

ITEM NO.3

COURT NO.1

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 5217/2024

(Arising out of impugned final judgment and order dated 19-05-2023 in CRAD No. 124/2023 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

THE STATE OF UTTAR PRADESH

Petitioner(s)

VERSUS

SARFARAZ ALI JAFRI

Respondent(s)

(IA No.71148/2024-CONDONATION OF DELAY IN FILING and IA No.71153/2024-EXEMPTION FROM FILING O.T. and IA No.71149/2024-CONDONATION OF DELAY IN REFILING/CURING THE DEFECTS and IA No.71151/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 05-04-2024 This petition was called on for hearing today.

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA**

**For Petitioner(s) Ms. Garima Prashad, Sr. A.A.G.
Ms. Ruchira Goel, AOR
Mr. Adit Jayeshbhai Shah, Adv.
Mr. Sharanya Sinha, Adv.
Mr. Aman Gupta, Adv.**

For Respondent(s)

**UPON hearing the counsel the Court made the following
O R D E R**

1 Delay condoned.

2

In the present case, the State of Uttar Pradesh has challenged the judgment of the Allahabad High Court dated 19 May 2023 which condoned a delay of 368

days in filing an appeal under Section 21(5) of the National Investigation Agency Act 2008 holding that the time of 90 days for filing an appeal is directory.

- 3 There is a divergence of views between different High Courts. While the High Courts of Allahabad, Bombay, Jammu & Kashmir & Laddakh and Delhi have held that the 90 day time limit is directory, a contrary view has been taken by the High Courts of Calcutta and Kerala.
- 4 Notice has been issued by this Court from the judgment of the High Court of Delhi which held that the 90 day period in Section 21(5) is directory.
- 5 Though, in this case, the appeal was eventually withdrawn by the accused before the High Court so as to file a second bail application, the issue of law which is sought to be canvassed by the State of Uttar Pradesh will still survive. The reasons in the impugned order will impact other cases. Given the conflicting views of the High Courts, the question has to be resolved by this Court.
- 6 Moreover, bearing in mind that notice has been issued by this Court already in one case, we issue notice and direct that the present Special Leave Petition be tagged with SLP (C) D No 41439 of 2019.
- 7 The Registry shall also issue notice to the Attorney General for India since the second proviso to sub-Section (5) of Section 21 has raised an important issue at least of construction, if not validity.
- 8 However, we clarify that the pendency of the proceedings before this Court shall not operate as a stay on any proceedings before the High Court.

- 9 List on 3 May 2024. The Registrar (J-1) shall list all connected matters also, after obtaining directions on the administrative side.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR