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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgement reserved on : 12.06.2020**

**% Judgment delivered on: 22.06.2020**

\+ **W.P.(CRL.) 824/2020**

AQIL HUSSAIN …Petitioner

Through: Mr. Mehmood Pracha, Mr. Shariq Nisar & Mr. Jatin Bhatt, Advocates.

versus

STATE OF NCT OF DELHI & ORS. …Respondents

Through: Mr. Rahul Mehra, Standing Counsel; Ms. Richa Kapoor & Mr. Chaitanya Gosain, Advocates along with DCP Rajesh Deo & DCP Pramod Singh Kushwah, for respondent/ GNCTD.
Mr. Aman Lekhi, ASG; Mr. Amit Mahajan, Senior Standing Counsel; and Mr. Rajat Nair, Advocate, for respondent/ UOI.

**CORAM**
**HON'BLE MR. JUSTICE VIPIN SANGHI**
**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**J U D G M E N T**

**VIPIN SANGHI, J.**

1. This petition has been preferred by the petitioner Aqil Hussain to seek a writ of habeas corpus for production of his sister – Ms. Gulfisha Fatima.

2. The petitioner states that the his sister Gulfisha Fatima was arrested on 09.04.2020 in connection with FIR No. 48/2020 registered under

Sections 147/186/188/283/353/109/34 IPC, 1860 at P.S. Jafrabad. The bail application filed by the petitioner's sister under Section 437 Cr.P.C. in case FIR No. 48/2020 was dismissed by the Ld. Metropolitan Magistrate/Duty M.M., Shahdara District, vide order dated 03.05.2020 on various grounds, including on the ground that she was involved in another case, being FIR No. 59/2020, registered under Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) – Section 120B read with Sections302/307/353/186/212/395/427/435/436/452/454/109/114/147/148/1 24A/153A of the Indian Penal Code, Sections 3 & 4 of the Prevention of Damage to Public Property Act, and Sections 25/27 of the Arms Act, and which is being investigated by the Crime Branch.

3. The petitioner states that aggrieved by the dismissal of the bail application, his sister approached the learned Ld. Sessions Judge under Section 439 of the Cr.P.C. Vide order dated 13.05.2020, the learned Sessions Judge, Shahdara District allowed the bail application of Gulfisha Fatima in FIR No. 48/2020. The petitioner submits that despite Gulfisha Fatima being granted bail in FIR 48/2020, she was illegally continued to be kept in custody on account of the registered FIR No. 59/2020, as aforesaid, by the Crime Branch.

4. The petitioner submits that Special Courts constituted under the National Investigation Agency Act, 2008 (NIA Act) – empowered to extend the judicial custody of persons charged under any provisions of the UAPA, (including sections 13/16/17/18 which have been invoked against Gulfisha Fatima), have not been holding sittings since 23.03.2020 – owing to the suspended functioning of courts subordinate to this Court due to the

COVID-19 pandemic, and the consequent lockdown measures imposed by the Union Government. The petitioner submits that as the Special Courts empowered to extend the judicial remand custody have not been sitting, the continued detention of Gulfisha Fatima in FIR No. 59/2020 is without any authority of law. Consequently, the petitioner seeks the issuance of a writ of Habeas Corpus for production and release of Gulfisha Fatima, his sister.

5. This petition is dated 14.05.2020, and the same appears to have been filed on 18.05.2020. It was listed before the Court, for the first time, on 19.05.2020. On 19.05.2020, Mr. Rahul Mehra, Standing Counsel (Criminal) of the GNCTD, along with Mr. Chaitanya Gosain, Advocate appeared for the respondents. Mr. Mehra made a statement that the petitioner's sister Gulfisha Fatima had been produced before the Magistrate. However, he sought time to take instructions – whether she had been produced before the Special Court. The matter was adjourned to 20.05.2020.

6. On 20.05.2020, the matter was listed before our Bench. We issued notice in the writ petition to the respondents. Mr. Aman Lekhi, learned ASG, along with Mr. Amit Mahajan, CGSSC appeared for the respondents, and Mr. Mahajan accepted notice. At the same time, Mr. Mehra, Standing counsel for the GNCTD also appeared along with Mr. Chaitanya Gosain, Advocate, and Mr. Mehra also accepted notice. We passed the following order on 20.05.2020.

> *"Issue notice. Notice is accepted on behalf of the respondents. We may state that both Mr. Amit Mahajan, Standing Counsel for Central Govt. and Mr.Rahul Mehra, Standing Counsel for GNCTD accept notice. It appears that there is lack of clarity as to who should represent the respondents. In any event, we*

*permit both Mr. Mahajan and Mr. Mehra to file their respective replies, which should be filed positively within one week.*

*On the next date, we shall, apart from dealing with the merits of the case, also call upon Mr. Mahajan and Mr. Mehra to address their submissions with regard to their respective authority to represent the respondents in the matter.*

*List on 29.05.2020."*

7. On 29.05.2020, Mr. Mehra, learned Standing Counsel for the GNCTD submitted that as per the law settled by this Court and the Supreme Court, it is only on the aid and advice of the Council of Ministers of the GNCTD, that the power under Section 24(8) Cr.P.C. to appoint the Special P.P./ Special Counsel could be exercised by the Hon'ble Lieutenant Governor, and that the Hon'ble Lieutenant Governor has no independent power to make such appointments. He also stated that Delhi Police had accepted the said position, and had applied for appointment of Special P.P./ Special Counsel to the Ministry of Home, GNCTD, and that the Home Minister in the GNCTD had issued appropriate orders in that regard.

8. Mr. Mehra forwarded the communication dated 28.05.2020 addressed to Mr. Satyendra Jain, Hon'ble Minister of Home, GNCTD by Mr. Rajesh Deo, DCP (Legal Cell), PHQ, Delhi, which also contained the endorsement made by the Hon'ble Minister, approving the appointment of Special P.P./ Special Counsel to represent the respondents in the present case. He also forwarded the communication dated 29.05.2020 issued by the Deputy Secretary (Home), GNCTD to the Deputy Commissioner of Police (Legal Cell), whereby it was informed that Mr. Tushar Mehta, learned Solicitor General; Ms. Maninder Acharya, learned ASG; Mr. Aman Lekhi,

learned ASG; Mr. Amit Mahajan, learned Senior Standing Counsel; and Mr. Rajat Nair, Advocate were appointed as Special P.P./ Special Counsel to represent Delhi Police in the present case. Mr. Mehra submitted that the aforesaid law officers/ Special Counsels would be representing the respondents in the present case, since the approval of the GNCTD had been specifically obtained in the present case.

9. The respondents have filed their response through Mr. Amit Mahajan, Senior standing Counsel, to which Mr. Pracha has filed his reply/ rejoinder. Mr. Mahajan has filed compilations of judgments relied upon by the respondents. We have heard the submissions of Mr. Pracha on behalf of the petitioner, and of Mr. Aman Lekhi, the learned ASG on behalf of the respondents. Ms. Richa Kapoor, learned APP has supported the submissions of Mr. Lekhi and she has also made her own submissions as well.

10. The first submission advanced by Mr. Pracha is that Mr. Mahajan and Mr. Lekhi are precluded from representing the respondents. He submits that the appointment of Mr. Mahajan as the Special PP, and several Law Officers as the Special Counsels for the case is by resort to Section 24 of the Code of Civil Procedure, 1908 (Code). He submits that in respect of proceedings under the NIA Act, the Public Prosecutors are appointed under Section 15 of that Act. He has referred to Section 2(1)(e) of the NIA Act, which defines "Public Prosecutor" to mean a Public Prosecutor, or an Additional Public Prosecutor, or a Special Public Prosecutor appointed under Section 15. Section 15 of the NIA Act, inter alia, states that the Central Government shall appoint a person to be the Public Prosecutor, and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public

Prosecutors: Provided that the Central Government may also appoint, for any case or class or group of cases, a Special Public Prosecutor. Section 15(3) provides that every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under that Section, shall be deemed to be a Public Prosecutor within the meaning of Clause (u) of Section 2 of the Code, and the provisions of the Code shall have effect accordingly. Section 2(u) of the Code defines "Public Prosecutors" to mean any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor.

11. We do not find any merit whatsoever in this submission of Mr. Pracha. This is for the reason that we are dealing with a writ petition under Article 226 of the Constitution of India, wherein the petitioner seeks a writ of Habeas Corpus. The High Court is not a Special Court designated by the Central Government under Section 11 of the NIA Act and, in the present case, the Central Government has not, in terms of Section 6(4) of the NIA Act, directed the NIA to investigate the offences alleged against Gulfisha Fatima. Therefore, in our view, advertence to Section 2(e) and Section 15 of the NIA Act is completely misplaced. Accordingly, we reject this submission of Mr. Pracha.

12. Before we proceed to notice the next submission of Mr. Pracha, we may take note of the relevant factual developments which have taken place after the filing of the present petition, and after issuance of notice in the petition by this Court on 19/20$^{th}$ May, 2020. To appreciate the contours of the controversy that arises for our consideration, we will also notice the legal position as it exists – about which there is no dispute.

13. The respondents have stated in their response that Gulfisha Fatima, since the inception of her detention, has been produced before the Competent Court, which duly passed orders granting remand of Gulfisha Fatima. The submission of the respondents is that vide order dated 28.05.2020 passed by Ld. Additional Sessions Judge-02, Patiala House Court, New Delhi in case FIR No. 59/2020, PS Crime Branch, ***State vs. Khalid & Ors***., the judicial remand custody of Gulfisha Khatun (Gulfisha Fatima), was extended till 25.06.2020. This order has been placed on record by the petitioner himself along with his written submissions. This order reads as follows:

> *" Present: Sh. Irfan Ahmed, Addl. PP for the State*
>
> *Accused Gulfisha Khatoon produced through video conferencing.*
>
> *Sh. Mahmood Pracha, Ld. Counsel for the accused Gulfisha Khatoon.*
>
> *IO/ ACP D.D. Negi alongwith Inspector Sanjay.*
>
> *An application for extension of J/C remand of accused Gulfisha Khatoon has been moved.*
>
> ***Ld. Counsel Sh. Mahmood Pracha has argued that as per the documents supplied to him, the JC remand of accused Gulfisha Khatoon has already been extended by Ld. Duty MM till 30.05.2020. He has also placed on record a photocopy of the order of Ld. Duty MM dt. 16.05.2020 which simply mentions "Accused be produced on 30.05.2020****". He submits that the same has been supplied to him by the IO today itself in the Court.*
>
> *It is further informed by the Ld. Defence Counsel that even the interpretation of section 6 of the N.I.A Act is subject matter of*

*Criminal reference no.01/2012 and inadvertently on the LDOH i.e 26.05.2020, he could not bring this fact to the notice of this Court.*

***It is clarified by the Ld. APP that*** *abovementioned order relied upon by the Ld. Defence Counsel pertains to Ishrat Jahan and Khalid,* ***the remand of accused Gulfisha Khatoon shall expire today.***

*It is submitted by the Ld. Defence Counsel that unless the prosecution pleads and proves the custody of the accused is required for further investigation, accused cannot be remanded to custody.*

***In the case at hand, in the application under consideration, the IO has specifically prayed that the judicial remand of the accused Gulfisha Khatoon be extended for a period of 30 days. As per the provisions of Section 167 Cr.P.C when the investigation cannot be completed within 24 hours and the accusation or information well founded, the accused can be remanded to JC/PC, subject to the statutory condition mentioned therein. In view of the same, accused Gulfisha Khatoon is remanded to judicial custody till 25.06.2020****.*

*At this stage, Ld. Defence Counsel has moved separate application praying for signature of the undersigned upon the case diary.*

*In view of the same, the case diary is signed by the undersigned.*

*A copy of the order be given dasti to the concerned parties."*

(emphasis supplied)

14. There is no dispute on either side, and it is also well settled law that a writ of Habeas Corpus would not lie where a person is under detention/ arrest in pursuance of orders passed by a Court. A person who is in custody – either in police remand, or in judicial remand, cannot maintain a writ of

Habeas Corpus unless the judicial authority which has remanded the detenue to one or the other kind of remand, is a usurper of authority. It is also not disputed by learned counsels, and it is an equally well settled proposition of law, that while dealing with a writ petition seeking issuance of writ of Habeas Corpus, the High Court shall examine the issue: whether the detention of the detenue is illegal – on the date of the petition, if no further developments have taken place between the date of institution of the petition and the date of return/ hearing. However, where further developments have taken place, it is the date of return of the notice, or even the date of hearing – on which the legality of the detention would be examined. In this regard, we may refer to two decisions by this Court. The first is ***Rakesh Kumar Vs. State,*** 1994 Scc Online Del 91, and the second is a decision of a Division Bench of this Court in ***Moin Akhtar Qureshi v. Union of India & Ors, 2017*** SCC OnLine Del 12108. In the subsequent decision, namely ***Moin Akhtar Qureshi*** (supra), authored by one of us (*Vipin Sanghi, J*), this Court considered the well-established position in law as enunciated by the Supreme Court, inter alia, in ***Madhu Limaye & Ors***., ***In Re.,*** 1969 (1) SCC 292; ***Kanu Sanyal v. District Magistrate, Darjeeling & Ors***., (1974) 4 SCC 141 and ***Manubhai R.P. Vs. State of Gujarat and Ors***., (2013) 1 SCC 314. In the present case, the returnable date was fixed vide order dated 20.05.2020 as 29.05.2020.

15. The aforesaid order dated 28.05.2020 has been passed by the learned ASJ – extending the judicial remand custody of Gulfisha Fatima upto 25.06.2020, between the date of filing of this petition, and the date of return of the notice/ hearing of the petition. Thus, all that we are called upon to

examine in these proceedings is: whether the said order has been passed by the learned ASJ-02 without jurisdiction. Whether, or not, the earlier arrest and remand of Gulfisha Fatima to police custody, or judicial custody was valid, or not, is of no relevance for the present purpose.

16. The submission of Mr. Pracha – in the light of the aforesaid development, is that the learned ASJ-02 had no jurisdiction to pass the order dated 28.05.2020, since he is not designated as a Special Court under Section 11 of the NIA Act. Mr. Pracha submits that only the Central Government could have designated the Special Court for the trial of scheduled offences, and undisputedly, the UAPA is enlisted at serial No. 2 of the Schedule to the NIA Act. Mr. Pracha submits that on account of imposition of the lockdown in the wake of COVID-19 Pandemic since 23.03.2020, the designated Special Court under the NIA Act is not functional. Mr. Pracha submits that Shri Dharmendra Rana, learned ASJ-02 purported to act on the basis of an administrative order issued by the District and Sessions Judge, New Delhi District, Patiala House Court, whereby the learned District and Sessions Judge fixed the Roster of learned Judges to hear urgent matters. He submits that the said administrative order issued by the learned ASJ could not vest jurisdiction upon the learned ASJ-02 to exercise the jurisdiction vested in the Special Court, which jurisdiction could only be vested by the Central Government under Section 11 of the NIA Act. In this regard, Mr. Pracha has drawn our attention to the order dated 22.05.2020 issued by the learned District and Sessions Judge, New Delhi District, Patiala House Court, New Delhi. The said order, insofar as it is relevant, is extracted herein below:

*"**OFFICE OF THE DISTRICT & SESSIONS JUDGE: PATIALA HOUSE COURT:***

***NEW DELHI DISTRICT: NEW DELHI***

***ORDER***

*In pursuance to High Court order No. R-305/RG/DHC/2020 dated 21.05.2020 and in continuation of this Office earlier order No. 6364-6454/D&SJ/ NDD/2020 dated 16.05.2020,* ***the roster of the following Judicial Officers shall remain effective from 23.05.2020 to 30.05.2020 for exercise of various jurisdictions in the New Delhi District****.*

*2.* ***In exercise of powers vested with the District & Sessions Judge (New Delhi District) inter alia under Section 10(3) Code of Criminal Procedure 1973, as in force in Delhi, I hereby authorize the following Additional District & Sessions Judges of New Delhi District to hear and dispose of fresh bail applications and pending bail applications pertaining to the New Delhi District Sessions Division.***

***CRIMINAL MATTERS IN COURT NOS.01&04, MAIN BUILDING(GF)***

| *Sr. No.* | *Date & Day of the week* | *Name of the Presiding Officers* | *Name of the Police Station & Investigating Agencies* |
|---|---|---|---|
| ***1.*** | ***23.05.2020 (Saturday)*** | ***Sh. Dharmender Rana, ASJ-02, New Delhi*** | ***CBI, Custom, NDPS Act/ NCB, DRI, SEBI, Central Excise, FERA, CAW Cell, Chanakaya Puri, IGI Airport, IGI Metro, R.K. Puram, Inderpuri, Sarojini Nagar, Naraina,*** |

| | | | |
|---|---|---|---|
| | | | ***Sagarpur, South Campus, Vasant Vihar, Special Cell, NIA and UAP Act.*** |

……

*5.* ***Sh. Dharmender Rana, ASJ-02, New Delhi district shall deal with the entire remand work pertaining to Unlawful Activities (Prevention) Act, 1967 (UAP) Act, 1989****, Prevention of Money Laundering Act, 2002 (PMLA Act), The Securities and Exchange Board of India Act, 1992 (SEBI Act), Drugs and Cosmetics Act, 1940 and Official Secrets Act, 1923."* (emphasis supplied)

17. The respondents, in their reply/ response have disclosed that on 09.04.2020, Gulfisha Fatima was arrested by the local police of PS Jafrabad in FIR No. 48/2020 under Sections u/s 186, 188, 353, 283, 341, 109, 147, 34 IPC registered at P.S. Jafrabad , District North East, Delhi. The detenue was remanded to 2 days police custody and after the expiry of the police custody remand, she was produced before the learned Duty MM, Mandoli Jail, who was holding the Court in the Jail premises itself. The learned Duty MM, Mondoli Jail sent Gulfisha Fatima to Judicial Custody at Mandoli Jail itself. The respondents have further disclosed that on 11.04.2020, Gulfisha Fatima was arrested in case FIR No. 59/2020 P.S. Crime Branch under section 120B r/w 124A, 153A, 302, 307, 353, 186, 212, 395, 427, 435, 436, 452, 454, 109, 114, 147, 148, 149, 34 IPC and 3 & 4 of Prevention of Damage of Public Property Act 1984, 25/27 Arms Act after filling an application for permission for interrogation/ arrest before the learned Duty MM, Mandoli Jail. After formal arrest, she was produced before the learned Duty MM, Mandoli Jail and an application for 10 days police custody remand was

moved. The learned Duty MM, Mandoli Jail granted 5 days police custody remand till 16.04.2020, and directed that the accused be produced before learned Duty MM on 16.04.2020. On 16.04.2020, Gulfisha Fatima was sent to judicial custody till 30.04.2020. On 19.04.2020, Sections 13, 16, 17 & 18 of UAPA were added in case FIR No. 59/2020. An intimation with regard to invocation of the said provisions of the UAPA was given in writing on 20.04.2020 to Shri Dharmender Rana, Learned Additional Session Judge, Designated Court for UAPA, Patiala House Courts, New Delhi by the I.O. On 20.04.2020, an intimation with respect to invocation of the provisions of the UAPA against the accused Gulfisha Fatima was also given to the Superintendent, Mandoli Jail, Delhi with a request that the provisions of the said Act be added in the warrant.

18. The respondents have thereafter proceeded to refer to the various Administrative Orders passed by this Court, inter alia, with regard to the manner in which the remand of the under – trials would be dealt with in the light of the Covid-19 pandemic. Reference has also been made to the order passed by the Supreme Court in suo moto proceedings in Writ Petition (C) No. 1/2020 on 23.03.2020 to submit that the detention of Gulfisha Fatima has continued under judicial orders. We do not consider it necessary to delve into those developments in the light of the limited scope of our examination, as aforesaid. The respondents go on to state that on 13.04.2020, the judicial custody of Gulfisha Fatima was extended from Jail by a remand order passed by the Court till 14.05.2020. On 14.05.2020, by adopting a similar procedure, the judicial custody of Gulfisha Fatima was extended till 28.05.2020. The respondents state that in the light of the order

dated 22.05.2020 issued by the learned District and Sessions Judge, Patiala House Court, District, New Delhi – relevant extract whereof has been set out hereinabove, the remand application dated 26.05.2020 was moved by the respondent before the concerned designated Court under UAPA for extension of judicial remand of Gulfisha Fatima. On 26.05.2020, the learned designated Court issued notice to the accused Gulfisha Fatima, as well as her counsel. Thereafter, the matter was adjourned to 28.05.2020. As aforesaid, on 28.05.2020, the learned ASJ-02 passed the order of extending the judicial custody remand of Gulfisha Fatima till 25.06.2020 after hearing the submissions of the parties and after due application of mind.

19. The submission of Mr. Aman Lekhi, learned Additional Solicitor General on behalf of the respondents is that the learned District and Sessions Judge, Patiala House Court, New Delhi District was empowered under Section 10 (3) of the Code to make provision for disposal of any urgent application in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, and every such Judge is deemed to have jurisdiction to deal with any such application. Mr. Lekhi submits that in view of the looming pandemic, the learned District and Sessions Judge, Patiala House Courts could issue the administrative order, as issued by him on 22.05.2020 whereby the learned ASJ-02, New Delhi, Shri Dharmender Rana was assigned the task of hearing and disposing of fresh bail applications and pending bail applications pertaining to the New Delhi District, Sessions Division, inter alia, in respect of cases under the UAPA. As noticed above, Shri Dharmender Rana, ASJ-02, New Delhi District was also empowered to deal with the entire remand work pertaining to the

UAPA and other laws. In this regard, Mr. Lekhi has drawn our attention to a decision by a learned Single Judge of this Court in ***Rambeer Shokeen v. State (NCT of Delhi)***, 2017 SCC Online Del 8504 wherein this Court was dealing with a case under the MCOCA. This judgment of Single Bench of this Court was further affirmed by the Supreme Court vide their order dated 31.01.2018, reported as (2018) 4 SCC 405. The learned Single Judge observed in this decision as follows:

> ***"46. An officer of Delhi Higher Judicial Service is selected and appointed by the High Court to preside over the court of Sessions Judge, such appointment being under Section 9(2) Cr.P.C. By virtue of such appointment, the presiding judge of the court of sessions is conferred with the powers of withdrawal or transfer of cases and appeals from one criminal court to another in the same sessions division in terms of Section 408 and 409 Cr.P.C. There can be no dispute as to the fact that the court of additional sessions judge, and the special court under MCOCA, are criminal courts and by virtue of their position they stand in subordination to the court of Sessions Judge. Such courts being criminal courts within the meaning of the expression used in Section 408 and Section 409 Cr.P.C., withdrawal of judicial business from one such criminal court and its transfer to another criminal court lies within the jurisdiction and power of the Sessions Judge of the division. There is nothing in the provisions contained in Section 408 and 409 Cr.P.C. to indicate that there cannot be a temporary transfer of the case. To take a contrary view would be ignoring the de facto doctrine discussed earlier. For such interpretation, cue will also have to be taken from the provision contained in Section 10(3) Cr.P.C. wherein the Sessions Judge is expected to put in position provision for disposal of urgent judicial business, in the event of absence or inability to act on the part of the presiding judge of a criminal court referred to in that clause. Such provision for dealing with urgent business must necessarily be in the nature of***

***adhoc or temporary arrangement. If it were not to be so construed, it might lead to "needless confusion" and "endless mischief", as was envisaged in Pushpadevi M. Jatia (supra). Thus, the concerns of necessity and public policy demand that the power of the Sessions Judge to withdraw a case from one criminal court and transfer it to another criminal court temporarily for dealing with a matter of urgency will have to be read in his powers under Section 408 and 409 Cr.P.C.***

*47. The Sessions Judge, it must be again noted, in the present case, was also an officer of Delhi Higher Judicial Service. By virtue of the office he held, he had the necessary power and jurisdiction to transfer a case from one criminal court in his sessions division to another including to his own court."* (emphasis supplied)

20. Mr. Lekhi further submits that even according to the petitioner, on account of the COVID-19 pandemic and the lockdown imposed by the Central Government, the Courts are not functioning in a normal and routine manner. He submits that the detenue cannot take advantage of the situation to seek release from custody when her judicial custody has been extended by a Judicial Officer, who is competent to do so.

21. Mr. Lekhi further submits that the reference made by Mr. Pracha to the NIA Act is completely irrelevant. He submits that the object of the NIA Act – which is evident from its long title is "*to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto".* He submits that the National

Investigation Agency does not *per se* get the power or jurisdiction to investigate all cases registered under one or the other of the enactments contained in the Schedule to the said Act. He submits that the UAPA is only one of the several enactments enlisted in the Schedule to the NIA Act. Section 6 of the NIA Act is adverted to by him, and the same reads as follows:

> *"6.* ***Investigation of Scheduled Offences****.—(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-incharge of the police station shall forward the report to the State Government forthwith.*
>
> *(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.*
>
> *(3) On receipt of report from the State Government,* ***the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.***
>
> ***(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.***
>
> ***(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.***

*(6)* ***Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.***

*(7)* ***For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.***

*(8) Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.*

*(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction."* (emphasis supplied)

22. Mr. Lekhi submits that only the Central Government is entitled to determine whether a given Scheduled Offence should be investigated by the NIA. He points out that, in the present case, though provisions of UAPA – a scheduled enactment, have been invoked against, inter alia, Gulfisha Fatima, the case has not been assigned to the NIA for investigation by the Central Government. The officer-in-charge of the police station where the case is registered is, therefore, obliged to continue with the investigation of the case. Thus, he submits that reference to provisions of NIA Act is completely misplaced. The submission of Mr. Pracha that only the NIA designated Court could have remanded Gulfisha Fatima to judicial Custody is seriously disputed by Mr. Lekhi. Our attention has also been drawn to Section 13 of the NIA Act, which reads as follows:

*"13.* ***Jurisdiction of Special Courts****.—(1) Notwithstanding*

*anything contained in the Code,* ***every Scheduled Offence <u>investigated by the Agency</u> shall be tried only by the Special Court within whose local jurisdiction it was committed***.

*(2) If, having regard to the exigencies of the situation prevailing in a State if,—*

*(a) it is not possible to have a fair, impartial or speedy trial; or*

*(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or*

*(c) it is not otherwise in the interests of justice, the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.*

*(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney General for India, be supported by an affidavit or affirmation."* (emphasis supplied)

23. "Special Court" is defined in Section 2(1)(h) to mean "*a Court of Session designated as Special Court under section 11 or, as the case may be, under section 22."* Section 22 of the NIA Act empowers the State Government to designate one or more Courts of Session as Special Courts for the trial of offences under any or all the enactments specified in the Schedule. Thus, the submission is that the Special Courts constituted either under Section 11, or Section 22 of the NIA Act alone can try scheduled

offences which are *"investigated by the Agency"*. It does not follow that even those scheduled offences which are not assigned to the NIA by the Central Government, would be tried by the Special Courts constituted either under Section 11 or Section 22 of the NIA Act. Mr. Lekhi submits the "Court" defined in Section 2(1)(d) of the UAPA means a criminal court having jurisdiction, under the Code, to try offences under this Act "*and includes a special court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 (34 of 2008)*". Therefore, it is not correct for the petitioner to claim that only a Special Court constituted under Section 11, or under Section 22 of the NIA Act is the Criminal Court having jurisdiction to try offences under the UAPA.

24. Ms. Richa Kapoor, learned APP has fully supported the submissions of Mr. Lekhi, and while doing so, she has drawn our attention to Section 16 of the NIA Act, which, inter alia, provides "*A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts*" She submits that in the facts of the present case, neither a complaint has been submitted, nor a police report has been submitted before the Special Court. If, and only if, the case is entrusted to the NIA for investigation by the Central Government, the question of either filing a complaint or a police report before the Special Court would arise. Even in that situation, the Special Court would come into the picture only upon it taking cognizance of the complaint or police report, and not before that.

25. Learned counsel, in this regard, has drawn our attention to

***Vidyadharan v. State of Kerala*** (2004) 1 SCC 215. This was a case under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. For trial of offences under this Act, Special Courts are constituted, like for the trial of scheduled offences entrusted to, and investigated by the NIA. The Supreme Court examined the character of the Special Courts constituted under the said Act and observed:

> "***13.*** *So the first aspect to be considered is whether the Special Court is a Court of Session. Chapter II of the Code deals with "Constitution of Criminal Courts and Offices." The section which falls thereunder says that:*
>
> > *"6. ... there shall be, in every State, the following classes of criminal courts, namely:*
> >
> > *(i) Courts of Session;"*
>
> ***14.*** *The other classes of criminal courts enumerated thereunder are not relevant in this case and need not be extracted.*
>
> ***15.*** *Section 14 of the Act says that:*
>
> > *"14. For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act."*
>
> ***16. So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act, it is clearly distinguishable from inquiry. The word "inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". So trial***

***is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14" [vide Section 2(1)(d)].***

***17. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why did Parliament provide that only a Court of Session can be specified as a Special Court? Evidently, the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fascicule of provisions for "trial before a Court of Session".*** (emphasis supplied)

26. The submission of learned counsels for the respondents is that it is only the trial of the scheduled offence(s) entrusted to, and investigated by the NIA, which are required to be conducted by the Special Court, and so far as the aspect of remand to police/ judicial custody is concerned, the same could be ordered by any Court of Sessions – even in a case entrusted to and investigated by the NIA.

27. The further submission of Mr. Lekhi is that, even if one were to assume that there was some defect inasmuch, as, the detenue Gulfisha Fatima was not produced before the "Special Court" for the purpose of extending her remand – as claimed by the petitioner, but was produced before the learned ASJ-02– Shri Dharmender Rana – who extended her

judicial remand custody till 25.06.2020, the said order passed by the learned ASJ-02 cannot be described as *non est*. He submits that the Court of the learned ASJ-02 is also a Sessions Court, and he has acted under the colour of authority vested in him by an order passed by the learned District and Sessions Judge, New Delhi District, Patiala House Court, dated 22.05.2020 by resort to Section 10(3) of the Code. He submits that the *de facto* doctrine would apply in the facts and circumstances of the case. He also points out that the petitioner has not challenged the order passed by the learned ASJ-02 dated 28.05.2020 and, therefore, this Court has to proceed on the basis that the said order is valid and legal. Validity and legality of the said order is not in question before this Court and, therefore, it cannot be gone into these proceedings.

28. To explain the *De facto* doctrine, Mr. Lekhi has placed reliance on ***Gokaraju Rangaraju v. State of Andhra Pradesh*** (1981) 3 SCC 132. Mr. Lekhi has drawn our attention particularly to the following extracts from this decision:

> *"**11.** In Norton v. Shelby County [(1871) 38 Conn 449] Field, J., observed as follows:*
>
> > *"The doctrine which gives validity to acts of officers de facto whatever defects there may be in the legality of their appointment or election is founded upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in apparent*

*possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result, if in every proceeding before such officers their title could be called in question."*

***12.*** *In Cooley's Constitutional Limitations, 8th Edn., Vol. 2, p. 1355, it is said:*

*"**An officer de facto is one who by some colour or right is in possession of an office and for the time being performs its duties with public acquiescence, though having no right in fact. His colour of right may come from an election or appointment made by some officer or body having colorable but no actual right to make it; or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally removed or made in favour of a party not having the legal qualifications; or it may come from public acquiescence in the qualifications; or it may come from public acquiescence in the officer holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompanied by such circumstances of official reputation as are calculated to induce people, without inquiry, to submit to or invoke official action on the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence.***

***No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by some one claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be. In all other cases the acts of an officer de facto are as valid and effectual, while he is supposed to retain the office, as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally****."***

***13.*** *In Black on Judgments it is said:*

> *"A person may be entitled to his designation although he is not a true and rightful incumbent of the office, yet he is no mere usurper but holds it under colour of lawful authority. And there can be no question that judgments rendered and other acts performed by such a person who is ineligible to a judgeship but who has nevertheless been duly appointed, and who exercises the power and duties of the office is a de facto judge, and his acts are valid until he is properly removed."*

***14.*** *The de facto doctrine has been recognised by Indian courts also. In Pulin Behari v. King-Emperor [(1912) 15 Cal LJ 517, 574 : 16 IC 257 : 16 Cal WN 1105 : 13 Cri LJ 609] Sir Asutosh*

*Mookerjee, J., after tracing the history of the doctrine in England observed as follows:*

> *"**The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence for defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined**."*

***15.*** *In P.S. Menon v. State of Kerala [AIR 1970 Ker 165, 170 (FB) : ILR (1969) 2 Ker 391 : 1970 Lab IC 967] a Full Bench of the Kerala High Court consisting of P. Govindan Nair, K.K. Mathew and T.S. Krishna-moorthy Iyer, JJ., said about the de facto doctrine:*

> *"**This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts,***

***public policy requires should be considered valid****."*

***16.*** *In the judgment under appeal Kuppuswami and Muktadar, JJ., observed:*

> *"Logically speaking if a person who has no authority to do so functions as a judge and disposes of a case the judgment rendered by him ought to be considered as void and illegal, but in view of the considerable inconvenience which would be caused to the public in holding as void judgments rendered by judges and other public officers whose title to the office may be found to be defective at the later date. Courts in a number of countries have, from ancient times evolved a principle of law that under certain conditions, the acts of a judge or officer not legally competent may acquire validity."*

***17. A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a***

***declaration that the judgment is void because the judge is no judge. A judged title to his office cannot be brought into jeopardy in that fashion. Hence the Rule against collateral attack on validity of judicial appointments. To question a judged appointment in an appeal against his judgment is, of course, such a collateral attack".*** (emphasis supplied)

29. To submit that the present petition is not maintainable, Mr. Lekhi has relied upon the decision of the Supreme Court in ***Kanu Sanyal v. District Magistrate, Darjeeling and Ors***.,(1974) 4 SCC 141. In particular, Mr. Lekhi has drawn our attention to the following observation made by the Court in paragraph 5 of the decision:

> ***"5.*** *……. This Court pointed out in B.R. Rao v. State of Orissa that a writ of habeas corpus cannot be granted "where a person is committed to jail custody by a competent Court by an order which prima facie does not appear to be without jurisdiction or wholly illegal". The present case is clearly covered by these observations and the petitioner is not entitled to a writ of habeas corpus to free him from detention."*

30. He also places reliance on ***Manubhai Ratilal Patel v. State of Gujarat and Ors***., (2013) 1 SCC 314. In particular, he has referred to the following observation made in paragraph 31 of the report:

> ***"31.*** *……. It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao [(1972) 3 SCC 256 : 1972 SCC (Cri) 481 : AIR 1971 SC 2197] and Kanu Sanyal [(1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court*

*is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted……."*

31. He also relies upon ***State of Maharashtra v. Tasneem Rizwan Siddiquee***, (2018) 9 SCC 745, and in particular, he has drawn our attention to paragraph 10, which reads as follows:

*"**10.** The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."*

32. In rejoinder, Mr. Pracha has referred to Section 167(1) of the Code to submit that the police did not produce Gulfisha Fatima before the

Magistrate, as they were obliged to do. He submits that the power to transfer cases vested in the Sessions Judge by virtue of Section 408 of the Code could be exercised only upon fulfilment of one or the other stipulations contained in Clauses (a), (b) and (c) of Sub Section 1 of Section 407. He submits that, in the present case, none of those requirement are satisfied and, therefore, the learned District and Sessions Judge New Delhi District, Patiala House Court could not have exercised the power under Section 408 to transfer the matter to the learned ASJ-02, Shri Dharmender Rana.

33. Having heard the submissions of learned counsels and perused the record, we are of the considered view that there is no merit in the present petition. The submission of Mr. Pracha that the learned ASJ-02, Shri Dharmender Rana was not competent, and did not have the jurisdiction to direct extension of judicial remand of Gulfisha Fatima vide his order dated 28.05.2020 upto 25.06.2020 is completely misplaced and we reject the same.

34. Reliance placed by Mr. Pracha on the NIA Act is completely misleading and is a red herring. As we have noticed hereinabove, the NIA Act primarily is an Act to constitute the National Investigation Agency, and to provide for trial of cases entrusted to and investigated by the NIA in respect of scheduled offences, by a Special Court. In the present case, it is not even the petitioner's submission that the Central Government has entrusted the investigation of the case registered against the detenue Gulfisha Fatima under UAPA to the NIA. The UAPA does not state that all cases under the said act necessarily have to be investigated by the NIA. Section 43 of the UAPA prescribes the ranks of Police Officers competent to

investigate offences under Chapters IV and VI of the said Act by different Police Organisations. The said section reads as follows:

> *"43. Officers competent to investigate offences under Chapters IV and VI.— Notwithstanding anything contained in the Code, no police officer,—*
> *(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946, (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;*
> *(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;*
> *(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank, shall investigate any offence punishable under Chapter IV or Chapter VI."*

35. Thus, it is clear that apart from NIA, the other police establishments are equally competent to investigate cases under the UAPA. This position is also clear from Section 6(7) of NIA Act, which clears doubts, if any, by declaring that till the NIA takes over the investigation of the case, it shall be the duty of the officer-in-charge of the police station where the case is registered, to continue to investigate.

36. The UAPA does not state that offences under the said Act can be tried only by a Special Court. Section 45 of the UAPA states:

> *"45 Cognizance of offences.(1)No court shall take cognizance of any offence—*
>
> *(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;*

*(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.*

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

37. Therefore, Section 45 only lays down the restriction of grant of prior sanction by the Central Government, or the State Government, as the case may be. It does not state that only a Special Court constituted under the NIA Act would have jurisdiction to try offences under the UAPA. Just because UAPA is one of the enlisted enactments in the Schedule to the NIA Act, it does not follow that every offence under the UAPA has necessarily to be investigated by the NIA, and that the trial of such case necessarily has to proceed before the Special Court.

38. There is no dispute about the fact that Shri Dharmender Rana, ASJ-02, is a court of Sessions. He had been entrusted by the District and Sessions Judge, New Delhi District, New Delhi with the task of hearing and disposing of fresh bail applications and pending bail applications, and also authorised to deal with the entire remand work pertaining to, inter alia, UAPA. The learned District and Sessions Judge acted completely within the scope of the authority vested in him under Section 10(3) of the Code, to assign work to the Additional District and Session Judges serving in the

New Delhi District, and this position has been squarely settled by the decision in ***Rambeer Shokeen*** (supra), which has been affirmed by the Supreme Court.

39. Pertinently, the respondents have stated in their response that Shri Dharmender Rana, ASJ-02, New Delhi, was designated to deal with cases under the UAPA. That is why intimation of adding Sections under the UAPA to the FIR No 59/2020 was sent to Shri Dharmender Rana, ASJ-02, this statement has not been controverted by the petitioner.

40. In the light of the aforesaid discussion, it is clear to us that Shri Dharmender Rana, ASJ-02 was competent to deal with bail application, as well as the aspect of remand of Ms. Gulfisha Fatima when he passed the orders on the application moved by the State to seek extension of judicial remand of Gulfisha Fatima, and remanded her to judicial custody till 25.06.2020 vide his order dated 28.05.2020. Even if, for the sake of argument, it were to be assumed that for some reason, Shri Dharmender Rana was not the competent Court to deal with the aspect of grant of bail/ extension of remand of Gulfisha Fatima, it is clear to us that the *de facto* doctrine would save his order dated 28.05.2020, since he is an Additional District and Sessions Judge, and he acted under the colour of authority while exercising the jurisdiction vested in him by the order dated 22.05.2020 passed by the learned District and Sessions Judge, New Delhi District, Patiala House Court under Section 10(3) of the Code.

41. To hold otherwise would cause public disorder, confusion and mischief. The said Doctrine has been evolved to preserve good order and peace in the society and to protect interest of the public and the individual. It cannot be said that Shri Dharmender Rana, ASJ-02 is a usurper of office,

since he undoubtedly is an Additional District and Sessions Judge serving within the New Delhi District, and he was entrusted with the responsibility of dealing with bail applications/ remand work of cases, inter alia, under the UAPA.

42. The submission advanced by Mr. Pracha in his rejoinder is neither here, nor there. We are not concerned with the alleged non-production of Gulfisha Fatima before the Magistrate under Section 167 of the Code, since we are only required to examine whether the order passed by the learned ASJ-02 on 28.05.2020 is completely without jurisdiction by a usurper of office. We are, therefore, of the considered view that the present writ petition is not maintainable since the detenue Gulfisha Fatima is in judicial custody under orders passed by the learned ASJ-02, Shri Dharmender Rana who was competent to do so.

43. For all the aforesaid reasons, we do not find any merit in this petition and dismiss the same leaving the parties to bear their respective costs.

**(VIPIN SANGHI)**
**JUDGE**

**(RAJNISH BHATNAGAR)**
**JUDGE**

**JUNE 22, 2020**
*N.Khanna*