IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2375 OF 2022
IN
CRIMINAL APPEAL (STAMP) NO.11931 OF 2022

Faizal Hasamali Mirza @ Kasib,
Age 34; Occupation Electrician,
S/o Hasamali Karim Abdul Mirza,
Room No. 09, Badar Masjid Chawl,
Near Parsi Colony, Behrambaug,
Jogeshwari (West), Mumbai-400 102 ...Applicant

Versus

1. The State of Maharashtra

2. National Investigating Agency ...Respondents

Mr. Mateen Shaikh a/w Mr. Shahid Nadeem and Ms. Muskan Shaikh for the Applicant

Mr. Aabad Ponda, Sr. Advocate as *Amicus Curiae* a/w Mr. Jugal Kanani and Mr. Saurabh Mehta

Mr. Sharan Jagtiani, Sr. Advocate as *Amicus Curiae* a/w Ms. Shraddha Achliya, Ms. Priyanka Kapadia, Mr. Ansh Karnavat and Mr. Aditya Pimple

Ms. P. P. Shinde, A.P.P for the Respondent No.1 – State

Mr. Sandesh Patil, Spl. P.P. a/w Mr. Chintan Shah, Ms. Divya Pawar and Mr. Krishnakant Deshmukh for the Respondent No.2– NIA

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
RESERVED ON : 29th AUGUST 2023
PRONOUNCED ON : 14th SEPTEMBER 2023

JUDGMENT (Per Revati Mohite Dere, J.) :

1 By this interim application, the applicant seeks condonation of delay of 838 days caused in filing the aforesaid appeal. By the said appeal, preferred under Section 21 of the National Investigation Agency Act (`NIA Act'), the appellant has impugned the order dated 9th March 2020 passed below Exhibit 30 by the learned Special Judge, by which, the learned Judge was pleased to reject the applicant's application seeking his enlargement on bail in connection with C.R. No. 13/2014 registered initially with the Kalachowky Police Station, Mumbai, Maharashtra, for the alleged offences punishable under Sections 16, 18, 18-A, 18-B and 20 of the Unlawful Activities Prevention Act, 1967 and under Sections 420, 465, 468, 471, 201 and 120-B of the Indian Penal Code, and subsequently transferred to NIA

and re-registered as RC-02/2018/NIA/Mum on 2nd August 2018 by NIA, Mumbai.

2 The question that arises for consideration in the aforesaid application is, whether the Appellate Court has the power to entertain an appeal, filed beyond the period of 90 days, in view of the 2nd proviso to Section 21(5) of the NIA Act, 2008 and accordingly, condone the delay beyond the said period ?

3 Mr. Sandesh Patil, learned Special P.P, appearing for the NIA submitted that the aforesaid application seeking condonation of delay of 838 days caused in filing the appeal is not maintainable, as the period sought to be condoned is beyond the period mandated by Section 21(5), 2nd proviso of the NIA Act, inasmuch as, the same prescribes an outer limit for condonation of delay.

4 Considering the vehement opposition by Mr. Sandesh Patil, learned Special P.P. for NIA, and keeping in mind

the important question raised in this application, as to whether or not, delay can be condoned beyond the prescribed period of 90 days as stipulated in the 2nd proviso to sub-section (5) of Section 21 of the NIA Act, we thought it fit to appoint an *amicus* to assist us, in considering the question raised. Accordingly, we appointed Mr. Ponda, learned Senior Advocate, to appear as an *amicus* vide order dated 26th July 2023.

5 We may note here, that there was another connected application filed in an appeal seeking condonation of delay of 299 days i.e. more than the period prescribed under Section 21(5) of the NIA Act, and in that application, being Interim Application No. 913/2023 in Appeal (Stamp) No. 3994/2023, we had appointed Mr. Sharan Jagtiani, Senior Advocate as an *amicus,* to assist the Court vide order dated 26th July 2023. However, the appeal alongwith the application seeking condonation of delay was withdrawn by the applicant therein on 28th August 2023, on the day, the application was fixed for hearing, as the applicant

wanted to approach the trial Court, in view of the subsequent development i.e. grant of bail to another co-accused by the Apex Court. Since we had appointed Mr. Sharan Jagtiani in that application as *amicus,* we permitted him to address us in the present application.

Submissions of Mr. Ponda, learned Sr. Advocate as *Amicus* :

6 Mr. Ponda, learned senior counsel urged before us that the appellate Court has the power to entertain an appeal even after the statutory period of 90 days despite the language employed in the 2nd proviso to Section 21(5) of the NIA Act. In this context, he submitted that Section 21(1) of the NIA Act commences with the words, **'notwithstanding anything contained in the Code'** and as such, it excludes the Code of Criminal Procedure and not any other law for the time being in force. He submitted that there are analogous statutory provisions i.e. Section 14A in the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 ('SCST Act') and Section 17 of the Fugitive Economic Offenders Act, 2018, and that although no appeal shall be entertained after the expiry of the period of 180 days under the 2nd proviso to Section 14A(3), and, the 2nd proviso to Section 17(2), Appellate Courts have been condoning delay caused in filing appeals under the said Acts.

6.1 Mr. Ponda submitted that the right of appeal is a statutory, substantive, fundamental and an unconditional right given to an accused. In this context, learned counsel relied on the judgment of the Apex Court in the case of ***Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.***[1]**,** in particular, para 12 of the said judgment, wherein, it is held that an appeal is indisputably a statutory right and that a right of appeal from the judgment of conviction, affecting the liberty of a person, is also a fundamental right, and, that this right of appeal can neither be interfered with or impaired, nor can it be subjected to any condition.

1 (2007) 6 SCC 528

6.2 Learned senior counsel further relied on the judgments of the Apex Court in ***Garikapati Veeraya v. Subbiah Choudhry***[2]***, Madhav Hayawadanrao Hoskot v. State of Maharashtra***[3]***, Noor Aga v. State of Punjab***[4] and ***Sita Ram v. State of U.P.***[5] to buttress his submission, that the right of appeal in criminal cases is protected under Article 21 of the Constitution and that no provision, that renders this right illusory or subject to chance, can interfere with the mandate of Article 21. Mr. Ponda, did a comparative analysis of the legal provisions under the NIA Act, vis-a-vis the SCST Act and the Fugitive Economic Offenders Act, to emphasize that from the language used in the sections therein, it is clearly evident, that the legislative intent in enacting Section 21 of the NIA Act, was not to exclude the applicability of all laws, including the Limitation Act. He submitted that hence, Section 21(5), 2nd proviso ought to be construed liberally, since the legislative intent was not to exclude all other laws, other than

2 AIR 1957 SC 540
3 (1978) 3 scc 544
4 (2008) 16 scc 417
5 (1979) 2 SCC 656

Cr.P.C. In this context, learned counsel relied on the provisions of Sections 3 and 29 of the Limitation Act, to show that the provisions of Section 3 r/w Section 5 of the Limitation Act, would apply to Section 21(5) of the NIA Act.

6.3 Mr. Ponda further submitted that there is no provision in the NIA Act, explicitly or implicitly excluding the Limitation Act of 1963, and that the same is important by virtue of Sections 5 and 29 of the Limitation Act.

6.4 Mr. Ponda further submitted that the provisions of Section 21(2) of the NIA Act show that even *qua* appeals, the said provision, cannot be strictly construed as mandatory vis-a-vis the time-line stipulated therein. He submitted that the requirement to dispose of an appeal as mandated in Section 21(2) of the NIA Act, within three months from the date of admission, can never be taken and interpreted as mandatory, as non-compliance of the same would result in consequences, including release of an

accused only because the appeal could not be disposed of in three months.

6.5 According to Mr. Ponda, there may be cases where the accused are incarcerated for long periods, financially unstable to file an appeal within the prescribed period, and that despite there being sufficient cause to justify the filing of an appeal beyond 90 days, if the said appeal is not entertained, as it is beyond 90 days, it would lead to travesty of justice. He submitted that if delay is not condoned beyond the outer period mentioned in Section 21(5) of the NIA Act, the same would be contrary to Articles 14, 19 and 21 of the Constitution of India, more particularly, because an appeal is an extension of the trial and there exists a fundamental right to file an appeal. Hence, he submits that the appellate Courts have the power to condone the delay beyond 90 days, despite the language used in the second proviso to Section 21(5) of the NIA Act and that the same can be done by resorting to Section 5 of the Limitation Act, the

applicability of which, is not excluded under the provisions of NIA Act, having regard to the language used in Section 21(1).

Submissions of Mr. Sharan Jagtiani, learned Sr. Advocate as Amicus :

7 Mr. Sharan Jagtiani, learned senior counsel supported the submission advanced by Mr. Ponda. He submitted that the Kerala High Court, whilst holding that the period beyond the outer limit stipulated under Section 21(5), 2nd proviso, could not be condoned being mandatory, had relied upon judgments rendered under the Customs and Excise Law, Representation of People's Act, the Sales Tax Act, under the Arbitration and Conciliation Act, under the FEMA Act, under the Electricity Act and Lease Control Act. He submitted that the constitutional scheme relating to a right of appeal in criminal matters is to be considered from a different perspective, as against appeals filed in civil matters. He submitted that the right of appeal is paramount and can be equated with Article 21 and as such, the

right of appeal cannot be taken away. Learned counsel also relied on the judgment of the Apex Court in the case of ***Dilip S. Dahanukar (Supra).*** Learned counsel submitted that the said judgment of the Supreme Court indicates that a statutory right to appeal in criminal matters, as provided by the legislation, find its roots or origins in Article 21 of the Constitution and that the Statute merely provides for the form and the manner in which the said right can be exercised. He submits that even though the right to file an appeal in criminal matters is guaranteed by Article 21, the said right is not absolute and that Article 21 itself contemplates that a person may be deprived of his/her fundamental right guaranteed thereunder, except in accordance with the procedure established by law. In this context, learned counsel relied on the judgment of the Apex Court in ***Maneka Gandhi v. Union of India***[6]***,*** to show that the Supreme Court had read substantive due process as the standard for determining whether the procedure established by law is fair, just and reasonable. Learned counsel also relied on the judgment in the

6 (1978) 1 SCC 248

case of ***K.S. Puttaswamy v. Union of India***[7]***,*** with respect to the observations made by the Apex Court as to what is "procedure established by law", in particular, paragraphs 288, 294, 295, 296, 451 and 477 of the said judgment. He submitted that the said judgment would reveal the settled proposition i.e. that the procedure established by law has to be reasonable, fair and just. He submitted that the word "shall" used in Section 21(5), second proviso of the NIA Act be read as "may". In this context, Mr. Jagtiani relied on the following judgments :

Chandrika Prasad Yadav v. State of Bihar[8]***; State of U.P v. Manbodhan Lal Shrivastava***[9]***; Bachahan Devi v. Nagar Nigam, Gorakhpur***[10] ***and Anant H. Ulahalkar v. Chief Election Commissioner***[11]***.***

7.1 According to Mr. Jagtiani, there are indications in the Scheme of the Act itself, which would show that Section 21(5) of the Act, is directory and not mandatory. He submitted that the

7 (2017) 10 SCC 1
8 AIR 2004 SC 2036
9 AIR 1957 SC 912
10 (2008) 12 SCC 372
11 (2017) 1 Mah. L. J. 431

Scheme of the NIA Act shows; that it was the intention of the legislature to provide speedy investigation and speedy trial of the scheduled offences being tried under this Act; that a special agency for investigation is constituted under the NIA Act; and, there are special courts for trial of scheduled offences. He submitted that even under Section 19 of the NIA Act, the legislature provided for day-to-day trial of the scheduled offences by the Special Court and that the said trial would have precedence over the trial of any other case against the accused in any other court and that it is in this background i.e. to ensure timely disposal and finality to the proceedings, that Section 21 of the NIA was enacted. Learned counsel also relied on the judgment of the Apex Court in the case of ***Sadhwi Pragya Singh Thakur v. National Investigation Agency***[12]***.*** He submitted that while deciding the said case, the Supreme Court held that the exception under Section 21(4) has been carved out to protect the life and liberty of the accused. He submitted that the intention of the legislature was to avoid undue delay in filing of bail appeal by

12 Order dated 13/09/2013 in Cri. Mis. Petition Nos. 17570/2013 & 17571/2013

the parties, which in turn, would delay the overall trial and finality of the proceedings and hence, the period for filing the appeal has been prescribed. He submitted that the period of 90 days cannot be said to be absolute for all cases and that if the accused is able to show sufficient cause, which prevented him from filing/preparing his appeal, within the mandated period of 90 days, the High Court, in its judicial discretion, may well condone the delay. According to Mr. Jagtiani, the prescription of time under Section 21(5) of the NIA Act is only a procedural law and does not take away the accused's right of appeal, which is a facet of right to life under Article 21 of the Constitution of India.

7.2 Learned counsel submitted that the consequence of reading Section 21(5) of the NIA Act as mandatory and not directory, are drastic and would lead to violation of Article 21 of the Constitution. He submitted that the time-line prescribed under Section 21(5) of the NIA Act and the fundamental rights of the accused guaranteed under Part II of the Constitution can be

organized by the courts by reading the said provision as directory and that the discretion vests in the courts to condone the delay upon sufficient cause being shown. He submitted that if the provision is read as mandatory, despite sufficient cause being shown, the appellant would lose his right of appeal, a facet of right to life guaranteed under Article 21 of the Constitution, in the event, the appellant does not approach the High Court within 90 days of the judgment, sentence or order. In this context Mr. Jagtiani submitted that generally, the rule is of strict interpretation in respect of penal statutes and any ambiguity must enure to the benefit of the accused, if it deprives the person of his life and liberty by giving a strict interpretation. He submitted that thus, it is permissible for the High Court to apply the rule of interpretation of `reading down' of Section 21(5), 2nd proviso of the NIA Act and to declare the same as directory and not mandatory.

Submissions of Mr. Sandesh Patil, learned Spl. P.P :

8 Mr. Sandesh Patil, learned Spl. P.P vehemently

opposed the condonation of delay application. He submitted that an appeal cannot be entertained after the expiry of 90 days and that the legislature, in its wisdom, has consciously excluded the power to condone delay beyond 90 days. He submitted that there is a presumption of constitutional validity and that Section 21(5) of the NIA Act has decided to put a full stop to the remedy of appeal, beyond 90 days. He submitted that Section 21(5) does not intend to curtail the right of first appeal, and as such, a remedy is available to an accused to file an appeal against his conviction/rejection of his bail, however, only puts an upper limit to file the same. In this context, learned counsel for the respondent-NIA relied on the judgment of the Apex Court in the case of ***Ram Krishna Dalmi v. Justice S. R. Tendolkar***[13]**,** and ***Charjeetlaal Chaudhari v. UOI***[14].

8.1 He submitted that NIA Act is a special law and therefore, the provisions of Sections 4 to 24 (inclusive) shall stand excluded. According to Mr. Patil, Section 5 of the Limitation Act

13 AIR 1958 SC 538
14 AIR 1951 SC 41

stands excluded and for the purpose of computation extension of the period for filing an appeal, Section 21(5) of the NIA Act will have precedence. In this context, Mr. Patil relied on the judgment in the case of ***Hukumdev Narayan Yadav c. Lalit Mishra***[15] and the full bench judgment of this Court in ***Anjana Yashawantrao v. Yashawantrao Dudhe***[16]**.** He submitted that the doctrine of limitation is founded on consideration of public policy and expediency and the object of the limitation statute, is to compel litigants to be diligent in seeking remedies in courts of law by prohibiting stale claims. He submitted that the law of limitation does not destroy the primary or substantive right itself, but puts an end to the accessory right of action.

8.2 Mr. Patil further submitted that under the garb of interpreting a provision, the court has no power to add or subtract, even a single word, as it would not amount to an interpretation, but legislation. In this context, learned counsel

15 (1974) 2 SCC 133
16 (1961) 1 Cr.L.J. 637

relied on the judgment in ***Rohitash Kumar v. Om Prakash Sharma***[17]***.***

8.3 As far as Article 21 is concerned, Mr Patil submitted that `reading down', the provisions of the statute cannot be resorted to, when the meaning thereof, is plain and unambiguous and the legislative intent, clear. He submitted that the fundamental principle of the reading down doctrine is, that the court must read the legislation literary and that if such intent cannot be reasonably implied without undertaking, what, unmistakable would be legislative exercise, the Act may be read down to save it from unconstitutionality. He submitted that in the present case, as there is no challenge to the vires of the Act, the question of reading down the statute does not arise and even otherwise, the doctrine of reading down can be applied, only when the provisions of the statute are vague and ambiguous and when, it is not possible to gather the intention of the Legislature. He submitted that where there is no difficulty in understanding

17 (2013) 11 SCC 451

the clear and unambiguous, meaning of the statute, where there is no uncertainty in the language, there is no scope for reading down the statute. In this context, Mr. Patil relied on the judgment in ***Subramanium Swamy v. Raju***[18]***.***

8.4 Mr. Patil submitted that the right to appeal is not a fundamental right, but a statutory right, and, that even assuming without admitting, that right to appeal is a fundamental right, the said fundamental right can be subject to reasonable restrictions. He submitted that right of appeal cannot be left in perpetuity, but there is a ceiling/cap provided for exercise of that right within the limitation prescribed in Section 21(5) of the NIA Act. He submitted that said procedure established by law is set-out in Section 21 (4) and (5) of the NIA Act.

8.5 Mr. Patil submitted that the period of 90 days stipulated in Section 21(5) is mandatory and cannot be held as directory, as if it is held to be mandatory, it would amount to

18 AIR 2014 SC 1649

legislating and not interpretation, which is not permissible. He submitted that such a power only vests in writ jurisdiction under Article 226 of the Constitution and not while exercising appellate jurisdiction under Section 21(1) of the NIA Act.

Submissions of Mr. Mateen Shaikh, learned counsel for the Applicant :

9 Learned counsel for the applicant submitted that the applicant hails from a very poor family and that right after the impugned order dated 9th March 2020 was passed, Covid-19 was declared. He submitted that his family was completely in the dark about the remedies available and that the applicant had also lost his mother during the pandemic and that it was only much later, he was made aware of his right to file an appeal and hence, the delay. He submitted that Section 5 of the Limitation Act is only excluded, when the special law expressly excludes the applicability of the same. He submitted that when there is no such express exclusion of the Limitation Act, 1973 provided in Section

21(5) of the NIA Act, there is no bar in entertaining the delay condonation application. He submitted that the personal liberty of an individual guaranteed under Article 21 not only is with respect to expeditious trial but also extends to filing of an appeal. He submitted that the right of a statutory appeal in orders passed in criminal appeals is an essential element of Article 21 and the same can no longer be disputed and that the issue stands duly concluded by the Apex Court in the case of ***M. H. Hoskot (Supra).*** He further submitted that the right of appeal arises from a right to fair trial, recognized under Article 21 of the Constitution. He submitted that if the word "shall" used in the second proviso to sub-section (5) of Section 21 is held as mandatory, it would take away the right of an accused or the prosecution, as the case may be, to avail of the remedy of an appeal. In this context, learned counsel relied on the judgment in ***State of U.P. v. Babu Ram Upadhya***[19] and ***State of W.B. v. Union of India***[20]***.***

19 (1961) 2 SCR 679
20 (1964) 1 SCR 371

ANALYSIS :

10 Having heard the rival submissions of the learned counsel for the respective sides, as well as, having heard Mr. Ponda and Mr. Jagtiani, learned senior counsel appearing as *amicus,* we proceed to decide a fundamental and important question of law, which is, whether the Appellate Court can condone delay beyond the period of 90 days, as stipulated in the 2nd proviso to Section 21(5) of the NIA Act, 2008 ?

11 Before we proceed to decide the said issue, it would be apposite to reproduce Section 21 of the NIA Act, with which we are concerned. Section 21 reads thus :

> *"21. Appeals. - (1) **Notwithstanding anything contained in the Code**, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.*
>
> *(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.*

(3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) 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."

(Emphasis supplied)

12 At the outset, we would place on record, the divergent views taken by different High Courts, on Section 21(5), 2nd proviso of the NIA Act.

Kerala High Court and Calcutta High Court have held :

Section 21(5), 2nd proviso of the NIA Act, is **mandatory**.

13 The Kerala High Court in the case of ***Nasir Ahammed v. National Investigating Agency***[21], has taken the view, that the Statute provides 30 days period for filing of an appeal against the judgment, sentence or order and gives a discretion to the appellate Court to condone the delay, subject to showing sufficient cause, beyond the period of 30 days, but not beyond the expiry of 90 days from the judgment, sentence or order appealed from, and hence, the Courts cannot by entering into interpretative process re-write the mandatory provision, and that if done, would amount to legislation by courts.

14 The Calcutta High Court in ***Sheikh Rahamtulla @ Sajid @ Burhan Sheikh @ Surot Ali & Ors. v. National Investigation Agency***[22] has, after considering various judgments has held that Section 21 of the NIA Act is mandatory and as such delay beyond 90 days cannot be condoned under the 2nd proviso to sub-section (5) of Section 21.

21 2015 SCC Online Ker 39625
22 CRA (DB) 231/2022 dated 01.03.2023

Delhi High Court, Jammu & Kashmir and Ladakh High Court and Chhattisgarh High Court have held – 21(5), 2nd proviso of the NIA Act, **is not mandatory.**

15 The **Delhi High Court** in ***Farhan Sheikh v. State (NIA)***[23] has held that the word `shall' used in the 2nd proviso of sub-section (5) of Section 21 of the NIA Act, must be read in the context and having due regard to the legislative intent and object. It held that if Section 21(5), 2nd proviso is read to be mandatory, it may in some cases, take away the right of the accused/the prosecution, to avail of the remedy of an appeal. Accordingly, the Delhi High Court opined that having regard to the rights of the accused, including that of a fair trial, which is implicit in Article 21 of the Constitution of India, the word 'shall' used in Section 21(5), 2nd proviso, must be read as 'may' and on sufficient cause being shown, the Appellate Court would be well within its powers to condone the delay and entertain the appeal, even after the expiry of the period of 90 days.

23 2019 SCC Online Del 9158

16 The view taken by the Delhi High Court as stated aforesaid was adopted by the Jammu & Kashmir and Ladakh High Court in the case of ***National Investigation Agency Through its Chief Investigating Officer v. 3rd Additional Sessions Judge, District Court Jammu***[24]**,** as it was a pragmatic view and furthered the ends of justice. Accordingly, the Jammu & Kashmir and Ladakh High Court in paras 22 to 24 has held as under:

> ***"22*** *Although the judgments rendered by the Allahabad High Court in the aforesaid case and the Delhi High Court in the case of Farhan Sheikh (supra) have been rendered in the context of fair trial rights of the accused, yet Section 21 does not make any distinction between the right of the accused and the right of prosecution to file an appeal against any judgment, sentence or order. If the delay in filing the appeal by the accused beyond the period of 90 as provided in second proviso to sub-Section 5 of Section 21 of the NIA Act can be condoned by the High Court in appropriate cases, we see no reason as to why the similar treatment cannot be accorded to the prosecution. The Division Bench judgment rendered by the Kerala High Court in the case of Nasir Ahammed vs. National Investigation Agency, (2016) Cri LJ 1101 in which a contrary view is taken, has not taken into account the fair trial rights of the accused which would include right of the accused to avail the remedy of appeal. The Division Bench of Kerala High Court in the aforesaid case has interpreted the second proviso to sub-Section 5 of Section 21 of the*

24 CrIA(D) No.46/2022 (CrIM No.1474/2022) decided on 13.12.2022

NIA Act by relying upon the decisions rendered in the context of civil or taxing statutes and without having regard to the scope, object, context and subject matter of the NIA Act.

23 *In view of the above, we are of the considered view that the word "shall" used in second proviso to sub-Section 5 of Section 21 of the Act must be read as "may" and that the High Court shall have the discretion to condone the delay even beyond the period of 90 days in appropriate cases, provided the appellant satisfies the Court that he had sufficient cause for not preferring the appeal even after expiry of period of 90 days as provided in the second proviso to sub-Section 5 of Section 21 of the NIA Act.*

24 *The application of the appellant seeking condonation of delay is held maintainable and the same, for the reasons stated therein, is allowed. Delay in filing appeal is, thus, condoned."*

17 The Chhattisgarh High Court in the case of ***State of Chhattisgarh v. Devdhar Nishad (Acquittal Appeal No. 350/2022 decided on 12.04.2023,*** has after considering the judgments passed by the Delhi High Court in ***Farhan Shaikh (Supra)*** and Jammu & Kashmir and Ladakh High Court in ***National Investigation Agency Through its Chief Investigating Officer v. 3rd***

Additional Sessions Judge, District Court Jammu (Supra), in para 42 held as under:

> *"42. To sum-up the issue, the question for consideration is answered as under:-*
>
> > *The second proviso appended to sub-section (5) of Section 21 of the NIA Act barring the entertainment of appeal preferred under Section 21(1) after the period of 90 days would not preclude the convict for the Scheduled Offences under the NIA Act showing sufficient cause in case of unmerited conviction and similarly, in case of unmerited acquittal, it would also not preclude the aggrieved party from preferring appeal after the period of 90 days showing sufficient cause."*

18 We, for reasons stated herein-under, are in complete agreement with the view taken by the Delhi High Court in ***Farhan Sheikh (Supra),*** the Jammu & Kashmir and Ladakh High Court in ***National Investigation Agency Through its Chief Investigating Officer v. 3rd Additional Sessions Judge, District Court Jammu (Supra)*** and the Chhattisgarh High Court in ***State of Chhattisgarh (Supra),*** inasmuch as, it holds that the 2nd proviso to Section 21(5) of the NIA Act, is directory.

19 At the outset, we may note, that the NIA Act, as a whole, cannot certainly said to be a complete Code, in itself, inasmuch as, there are several provisions in the NIA Act, which have to be read in conjunction with other laws. The schedule to the Act enlists the several enactments which create offences and prescribes punishments. It is those offences alone, that NIA is authorized to investigate. Thus, the NIA Act cannot survive in its scheme/purpose, without dependence on other Statutes. Section 2(1)(b) of the NIA Act defines 'Code' to mean the Code of Criminal Procedure, 1973. The provisions of the Code are applicable to a trial under the NIA Act, in view of Section 4 of the Code of Criminal Procedure. The NIA Act is dependent on the Code for its execution. The only aspect on which NIA Act is a complete Code, is with respect to its Constitution and the terms of the special agency that has been created, which is the avowed purpose of the Act.

20 Coming to the language employed in Section 21 of the NIA Act, we now propose to examine, whether the said Section excludes the operation of the Limitation Act. In order to examine the same, and to arrive at a decision, we would like to do a comparative analysis of the legal provisions of the NIA Act vis-a-vis the provisions of the SCST Act.

21 Section 21(1) of the NIA Act commences with the words, **'Notwithstanding anything contained in the Code,** an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law, whereas, Section 14A(3) of the SCST Act uses the words, **"Notwithstanding anything contained in any other law for the time being in force".** The relevant part of Section 14A(3) reads thus:

> *"14A. .....*
>
> *(2) .....*
>
> ***(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.

(4) ……."

(emphasis supplied)

22 It is pertinent to note, that the said provision of the SCST Act with respect to the bar of entertainment of an appeal after the stipulated period and its constitutionality came up for consideration before the Allahabad High Court in-

(i) ***Re : Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015***[25]***;***

(ii) ***Ghulam Rasool Khan and Ors. v. State of U.P. and Ors.***[26]

25 2018 SCC Online All 2087
26 28.07.2022 – ALL HC : MANU/UP/2312/2022

23 The Allahabad High Court (Lucknow Bench) in para 15 of ***Ghulam Rasool Khan (Supra)*** has extracted the relevant paragraphs of ***Re : Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (Supra),*** as under:

> *"**55.** ..... It has left an aggrieved person without remedy of even a first appeal against any judgment, sentence or order passed under the 1989 Act on the expiry of 180 days. As we contemplate the fatal consequences which would visit an aggrieved person on the expiry of 180 days, we shudder at the deleterious impact that it would have and find ourselves unable to sustain the second proviso which must necessarily be struck down, as we do, being in violation of Article 14 and 21 of the Constitution.*
>
> *xxxx*
>
> ***62.** While we reject the challenge to section 14A(2), we declare that the second proviso to Section 14A(3) is violative of Articles 14 and 21 of the Constitution and it is consequently struck down."*

24 In para 16 of ***Ghulam Rasool Khan and Ors. (Supra)***, it was held as under :

> ***"16.** The second proviso to sub-section (3) of Section 14A of the 1989 Act having been struck*

down by this Court in In Re : Provision of Section 14(a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra), there will be no limitation to file an appeal against an order under the provisions of 1989 Act. Hence, the remedies can be availed of as provided."

25 Although, at the first blush, the provisions of the two Statutes i.e. Section 21 of the NIA Act and Section 14A of the SCST Act, appear to be analogous, but on a careful and deeper scrutiny, there are inherent differences between them.

26 Under the SCST Act, there is a specific provision under Section 20 of the said Act, which overrides other laws, which provision applies inspite of the specific analogous reference in Section 14A(3) of the SCST Act, which clearly states the legislative intent in excluding other laws. This harsh sweep of Section 14A(3) cannot be applied to the NIA Act, inasmuch as, there is no such analogous provision under the NIA Act, including under Section 21 of the said Act.

27 The words used in Section 14A(3) of the SCST Act, would reveal the legislative intent for not incorporating the words "**Notwithstanding anything contained in any other law for the time being in force"** in Section 21 of the NIA Act. The words used in Section 21(1) are '**Notwithstanding the provisions contained in the Code…….'.** Section 2(b) defines, "Code" means the Code of Criminal Procedure, 1973. Thus, the language employed in Section 14A(3) of the SCST Act, would reveal that the provisions of the Limitation Act, 1963, do not apply in cases under the SCST Act, having regard to the 1st proviso to Section 14A(3). Section 21 of the NIA Act, omits the words found in Section 14A(3) of the SCST Act and as such, it appears, that the legislative intent was not to exclude the applicability of Section 5 of the Limitation Act and other provisions of the said Act, whilst dealing with cases under the NIA Act. This clear distinction between the said provisions i.e. between Section 21 and Section 14A(3), makes the legislative

intent clear i.e. one must be liberal in construing the provisions of Section 21(5), since the said provision, does not exclude the applicability of all other laws, other than the Criminal Procedure Code.

28 In this context, it would be apposite to reproduce the relevant provisions of the Limitation Act, 1963, with which we are concerned i.e. Section 3, 5 and 29. Relevant portion of the said Sections read thus :

> *"3. Bar of limitation.— (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*
>
> *(2) ……"*
>
> *"5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

*"29. **Savings.—** (1) .....*

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) .....

(4) ....."

29 It is worthwhile to note, that unlike Section 14A(3) of the SCST Act, there is no implied or express exclusion of the Limitation Act, in the NIA Act. Hence, Section 3 r/w Section 5 of the Limitation Act, will apply to Section 21(5) of the NIA Act. It is pertinent to note, that the Apex Court in the case of ***N.***

Balakrishnan v. M. Krishnamurthy[27]**,** has observed in para 11 as under :

> *"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."*

30 Having perused the Kerala High Court judgment in ***Nasir Ahammed (Supra)*** and the judgments relied upon by the Kerala High Court, on which strong reliance is placed by

27 (1998) 7 SCC 123

Mr. Patil, learned Special P.P, we find that the judgments relied upon by the Kerala High Court, in coming to a conclusion, that an appeal filed beyond 90 days is not maintainable, has, infact, relied on all civil cases arising out of tax matters, Customs and Excise Law, Representation of People's Act, the Sales Tax Act, under the Arbitration and Conciliation Act, under the FEMA Act, under the Electricity Act and Lease Control Act. We may note, the consequences that arise out of civil and criminal cases are distinct and different, inasmuch as, the concept of personal liberty and Article 21 of the Constitution, being the touchstone of criminal cases, the considerations arising in criminal cases would differ from civil cases.

Right of Appeal in Criminal Cases :

31 The right of an accused to file an appeal against his conviction, is linked to Article 21 of the Constitution of India.

32 The Apex Court in ***Garikapati Veeraya (Supra),*** has in para 23 opined, that the right of appeal is not a mere matter of procedure, but is a substantive right, and, that the right of appeal is a vested right.

33 In ***M. H. Hoskot (Supra),*** the Apex Court in para 11 has held as under:

> *"11. One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Article 21.*

34 In ***Sita Ram (Supra)***, the Apex Court while considering the constitutional validity of a Supreme Court Rule that permitted summary dismissal of appeals under Article 134(2) of the Constitution held, that the right of appeal in Criminal

Cases is protected under Article 21 of the Constitution and that no provision, that renders this right illusory or subject to chance, can interfere with the mandate of Article 21. It was further held in paras 31, 41, 42 and 51 as under:

> *"31. When an accused is acquitted by the trial court, the initial presumption of innocence in his favour is reinforced by the factum of acquittal. If this reinforced innocence is not only reversed in appeal but the extreme penalty of death is imposed on him by the High Court, it stands to reason that it requires thorough examination by the Supreme Court. A similar reasoning applies to cases falling under Article 134(1)(b). When the High Court trying a case sentences a man to death a higher court must examine the merits to satisfy that a human life shall not be haltered without an appellate review. The next step is whether a hearing that is to be extended or the review that has to be made by the Supreme Court in such circumstances can be narrowed down to a consideration, in a summary fashion, of the necessarily limited record then available before the Court and total dismissal of the appeal if on such a prima facie examination nothing flawsome is brought out by the appellant to the satisfaction of the Court. A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is*

made an integral part of fundamental fairness or procedure."

"41. Going to the basics, an appeal "is the right of entering a superior court and invoking its aid and interposition to redress the error of the court below." .... An appeal, strictly so called, is one "in which the question is, whether the order of the court from which the appeal is brought was right on the materials which that court had before it" (per Lord Davey, Ponnamma v. Arumogam, (1905) A.C. at p.390) .... A ***right*** *of appeal, where it exists, is a matter of* ***substance****, and not of procedure (Colonial Sugar Refining Co. v. Irving, (1905) AC 369; Newman v. Klausner, (1922) 1 K.B. 228. Thus, the right of appeal is paramount, the procedure for hearing canalises so that extravagant prolixity or abuse of process can be avoided and a fair workability provided. Amputation is not procedure while pruning may be."*

"42. Of course, procedure is within the Court's power but where it pares down prejudicially the very right, carving the kernal out, it violates the provision creating the right. Appeal is a remedial right and if the remedy is reduced to a husk by procedural excess, the right became a casualty. That cannot be."

"51. Ordinarily, save where nothing is served by fuller hearing notice must go. If every appeal under Article 134(1)(a) and (b) or Section 2(a) of the Enlargement Act, where questions of law or fact are raised, is set down for preliminary hearing and summary disposal, the meaningful difference between Art. 134 and Art. 136 may be judicially eroded and

> *Parliament stultified. Maybe, many of the appeals after fuller examination by this Court may fail. But the minimum processual price of deprivation of precious life or prolonged loss of liberty is a* ***single comprehensive appeal.*** *To be peeved by this need is to offend against the fair play of the Constitution. The horizon of human rights jurisprudence after* ***Maneka Gandhi case (supra)*** *has many hues."*

35 Similarly, in ***Noor Aga (Supra),*** *the Apex Court has in para 114, observed as under :*

> *"114. Article 12 of the Universal Declaration of Human Rights provides for the Right to a fair trial. Such rights are enshrined in our Constitutional Scheme being Article 21 of the Constitution of India. If an accused has a right of fair trial, his case must be examined keeping in view the ordinary law of the land."*

36 In ***Dilip S. Dahanukar (Supra),*** the Apex Court, linked the right of appeal against an order of conviction, as being a fundamental right enshrined in Article 21 of the Constitution. Relevant paras 12 and 66 are reproduced herein-under, to understand the purport of this judgment :

"12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of Appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a Fundamental Right. Right of Appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition."

"66. The right to appeal from a judgment of conviction vis-a-vis the provisions of Section 357 of the Code of Criminal Procedure and other provisions thereof, as mentioned hereinbefore, must be considered having regard to the fundamental right of an accused enshrined under Article 21 of the Constitution of India as also the international covenants operating in the field."

37 The Apex Court, in conclusion, opined in para 72(ii) as under:

"72. We, therefore, are of the opinion :

(i) …….

(ii) The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) to (v) ……."

38 The aforesaid judgments clearly and unequivocally state that the right of appeal in criminal cases is well protected under Article 21 of the Constitution; that the right to have a conviction and sentence re-examined on appeal (Statutory Appeal) is an intrinsic part of the right to fair trial, covered not only under Article 21 of the Constitution of India, but even under Article 14(5) of the International Covenant on Civil and Political Rights, 1966; and, that atleast a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. Presumption of innocence is a human right and the said principle forms the basis of criminal jurisprudence in India. Presumption of innocence, being a facet of Article 21, the same enures to the benefit of the accused. An appeal being an extension of the trial, there exists a fundamental right to file an appeal and this right cannot be rendered illusory or subject to chance.

39 If the 2nd proviso to sub-section (5) of Section 21 of the NIA Act, is held to be mandatory, it would lead to travesty of justice, even in cases, where the accused is able to show 'sufficient cause' for not filing an appeal, within the prescribed period, as stipulated. The reasons could be several and the list exhaustive. For example, financial condition of the accused to engage a lawyer; lack of legal knowledge, of his right to file an appeal; no member of the family to assist/help engage a lawyer for the accused; having no family member and so on. If the 2nd proviso to sub-section (5) of Section 21, is held to be mandatory, even if the accused is able to show `sufficient cause' for filing the appeal belatedly, his appeal would necessarily have to be dismissed. This would most certainly lead to travesty of justice.

40 Courts exist to do justice. Access to justice is a fundamental right and cannot be diluted. If despite 'sufficient cause' being shown, if an appeal under Section 21(5), 2nd proviso

cannot be entertained, this would lead to depriving an accused of his fundamental right guaranteed to him under Article 21 of the Constitution.

41 Time and again, Courts have held that 'access to justice', an invaluable human right, is also recognized as a fundamental right.

42 Professor M. Cappelletti Rabel, a noted jurist in his book 'Access to Justice' (Volume I) has explained the importance of access to justice in the following words;

> *"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement – the most 'basic human right' – of a system which purports to guarantee legal right.*

In India, 'access to justice' has been recognized as a

valuable right by Courts in India, even before the Constitution came into force.

We may note, that the Apex Court in the case of ***Hussainara Khatoon v. State of Bihar***[28]**,** has declared speedy trial to be an integral and essential part of the fundamental right to life and liberty as enshrined in Article 21. Article 39A makes free legal service an inalienable element of a reasonable, fair and just procedure and that the right to such services is said to be implicit in the guarantee of Article 21.

Thus, access to justice is and has been recognized as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its importance/significance, leave alone afford to deny the same to its citizens. The accused have a right to get free legal advise and for appointment of a lawyer from the Legal Services Authority to

28 (1980) 1 SCC 81

espouse their cause and all this is a part of `access to justice', so as to see that there is no injustice caused to them for want of them being unrepresented before the appropriate forum.

43 An accused stands nothing to gain by filing an appeal belatedly, inasmuch as, it is the accused who continues to suffer incarceration, and it is the accused who will stand prejudiced by filing an appeal belatedly. The NIA suffers no prejudice.

44 If at the threshold, only having regard to the statutory bar prescribed under Section 21(5) of Act, an appeal is not heard, the right of an accused, whose personal liberty stands curtailed by the said judgment/sentence/order passed by the Special Court, would stand seriously jeopardized. The accused's fundamental right to file a statutory appeal, as well as his right to access to justice, would also stand seriously jeopardized. All this, despite the accused having sufficient cause for filing the appeal belatedly. One cannot be oblivious that it is a substantive appeal, that is

being considered by the Appellate Court. The right to appeal by an accused is a substantive right, a right protected by Article 21 of the Constitution. Courts cannot be mute spectators or helpless and dismiss an appeal, simply because it is filed beyond 90 days, despite sufficient cause being shown, for filing the appeal belatedly. The same is true, even in cases, where the prosecution has filed an appeal beyond the 90 days period.

45 It is pertinent to note, from a perusal of the Schedule specified in the NIA Act, that the "Scheduled Offence" means an offence specified in the Schedule. The Schedule specified in the NIA Act states as under :

"THE SCHEDULE
[See section 2(1) (f)]

1. The Atomic Energy Act, 1962 (33 of 1962);

2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);

3. The Anti-Hijacking Act, 1982 (65 of 1982);

4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);

5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);

6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);

7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);

8. Offences under—

(a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];

(b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860);

(c) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860);

(d) Sub-section (1AA) of section 25 of Chapter V of the Arms Act, 1959 (54 of 1959);

(e) Section 66F of Chapter XI of the Information Technology Act, 2000 (21 of 2000).”

46 A careful perusal of the Schedule specified in the NIA Act, would show that the offences enumerated in the said Schedule are serious in nature and most of the offences are punishable with

imprisonment for life and considering the seriousness of the offences, the jurisdiction to try the offences under the NIA Act has been vested with the Designate Special Court, constituted under Section 11 of the NIA Act. Thus, it is all the more necessary to ensure that an accused/the prosecution gets a right to test the correctness of the order passed by the Special Court in appeal, lest, injustice is caused to either of the parties, due to an unmerited order. Not only the accused, but even the prosecution should be able to approach the Appellate Court after expiry of 90 days, on sufficient cause being shown for delay, as even closing the doors to the prosecuting agency can also lead to serious consequences, as the NIA Act is concerned with the national sovereignty, security and integrity of India, friendly relations with foreign State and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other International organizations.

47 Having regard to the discussions as stated aforesaid, we are firmly of the opinion that the 2nd proviso to sub-section (5) of Section 21 of the NIA Act, will have to be read down, so as to read 'shall' as 'may', and as such directory, so as to vest discretion in the Appellate Court, to condone delay, beyond the 90 days period on sufficient cause being shown. If the provision were to be held mandatory, despite sufficient cause being shown by accused, the doors of justice will be shut, leading to travesty of justice, which cannot be permitted by Courts of Law.

48 It is perplexing to note, the stand of the NIA. As noted earlier, Mr. Patil, learned Spl.P.P vehemently opposed the delay condonation application, on the premise that the 2nd proviso to sub-section (5) of Section 21 was mandatory and that no appeal beyond 90 days can be entertained, in view of the statutory bar. The contradiction in the stand taken by the NIA, is apparent. It is pertinent to note, that in the appeal filed by the NIA before the Jammu & Kashmir and Ladakh High Court in

National Investigation Agency Through its Chief Investigating Officer v. 3rd Additional Sessions Judge, District Court Jammu (Supra), the NIA had filed a delay condonation application, there being a delay of 40 days. The NIA urged before the said Court that the 2nd proviso to Section 21(5) of the NIA Act was directory. The Jammu & Kashmir and Ladakh High Court, relying on the Delhi High Court judgment in ***Farhan Sheikh (Supra)***, held that the 2nd proviso to Section 21(5) was directory and as such, condoned the said delay of 40 days (beyond the 90 days prescribed) caused in filing the appeal by the NIA and consequently, allowed the NIA's appeal. Similarly, in ***State of Chhattisgarh (Supra)*** before the Chhattisgarh High Court, NIA had filed an appeal against acquittal along with an application seeking condonation of delay of 228 days. NIA, whilst seeking to condone the delay of 228 days, had urged that the provision in question i.e. 2nd proviso to Section 21(5) of the NIA Act, was directory. The Chhattisgarh High Court accepted the submission of the NIA that 2nd proviso to Section 21(5) of the NIA Act was

directory in nature and accordingly, condoned the delay caused in filing the appeal against acquittal. NIA being a Central Investigating Agency, is expected to take one stand, either ways, for or against. The stand cannot change to suit its needs. We are unable to see any merit/reason, in the contradictory stand taken by the NIA before different High Courts. Infact, reliance placed by Mr. Patil, learned Special P.P for NIA on ***Hukumdev Narain Yadav (Supra)***, and the full bench judgment of this Court in ***Anjana Yashawantrao (Supra)*** are clearly misplaced, inasmuch as, the said cases are clearly distinguishable.

49 Accordingly, for the reasons set-out in detail herein-above, we hold -

(i) that the Appellate Courts have the power to condone delay beyond the 90 days period, despite the language of the 2nd proviso to Section 21(5) of the NIA Act and that this can be done by virtue of Section 5 of the Limitation Act, 1963, the applicability of which is not excluded under

the provisions of the NIA Act. Thus, an application seeking to condone delay beyond 90 days in filing an appeal against the judgment, sentence, order, not being an interlocutory order, passed by a Special Court is maintainable, on sufficient cause being shown;

(ii) that the word `shall' in the 2nd proviso to sub-section (5) of Section 21, be read down, to read as `may', and hence, directory in nature.

50 Now, coming to the facts of the present case, we find that the applicant/accused has spelt out sufficient cause for condoning the delay. The applicant has stated that the applicant hails from a very poor family; that right after the impugned order dated 9th March 2020 was passed, lock-down was declared in April 2021, due to Covid-19 pandemic; that his family was completely in the dark about the remedies available; that the applicant had also lost his mother during the pandemic and that it

was only much later, he was made aware of his right to file an appeal and hence, the delay. In this context, learned counsel for the applicant relied on the order passed by the Supreme Court, by which, the period of limitation came to be extended for a certain period.

51 Accordingly, the delay of 838 days caused in filing the appeal is condoned. The application is disposed of.

52 Before we part, we must record a word of appreciation for the able assistance provided and the efforts taken by learned senior counsel Mr. Ponda and Mr. Jagtiani.

53 All concerned to act on the authenticated copy of this order.

GAURI GODSE, J. REVATI MOHITE DERE, J.