous data in electronic form, some of which showed the involvement of the respondents in the alleged commission of the offence. Such record, it was observed, had been sent to the FSL and reports were awaited. Some of the papers collected by the IO also showed that students from Tata Institute of Social Science were taken by accused Mahesh Rao to a forest area of Maoist Guerilla, to meet underground Naxalite and to train them. Since the investigation was in progress and at a crucial stage, and there had been certain progress in the investigation, the period for investigation was extended beyond 90 days, upto 180 days.

7. The aforesaid order was challenged in the writ petition, before the Bombay High Court. Vide impugned order dated 24.10.2018, the pleas of the respondents found favour with the learned single Judge of the Bombay High Court inasmuch as on the basis of the records, a finding was reached that the Public Prosecutor could not be said to have applied his mind and, thus, the mandatory

requirement of the proviso of clause

(b) of sub-section (2) of Section 43D of the said Act was not met.

8. Aggrieved by the said order, the State of Maharashtra preferred two SLPs before this Court, in which notice was issued and operation of the order was stayed on 29.10.2018.

9. In the conspectus of the aforesaid facts, the sole question which arises for consideration is whether the application presented on 30.8.2018, under the proviso to Section 43D(2)(b) of the said Act, conforms to the norms laid down by that provision, as enunciated in the judgments of this Court.

10. Mr. Mukul Rohatgi, learned Senior Counsel advanced submission on behalf of the State Government/appellant while Dr. A.M. Singhvi, Ms. Indira Jaising and Mr. Anand Grover, Senior Advocates advanced the case of the respondents.

11. We are setting forth the scope of the controversy under different heads:

Respondents had never argued their case before the trial court:

12. Learned senior counsel for the State of Maharashtra sought to contend that the order sheet of the trial court itself shows that the counsel for the respondents and the respondents present refused to make submissions before the trial court. It was submitted that in such a scenario, a writ petition filed by these respondents ought not to have been entertained.

13. On the other hand, learned senior counsel for the respondents contended that the matter was not as simple as was sought to be made out by learned senior counsel for the appellant. In a nutshell, it was pleaded that there was no sufficient opportunity given to present the case, as the case of the respondents was called for on the very next day after the application was submitted before the Special Court, on 31.8.2018. The respondents were produced on 1.9.2018, when they were given copies of the application. The lawyers were stated to not have been initially available on 1.9.2018, since it was a Saturday. A request was made for adjournment till 3.9.2018 (Monday), which undisputedly was the last day, but that request was declined and the matter was listed on 2.9.2018. Certain other allegations have also been made.

14. We are of the view that nothing much turns on the aforesaid plea as the High Court, in its wisdom, decided to consider the merits of the controversy. The appellant/State having approached the Special Court at the last minute did create a scenario before the Court where an endeavour was made to complete the proceedings, in respect of the matter in issue, within the next two days. At this stage, the respondents cannot be denied the benefit of advancing their case, the High Court having considered their case on merits.

Whether the necessary ingredients of the proviso to Section 43D(2)(b) of the said Act were set out in the application submitted:

15. A perusal of the proviso to Section 43D(2)(b) of the said Act shows that there are certain requirements that need to be fulfilled, for its proper application. These are as under:

a. It has not been possible to complete the investigation within the period of 90 days.

b. A report to be submitted by the Public Prosecutor. c. Said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days.

d. Satisfaction of the Court in respect of the report of the Public Prosecutor.

16. The document which purports to be the report of the Public Prosecutor is, in the case before us, in the form of an application under Section 43D of the said Act. A perusal of the contents of the document shows that the development and progress in the investigation have been set out. The developments leading to the incident have also been so set forth. A perusal of the grounds shows that the allegation is that all the respondents are active members of the banned organisation, CPI (Maoist). In the course of investigation, documents, pen drives, CD, DVD, etc. were seized and the electronic records were sent to FSL, Mumbai, for its report, which was still awaited. The data was stated to be voluminous and further investigation was also required into the funding of the accused persons. The criminal conspiracy was stated to be spread over a number of cities, which needed further investigation, and financial details of the respondents were still being ascertained. Further, investigation into the telephonic interconnection between the respondents and other 'absconding and underground accused persons' and also into the attempt to train young students were also set out as grounds for seeking the extension. It was also set out that, upon completion of the investigation, permission under Section 45 of the said Act is sought for sanction of prosecution for filing the charge-sheet.

17. We are unable to accept the plea advanced on behalf of the respondents that the material set out in the document does not meet with the requirements of the proviso, insofar as the reasons for seeking extension for the period of investigation are concerned.

18. The troublesome aspect, however, in the present case, to be dealt with by us, is the issue whether the document submitted, itself, can be said to be one which is really a report of the Public Prosecutor, meeting the requirements of what the Public Prosecutor is required to do as per the proviso to Section 43D(2)(b) of the said Act.

Analysis of the document purporting to be the report of the Public Prosecutor:

19. The facts in respect of the controversy are broadly not in dispute. It has been mentioned earlier that initially, on 30.8.2018, an application was submitted by the IO through the Public Prosecutor, setting out the reasons for seeking extension of ninety (90) days, to complete the investigation under the said Act. The submission of Mr. Mukul Rohatgi, learned Senior Counsel for the appellant is that on the issue being visited in greater depth on the same day, by the Public Prosecutor, a second document was filed, which is, in fact, the report of the Public Prosecutor, in terms of the

provisions of Section 43D of the said Act. A closer look at this document does indicate that the State of Maharashtra is represented through the Assistant Commissioner of Police, Swargate Division, Pune City, but according to the learned senior counsel it is only a description of the representation. The document also purports to be an "application" under Section 43D of the said Act for extension of a period of ninety (90) days for further investigation and the word "application" is again repeated before the recital of facts. The third factual aspect is mentioned in para 10 of the application, which reads as under:

> "10. That according to the provisions of Section 43(D) (sic) of UAPA Act, 1967, if the investigation pertaining to the said Act is not completed within the period of 90 days, then, after filing the application/report by the investigation officer, the said period of 90 days can be extended up to the period of 180 days. It is submitted that the investigation of the said crime is in progress.

That the investigation has not yet completed and, therefore, the investigation authority approached this Hon'ble Court for extension of further period of 90 days on the following grounds:

> GROUNDS a. That all the accused are the active members of banned organisation, i.e., C.P.I. (Maoist) and are having direct nexus of unlawful activities of the said organisation, viz., CPI (Maoist).
>
> b. That, during the investigation, seized devised, document, pen drives, CD, DVD, hard disk, sim cards and other electronic records were sent to FSL Mumbai for its report and for mirror image of the data contained in the said electronic devices. That the report from FSL is awaiting (sic).
>
> c. That there is a voluminous data in the said electronic record which requires to investigate in order to ascertain the implementation of these unlawful activities not only in the State of Maharashtra, but in other States also and all over India.
>
> d. That it is also necessary to investigate from where the funds are available to the accused persons which is utilised by the said accused for promoting the unlawful activities of the banned organisation.
>
> e. That during the investigation, it is also revealed that the accused in pursuance of their criminal conspiracy engaged in the unlawful activities of banned organisation at Delhi, Mumbai, Nagpur, Gadchiroli and Chhattisgarh. That further investigation in this context has yet to complete.
>
> f. That it is necessary to ascertain the details of Bank Account of all the accused persons as well as their transactions in their respective accounts.
>
> g. That it is revealed during the investigation through seized CDR reports of mobile phones of the accused persons that they are in communication with each other as

well as with the absconded and underground accused persons. That investigate (sic) pertaining to the said communication is yet to be completed.

h. That during the investigation, it is revealed and (sic.) the students from Tata Institute of Social Science Mumbai were taken by accused Mahesh Rao safely and secretly to forest areas of Maoist Guerilla to meet absconding underground Naxalite and to train them. The investigation in this respect is in progress.

i. That the accused persons are having their own Facebook accounts and e-mails. That investigation regarding the said Facebook account as well as e-mail communications are in progress.

j. That after the arrest of accused P. Vara Vara Rao, Vernon Gonsalves & Arum Thomas Parera as well as Sudha Bhardwaj & Gautam Naulakha on 28.8.2018 the Naxalite material in the form of electronic record seized from these accused persons and investigation is pertaining to the said seizure of the documents and electronic records is going on at FSL.

k. That all the accused persons are the masterminds of banned organisation of CPI (Maoist) and were found involved in commission of illegal act with the intention to commit or advocate, abate (sic.) and incite people to take violence and create public disorder with intent to threaten the unity, integrity, security and sovereignty of India. That investigation in respect of the same is yet to be completed.

l. After completion of the investigating (sic.) permission u/s 45 of Unlawful Activities (Prevention) Act, 1967 sanction for prosecution is required to be obtained for filing the charge sheet against all the accused persons." (emphasis supplied by us)

20. The averment in the aforesaid paragraph, thus, is that the application/report was filed by the IO that the IO had approached the Court for an extension of a period of further ninety (90) days to complete the investigation.

21. Once again, in para 13 of the aforementioned document, a similar averment is made about the IO approaching the Court.

22. Learned senior counsel for the appellant, however, contended that this was more a question of format, rather than of substance. His contention was that in view of the limited period of time left, the application was moved on an urgent basis and considering the seriousness of the matter, it should not be looked at technically but as a matter of substance. The fact that the Public Prosecutor had duly appended her signatures at the end of the application, and the very fact that there were changes in the second application, from the earlier application would show, as contended, that there has been application of mind of the Public Prosecutor, which is the real sine qua non of the report to be made by the Public Prosecutor.

23. It could not, however, be seriously disputed that the report of the Public Prosecutor could have been worded better or that if the appellant had approached the Court some time earlier, it would have been more appropriate. The alleged infirmities are, however, sought to be explained away by learned senior counsel for the appellant by referring to certain other facts, i.e., the mention of the progress of the investigation in the report/application and the fact that investigation papers were indeed submitted to the Public Prosecutor, the factum of filing of two separate documents referred to aforesaid, indicating application of mind by the Public Prosecutor, the mention of additional grounds in the subsequent document submitted by the Public Prosecutor, etc. It is the case of the appellant that it was only after scrutinising the earlier application of the even date that the Public Prosecutor filed the report, albeit in the form of an application.

24. The crucial judgment relied upon, by both the sets of counsel for the parties, is Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors.1. The accused had been detained under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA'). The TADA was amended by the Amendment Act No.43 of 1 (1994) 4 SCC 602 1993, which inter alia reduced the time for filing of a charge sheet from one year to 180 days and also introduced a new clause (bb) in Section 20(4), providing for grant of extension of time for completion of investigation and filing of challan on a report of the Public Prosecutor, indicating the progress of the investigation and the specific reasons for detention by the designated court, subject, however, to maximum compulsory detention of one year. Thus, the difference between this case and the case before us is only in the periods insofar as in this case and the said Act, the corresponding period for judicial custody for the purpose of completion of investigation is 90 + 90 days. In the case of Hitendra Vishnu Thakur2, this Court had faulted the report submitted by the Public Prosecutor, to hold that the parameters contemplated by clause (bb) had not been met.

25. Mr. Mukul Rohatgi, learned senior counsel contended that the facts relating to what was the report of the Public Prosecutor in that case and the present case are different. In this behalf, he invited our attention to para 73 of the judgment, where the application had been reproduced. The application was in the form of an affidavit of the IO. At the bottom of the application, it showed the same being signed by the IO, but with an 2 (supra) endorsement by the Public Prosecutor that it was identified before him. It was found that the designated court had erred in treating the application of the IO as a report of the Public Prosecutor, where the Public Prosecutor had merely identified the deponent of the affidavit (the IO) and such identification, alone could not justify the application to be treated as a report of the Public Prosecutor. It was sought to be contended by Mr. Rohatgi that on the other hand, in the case before us, there had been an actual application of mind of the Public Prosecutor, as witnessed by the submission of two different applications before the Special Court, and other reasons as aforementioned.

26. On the other hand, Dr. A.M. Singhvi, sought to rely upon the same facts as mentioned above, that the mere appending of the signatures by the Public Prosecutor would not suffice and in fact the earlier document, which was submitted by the IO was also signed by the Public Prosecutor. The submission, thus, was that the Public Prosecutor was merely endorsing what the IO had set forth in the application, without any independent application of mind. Not only that, learned senior counsel drew our attention to the order passed by the trial court to contend that the designated court also

appears to have treated the document in question as an application for extension of period of investigation that had been submitted by the IO. Moreover, it was also argued that reasons provided by the IO for an extension in the period of investigation did not appears to be genuine.

27. Learned senior counsel sought to emphasise that the appellant cannot get away from the requirements stipulated in the judgement of Hitendra Vishnu Thakur,3 for a document to be treated as a report of the Public Prosecutor and the mandatory requirements stipulated in this context, in Section 20(4)(bb) of TADA. In this behalf he referred to para 23 of the aforementioned judgement.

28. A perusal of the aforesaid paragraph shows that the emphasis laid by this Court was on the legislature, in its wisdom, not leaving it to the IO to make an application for seeking an extension of time from the Court and, thus, requiring the investigating agency to submit itself to the scrutiny of the Public Prosecutor, in the first instance, and satisfying him about the progress of the investigation and furnishing reasons for seeking further custody of an accused. Otherwise, an accused could be kept in continued detention, during unnecessarily prolonged investigation, at the whims of the police. This Court also emphasised that the Public 3 (supra) Prosecutor is not a part of the investigating agency, but is an independent statutory authority and, thus, is expected to independently apply his mind to the request of the investigating agency, before submitting a report to the Court for extension of time with a view to enable the investigating agency to complete its investigation. Thus, "He is not merely a post office or a forwarding agency. A Public Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the Court under clause (bb) to seek extension of time."

29. The observations in para 23 also then go on to state that the Public Prosecutor may attach the request of the IO along with his request or application or report, but his report must disclose, on the face of it, that he has applied his mind and has been satisfied with the progress of the investigation and considered a grant of further time, to complete the investigation, as necessary. This report is not merely a formality, but is a very vital report as it affects the liberty of an accused. The request of an IO for extension of time is no substitute for the report of the Public Prosecutor. We may notice that it has been very clearly set out that it is not merely a question of the form in which the request for extension is to be made, but one of substance, as it is to assist the designated court to independently decide whether or not to grant such extension. It cannot be a mere presentation and forwarding of the request of the IO to the Court. The mere labelling of the document as a report or an application was stated to be not of much consequence, but what was held to be of consequence was that there could not be a mere reproduction of the application or request of the IO by the Public Prosecutor in his report, without demonstration of the application of his mind and a recording of his own satisfaction.

30. The aforesaid line of argument was supported by Mr. Anand Grover and Ms. Indira Jaising, learned senior counsels. A reference was also made to the judgment in Sanjay Kumar Kedia alias Sanjay Kedia v. Intelligence Officer, Narcotics Control Bureau & Anr.4

31. Insofar as the facts are concerned, the accused was arrested under the Narcotic Drugs and Psychotropic Substances Act, 1985 and was kept in detention for the initial period of 180 days. The complaint was filed 4 (2009) 17 SCC 631 just before the expiry of the statutorily stipulated one year period. The endeavour of the accused to seek bail post filing of the complaint did not succeed and it is thereafter that an endeavour was made to assail the initial extension of detention on the ground that the report of the Public Prosecutor did not meet the relevant test. At that stage also, ultimately the Supreme Court held in favour of the accused by opining that he would be entitled to "default bail" relying on the judgment in Hitendra Vishnu Thakur5.

32. A further plea sought to be advanced, on reliance upon the Sanjay Kedia6 judgment, was that "compelling reasons" are required to be disclosed for extension of time beyond 180 days and that no such compelling reasons have been disclosed in the present case.

33. In order to complete the recital of facts, we may note at this stage that the charge sheet in the present case was filed on 15.11.2018, within the extended period of 90 days and, thus, it is open to the respondents to seek bail from the competent court; but then the contention of the counsel for the respondents was based on the facts that if the respondents are entitled to default bail, they should not be compelled to go through the 5 (supra) 6 (supra) rigours of applying for a regular bail, post filing of the charge sheet.

34. We have given our deep thought to the controversy in question.

35. There is no doubt that the report/application of the public prosecutor, setting out the reasons for extension of ninety (90) days of custody to complete investigation leaves something to be desired. The first document placed before the trial court was an application/report filed by the IO, though that is also stated to contain the signature of the public prosecutor. The second document, which purports to be the report of the public prosecutor, has also been filed in the form of an application. There is repetition of averments that the IO is approaching the court. Para 10 of the second document again mentions that the investigating authority had approached the court for an extension of a further period of ninety (90) days on the grounds set out therein and the trial court also appears to have treated the document in question as an application filed by the IO. A clarity in the form of a proper endorsement by the public prosecutor that he had perused the grounds in the earlier document submitted by the IO and, thus, was satisfied that a case had been made out for extension of time to complete the investigation would have obviated such a controversy. But that is not to be.

36. We may, however, notice that insofar as the existence of reasons for such extension, we have found that the same exist in the detailed grounds extracted aforesaid. The first document, purporting to be the application of the IO, contains the reasons for such extended period of investigation but the second document 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.

37. There is merit in the contention of the learned senior counsel for the appellant/State that the question is more of substance than form, an aspect even emphasised in Hitendra Vishnu Thakur7 case, which has been relied upon by learned counsel for both the parties. The second document in the form of an application has been filed on the same day. It is not as if the first document, which is an application of the IO was withdrawn to file the second document, which purports to be the report of the public prosecutor. It is on the analysis of the first document that the second document has been filed, albeit both containing the endorsement of the public prosecutor. There are averments in the second 7 (supra) application referring to the progress of the investigation and the rejoinder before us elucidates that the public prosecutor had the benefit of scrutinising these papers. There are additional and expanded grounds set out in the second document.

38. Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant/State has rightly contended that there is a material difference in the facts of the present case and those of Hitendra Vishnu Thakur8 case, inasmuch as the application in that case was in the form of an affidavit of the IO, whose signatures were identified by an endorsement of the public prosecutor. It is in those circumstances it was held that mere identification by the public prosecutor, of the deponent of the affidavit could not justify the application to be treated as a report of the public prosecutor. In the present case, the second document contains a clear endorsement of the public prosecutor in support of the averments made therein.

39. No doubt, in para 23 of Hitendra Vishnu Thakur9 case, this Court laid emphasis on the importance of the scrutiny by a public prosecutor so as to not leave the detenu in the hands of the IO alone, being the police 8 (supra) 9 (supra) authority. The public prosecutor, thus, has the option to agree or disagree with the reasons given by the IO for seeking extension of time but in the facts of the present case, the second document in the form of an application shows scrutiny of the first document and thereafter details grounds and expanded reasons for the requirement of further time to complete the investigation.

40. Undoubtedly the request of an IO for extension of time is not a substitute for the report of the public prosecutor but since we find 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 to the benefit of a default bail when in substance there has been an application of mind. The detailed grounds certainly fall within the category of “compelling reasons” as enunciated in Sanjay Kedia10 case.

41. We are, thus, not able to persuade ourselves to agree with the conclusions of the learned single Judge of the Bombay High Court in the impugned order and hold that the respondents would not be entitled to the benefit of default bail and consequently the impugned order is set aside.

10 (supra)

42. We may, however, clarify that since the charge-sheet has been filed, any observations made by us herein, would not, in any manner, affect the right of the respondents to seek regular bail from the trial court, if so advised, which would be decided on its own merits by the trial court.

43. The appeal is allowed leaving the parties to bear their own costs.

.....CJI.

[Ranjan Gogoi] .....J. [L. Nageswara Rao] .....J. [Sanjay Kishan Kaul] New Delhi.

February 13, 2019.