

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA  
AND  
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**I.A.No.1 of 2024 in Crl.A.No.421 of 2024  
and  
I.A.No.1 of 2024 in Crl.A.No.425 of 2024**

Mr. Shaik Mohammed Rizwan Akhtar, learned counsel for the petitioner  
Sri P. Vishnuvardhana Reddy, learned Special Public Prosecutor for NIA

**COMMON ORDER:** *(Per Justice Moushumi Bhattacharya)*

The appellant/accused No.2 prays for condonation of delay of 390 days in filing the Criminal Appeals against the orders dated 27.02.2023 passed by the IV Additional Metropolitan Sessions Judge-cum-Special Court for NIA Cases, Nampally, at Hyderabad, in Crl.M.P.No.240 of 2023 in Spl.S.C.No.3 of 2023 (RC-01/2023 of NIA) and Crl.M.P.No.252 of 2023 in Crl.M.P.No.166 of 2023 in Spl.S.C.No.3 of 2023 (RC-01/2023 of NIA) respectively.

2. The petition filed by the Investigating Officer (ACP), Special Investigation Team, under Sections 18, 18(B) and 20 of the Unlawful Activities (Prevention) Act, 1967, was allowed by the impugned order dated 27.02.2023 extending the judicial remand of the accused Nos.1 to 3 up to 180 days. The Investigating Agency was directed to take appropriate steps to

complete the investigation within the period of 180 days. The Special Court for NIA Cases dismissed the petition filed by the accused Nos.1 to 3 for default bail under section 167(2) of The Code of Criminal Procedure, 1973.

3. The immediate question before this Court is whether the Appeals filed against the impugned orders can be allowed after the expiry of the statutory period stipulated under section 21 of The National Investigation Agency Act, 2008 (NIA Act).

4. There is no dispute as to the fact of delay in filing of the Appeals.

5. The only question is whether section 21, more particularly section 21(5) of the NIA Act read with the 2 provisos thereunder, permits condonation of delay as prescribed under section 5 of The Limitation Act, 1963.

6. Learned counsel for the petitioner/accused No.2 argues that section 5 of The Limitation Act, 1963 should be read into section 21(5) of the NIA Act.

7. The learned Special Public Prosecutor urges otherwise- that section 21(5) of the NIA Act itself provides for condonation of delay and hence any further extension of the time limit would be contrary to the object of a special statute like the NIA Act.

8. Learned counsel appearing for the appellant as well as the learned Special Public Prosecutor are armed with decisions passed by the various High Courts in support of their respective contentions. Needless to say, the High Courts have pronounced decisions both ways i.e., in favour of extending the time limits for filing of an Appeal under section 21(5) of the NIA Act as well as negating any such extension beyond the second proviso to section 21(5) of the NIA Act.

9. Section 21(5) of the NIA Act, 2008 is set out below:

“Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days”.

10. The decisions may be summarized as under:

10.1. The ‘YES’ decisions – The time limit under section 21(5) of the NIA Act, 2008 can be extended:

i. *National Investigation Agency through its Chief Investigating Officer, Jammu v. 3<sup>rd</sup> Additional Sessions Judge,*

*District Court Jammu (CrIa(D) No.46/2022 CrIMNo.1474/2022)*

– High Court of Jammu & Kashmir and Ladakh at Jammu.

- The Division Bench held that the second proviso to section 21(5) of the NIA Act should be read in a manner so as not to deprive an accused of the right to Appeal. The Division Bench relied on Article 21 of the Constitution of India to hold that section 21 of the NIA Act does not expressly exclude application of the provisions of The Limitation Act, 1963 and hence confers discretion on the High Court to entertain an Appeal after expiry of the period of limitation upon satisfaction of sufficient cause being shown.

ii. *Faizal Hasamali Mirza v. State of Maharashtra*<sup>1</sup> - Bombay High Court.

- The Bombay High Court held that the power to condone the delay beyond 90 days can be exercised by virtue of section 5 of the Limitation Act and that the word “shall” in the second proviso to section 21(5) should be read down as “may” and held to be directory in nature.

iii. *Buhari @ Kichan Buhari v. State rep. by The Additional Deputy Superintendent of Police, Special Investigation Division, Crime Branch, CID, Madurai (CrI.M.P.No.19676 of 2023 in CrI.A.SR.No.52810 of 2023)* – Madras High Court.

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<sup>1</sup> 2023 SCC OnLine Bom 1936

- The Court held that the word “shall” should be read as “may” in the case of an Appeal filed under section 21(5) of the NIA Act since not doing so would deprive a citizen of his/her fundamental right. The High Court was also of the view that procedural law cannot be treated at par with substantive law particularly in cases which involve the Fundamental Rights guaranteed under the Constitution of India.

iv. *Farhan Shaik v. State (National Investigation Agency)*<sup>2</sup> –  
Delhi High Court:

- The Court relied on a decision of the Full Bench of the Allahabad High Court in *In Re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (WP (Crl.) No. 8/2018 decided on 10.10.2018)* to hold that limitation is generally understood to bar the remedy and not extinguish the right itself and permits the filing of belated applications and Appeals with sufficiency of cause. The Court was further of the view that the prescription of limitation in section 21(5) of the NIA Act is directory and not mandatory and that the High Court is empowered to entertain and consider an application under Section 5 of the Limitation Act for condonation of delay in filing the Appeal.

We are informed that this judgment has subsequently been stayed by the Supreme Court.

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<sup>2</sup> 2019 SCC OnLine Del 9158

10.2 The “NO” decisions – The timeline under section 21(5) read with the provisos cannot be extended

i. *Nasir Ahammed v. National Investigation Agency*<sup>3</sup> - Kerala High Court.

- The Court held that the language of the 2 provisos under section 21(5) of the NIA Act would amount to a clear indication that the High Court cannot exercise the power under section 5 of the Limitation Act to condone the delay.

ii. *Shaik Rahamtulla v. National Investigation Agency*<sup>4</sup> - Calcutta High Court.

- The Court held that sections 4 to 24 of The Limitation Act, 1963 have been excluded in section 21(5) of the NIA Act, notwithstanding the absence of the clear reference to the former. The Court further held that reading section 5 of The Limitation Act, 1963 into the second proviso of section 21(5) of the NIA Act would render the latter otiose and superfluous.

iii. *Jagtar Singh Johal @ Jaggi v. National Investigation Agency*<sup>5</sup> - Delhi High Court.

- The Court ruled in favour of the respondent NIA holding that the timeframe under section 21(5) cannot be extended in a special statute like the NIA Act, 2008 in the

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<sup>3</sup> 2015 SCC OnLine Ker 39625

<sup>4</sup> 2023 SCC OnLine Cal 493

<sup>5</sup> 2024 LawSuit (Del) 3372

matter of re-filing of the appeal where delay would have to be condoned under section 5 of The Limitation Act, 1963.

The issue before us:

11. We have only been called upon to decide the maintainability of the present Appeals filed by the accused No.2 against the statutory timeline engrafted in section 21(5) of the NIA Act.

12. First and foremost, we are struck by the inconsistent stand taken by the NIA which clearly amounts to a change of position, both in the legal as well as in the metaphorical sense.

13. In respect of the statutory timeframe for filing of Appeals under section 21 of the NIA Act, 2008, each and every argument made by the NIA against allowing the present I.As, namely, impermissibility of extending the timeline under the second proviso to section 21(5) of the Act and inapplicability of section 5 of The Limitation Act, 1963 has been reversed before the Jammu & Kashmir High Court and the Chattisgarh High Court in *National Investigation Agency v. 3<sup>rd</sup> Additional Sessions Judge (supra)* and *State of Chattisgarh through Police Station*

*Bhanupratappur, District North Bastar Kanker (C.G) v. Devdhar Nishad*<sup>6</sup>, respectively.

14. In the first case, the Jammu & Kashmir High Court accepted NIA's contention and held that the word "shall" in the second proviso to section 21(5) should be construed as "may" in order to preserve the right of the accused or the prosecution, as the case may be, to avail of the remedy of Appeal. The case of the NIA was also that second proviso to section 29(2) of The Limitation Act, 1963 which preserves a different period of limitation in a special law would only apply in cases where sections 4 to 24 of The Limitation Act, 1963 have expressly been excluded in the special law. The High Court accordingly held that section 5 of The Limitation Act cannot be held to be excluded from the purview of section 21 of the NIA Act in the absence of an express exclusion. It was also the NIA's case that section 21 (5) of the NIA Act was directory and not mandatory in nature.

15. The *volte-face* of NIA was again repeated before the Chattisgarh High Court where the NIA, as the appellant, was able to persuade the Court to hold that application of section 5 of The Limitation Act for extending the timelines for filing of the

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<sup>6</sup> Acquittal Appeal No.350 of 2022 dated 12.04.2023



Appeal, was not excluded from section 21(5) of the NIA Act. The Court further went on to hold that procedural law should not close the substantive right of Appeal particularly where the Appellate Court is of the opinion that the parties were otherwise prompt in challenging the order.

16. In both of the above cases, the Jammu & Kashmir High Court and Chattisgarh High Court accepted the stand of the NIA as the appellants and permitted the Appeals to be filed beyond the statutory timelines under section 21(5) of the NIA Act read with the 2 provisos.

#### The “Justice Bar”

17. The perceived statutory bar against extension of timelines as contained in section 21(5) of the NIA Act, read with the first and second provisos, beyond 90 days from the date of the judgment/order, may be described as a “Justice Bar” to filing of Appeals beyond the statutory window or - more appropriately - the “Bar to Justice” when inconsistently applied. The timeline must be applied to one and all in equal measure irrespective of whether the appellant is an accused or an “Agency” as constituted under section 3 of the NIA Act.

18. Section 21 of the NIA Act is an entity-neutral provision and provides for the mechanism of filing of Appeals. Section 21 does not differentiate between an accused and the “Agency” and simply provides for the forum, the constitution of the forum and the timeline within which the Appeal is to be filed.

19. It is indeed perplexing to find that the NIA has construed section 21(5) of the NIA Act according to its convenience and taken diametrically-opposite stands to suit its purpose.

20. Although we do not intend to sermonize on the sanctity of the laws framed by the Legislature, including Special Laws with a stated objective, equal application of the laws regardless of standing and privilege is the *grundnorm*. Selective application of the laws is bound to impinge on the rights guaranteed under the Constitution.

21. Curiously enough, in the decisions shown to us, the Courts decided that the right of Appeal is an indispensable part of the right to life and liberty under Article 21 of the Constitution. We also find it necessary to add Article 14 of the Constitution that is, the right not to be discriminated against, as being an inalienable right of every person given the flip-flop

on the part of the NIA and the inconsistent rulings of the Courts in respect of section 21(5) of the NIA Act.

22. Equality before the law and equal protection of the laws within the territory of India is as fundamental and inviolable as Article 21 of the Constitution which protects a person from being deprived of his/her life or personal liberty except according to the procedure established by law.

23. The “Justice Bar” cannot be stretched or curtailed at will and must remain of equal length regardless of the litigant at both ends of the spectrum. The doors of justice also cannot selectively be shut to a few and not to others particularly where the life and liberty of the accused is at stake. If justice can be likened to the consistency of a pendulum, the certainty of the motion cannot be reduced to a whimsical swing for self-serving reasons.

24. The anomalous stand of the NIA was not noticed in the decisions shown to us except in *Faizal Hasamali Mirza (supra)*.

25. There is also something to be said on the applicability of section 5 of The Limitation Act, 1963, to section 21(5) of the NIA Act, 2008. Section 5 of The Limitation Act, 1963, permits applications and Appeals under Order XXI of The Code of Civil

Procedure Code, 1908 to be admitted after the prescribed period of limitation upon the Court being satisfied of the sufficiency of cause shown by the applicant/appellant in not preferring the Appeal or making the application within the prescribed period. The prescribed period under section 21(5), read with 2 provisos, is 90 days from the date of the judgment/order. Therefore, application of section 5 of The Limitation Act, 1963 cannot be wished away from a reading of the 2 provisos under section 21(5) of the NIA Act.

26. Further, section 29(2) of The Limitation Act, 1963 contemplates prescription of a different timeline in a special law and presumes application of section 5 unless expressly excluded by the special law.

27. Section 21(5) and the provisos of the NIA Act do not contain any express exclusion of sections 4 to 24 or section 5, in particular, as provided under section 29(2) of The Limitation Act, 1963.

28. The Supreme Court considered the application of sections 4 to 24 of The Limitation Act, 1963 and the provisions of the Representation of People Act, 1951 in *Hukumdev Narain Yadav*

*v. Lalit Narain Mishra*<sup>7</sup> and in *Commissioner of Customs and Central Excise v. Hongo India Private Limited*<sup>8</sup>, and held that it would be open to the Court to examine whether and to what extent sections 4 to 24 of the Limitation Act would stand excluded where the special law does not exclude these provisions by express reference. *Union of India v. Popular Construction Company*<sup>9</sup> construed section 34 of The Arbitration and Conciliation Act, 1996.

29. The Supreme Court in *Chattisgarh State Electricity Board v. Central Electricity Regulatory Commission*<sup>10</sup> held that section 5 of The Limitation Act, 1963 cannot be invoked by the Supreme Court for entertaining an Appeal filed against the direction of a Tribunal beyond 120 days as specified in section 125 of The Electricity Act, 2003. It is important to state that the High Courts of Kerala and Calcutta relied on the decisions of the Supreme Court which specifically held against the application of section 5 of The Limitation Act, 1963 and decided not to allow an Appeal being filed beyond the statutory limit under section 21(5) of the NIA Act.

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<sup>7</sup> (1974) 2 SCC 133

<sup>8</sup> 2009 (5) SCC 791

<sup>9</sup> (2001) 8 SCC 470

<sup>10</sup> (2010) 5 SCC 23

30. The issue before the Delhi High Court was whether the appellant could take the benefit of the period during which the Certified Copy of the order was yet to be issued and condonation of delay in re-filing of the appeals where Rule 5 of the Delhi High Court Rules was also considered by the Court. The fact of the earlier Division Bench Judgment in *Farhan Shaik* (supra) being stayed by the Supreme Court also weighed with the Court. Although not relevant to the issue at hand, there is also a marked difference between Rule 5 of Chapter I Volume V of the Delhi High Court (Original Side) Rules, 2021 which caps the time for re-filing to 30 days in total and Rules 130 and 131 of the Criminal Rules of Practice & Circular Orders, 1990 followed by the High Court for the State of Telangana, which do not contain any such cap.

31. In the present case, we have not been shown any decision of the Supreme Court which has conclusively settled that the timeframe under section 21(5) of the NIA Act, read with the provisos, cannot be extended or that section 5 of The Limitation Act, 1963 cannot be read into the former.

32. We must also make it clear that the learned Special Public Prosecutor has informed the Court that the issue of entertaining an Appeal beyond the 90 days under section 21(5) of the NIA Act

was brought before the Supreme Court in 2016. We however find that the decisions shown to us, save and except *Nasir Ahmmed (supra)* of the Kerala High Court, were pronounced by the High Courts after 2016. The Special Public Prosecutor has also not shown any order of the Supreme Court directing the High Courts' not to pronounce on this issue pending a decision of the Supreme Court.

33. Moreover, we must also mention a vital difference between section 21(5) of the NIA Act, 2008 read with the 2 provisos, which have been set out above and section 14A(3) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST (PoA) Act, 1989). The latter begins with a *non obstante* clause as is set out below:

“14A(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.”

34. The wording of section 14A(3) of the SC/ST (PoA) Act, 1989 is therefore far more strict and excludes the application of any other law. The absence of such express exclusion in the language of section 21(5) of the NIA Act is a further point which assists the appellant in arguing for extending the timeline under section 21(5) of the NIA Act.

35. We are in any event satisfied with the sufficiency of the cause shown by the petitioner in I.A.No.1 of 2024 and we are persuaded to hold that the delay in filing of the Appeals should be condoned. We accordingly hold that the Appeals are maintainable.

36. I.A.No.1 of 2024 in CrI.A.No.421 of 2024 and I.A.No.1 of 2024 in CrI.A.No.425 of 2024 are accordingly allowed and disposed of. The delay of 390 days in filing the Appeals is condoned.

37. We make it clear that our decision will be subject to the judgment/order pronounced by the Supreme Court in the matter of extension of time under section 21(5) of The NIA Act read with the provisos. We have been shown *The State of Uttar Pradesh v. Sarfaraz Ali Jafri* (Special Leave Petition (Criminal) Diary No(s). 5217/2024), where the Supreme Court noted that



pendency of proceedings before the Supreme Court shall not operate as a stay on any proceedings before the High Court.

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**MOUSHUMI BHATTACHARYA, J**

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**NAGESH BHEEMAPAKA, J**

Date: 27.09.2024

**Note: L.R. Copy to be marked**

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