Sudha Bharadwaj Bail: Limitations of Sessions Court

What is the issue?

The NIA has moved the Supreme Court against the Bombay High Court order granting default bail to lawyer-activist Sudha Bharadwaj, who was arrested in the Elgar Parishad-Maoist links case in August 2018.

What is the case about?

- The case relates to alleged inflammatory speeches delivered at the Elgar Parishad conclave held in Pune in 2017.
- The Additional Sessions Judge, Pune, extended the period of detention of Ms. Bharadwaj by 90 days.
- A default bail was filed on the ground that Session Court was not competent to extend the detention by 90 days under the National Investigation Agency (NIA) Act.
- The second ground was that Ms. Bharadwaj had the right to be released on default bail and ought to have been released on January 25, 2019 as the chargesheet was filed only on February 21, 2019.

What is default bail?

- The Code of Criminal Procedure sets deadlines for investigative agencies to complete an investigation during which the accused can be kept in custody.
- If the agency fails to comply with these deadlines, the accused becomes entitled to what is commonly referred to as ‘default’ or ‘regular’ bail.
- Under **Section 167 in the CrPC**, 1973, the maximum period of detention is 90 days for the highest class of offences.
- However, under the UAPA, a court can extend custody of an accused up to 180 days if the investigating agency seeks more time to probe the case.

What has the High Court ordered?

- The Bombay High Court affirmed that when a special court designated

under the NIA Act, 2008, the sessions judge had no jurisdiction to extend the detention beyond the stipulated 90 days.
- The accused relied on the Supreme Court's 2020 verdict in Bikramjit Singh v State of Punjab which held that only a special court had jurisdiction to extend detention up to 180 days under the UAPA.
- The High Court had said in its order that Ms. Bharadwaj was entitled to bail and its denial would be in breach of her fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution.
- The court granted her bail on the ground that her detention under the UAPA was extended by a sessions court, which had no power to do so.
- The High Court had directed that Bharadwaj be produced before the special NIA court in Mumbai and conditions of her bail and date of release be decided.

Who is a special judge under the law?

- In 2008, the **NIA Act** was passed and the UAPA was also amended and all Scheduled Offences are to be tried exclusively by the special courts under the NIA Act, whether investigated by the NIA or the state government investigation agency.
- If there are no designated courts, then the sessions court, which is the highest court to try criminal offences, would have jurisdiction.

What can be inferred from the NIA's appeal?

- The NIA's appeal to the Supreme Court exemplifies the hard-line approach of the Union government in prosecuting the Bhima Koregaon case under the Unlawful Activities (Prevention) Act.
- After convincing the Supreme Court that it was not a case of suppression of political dissent, the Centre pursued the probe vigorously, and got bail denied to everyone.
- It is time to examine the merit behind the sweeping claims in the charge sheet and to took heed of Supreme Court judgments that have granted bail even under UAPA if the trial is unlikely to be completed in the foreseeable future.

References

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