



\$~J1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 23rd July, 2026**Pronounced on: 18th August, 2026**Uploaded on: 18th August, 2026*

#

CNR No. DLHC010190742026

+

CRL.A. 444/2026**JASIR BILAL WANI @ DANISH**

.....Appellant

Through: Ms. Warisha Farasat, Sr. Adv. with
Ms. Suvarna Swain, Adv.
(M) 91 90078 61884

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Mr. Madhav Khurana, Sr. Adv. with
Ms. Trisha Mittal, Mr. Anil Dabas, Mr.
Teeksh Singhal, Mr. Deeparghya
Datta and Mr. Nishant Sharma, Adv.
with Dr. Navneet Sharma CIO for NIA
(M) 9711845913

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****JUDGEMENT****Prathiba M. Singh, J.**

1. The present appeal has been filed by the Appellant-Jasir Bilal Wani@Danish under Section 21 of the National Investigation Agency Act, 2008 assailing the following orders;

- Order dated 13th February, 2026 passed by the Id. Principal District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi *vide* which the application filed by the National Investigation Agency seeking extension of the investigation and custody period was allowed;



- Order dated 27th March, 2026 passed by the Id. Principal District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi *vide* which the application filed by the National Investigation Agency seeking extension of the investigation and custody period was allowed; and
 - Order dated 30th March, 2026 passed by the Id. Principal District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi *vide* which the application filed by the Appellant seeking default bail was rejected.
2. This appeal raises an important issue in respect of the interplay between Section 167 of the Code of Criminal Procedure, 1973 (hereinafter, '*Cr.P.C.*') and Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, '*BNSS*') in the context of application to Section 43D of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, '*UAPA*').
3. Section 43D of the UAPA is a provision which falls under Chapter VII of the UAPA and refers to Section 167 of the Cr.P.C. as it then existed in a modified form for the purpose of custody and default bail. However, after the enactment of the BNSS, the equivalent provision of the Cr.P.C has not been incorporated in Section 43D of the UAPA. Hence a legal issue has been raised to the effect that the accused is entitled to default bail as per Section 187 of BNSS after 90 days and not after 180 days as per Section 167 of the Cr.P.C.

Brief background

4. On 10th November, 2025, an explosion took place at Gate No.4, Lal Qila Metro Station, Netaji Subhash Chandra Marg, Delhi using a vehicle borne Improvised Explosive Device by Accused No.1-Dr. Umer Un Nabi,



who is since deceased.

5. Initially, **FIR No. 1049/2025** dated 11th November, 2025 was registered at PS. Kotwali. The same was later re-registered at PS. National Investigation Agency, New Delhi as **RC-21/2025/NIA/DLI** dated 11th November, 2025 for commission of the offences under Sections 103(1)/109(1)/61(2) of the Bharatiya Nyaya Sanhita, 2023, Sections 16/18 of the UAPA and Sections 3/4 of the Explosive Substance Act, 1908.

6. The Appellant-Jasbir Bila Wani @ Danish, S/o Bilal Ahmad Wani was arrested on 17th November, 2025 from National Investigation Agency (hereinafter, 'NIA') Camp Office, Srinagar. Police custody of the Appellant was granted by the Trial Court for 10 days, 7 days and 7 days respectively *i.e.*, for a total of 24 days.

7. *Vide* orders dated 10th December, 2025, 24th December, 2025 and 8th January, 2026, the Appellant was sent to judicial custody for 15 days, 15 days and 14 days respectively.

8. During the period while the Appellant was in judicial custody, an application was moved by the NIA under Section 43D(2) of the UAPA read with Section 187 of the BNSS wherein police custody of the Appellant was again sought by the NIA. The same was allowed *vide* order dated 13th January, 2026 till 16th January, 2026. Thereafter *vide* order dated 16th January, 2026, the Appellant was again sent to judicial custody for a period of 28 days.

9. On 10th February, 2026, the NIA moved an application seeking extension of the investigation and custody remand period beyond the statutory period of 90 days, upto 180 days in accordance with the provisions of Section 43D(2)(b) of the UAPA read with Section 187 of the BNSS. In this application, the extension of the investigation and custody remand was sought



of 7 accused persons including the Appellant. On 13th February, 2026, the Trial Court extended the period of remand of the Appellant for a period of 45 days *i.e.*, upto 135 days from the date of their arrest. The said order dated 13th February, 2026 is extracted below:

*“31. In view the above facts and circumstance and considering the submission made by Ld. Counsel for both the parties, Public Prosecutor report and various judicial precedents and after perusal of the case diary, this Court is satisfied that extension of period of detention of accused person in judicial custody is required for the completion of investigation. **Accordingly, the present application filed by the NIA is allowed and the period of remand of accused persons namely Jasir Bilal Wani @ Danish, Dr. Muzamil Shakeel Ganie, Dr. Shaheen Saeed, Soyab, Amir Rashid Mir, Mufti Irfan Ahmad Wagey and Dr. Adeel Ahmad Rather is extended for 45 more days i.e. up to, 135 days from the date of their arrest.**”*

10. On 15th February, 2026, the Appellant moved an application seeking default bail in terms of Section 187(3) of the BNSS.

11. Thereafter, the NIA moved a second application seeking extension of the investigation and custody remand period beyond the statutory period for an additional period of 45 days *i.e.*, total of 180 days. *Vide* order dated 27th March, 2026, the second extension was allowed in the following terms:

*“18. Accused persons mentioned on the top of this order i.e. Amir Rashid Mir, Jasir Bilal Wani @ Danish, Mufti Irfan Ahmad Wagey, Dr. Muzamil Shakeel Ganie, Dr. Adeel Ahmad Rather, Dr. Shaheen Saeed and Soyab **are sent to Judicial Custody remand for a further period of***



45 days i.e. up to 180 days from the date of their arrest.”

12. *Vide* order dated 30th March, 2026, the default bail application filed by the Appellant was also dismissed by the Trial Court in the following terms:

“35. In the instant case, while dealing with the application for extension of remand, a notice was given to the accused, who submitted a reply. Ld. Counsel of the accused also advanced the argument and only thereafter the order dated 13.02.2026, was passed.

36. If the applicant was aggrieved from the order of extension of judicial remand granted by this court vide order dated 13.02.2026, he should have assailed the said order before the higher court by filing an appropriate proceeding.

37. The applicant, however, has not assailed the said order before the higher court and has filed this application for grant of default bail, which tantamount a review of the order dated 13.02.2026, which is not permissible in law.

38. In view of the above facts and circumstances, I am of the considered view that the application filed by applicant seeking default bail, is not maintainable, after passing of an order dated 13.02.2026 vide which period of completion investigation was extended beyond 90 days for further 45 days. Accordingly, the application filed by the applicant/ accused for seeking default bail is dismissed.”

13. The Appellant has filed the present appeal in which notice was issued on 30th April, 2026. In the meantime, on 14th May, 2026, the charge-sheet has been filed by the NIA against the Appellant. The Appellant, accordingly,



challenges the following orders passed by the Trial Court in the present appeal:

- i) Order of first extension dated 13th February, 2026;
- ii) Order of second extension dated 27th March, 2026; and
- iii) Order dated 30th March, 2026 dismissing the default bail application of the Appellant.

Submissions on behalf of the Parties

14. Ms. Warisha Farasat, Id. Senior Counsel appearing for the Appellant has highlighted various differences between the manner in which Section 167 of the Cr.P.C. and Section 187 of the BNSS operate. It is her submission that earlier under Section 167 of the Cr.P.C., police custody of the accused was not permissible for more than the initial 15 days. However, under the BNSS, the Appellant's police custody can be granted by the Court even during the 60 day period in parts.

15. In addition, it is submitted on behalf of the Appellant that Section 8 of the General Clauses Act, 1897 cannot be read automatically to mean that Section 187 of the BNSS would stand incorporated into Section 43D(2), particularly when several modifications have been made in Section 187 of the BNSS, while corresponding modifications have not been made in Section 43D of the UAPA. According to the Id. Senior Counsel, the scheme of Section 167 of the Cr.P.C. and Section 187 of the BNSS are different and thus, it is not merely a reading of the provision of Section 187 of the BNSS in place of Section 167 of the Cr.P.C.

16. Further, it is submitted by Ms. Farasat, Id. Senior Counsel that the Ministry of Law and Justice *i.e.*, Union of India has issued a notification dated



16th July, 2024 under Section 8 of General Clauses Act, 1897 to the effect that wherever the Indian Penal Code, 1860 (hereinafter, 'IPC'), Cr.P.C. or Indian Evidence Act, 1872 was referred to in any Act of Parliament, State Legislature, an Ordinance, in Regulations, under Article 240 of the Constitution of India, in a Presidential Order or in Rules, Regulations, Orders or Notifications, the provisions of the Bharatiya Nyaya Sanhita, 2023, BNSS and Bharatiya Sakshya Adhiniyam, 2023 would be construed accordingly. It is her submission that this notification would be contrary to law inasmuch as the General Clauses Act, 1897 does not permit the Government to issue any notifications.

17. Reliance is placed upon the decision in ***General Officer Commanding-in-Chief v. Subhash Chandra Yadav, (1988) 2 SCC 351*** and ***Income Tax Officer, Alleppy v. M.C. Ponnose & Ors., (1969) 2 SCC 351*** to argue that the power to frame Rules or issue notifications would be within the confines of the statute itself. The two conditions as stipulated in ***General Officer (Supra)***, are that the Notifications/Rules must be in conformity with the provisions of the statute and that it should be within the scope and purview of the rule making power. According to the Appellant's counsel both conditions are not satisfied in the present case.

18. It is, further urged that there are different categories of provisions of the Cr.P.C. and their reference in the UAPA. By way of illustration, reference is made to the provisions relating to powers to arrest, search, seizure where the provisions of the Code would apply, *i.e.*, Cr.P.C. However, if there is any inconsistency between the provisions of Cr.P.C. and UAPA, the provisions of UAPA would apply. Similarly, under Section 43D(4) of the UAPA, Section 438 of the Cr.P.C. relating to anticipatory bail would not apply to UAPA.



19. Ld. Senior Counsel submits that in Section 43D(2) of the UAPA, Section 167 of the Cr.P.C. has not merely been referred to but has been referred to for modifications. Thus, there are three species within Chapter VII itself where provisions of the Cr.P.C. are referred to and therefore, no general legal principles that can be applied. According to Ms. Farasat, Id. Senior Counsel, a specific provision that has to be interpreted would have to be construed on the basis of the manner in which the provisions of Cr.P.C. have been incorporated into the UAPA and no general principle can be applied.

20. On the other hand, Mr. Madhav Khurana, Id. Senior Counsel appearing for the NIA submits that insofar as the reference to Section 167 of the Cr.P.C. in Section 43D(2) of the UAPA is concerned, instead of Section 167(2) of Cr.P.C., the corresponding provision would be Section 187(3) of the BNSS. According to the Id. Senior Counsel for the NIA, there would be no change required in Section 43D(2)(a) of the UAPA as the period of 15 days, 60 days and 90 days would continue to be 15 days, 60 days and 90 days in the BNSS. Insofar as the proviso to Section 43D(2) of the UAPA is concerned, the same would continue to apply to UAPA matters. According to the said proviso, wherever specific reasons are cited for the detention beyond 90 days and the said extension is granted by the Court, the outer limit would be 180 days.

21. In this case, it is the submission on behalf of the NIA that such extension has been sought by the NIA and the same was granted *vide* orders dated 13th February, 2026 and 27th March, 2026. The said orders not being challenged initially, the prayer for default bail would not be maintainable as per Id. Senior Counsel.

22. The next submission of Mr. Khurana, Id. Senior Counsel is that insofar as the judicial custody to police custody and vice versa is concerned, Section



187 of the BNSS operates as a complete scheme in itself. However, insofar as UAPA is concerned, the second proviso to Section 43D(2) of the UAPA would still be applicable as the agency would have to explain the delay by filing an affidavit and giving the reasons for the movement from judicial custody to police custody. Ld. Senior Counsel further submits that two extensions dated 13th February, 2026 and 27th March, 2026 were initially not challenged but are now challenged in a consolidated manner in the present appeal after the default bail application has been dismissed.

23. Vehement reliance has been placed upon the decision of the Bombay High Court in *Nagani Akram Mohammad Shafi v. Union of India, 2025 SCC OnLine Bom 2586* where, the Bombay High Court has interpreted Section 8(1) of the General Clauses Act, 1897 in the context of the schedule to Prevention of Money Laundering Act, 2002 and has distinguished ‘legislation by reference’ and ‘legislation by incorporation’. It is his submission that in the present case, the mention of Section 167 of the Cr.P.C is a ‘legislation by reference’ and not by incorporation and therefore, it would be dynamic in nature and would not get frozen. It is also highlighted that the Supreme Court dismissed the Special Leave Petition against the judgment of the Bombay High Court in *Nagani Akram Mohammad Shafi (Supra)* being *Petition for Special Leave to Appeal (Crl.) No. 13982/2025 titled ‘Nagani Akram Mohammad Shafi v. Union of India & Anr.’* and the reasoning of the Bombay High Court has been approved by the Supreme Court. Accordingly, it is not a mere dismissal of the Special Leave Petition.

24. Further, it is the submission on behalf of the NIA that following the rationale of the Bombay High Court in *Nagani Akram Mohammad Shafi (Supra)*, Section 187(3) of the BNSS would be applicable only to the former



part of Section 43D(2) of the UAPA, but would not replace the proviso. In addition, it is submitted that the replacement of the provisions of the Cr.P.C. with the BNSS has also been administratively notified by the Orissa High Court and the Madras High Court as also by the Union of India, though the notification of the Union of India has not been approved by the Bombay High Court.

25. Further, Id. Senior Counsel for the NIA has referred to the following decisions for the interpretation of Section 8 of the General Clauses Act, 1897:

- ***State through SP, New Delhi v. Ratan Lal Arora, (2004) 4 SCC 590***
- ***State represented by Inspector of Police, Pudukottai v. A. Parthiban, (2006) 11 SCC 473***
- ***Zuber Ahmed v. Union of India, 2015 SCC OnLine P&H 8826***

26. Finally, Mr. Khurana, Id. Senior Counsel for the NIA submits that the power under Section 43D(2) has been exercised in the present case *vide* order dated 13th February, 2026. Reference has also been placed upon the order of the Supreme Court dated 4th May, 2026 in ***SLP (Crl.) No. 908 of 2026 titled State of Uttarakhand v. Javed Siddiqui*** to argue that whenever there is a belated challenge to the extension orders, the same would be construed as acquiescence and hence, the challenge would not be maintainable.

27. In rejoinder, Ms. Farasat, Id. Senior Counsel has pointed out that the manner in which the Schedule to the Prevention of Money Laundering Act, 2002 mentions provisions of the IPC is different from the manner in which Section 167 Cr.P.C. is referred to in Section 43D(2) of the UAPA. This according to her would be ‘Legislation by incorporation’ and not ‘Legislation by reference’. Further, as per Id. Senior Counsel for the Appellant, Section 43D(1) of the UAPA has a non-obstante clause which would also show that



within Section 43D of the UAPA itself, each provision is being treated differently when it comes to the application of the provisions of the Cr.P.C. Thus, it is not a mere reference, but legislation by incorporation which would get frozen with time.

28. It is further submitted on behalf of the Appellant that UAPA being a special enactment and Section 43D of the UAPA dealing with life and liberty, any interpretation that would be taken by the Court ought to be in favour of the accused and not in favour of the State. Finally, it is submitted on behalf of the Appellant that the intent behind Section 167 of the Cr.P.C. and Section 187 of the BNSS being completely different, they cannot be treated as provisions which are in *pari materia*.

Analysis and Findings

29. The issue raised in the present appeal is whether after enactment of Section 187 of the BNSS, the first proviso to Section 43D(2) of the UAPA which extends the period of investigation to 180 days would be applicable or not.

30. As a corollary - the question is whether, after enactment of BNSS, an accused person in a UAPA case would be entitled to default bail after 90 days or after 180 days.

A. Interplay between Section 43(D) of the UAPA and Section 167 of the Cr.P.C.

30. Section 167 of the Cr.P.C. permits extension of custody of an accused person for a maximum period of 90 days in cases where the offence alleged is punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years. In case of other offences, Section 167 of the Cr.P.C



permits detention for a maximum period of 60 days. The relevant portion of Section 167 of the Cr.P.C. reads as under:

“Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;



*(ii) sixty days, where the investigation relates to any other offence,
and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]*”

31. Upon the expiry of the said 90 days or 60 days, as the case may, the accused person shall be released on bail. During this period, the police custody of an accused person can be granted for a maximum period of 15 days.

32. This provision under the Cr.P.C. *i.e.*, Section 167 while being adapted to the UAPA was modified in the following terms:

“43D. Modified application of certain provisions of the Code.--(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(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),--

a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(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:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody. ”

33. A perusal of the above provision would show that Section 43D(1) of the UAPA starts with a non-obstante clause to the effect that every offence under the UAPA would be deemed to be a cognizable offence. Under Section 43D(2) of the UAPA, the period of 15 days, 60 days and 90 days is modified to 30 days, 90 days and 90 days respectively.

34. A further proviso has been added to the said provision extending the maximum period of 90 days to 180 days. The second proviso to Section 43D(2) of the UAPA also permits a police officer to seek police custody from judicial custody by giving reasons and by explaining the delay in the investigation. However, in the present case, this Court is concerned with Sections 43D(2)(a) and 43D(2)(b) of the UAPA as also the first proviso to Section 43D(2)(b) of the UAPA but not the second proviso.

35. The interplay between Section 43D of the UAPA and Section 167 of the Cr.P.C. has been considered by a Co-ordinate Bench of this Court in ***Syed Shahid Yousuf v. National Investigation Agency, 2018 SCC OnLine Del 9329***. In the said decision, the Court observed as under:

“28. The above amended provision contemplates extension of the period of detention up to 180 days where it is not possible for the NIA to complete the



investigation within a period of 90 days. For this the Court has to be satisfied, on a perusal of the report of the PP indicating the progress of the investigation, that it cannot be completed within 90 days and that it is necessary therefore to extend the detention beyond 90 days and for a period not beyond 180 days. In other words, the proviso to Section 167 (2) (a) (ii) Cr PC (as amended by Section 43D UAPA) envisages the report of the PP being presented before the Court explaining the progress of the investigation. This report should make out a case that it is not possible to complete the investigation within 90 days. This report should indicate the specific reasons why the detention of the accused beyond 90 days is necessary.

29. In effect, although the permission of the Court is sought for extending the period of detention and not for extension of the period of investigation, the Court by allowing an application seeking permission for extension of the period of investigation, for whatever period it thinks fit, is in fact allowing the prayer for extension of the custody of the detainee by that period.”

36. From the above, it is clear that insofar as the extension of the detention period of custody from 90 days to 180 days is concerned, for offences under the UAPA, the same has been fully recognized and this position in law is not in dispute. Thus, under the older regime of the Cr.P.C., in its application to the UAPA, the time period for default bail was 180 days.

B. Repeal of Cr.P.C. and enactment of BNSS

37. Parliament enacted the BNSS in the year 2023. The said Code has been notified and has come into operation from 1st July, 2024. The Ministry of Law and Justice, Government of India also issued a notification dated 16th July, 2024 to the following effect:

**MINISTRY OF LAW AND JUSTICE****(Legislative Department)****NOTIFICATION**

New Delhi, the 16th July, 2024

S.O. 2790(E).—In pursuance of section 8 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby notifies that where any reference of the Indian Penal Code (45 of 1860), or the Code of Criminal Procedure, 1973 (2 of 1974) or the Indian Evidence Act, 1872 (1 of 1872 or any provisions thereof is made in any—

- (a) Act made by Parliament; or
- (b) Act made by the Legislature of any State;
- (c) Ordinance;
- (d) Regulations made under article 240 of the Constitution;
- (e) President's order;
- (f) rules, regulations, order or notification made under any Act, Ordinance or Regulation,

for the time being in force, such reference shall respectively be read as the reference of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) (BNSS) or the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) (BSA), and the corresponding provisions of such law shall be construed accordingly.

[F. No. 13(12)/2024-Leg.I]

DIWAKAR SINGH, Addl. Secy.

38. The equivalent provision under the BNSS for seeking extension of detention under the UAPA is Section 187 of the BNSS which prescribes slightly different time periods.

39. A comparative chart of Section 167(2) of the Cr.P.C. and Section 187(2) and (3) of the BNSS is set out below:

<i>Section 167(2) Cr.PC</i>	<i>Section 187(2) & (3) BNSS</i>
<i>The magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a terms not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he</i>	<i>(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorize, from time to time, the detention of the accused in such custody as such</i>



may order the accused to be forwarded to a Magistrate having such jurisdiction;

Provided that--

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions

Magistrate thinks fit, for a term not exceeding fifteen days in the whole or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section(3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the



of Chapter XXXIII for the purposes of that Chapter;]

[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

[Explanation I.--For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

[Explanation II.--If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by

expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.



his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.]

[Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]

40. A perusal of the above comparative table would show that under Section 187 of the BNSS instead of 15 days, 60 days and 90 days, the period of 15 days of police custody could be either in whole or in part, during the initial 40 days or 60 days, out of the detention period of 60 days or 90 days – meaning thereby during the period of 60 days or 90 days, the period of police custody of 15 days could be either continuous or in part during the permissible detention period. Thus, police custody can be sought for e.g., for 3 days, 4 days, 10 days or 15 days within the initial period of 40 days or 60 days, or 90 days.

41. Flexibility and choice has been given to the concerned police officer to decide as to when police custody of an accused person is needed during the initial detention period. However, the maximum period would still be 15 days of police custody as per Section 187 of the BNSS.

42. Under Section 187(3) of the BNSS, the period of 15 days can also be extended by the Magistrate if there are adequate grounds to do so. However, the maximum limit is 90 days in case of offences punishable with death, life



imprisonment or imprisonment for a term of 10 years or more. In case of other offences, the maximum period would be 60 days. Upon the expiry of the said 90 days or 60 days, the accused person shall be entitled to default bail.

43. Broadly speaking, therefore, the fundamental distinction between Section 167 of the Cr.P.C. and Section 187 of the BNSS is the manner in which police custody can be sought for 15 days in whole or in parts. The issue, however, in this case does not relate to the 15 days period.

44. Upon the enactment of the BNSS, the Cr.P.C. was repealed subject to certain exceptions. The relevant repeal and savings provision of the BNSS being Section 531 is extracted below:

*“Section 531. **Repeal and savings.***

1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal---

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

Section 531(2)(b).....

Section 531(2)(c).....

Section 531(3).....”

45. Upon the repealing of Cr.P.C. by the BNSS, Section 43D of the UAPA was not amended to incorporate Section 187 of the BNSS in the text of the provision. The said provision continues to retain reference to Section 167 of the Cr.P.C. The Appellant has relied upon this fact to seek default bail, under



Section 187 of the BNSS.

C. Whether Section 187 of the BNSS can be read into Section 43D(2) of the UAPA or not?

46. The main argument on behalf of the Appellant is that the subject FIR *i.e.*, ***FIR No. RC-21/2025/NIA/DLI*** was registered after the BNSS came into force and in the absence of reference to Section 187 of the BNSS in Section 43D(2), the BNSS would prevail. Hence, the extension of the detention period beyond 90 days to 180 days, would not be applicable. To put it pithily, the Appellant's case is that he is entitled to default bail upon the expiry of 90 days from date of arrest.

47. It is not in doubt that the Cr.P.C. stands repealed and along with it, Section 167 also stands repealed. Section 43D(2) of the UAPA continues to refer to Section 167 of the Cr.P.C. The difference between Section 167 of the Cr.P.C. and Section 187 of the BNSS – to put it briefly, is in respect of the period for police custody within the 90 days period, with which, we are not concerned in the present case.

48. The detention period of 15 days, 60 days and 90 days under Section 167 of the Cr.P.C. was modified to 30 days, 90 days and 90 days under Section 43(D)(2) of the UAPA. However, this modification was with reference to Section 167 of the Cr.P.C. and not Section 187 of the BNSS. The first proviso to Section 43D(2) of the UAPA extends the period of 90 days upto 180 days. Again, this is with reference to Section 167 of the Cr.P.C. and not Section 187 of the BNSS.

49. Thus, the question is whether Section 167 of the Cr.P.C. ought to be automatically read as Section 187 of the BNSS in Section 43D(2) of the



UAPA or not?

50. In order to understand and answer this question, the effect of replacement of legislations which apply across various statutes such as the Cr.P.C. needs to be appreciated.

51. The Cr.P.C. was enacted in the year 1973 and the said Code would find mention in a large number of statutes. At the time when the Cr.P.C. was enacted, the Code of Criminal Procedure, 1898 was repealed. The Cr.P.C., 1973 would find mention in various statutes dealing with criminal offences as it forms the foundation of criminal procedure to be followed across the country. When any procedural Code like Cr.P.C. which governs all criminal cases and their proceedings, is replaced with a new Code such as the BNSS, is there a need to amend each of the statutes where Cr.P.C. has been referred to. In the opinion of this Court, the answer to this is based on the manner in which other statutes refer to the Cr.P.C.

52. When a reference is made in one statute to another statute, the reference could be either by mere reference or by incorporating it. Whenever one enactment refers to another enactment or a specific provision of the said enactment, it is '*Legislation by reference*'. However, if a provision is fully incorporated into another statute, it is '*Legislation by incorporation*'. This distinction has been dealt with in various decisions which would be discussed below.

53. The legislature cannot be expected to amend each and every statute where there is a reference to a repealed enactment. In order to avoid such an onerous responsibility upon Parliament or the State Legislature, Section 8 of the General Clauses Act, 1897 provides as under:



“8. Construction of references to repealed enactments.—[(1)] Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.”

54. The above provision clearly stipulates that whenever a statute/provision is repealed or re-enactment of any Central Act takes place, any reference to the repealed enactment in any other enactment is to be construed as a reference to the provisions so re-enacted. To put it simply, since the Cr.P.C. was repealed, in terms of Section 8(1) of the General Clauses Act, 1897, reference in any other statutes to provisions of the Cr.P.C. is to be deemed as a reference to corresponding provisions of the BNSS. However, this is further subjected to one caveat *i.e.*, if a different intention appears from the statute.

55. A perusal of the UAPA would show that even in Chapter VII, by way of illustration, reference to the Cr.P.C. has been made in various places. For example, under Section 43B(3) of the UAPA, the measures taken upon arrest or seizure are in accordance with the provisions of the Code *i.e.*, Cr.P.C. However, no specific provision of the Cr.P.C. has been mentioned under Section 43B(3) of the UAPA. Section 43C of the UAPA provides that insofar as the provisions of Cr.P.C. which are not inconsistent with UAPA are concerned, the provisions of Cr.P.C. would continue to apply to all arrests, searches and seizures under UAPA. Again, there is no reference to the specific provisions of the Cr.P.C. Under Section 43D(3) of the UAPA, reference to the State Government is to be construed as the reference to Central



Government or State Government. Under Section 43D(4) of the UAPA, it is provided that Section 438 of the Cr.P.C. would not apply in case of persons who are accused under the UAPA *i.e.*, provisions relating to anticipatory bail would not apply.

56. Thus, as can be seen, within Chapter VII of the UAPA, there are different kinds of reference to Cr.P.C. Broadly, there are three categories:

- A. General reference to provisions of Cr.P.C.;
- B. Specific reference to provisions of Cr.P.C. – to make them either applicable or not applicable to the UAPA; and
- C. Reference to specific provisions of Cr.P.C. with certain modifications.

The question is what is the nature of reference in Section 43D(2) to Section 167 of Cr.P.C? Is it '*Legislation by reference*' or '*Legislation by incorporation*' or some other form of reference?

57. This question deserves to be answered in order to assess whether under Section 8 of the General Clauses Act, 1897, the reference to Section 167 of the Cr.P.C in Section 43D(2) of the UAPA would automatically mean a reference to Section 187 of BNSS or not.

58. The Bombay High Court in ***Nagani Akram Mohammad Shafi (Supra)*** has considered the interplay between Bharatiya Nyaya Sanhita, 2023 (hereinafter, '*BNS*') and Prevention of Money Laundering Act, 2002 (hereinafter, '*PMLA*') and in the said context has succinctly brought out the difference in '*Legislation by reference*' and '*Legislation by incorporation*'. The relevant portion of the said decision is set out below:

“22. Understanding the effect of repealing and re-enacting a law on other existing laws depends on a careful understanding of two important legal rules of interpretation: "legislation by reference" and



"legislation by incorporation." Telling the difference between these two is very important to decide whether the provisions of the BNS and BSS will automatically take the place of the earlier IPC and CrPC for the purpose of the PMLA.

23. Where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all. [See: Collector of Customs, Madras v. Nathella Sampathu Chetty, (1962) 3 SCR 786 and Mahindra & Mahindra Ltd. v. Union of India, (1979) 2 SCC 529]

24. Legislation by Reference occurs when a statute refers to the provisions of another existing statute without physically reproducing them within its own text. In such cases, the referred provisions are considered part of the referring statute, but they maintain their independent existence. A key characteristic of this doctrine is its dynamic nature: any subsequent amendments, modifications, or even the repeal of the referred statute will directly affect the referring statute. This is because the referring statute dynamically points to the current version of the referred law. For instance, a general reference to a provision implies the exclusion of specific references. If there is a mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly



appears, Section 8(1) of the General Clauses Act, 1897, would apply, and the reference would be construed as a reference to the provision in the former statute, as it maybe in force from time to time.

25. Conversely, Legislation by Incorporation involves the physical "bodily lifting" of provisions from one enactment and making them an integral, fixed part of another. Once incorporated, these provisions become a static component of the incorporating statute, as if they were originally enacted within it. Consequently, subsequent amendments or the repeal of the original statute from which the provisions were drawn do not affect the incorporated provisions, as they have lost their independent existence within the context of the incorporating statute. The effect of incorporation means that the repeal of the former leaves the latter wholly untouched.

26. The main legal difference between legislation by reference and legislation by incorporation is seen when the original law, which is referred to or incorporated, gets changed later. In the case of legislation by reference, the law that makes the reference keeps getting automatically updated, so it always stays in line with the latest version of the referred law. But in legislation by incorporation, the law only takes a fixed version, like a snapshot, of the other law at the time it was incorporated. That fixed version does not change, even if the original law is changed or repealed later. Though legislation by incorporation has some clear exceptions in law, legislation by reference generally does not allow any exceptions. The Supreme Court has clearly said many times that when only specific provisions of one law are both referred to and incorporated into another law, then only those specific provisions apply. Any later changes made to the original law do not become part of the new law.



27. Section 8(1) of the General Clauses Act, 1897, is a foundation for ensuring legal continuity when enactments are repealed and re-enacted. This statutory provision mandates that where a Central Act or Regulation repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or instrument to the repealed provision shall, unless a different intention appears, be construed as a reference to the reenacted provision. This section thus provides for the automatic substitution of references to repealed laws with their re-enacted equivalents, unless a contrary intention is shown, the law will automatically replace the reference to the legislative intent is explicitly demonstrated. Section 8(1) plays an important role in making sure that the law continues to work smoothly when a law is repealed and re-enacted. This means that, unless a contrary intention is shown, the law will automatically replace the reference to the old law with the reference to the new re-enacted law.”

59. Thus, in the context of BNS and PMLA, the Bombay High Court held that if there is bodily lifting of one provision into another enactment in order to make the former a complete part of the latter, then it is ‘*Legislation by incorporation*’. However, if the provision is not bodily lifted but mere reference is made in the second statute to the other statute, then it is ‘*Legislation by reference*’.

60. In the context of PMLA, IPC and BNS, the Bombay High Court held as under:

“69. In view of the above discussion, the Court answers the legal questions as follows: (i) A notification issued by the Central Government dated 16th July 2024, seeking to substitute references to IPC with BNS by



invoking Section 8 of the General Clauses Act and Article 73, does not amount to "law" within the meaning of Article 13 of the Constitution of India. (ii) Section 8 of the General Clauses Act is merely a tool of interpretation, not a source of legislative or executive power. (iii) Article 73 does not authorise the executive to alter legislative references or create binding legal norms without legislative sanction. (iv) The absence of authentication under Article 77 further deprives the said notification of any legal effect.

70. In view of the above discussion, this Court is satisfied that offences under the Bharatiya Nyaya Sanhita, 2023 which correspond to offences listed in the PMLA Schedule, as erstwhile IPC provisions, are to be regarded as scheduled offences for the purposes of PMLA, 2002. The absence of a textual amendment of the Schedule does not disable the prosecution so long as the new law covers the same field of criminality.

Therefore, the contention of the applicant that the Enforcement Directorate had no jurisdiction to register the ECIR or proceed under PMLA due to the change in law is devoid of merit. The prosecution is lawfully maintaining the case treating the BNS offences as predicates, and there is no illegality in the invocation of PMLA on this ground."

61. As per this judgment, the conclusion is that offences under BNS which correspond to offences in the IPC would be regarded as 'Scheduled Offences' for the PMLA. This decision of the Bombay High Court has been upheld by the Supreme Court in ***Petition for Special Leave to Appeal (Crl.) No. 13982/2025*** vide order dated 22nd September, 2025 in the following terms:

"1. We are not inclined to interfere with the impugned judgment and order of the High Court, at this stage;



hence, the special leave petition is dismissed.
2. However, since the special leave petition is confined only to the question of law which had been urged before the High Court and decided by it, **with which we are in agreement**, it shall be open to the petitioner to apply for bail afresh before the trial court.
3. If such an application is made, the same shall be decided on its own merits.
4. Pending application(s), if any, shall also stand disposed of.”

62. A perusal of the above order would show that the Supreme Court has categorically endorsed/affirmed the view of the Bombay High Court.

63. The applicability of Section 8 of the General Clauses Act, 1897, as also the interpretation of the said provision in the context of ‘*Legislation by reference*’ and ‘*Legislation by incorporation*’, has been considered by the Supreme Court in the year 1979 in ***Mahindra & Mahindra Ltd. v. Union of India, (1979) 2 SCC 529***, in the following terms:

“8. The first question that arises for consideration on the preliminary objection of the respondents is as to what is the true scope and ambit of an appeal under Section 55. That section provides inter alia that any person aggrieved by an order made by the Commission under Section 13 may prefer an appeal to this Court on “one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908”. Now at the date when Section 55 was enacted, namely, December 27, 1969, being the date of coming into force of the Act, Section 100 of the Code of Civil Procedure specified three grounds on which a second appeal could be brought to the High Court and one of these grounds was that the decision appealed against was contrary to law. It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and,



therefore, if the reference in Section 55 were to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from February 1, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated and in their place only one ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondents leaned heavily on Section 8(1) of the General Clauses Act, 1897 which provides:

“Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.”

and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as



reference to the new Section 100 and the appeal could be maintained only on ground specified in the new Section 100, that is, on a substantial question of law. We do not think this contention is well founded. **It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted.** Such was the case in *Collector of Customs v. Nathella Sampathu Chetty* [AIR 1962 SC 316 : (1962) 3 SCR 786] and *New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise* [(1970) 2 SCC 820 : AIR 1971 SC 454 : (1971) 2 SCR 92] . **But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute.** Lord Esher, M.R., while dealing with legislation in incorporation in *In re Wood's Estate* [(1886) 31 Ch D 607] pointed out at p. 615:



“If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.”

Lord Justice Brett, also observed to the same effect in Clarke v. Bradlough [(1881) 8 QBD 63, 69] :

“.... there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second.”

This was the rule applied by the Judicial Committee of the Privy Council in Secretary of State for India in Council v. Hindustan Cooperative Insurance Society Ltd. [58 IA 259] The Judicial Committee pointed out in this case that the provisions of the Land Acquisition Act, 1894 having been incorporated in the Calcutta Improvement Act, 1911 and become an integral part of it, the subsequent amendment of the Land Acquisition Act, 1894 by the addition of sub-section (2) in Section 26 had no effect on the Calcutta Improvement Act, 1911 and could not be read into it. Sir George Lowndes delivering the opinion of the Judicial Committee observed at p. 267:

“In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in Craies on Statute Law, 3rd Edn. pp. 349, 350 ... The independent existence of the two Acts is, therefore, recognised; despite the death of the parent Act, its offspring survives in the incorporating Act.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the



former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.”

So also in Ram Sarup v. Munshi [AIR 1963 SC 553 : (1963) 3 SCR 858] it was held by this Court that since the definition of “agricultural land” in the Punjab Alienation of Land Act, 1900 was bodily incorporated in the Punjab Pre-emption Act, 1913, the repeal of the former Act had no effect on the continued operation of the latter. Rajagopala Ayyangar, J., speaking for the Court observed at p. 868-69 of the Report:

“Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated.

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression ‘agricultural land’ in the later Act has to be read as if the definition in the Alienation of Land Act, 1900, had been bodily transposed into it.”

The decision of this Court in Bolani Ores Ltd. v. State of Orissa [(1974) 2 SCC 777 : AIR 1975 SC 17 : (1975) 2 SCR 138] also proceeded on the same principle. There the question arose in regard to the interpretation of Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as “the Taxation Act”). This section when enacted adopted the definition of “motor vehicle” contained in Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no corresponding amendment was made in the definition contained in Section 2(c) of the Taxation Act. The argument advanced before the Court was that the definition in Section 2(c) of the Taxation Act was not a



*definition by incorporation but only a definition by reference and the meaning of “motor vehicle” in Section 2(c) must, therefore, be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939. This argument was negated by the Court and it was held that this was a case of incorporation and not reference and the definition in Section 2(18) of the Motor Vehicles Act, 1939 as then existing was incorporated in Section 2(c) of the Taxation Act and neither repeal of the Motor Vehicles Act, 1939 nor any amendment in it would affect the definition of “motor vehicle” in Section 2(c) of the Taxation Act. **It is, therefore, clear that if there is mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute.** The question is to which category the present case belongs.”*

64. As per the above decision, where one enactment merely refers to or cites a provision of another enactment, Section 8(1) of the General Clauses Act, 1897 applies, and the reference is construed as a reference to the corresponding provision as re-enacted.

65. The purpose of Section 8 of the General Clauses Act, 1897 is to enable seamless applicability of provisions of a new statute replacing an old statute, especially when there is ‘*Legislation by reference*’. If such an interpretation is not adopted, the burden on the legislature would be extremely onerous. It is to avoid such an onerous burden that Section 8 of the General



Clauses Act, 1897 exists to ensure that there is automatic applicability of the new law.

66. However, where a provision is incorporated into another statute, it becomes an integral part of the incorporating statute as if it had been expressly enacted therein. Once incorporated, the provision stands independently within the incorporating statute, and any subsequent repeal or amendment of the original enactment does not affect the incorporated provision.

67. Coming to Section 43D of the UAPA and the manner in which it refers to Section 167 of the Cr.P.C., a perusal of the provision itself would show that Section 167 of the Cr.P.C. has not been bodily lifted into Section 43D(2) of the UAPA. Section 167 of the Cr.P.C. is a detailed provision and continues to be so prior to its repeal for the purpose Section 43D(2) of the UAPA. A mere reading of Section 43D(2) of the UAPA would not be sufficient to understand the scheme of Section 167 of the Cr.P.C. Section 43D(2) of the UAPA merely modifies the time periods mentioned in Section 167 of the Cr.P.C. for the purpose of UAPA. Accordingly, instead of 15 days in Section 167 of the Cr.P.C., the UAPA stipulates 30 days and instead of 60 days mentioned in Section 167 of the Cr.P.C., the UAPA stipulates 90 days. Thus, Section 167 of the Cr.P.C. is referred to in Section 43D(2) of the UAPA.

68. The question again is whether this reference to Section 167 of the Cr.P.C. would automatically be deemed to be a reference to Section 187 of the BNSS or not.

69. Section 8 of the General Clauses Act, 1897 makes it clear that unless a different intention appears, the reference in the provision in question should be construed as reference to the new provision. By this simple test, therefore, Section 167 of Cr.P.C. in Section 43D(2) of the UAPA ought to be construed



as reference to Section 187 of the BNSS.

70. The question now for the purpose of this case is whether the first proviso to Section 43D(2) of the UAPA applies or not. There is no intention that can be deciphered from a reading of the BNSS that it seeks to express anything to the contrary. The BNSS merely makes some modifications in the 15 days period of police custody. However, broadly, the 15 days, 60 days and 90 days would still have to be construed as 30 days, 90 days and 90 days for the UAPA.

71. By applying Section 8 of the General Clauses Act, 1897 along with the principle of '*Legislation by reference*', it becomes clear that in the case of Section 43D(2) of the UAPA, reference to Section 167 of the Cr.P.C. has to be construed as reference to Section 187 of the BNSS. The first proviso to Section 43D(2) would therefore apply and the period of detention can be extended upto 180 days. Ultimately, the intention of the Legislature has to be seen. The purpose of increasing the detention period to 180 days in the UAPA, is clearly to provide longer period of detention for heinous offences such as terrorism. While answering the questions raised herein, the said intention cannot be forgotten. Under UAPA, longer period of detention is permissible, anticipatory bail is not applicable – subject to the conditions in the statute. Thus, by the mere enactment of BNSS the said intention of the Legislature cannot be defeated. In fact Section 4 of the Cr.P.C and Section 4 of the BNSS, make it clear that offences under other laws shall be inquired, investigated, tried and otherwise dealt with as per the Special laws. The said provisions read as under:

Section 4 of the Cr.P.C.

“4. Trial of offences under the Indian Penal Code and



other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.”

Section 4 of the BNSS

“4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws.—(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

72. A Id. Single Judge of this Court in the decision in ***Inder Pal Singh Gaba v. National Investigation Agency, 2024 SCC OnLine Del 7971*** while dealing with the interplay between the UAPA and Cr.P.C held as under:

“26. The contention raised by the Petitioner that since the maximum punishment under Section 13(1) of UAPA only entails the punishment of 07 years and, therefore, notice under Section 41A Cr. P.C. ought to have been served on the Petitioner and the same is in violation of the Judgment of the Apex Court in Arnesh Kumar (supra) cannot be accepted. Section 43B of the UAPA prescribes the procedure of arrest, seizure etc., for offences under the UAPA. Section 43B of the UAPA



read as under:

“43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.”

27. Section 48 of the UAPA provides for effect of Act and Rules, etc., inconsistent with other enactments. Section 48 of the UAPA reads as under:

“48. Effect of Act and rules, etc., inconsistent with other enactments.—The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.”

28. A perusal of the above shows that the Unlawful Activities (Prevention) Act, 1967 (UAPA), therefore, being a special enactment would prevail over the Cr. P.C. and therefore, the Judgment of the Apex Court in Arnesh Kumar (supra) cannot be said to be applicable for offences committed under the UAPA and the maxim Generalia specialibus non derogant would clearly apply in the present case. The Apex Court in Prabir Purkayastha (supra) and V. Senthil Balaji (supra) has held that PMLA being a special provision, service of notice under Section 41A Cr. P.C. does not apply and the same analogy would also apply in UAPA which is also a special provision.”



73. Thus, the intention of the Special law *i.e.*, UAPA shall prevail over the general law *i.e.*, BNSS.

74. **In conclusion it is held that the Appellant is thus not entitled to default bail after 90 days merely because there is no reference to Section 187 of the BNSS in Section 43D(2) of the UAPA. The reference to Section 167 of the Cr.P.C. has to be construed as a reference to Section 187 of the BNSS in terms of Section 8(1) of the General Clauses Act, 1897.**

D. Belated challenge to the orders granting extension

75. The NIA has also challenged the maintainability of the present appeal. As per the NIA, the Appellant cannot challenge the extension orders dated 13th February, 2026 and 27th March, 2026 passed by the Trial Court in a belated manner after the dismissal of the application filed by the Appellant seeking default bail.

76. The first extension in this case was granted by the Trial Court on 13th February, 2026 which was not challenged by the Appellant. It is only when the second extension was granted and the default bail application was dismissed that the challenge has been raised to the first extension. Even when the first extension was granted, the same was after the BNSS had come into force. But the Appellant chose not to challenge the same.

77. The Supreme Court *vide* order dated 4th May, 2026 in ***Javed Siddiqui & Anr. (Supra)***, has held that if an accused person did not challenge the earlier orders granting extension of time promptly, the right to seek default bail is lost due to acquiescence. The relevant portion of the said order is set out below:



“7. The respondents were arrested on 9th February, 2024. Before the period of 90 days from their arrest had expired, the investigating agency, moved an application under Section 43D(2)(ii) (b) of UAPA dated 10th, May, 2024 seeking extension of time to complete the investigation and to continue the detention of the accused for another 28 days.

8. Notice on the application was served on the accused and two learned counsel, namely Mr. Piyush Garg and Shri Manish Pandey were present in the Court who were heard on the said application. Learned trial Judge, passed a detailed order dated 10th May, 2024 extending the time for completion of investigation by another 28 days.

9. On 3rd June, 2024, the accused respondents preferred an application seeking default bail on the ground of non-conclusion of investigation within the period of 90 days prescribed under Section 167(2) of the Code of Criminal Procedure, 1973 (CrPC) read with Section 43D(2) of UAPA which came to be rejected by the learned trial Court vide a reasoned order dated 3rd June, 2024.

10. The time for completion of investigation was further extended on 6th June, 2024 and 1st July, 2024 and ultimately chargesheet against the accused came to be filed on 7th July, 2024 within the extended period which was coming to an end on 11th July, 2024.

11. In September, 2024, the accused respondents preferred an appeal before the High Court for assailing the orders dated 10th May, 2024, 6th June, 2024, 1st July, 2024 and so also the order rejecting bail dated 3rd June, 2024 passed by the learned trial Court.

xxx xxx xxx

13. Having gone through the record, we find that the High Court has completely gone wrong in casting aspersions on the conduct of the Investigating Officer in failing to complete the investigation within a period of 90 days. It may be noted here that the FIR had been filed



in relation to an incident of widespread arson, rioting and damage to public property including the building of the police station wherein large number of accused persons were arraigned with the allegation of using petrol bombs and other arsenal in the incident. Few other incidents of the similar nature took place in the nearby areas in relation to which separate FIRs were filed. In our opinion, it was absolutely unreasonable of the High Court to have observed that the investigating agency had not proceeded with investigation at a reasonable pace or that it had acted with lethargy. The observation that only 8 official witnesses and 4 public witnesses had been examined in three months is factually incorrect as has been pointed out by learned D.A.G. representing the appellant because in the said period of 90 days, the statements of 65 witnesses had been recorded by the investigating agency. Thus, without a doubt, the investigation was proceeding with utmost expediency in a case which would have presented grave challenges to the investigation agency, considering the magnitude of the crime and the large number of accused and witnesses

14. Further, the High Court failed to advert to the important fact that the accused respondents never challenged the orders of extension of time and rejection of bail by promptly approaching the High Court and instead waited till September, 2024 before filing the appeal. It is not in dispute that long before the appeal came to be filed, investigation was completed and chargesheet had been filed.

15. Thus, we are of the opinion that by the time, the accused respondents approached the High Court, they had lost the right to seek default bail by their acquiescence. Consequently, the impugned order does not stand to scrutiny and is hereby set aside.”

78. In view of the aforesaid order, this Court is of the opinion that the first extension granted by the Trial Court on 13th February, 2026, having not been



challenged by the Appellant at the relevant stage, attained finality. The Appellant chose to challenge the said extension only after the second extension was granted and the application seeking default bail was dismissed. Thus, by acquiescence, the Appellant had lost the right to subsequently challenge the first extension and seek default bail on the basis thereof.

E. Report of the Public Prosecutor

79. The Appellant has also raised the issue that his right to defence has been severely violated by the Trial Court, inasmuch as, when the applications seeking extensions were filed by the NIA, the report of the Public Prosecutor was not furnished to the Appellant and was only placed before the Trial Court in a sealed cover.

80. This aspect was dealt by the Trial Court in the order dated 30th March, 2026 in the following terms:

“27. Ld. Counsel for the applicant has also contended that while granting extension of remand, copy of Public Prosecutor (PP) report, which was filed in scaled cover, was not supplied to the accused and non-supply of PP report to the accused tantamount denial of notice while deciding the application extension of remand period

28. The Hon’ble Supreme Court of India in Hitendra Vishnu Thakur and others vs State of Maharashtra and others (supra) has observed that “when a report is submitted by the public prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance



of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party”

29. *Ld. Counsel for applicant has also relied upon another judgment passed by Hon’ble High Court of Delhi titled Khalid vs State (Govt of NCT of Delhi) (Supra) on the same legal proposition.*

30. The legal preposition laid down in both these judgments are that before extending remand, a notice is required to be given to the accused. None of these judgment talks about that PP report, which is filed in a scaled cover, is also required to be shared with the accused.

31. *The only requirement pointed out by the Hon’ble Supreme Court of India in “Hitendra Vishnu Thakur (Supra)” is that a due notice of such application should be given to the accused before, extending the period of remand.*

32. In the instant ease, when NIA filed the application for extension of remand, notice of the said application was duly given to the accused, who filed his reply. The contention raised by Ld. Counsel for applicant/accused was also heard and thereafter, the order dated 13.02.2026 was passed. That was the only right available to the accused at that stage and accused



was not entitled for PP report.”

81. It is a settled position in law that an accused person is not entitled to the copies of the report of the Public Prosecutor at the stage when the extension of time is being sought by the concerned investigation agency. A Division Bench of this Court in the decision in ***Zeeshan Qamar v. State (NCT of Delhi)*, (2023) 1 HCC (Del) 720**, in this regard held as under:

“27. The issue whether the report of the Public Prosecutor is required to be provided to the accused while seeking extension of time for continued investigation came up for consideration before this Court in Syed Shahid Yousuf v. National Investigation Agency [Syed Shahid Yousuf v. National Investigation Agency, 2018 SCC OnLine Del 9329 : (2018) 250 DLT 283] , wherein, the Division Bench of this Court, dealing with the contention of the appellant therein that without supply of the report of the Public Prosecutor, no sufficient notice was given to the appellant therein, held that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso to Section 167CrPC, the accused cannot ask to see the reports of the Public Prosecutor. It was held that these reports like the case diaries maintained under Section 174CrPC, are to satisfy the court about the progress of investigation and the justification for seeking extension of time to complete the investigation.

28. Following the decision of the Division Bench in Syed Shahid Yousuf case [Syed Shahid Yousuf v. National Investigation Agency, 2018 SCC OnLine Del 9329 : (2018) 250 DLT 283] , two Single Judges of this Court in Ishrat Jahan v. State [Ishrat Jahan v. State, 2020 SCC OnLine Del 882] and Shifa-Ur-Rehman case [Shifa-Ur-Rehman v. State (NCT of Delhi), 2021 SCC OnLine Del 2500] held that at this stage, the accused is not entitled



to the copies of the Public Prosecutor's report.

29. Learned counsels for the appellants have strenuously argued that the report of the Public Prosecutor is a report by an independent officer as held by the Supreme Court and cannot be treated as case diaries under Section 174CrPC. This Court is of the opinion that even if a Public Prosecutor's report is not akin to case diaries maintained under Section 174CrPC, which is written by the investigating officer, however, the Public Prosecutor's report has to be based on the material available in the case diaries which would show progress of the investigation carried out and the requirement for further investigation and the continued detention of the accused for the said purpose.

30. It is trite law that before filing of the charge-sheet when the investigation is in progress, the material collected during the course of investigation cannot be revealed to the accused as the same may impede the progress of investigation, inter alia inclusion of further accused, recoveries, etc. Thus, even if the Public Prosecutor's report is not akin to case diaries written by the investigating officer, the same has to be based on the material already collected and required to be further collected during investigation as reflected in the case diaries. The Public Prosecutor though required to form an independent opinion, the same cannot be extraneous to the investigation already carried out and required to be further carried out.

xxx

xxx

xxx

34. Issue 1 is thus answered in the negative and it is held that the report of the Public Prosecutor cannot be furnished to the accused at the time of extension of remand for a further period of 90 days under proviso to sub-section (2)(b) of Section 43-D of the UAPA.



xxx xxx xxx

82. As regards Issue I, the report of Public Prosecutor is not required to be provided to the accused at the stage of grant of extension of remand for continued investigation. However, when the accused is produced to inform him about the extension of period of investigation based on Public Prosecutor's report, the accused cannot be a silent spectator and the Special Court would be required to take into consideration, submissions on behalf of the accused, while examining Public Prosecutor's report regarding progress of investigation, and the reasons for seeking further detention, for continued investigation. The Special Court would also be required to satisfy itself, from the investigation carried out that there is sufficient material to form a reasonable belief that prima facie an offence under UAPA is made out, though no reasons in this regard will be required to be reflected in the order as the same would entail disclosure of the investigation carried out. "

82. Accordingly, the Trial Court was correct in holding that the report of the Public Prosecutor could not be furnished to the Appellant.

Conclusion

83. In the present case, by the time the present appeal was filed, all three orders had already been passed by the Trial Court, whereby the first extension was granted, the second extension was also granted, and the application seeking default bail was dismissed.

84. As of now, even the charge-sheet has been filed on 14th May, 2026. Thus, at this stage, the Appellant cannot seek to challenge that he was entitled to default bail after the period of 90 days as in the opinion of this Court, that ship has sailed.



2026:DHC:6814-DB



85. The appeal, therefore, is liable to be dismissed. Pending applications, if any, are also disposed of.

86. However, it is made clear that though the Appellant is not entitled to default bail, he is free to avail of any other remedies in accordance with law.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

AUGUST 18, 2026
Rahul/Ck