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

Judgment reserved on: 12.07.2019

% Judgment delivered on: 16.07.2019

\+ **CRL.A. 871/2018**

FARHAN SHAIKH ..... Appellant

Through: Mr. Siddharth Aggarwal with Ms.Rupali Samuel and Mr. Vishakh Ranjit, Advocates.

versus

STATE (NATIONAL INVESTIGATION AGENCY) ..... Respondent

Through: Mr. Amit Sharma, SPP (NIA) with Mr. Abhishek Bagai, PP (NIA) and Mr. Ahmad Ziad, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

VIPIN SANGHI, J.

CRL.M.A. 30949-30951/2018

1. The aforesaid applications have been preferred by the appellant to seek condonation of 314 days in filing the present appeal, and condonation of further 44 days in re-filing the appeal. The present appeal has been preferred by the appellant under Section 374 and 375 Code of Criminal Procedure, 1973 (The code) read with Section 21 of the National Investigation Agency Act, 2008 (The NIA Act for short).

2. The appellant has preferred the appeal to seek setting aside of the order on sentence dated 24.01.2017 passed in Sessions Case No. 12/16 by the Learned District and Sessions Judge, Special Court NIA, Patiala House Courts. The appellant has accepted his conviction for the offences punishable under Section 120B IPC and Section 18, 20, 38 and 40 of the Unlawful Activities Prevention Act, 1997 (as amended).

3. We heard learned counsels on the aspect of condonation of delay in filing and re-filing of the present appeal, and reserved orders on 27.09.2018. However, we could not pronounce orders earlier due to our busy schedule. Accordingly, we listed the matter for recapitulation of submissions. We have, accordingly, heard learned counsels and we proceed to dispose of these two applications by this decision.

4. The appellant states that he is in judicial custody and that he has no family members, and no other acquaintances in Delhi. He was represented by legal aid counsel before the Trial Court. He claims that he was not provided with the complete documentation relied upon by the National Investigation Agency (NIA) in the instant case till the date on which charges were framed against him. He claims that a part of the documents relied upon by the prosecution may have been supplied to the learned legal aid counsel, but the same have not been handed over to him despite repeated requests.

5. He claims that looking to his past incarceration, he informed the officials of the NIA of his desire to plead guilty to the charges, and the officials promised him that they will ensure that he will be let off with the minimum sentence of 5 years. He was also promised that he would be

transferred to a jail in his home state i.e. Taloja Central Jail in Mumbai, to undergo the remaining portion of his sentence. For this reason, he did not feel it necessary to collect all the relevant documents related to his case. He moved an application on 29.03.2017 to plead guilty to all the charges framed against him. Consequently, his statement conveying his intention to plead guilty was recorded on 12.04.2017. He submits that contrary to the assurance given to him, the Special Court NIA, Patiala House Courts passed the order on sentence on 21.04.2017, sentencing him to rigorous imprisonment for up to 7 years in respect of the several offences, and to undergo the default sentence of 30 days in respect of each of the offences on non payment of fine. He claims that he was devastated with the sentence pronounced by the Special Court and he went into severe depression for about 6 months. With the help of kind hearted inmates and support of his family, he came out of his depression and started exploring the avenues available to him. He learnt that the legal aid cell within Tihar Jail, New Delhi would provide him the necessary legal assistance needed to challenge the order on sentence. He attempted to consult a lawyer, but he was informed that he would need to first collect the documents regarding the case against him. Since the appellant was confined in High Security Section of the Jail, he faced difficulty in freely speaking to fellow inmates, let alone to collect documents. He had nearly given up and resigned to his fate. However, he informed his uncle based in Maharastara regarding the trouble faced by him in collecting documents and obtaining legal advice. His uncle then assured him of his help. He states that his uncle, who is the pairokar for the purpose of the present appeal, resides in Maharashtra and does not know anyone in Delhi. He describes the steps taken by his uncle to seek

help from an NGO called National Confederation of Human Rights Organizations (NCHRO) and how the appellant's uncle put him in touch with Mr. Aditya Wadhwa, Advocate. He states that his counsel tried to get the documents from the other advocates appearing in the case and even they did not have the complete documents. Further, the counsel was informed that due to the new Special NIA Court being constituted in Patiala House Courts, the files are being transferred to the newly constituted Special NIA Court and hence it would be difficult to identify and procure the said documents. He claims that one of the advocates appearing in the case supplied the documents to the counsel for the appellant. Upon perusing the same, it became evident that the appellant had a strong case and that he had been harshly sentenced. The aforesaid are stated to be the reason for the delay of 314 days in filing the appeal.

6. So far as the delay of 44 days in refiling is concerned, the appellant states that the appeal was initially filed on 30.05.2018 and was refiled on 30.08.2018, resulting in delay of 44 days in refiling. He states that at the time of initial filing on 30.05.2018, he did not have in his possession the complete papers in the matter. He states that the appeal was initially filed, so as to save further delay in filing. Refiling had been done with additional documents which his counsel had procured with great difficulty. Delay in refiling had occurred on account of obtaining of certified copies of the Charge and Order on charge, which were provided to the appellant only on 26.07.2018.

7. Upon issuance of notice in these applications, the respondent NIA has filed its replies. The respondent has opposed the applications and contended that the applications are not maintainable.

8. Since the objection to the maintainability of the aforesaid two applications has been raised by the respondent, we proceed to first take note of the submissions advanced by the learned SPP (NIA).

9. Mr. Amit Sharma, ld. SPP (NIA) appearing for respondent– NIA submits that the present applications are not maintainable, since the appellant is seeking condonation of delay for a period far beyond the period for which the same could be condoned by the Court under Section 21 of the NIA Act.

10. Mr. Sharma submits that Section 21 of the NIA Act is a self – contained code for filing of appeals against any judgement, sentence or order of the Special Court. He submits that Section 21 of the NIA Act encapsulates the aspect of condonation of delay, and prescribes the outer limit of delay that the Court is competent to condone. In this regard, emphasis is laid on Sub-section (5) of Section 21. Section 21 reads:

> "*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)*

11. The respondents submit that the period of limitation prescribed under Section 21 for preferring an appeal is 30 days from the date of the judgment, sentence or order (not being an interlocutory order) of a Special Court, and that the High Court may entertain an appeal after expiry of the said period of 30 days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of 30 days. The power of the High Court to condone the delay is only to the extent of 60 days, since the second proviso to Section 21(5) states "*provided further that no appeal shall be entertained after the expiry of period of ninety days.*" Mr. Sharma submits that the High Court cannot condone the delay in filing the appeal beyond 60 days.

12. Since the present appeal has been preferred after the expiration of 314 days from the date of the order on sentence i.e. 21.04.2017, the appeal is barred by limitation and delay beyond 60 days cannot be condoned. Without prejudice to this submission, it is also contended that the delay in filing the appeal is extraordinary, not justified and sufficient cause is not shown in the applications for condonation of delay in preferring the appeal and in re-filing.

13. Mr. Sharma relies on Section 29(2) of the Limitation Act which provides:

> *"(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****."* (emphasis supplied)

14. Mr. Sharma submits that the application of Section 5 of the Limitation Act to the present situation is excluded on the plain reading of Section 21(5) of the NIA Act. The power of the Court to condone delay by resort to Section 5 of the Limitation Act is curtailed in its scope, and the said power cannot be exercised to condone delay beyond 60 days.

15. Mr. Sharma relies on ***Nasir Ahammed v. National Investigation Agency***, (2016) Cri LJ 1101, wherein, a Division Bench of the Kerala High Court has held that the restriction imposed by the 2nd proviso to section

21(5) of the NIA Act is a clear indication that the High Court cannot resort to the power under section 5 of the Limitation Act, 1963 to condone the delay in filing an appeal under the NIA Act beyond the period of 60 days.

16. He also relies upon ***Gopal Sardar v. Karuna Sardar***, (2004) 4 SCC 252. In this case, the Supreme Court considered whether Section 5 of the Limitation Act was applicable to an application made under Section 8 of the West Bengal Land Reforms Act, 1955. Section 8 of the said Act vested a right of pre-emption, which was sought to be enforced belatedly by moving an application under Section 5 of the Limitation Act. The Supreme Court held that the said Act was a self contained code in relation to enforcement of rights of pre-emption. It held that an application for enforcement of rights of pre-emption under Section 8 of the Act is in the nature of a suit. Consequently, Section 5 of the Limitation Act was held to be not attracted to proceedings initiated under Section 8 of the said Act. The Supreme Court held that Section 8 of the said Act does not speak of application of Section 5 of the Limitation Act, or its principles. It held that the legislature had consciously and expressly made Section 5 of the Limitation Act, or its principles, applicable to other proceedings under the Act - such as appeal or a revision, etc., but the same had not been made applicable to initiation of proceedings under Section 8 of the Act. Consequently, it necessarily follows that the legislature did not intend to give benefit of Section 5 of the Limitation Act to a proceeding under Section 8, having regard to the nature of right of pre-emption, which is considered a weak right. The Supreme Court also held that the right of pre-emption must be exercised within the

period specified under Section 8 of the Act, so that the rights of purchasers of land are not eclipsed for a long time.

17. In the course of its decision, the Supreme Court relied upon its earlier decision in ***The Commissioner of Sales Tax, U.P. Lucknow v. M/s. Parson Tools and Plants***, ***Kanpur***, (1975) 4 SCC 22. The decision in ***Parson Tools*** (supra) was rendered in the context of a taxing statute, namely U.P. Sales Tax Rules framed under the U.P. Sales Tax Act, 1948. It was held in ***Parson Tools*** (supra) as follows:

> *"22. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.*
>
> *23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham [At p. 11, Pearl Berg v. Varty, (1972) 2 All ER 6] has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself:*

> *"It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment.""*

18. Mr. Sharma has also placed reliance on ***Hukumdev Narain Yadav v. Lalit Narain Mishra***, (1974) 2 SCC 133. This decision arose in the context of The Representation of the People Act, 1951. One of the questions determined by the Supreme Court was whether, by virtue of Section 29(2) of the Limitation Act, Sections 4 to 24 of the said Act are applicable to election petitions. It was held that in ***Hukumdev Narain Yadav*** (supra) that:

> *"If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act.* ***In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."*** *(emphasis supplied)*

19. The Supreme Court expounded on the meaning of Section 29(2) of the Limitation Act in this decision as follows:

> *"18. It was sought to be contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But this is not what Section 29(2) of the Limitation Act says, because it provides that* ***Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. If none of them are excluded, all of them would become applicable. Whether those Sections are applicable is not determined by the terms of those Sections, but by their applicability or inapplicability to the proceedings under the special or local law.*** *A person who is a minor or is insane or is an idiot cannot file an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in that petition who dies, in order to make Section 16 of the Limitation Act applicable. The applicability of these provisions has, therefore, to be Judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act." (emphasis supplied)*

20. Mr. Sharma has also placed reliance on ***Fairgrowth Investments Ltd. v. The Custodian***, (2004) 11 SCC 472. This decision arose in the context of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992. This Act was enacted with the object to deal with the situation created by large scale irregularities and malpractices in transactions in securities indulged in by some brokers in collusion with the employees of various banks and financial institutions. The said Act sought to ensure speedy recovery of the funds which had been diverted from banks and financial institutions to the individual accounts of brokers. The other objective of the Act was to punish the guilty and to restore confidence in,

and maintain the basic integrity and credibility of the banks and financial institutions. Section 3(3) of the Act empowered the custodian to notify the name of persons in the official gazette involved in any offence relating to transactions and securities for the specified period. From the date of such notification, properties – both movable and immovable, belonging to such person, stood attached under Sub Section (3) of Section 3. Section 4(2) of the Act permitted any person aggrieved by notification issued under Section 3(2) to file an objection within 30 days of its issuance. The issue arose whether the said period of limitation of 30 days prescribed under Section 4(2) of the said Act was mandatory, or could be extended by resort to Section 5 of the Limitation Act. The Supreme Court held that the period of limitation prescribed in Section 4(2) of the said Act was mandatory and invoked Section 29(2) of the Limitation Act to exclude the application of Section 5 of the Limitation Act by observing that the Act in question was a special statute. It observed "*In other words, the general rule as far as special and local Acts are concerned is that the specified provisions including Section 5 of the Limitation Act will apply provided the special or local Act provides a period of limitation different from that prescribed under the Limitation Act.*"

21. The Supreme Court also observed that an express provision for condonation of delay, coupled with a non- obstante provision which states that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any law or in any decree or order of any court, tribunal or other authority, excluded application of

Section 5 to Section 42 of the Limitation Act to the provisions of the said Act.

22. Mr. Sharma has also placed reliance on ***Bengal Chemists and Druggists Association v. Kalyan Chowdhury***, (2018) 3SCC 41, which is a decision relating to limitation prescribed for preferring an appeal before the Appellate Tribunal under the Companies Act, 2013. Section 421(3) of the Companies Act, 2013 prescribes the period of limitation of 45 days for preferring an appeal before the Appellate Tribunal. It provides a further period of 45 days within which the appeal may be preferred upon sufficient cause being made out. The Supreme Court held that the extension of 45 days beyond the prescribed period of limitation of 45 days is a special inbuilt kind of Section 5 of the Limitation Act in the special statute and, therefore, there could be no further condonation of delay.

23. Mr. Sharma has also placed reliance on a decision of Division Bench of Gauhati High Court in ***Jayanta Kumar Ghosh v. National Investigation Agency***, 2014(1) GLT 1: MANU/GH/1056/2012 to submit that the NIA Act is a special enactment, and that when a scheduled offence under the said Act is being investigated by the National Investigation Agency, the person arrested by the NIA would automatically loose his right to approach the High Court or Court of Sessions under Section 439 of the Code for his release on bail. Even when a person is arrested by police personnel, other than the personnel of the NIA, for commission of a scheduled offence under the NIA Act and the same is investigated by an Investigating Authority, other than the NIA, then such a person can approach the High Court under Section 439 of the Code for his release on bail, but, while considering the

bail application, the High Court would not be able to ignore the limitations imposed on the power to grant bail by the proviso to Section 43D(5) of the Unlawful Activities Prevention Act. By placing reliance on this decision, Mr. Sharma has submitted that the appellant is not entitled to invoke the inherent power of this Court under Section 482 of the Code.

24. Mr. Sharma has also placed reliance on ***Patel Brothers v. State of Assam and Ors***., (2017) 2 SCC 350. This decision arose in the context of the Assam Value Added Tax Act, 2003. The question which fell for consideration before the Supreme Court was whether Section 5 of the Limitation Act was applicable in respect of the Revision Petition filed in the High Court under Section 81 of the said Act. The Supreme Court held that the period of limitation prescribed under Section 81 of the said Act could not be extended and delay condoned, by invocation of Section 5 of the Limitation Act. In the course of its decision, the Supreme Court observed in paragraph 22 as follows:

> *"22. The High Court has rightly pointed out the well-settled principle of law that: (Patel Bros. case [Patel Bros. v. State of Assam, 2016 SCC OnLine Gau 124] , SCC OnLine Gau para 19)*
>
> > *"19. ... 'the courts cannot interpret a statute the way they have developed the common law "which in a constitutional sense means judicially developed equity". In abrogating or modifying a rule of the common law the courts exercise "the same power of creation that built up the common law through its existence by the Judges of the past". The court can exercise no such power in respect of statutes. Therefore, in the task of interpreting and applying a statute, Judges have to be conscious that in the end the*

statute is the master not the servant of the judgment and no Judge has a choice between implementing the law and disobeying it.' [Ed.: See Principles of Statutory Interpretation, 14th Edn., p. 26 by Justice G.P. Singh.] "

What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implication."

25. Mr. Sharma submits that the intention of the Parliament to exclude applicability of Section 5 of the Limitation Act for condonation of delay beyond the period of 60 days becomes clear from the fact that Section 21 of the NIA Act is *pari materia* to Section 34 of the erstwhile Prevention of Terrorism Act with one more distinguishing feature, namely, the addition of 2nd Proviso to Section 21(5) of the NIA Act. He submits that, therefore, the parliament consciously excluded the application of Section 5 of the Limitation Act beyond the period of 60 days.

26. The respondents submit that the power of this Court under Section 482 Cr.P.C. cannot be exercised when there is an express bar engrafted by the law in the matter of condonation of delay in filing the appeal under the Act.

27. The respondents also deny the factual averments made by the appellant in the aforesaid applications. The respondents submit that the relied upon documents were supplied to the appellant vide order of the Special Court dated 26.07.2016, which records that complete set of charge

sheet along with documents has been supplied to all the accused. The respondents also deny that the NIA had given any assurance to the appellant that his sentence would be of 5 years. It is argued that it is the judicial prerogative of the Trial Court to convict and to pass appropriate orders on sentence against the accused. The respondents emphasise that the appellant voluntarily moved an application to plead guilty. When his statement was recorded on 12.04.2017, he stated that he made the statement voluntarily without any fear, pressure of any kind, and out of his own free will.

28. The respondents state that the appellant has not provided any justifiable or sufficient cause for condoning the extraordinary delay of 314 days from the date of the impugned order on sentence. This submission is made without prejudice to the submission, that this Court cannot condone the delay beyond 60 days from the date of expiry of the period of limitation i.e. 30 days from the date of the judgment/ order appealed against.

29. On the other hand, Mr. Siddharth Aggarwal, ld. Counsel for the applicant/ appellant has submitted that the 2nd proviso to section 21(5) of the NIA Act is not mandatory in nature. The statutory remedy of appeal against the conviction and sentence under NIA Act must not be denied on the basis of delay. Reliance is placed on ***State of UP v. Baburam Upadhyay***, AIR 1961 SC 751 to contend that the directory or mandatory nature of the provision has to be determined by ascertaining the real intention of the legislature on the basis of the entire scope; object; context, and; subject matter of the statute. Interpretation should depend on the consequences which will flow by adoption of one or the other interpretation of the statute.

If the object of the enactment will be defeated by holding the same to be directory, it will be construed as mandatory, whereas, if by holding it mandatory, serious general inconvenience will be caused to innocent persons without very much furthering the object of enactment, the same will be construed as directory.

30. Mr. Aggarwal submits that there is no larger societal purpose that would be achieved by interpreting Section 21 of the NIA Act in the manner suggested by the NIA, which robs the accused/ convict of his valuable right of appeal.

31. He further submits the delay in filing an appeal against a judgment, sentence or an order passed under the NIA Act can be condoned by resort to section 5 of the Limitation Act, 1963. As per Section 29(2) of the Limitation Act, 1963, the applicability of section 5 of the Limitation Act is only excluded, when the special law expressly excludes the applicability of the same. He submits that there is no such express exclusion of Limitation Act, 1963 provided in section 21(5) of the NIA Act. He submits that though exclusion of application of Section 5 of the Limitation Act need not be express, and may be inferred by necessary implication, the same has to be assessed on the basis of the scheme of the special law; the nature of the remedy, and; the context of the legislation that is under consideration. It has to be seen whether the special law is a code unto itself, and precludes the application or extension of other legislations – and specifically, the Limitation Act, to it.

32. Mr. Aggarwal submits that the NIA Act is not a complete code in itself. The NIA Act does not create any new offences or any unique procedure for investigation or conduct of trials. It merely creates a new investigating agency for investigation of certain offences contained in the schedule to the Act. The NIA Act cannot survive in its scheme or purpose, without dependence on other statutes. The only aspect on which the NIA Act is a "complete" code, is the constitution and terms of the special agency that has been created, which is also the avowed purpose of the Act. He submits that the provisions of Code are applicable to a trial under the NIA Act in view of section 4 of the Code. Since the NIA Act is dependent on the Code for its execution, it cannot be said to be a complete code in itself. Reliance is placed on ***Girnar Traders v. State of Maharashtra***, (2011) 3 SCC 1.

33. Mr. Aggarwal further submits that reliance placed by the respondent-NIA on ***Patel Brothers*** (Supra)***; Gopal Sardar*** (Supra); ***Fairgrowth Investments Ltd.*** (Supra) and ***Bengal Chemists*** (Supra) is misplaced in as much, as, these cases pertain to legislations dealing with civil rights and disputes. The legislations considered by the Courts in the aforesaid cases did not pertain to criminal matters, where the right to life and personal liberty of individuals are impacted. In civil matters, since the law presumes equal bargaining power, unless proved otherwise, the remedy may be barred by stipulating a strict/ mandatory period of limitation. However, the right of appeal vested in an accused/ convict to assail his conviction/ sentence is a facet of Article 21 of the Constitution of India to receive fair trial and

substantive due process of law, and the same cannot be denied on a mere technicality.

34. Mr. Aggarwal submits that the right to fair trial is protected under Article 21 of the Constitution. He relies on ***Noor Aga v. State of Punjab***, (2008) 16 SCC 417, wherein the Supreme Court observed:

> "*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."*

35. He also places reliance on ***Selvi v. State of Karnataka***, (2010) 7 SCC 263, wherein the Supreme Court observed

> *"88. ..... we must examine the "right against self-incrimination" in respect of its relationship with the multiple dimensions of "personal liberty" under Article 21, which include guarantees such as the "right to fair trial" and "substantive due process""*

36. He submits that the right to have a conviction and sentence passed by court of fact – exercising original jurisdiction, re-examined on appeal, is an intrinsic part of the right to fair trial. This right is specifically enumerated in Article 14(5) of the International Covenant on Civil and Political Rights, 1966.

37. He submits that a Constitution Bench of the Supreme Court in ***Sita Ram v. State of U.P.***, (1979) 2 SCC 656, while considering the constitutional validity of a Supreme Court Rule that permitted summary dismissal of appeals under Article 134(1)(c), or 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. While holding that life and personal liberty cannot be forfeited without, at least, the trial and one higher court having fully applied their minds to the criminal case, *Krishna Iyer, J*. speaking for the majority, held that:

> *"31…….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."*

38. The Supreme Court specifically repelled the argument that the right to appeal being a mere statutory right, was governed by the ambit of the statute. The minority view – which held that the right to appeal is limited to the mere contours of the statute encapsulating such right, was rejected by the majority opinion. While specifically declaring that the right of appeal is a substantive right of an accused in a criminal case, *Krishna Iyer J.* speaking for the majority, held as follows:

> ***"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 AC 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] and Newman v. Klausner [(1922) 1 KB 228]) [Stroud*

: Judicial Dictionary, 3rd Edn. Vol. 1, pp. 160-61] . 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 kernel 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****." [emphasis supplied]*

39. The Supreme Court went on to observe:

"51…….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." [emphasis is original]*

40. Mr. Aggarwal also relies on ***Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd***., (2007) 6 SCC 528. In this decision the Supreme Court observed:

"12... Right to 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"

41. Mr. Aggarwal submits that the restriction on the most valuable of the fundamental rights, namely, the right to life and personal liberty, sought to be placed by the second Proviso to Section 21(5) of the NIA Act would fall foul of Article 21 of the Constitution of India, and would be liable to be declared unreasonable, if the same is construed as laying down a mandatory

period of limitation, which could not be extended by the Appellate Court even in deserving cases.

42. Mr. Aggarwal submits that the statutory interpretation of civil statutes cannot be relied upon while interpreting the NIA Act – which is a legislation pertaining to criminal offences, and civil and criminal legislations cannot be construed as being *pari materia*. He submits that the statutory interpretation adopted in respect of civil legislation cannot *per se* be applied to criminal legislation. Reliance is placed on ***Shah and Co. Bombay v. State of Maharashtra and Another***, AIR 1967 SC 1877, wherein the Supreme court examined as to when two statutes may be considered as being *pari materia*. In this case, it was argued by the petitioner that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act for short) and the Bombay Land Requisition Act, 1948 (Bombay Requisition Act for short) dealt with the same problem and were necessitated because of the existence of the same or identical circumstances, namely, scarcity of accommodation and, therefore, both the statutes pertain to the same subject matter. In other words, both the statutes are in *pari materia*. It was further argued that the provisions of the Bombay Requisition Act had to be read in conjunction with, and in the context of, the provisions of the Bombay Rent Act. This submission of the petitioner was rejected by the Supreme Court.

43. The Supreme Court referred to Sutherland in "*Statutory Construction*", 3rd Edition, Vol 2. at page 535, and stated:

> *""Statutes are considered to be in pari materia — to pertain to the same subject-matter — when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object."*

The learned author, further states, at p. 537:

> *"To be in pari materia, statutes need not have been enacted simultaneously or refer to one another."*

Again, at p. 544, it is stated:

> *"When the legislature enacts a provision, it has before it all the other provisions relating to the same subject-matter which it enacts at that time, whether in the same statute or in a separate act. It is evident that it has in mind the provisions of a prior act to which it refers, whether it phrases the later act as an amendment or an independent act. Experience indicates that a legislature does not deliberately enact inconsistent provisions when it is cognizant of them both, without expressly recognizing the inconsistency."*

The canon of construction, under these circumstances, is stated by the author, at p. 531:

> *"Prior statutes relating to the same subject-matter are to be compared with the new provision; and if possible by reasonable construction, both are to be so construed that effect is given to every provision of each. Statutes in pari materia although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other.""*

44. The Supreme Court also referred to *Craies "Statute Law"*, 6th Edition., at page 133, which reads:

> *"Where Acts of Parliament are in pari materia, that is to say, are so far related as to form a system or codex, of legislation, the rule as laid down by the twelve judges in Palmer Case, [(1785) 1 Leach C.C. 4th Edn. 355], is that such Acts 'are to be taken together as forming one system, and as interpreting and enforcing each other'. In the American case of United Societyv. Eagle Bank, [(1829) 7 Conn. 457, 470], Hosmer, J. said: 'Statutes are in pari materia which relate to the same person or thing or to the same class of persons or things….'."*

45. It also referred to Maxwell on the "The *Interpretation of Statutes*", 11th Edition, at Page 153, wherein the principle was stated thus:

> *"An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the legislature is treated in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal …. It cannot be assumed that Parliament has given with one hand what it has taken away with the other."*

46. The Supreme Court concluded that Bombay Requisition Act dealt with matters totally different from those dealt with by the Bombay Rent Act, and that there was no similarity between the two enactments. The Supreme Court observed that it cannot be held that they relate to the same person or thing, or to the same class of persons or things. Hence the two Acts cannot be considered to be in *pari materia*.

47. The Supreme Court held that the provisions of the Bombay Requisition Act could not be read and understood in the context of the Bombay Rent Act. Mr. Aggarwal submits that in the same way, the provisions of the NIA Act cannot be read and understood in the manner similar provisions have been understood in the enactments considered by the Supreme Court in the cases relied upon by Mr. Sharma, as those provisions are not *pari materia* with the provisions of the NIA Act. None of them deal with the right of an accused/ convict to prefer an appeal – both on facts and

law, from a judgment of conviction or an order on sentence, and none of them relate to the right of life and personal liberty of the subject concerned.

48. Mr. Aggarwal has relied upon ***Mangu Ram v. Municipal Corporation of Delhi***, (1976) 1 SCC 392. This case arose from the Prevention of Food Adulteration Act 1954. The accused was acquitted by the learned Judicial Magistrate. The Municipal Corporation of Delhi sought special leave to appeal from the High Court under Section 417(3) of the Code of Criminal Procedure, 1898. Section 417(4) stipulated the period of limitation as 60 days from the date of the order of acquittal. The application for seeking special leave to appeal made by the MCD was delayed by two days and, consequently, it moved an application to seek condonation of delay by invoking Section 5 of the Limitation Act. The High Court condoned the delay and granted special leave to the Municipal Corporation to appeal against the order of acquittal. At the hearing of the appeal, the High Court set aside the acquittal of the accused and convicted the accused under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. The accused preferred a Special Leave Petition before the Supreme Court. Before the Supreme Court, the only argument which could be advanced by the appellant was that the time limit of 60 days prescribed under Sub Section (4) of Section 417 of the Code – for making of an application for Special Leave under Sub Section (3) of the said Section, was mandatory, and the said period of limitation could not be relaxed, and that Section 5 of the Limitation Act was not applicable.

49. The Supreme Court held that the time limit of 60 days laid down in Section 417(4) of the Code is a special law of limitation, and it did not find

anything in the said special law, which expressly excludes the applicability of Section 5. It observed:

> *".....* ***It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation.*** *It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar.* ***Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it..."*** (emphasis supplied)

50. Mr. Aggarwal submits that the aforesaid decision has been followed by this Court in ***Saj Properties Pvt. Ltd. v. Virender***, 2015 cri LJ 2772.

51. Mr. Aggarwal submits that the objects and reasons, as well as the debates undertaken at the time of the introduction of the NIA Act in the Parliament, shows that the mandatory/ strict construction of the second Proviso to Section 21(5) of that Act has no nexus to the objects and reasons of the NIA Act. It is argued that the consequences which flow for the accused/ convict from the applicability of the NIA Act, being serious,

second Proviso to Section 21(5) of the NIA Act calls for liberal interpretation so as to subserve Article 21 of the Constitution of India.

52. Mr. Aggarwal further submits that the full bench of Allahabad High Court in ***In Re Provision Of Section 14A Of SC/ST (Prevention Of Atrocities) Amendment Act, 2015***, WP (Crl.) 8/ 2018 decided on 10.10.2018, has struck down an identical provision i.e., Section 14A(3) of the Scheduled Castes and the Scheduled tribes (Prevention of Atrocities) Act, 1989 as being unconstitutional. The period of limitation to file an appeal under Section 14A(3) of the SC/ST (Prevention Of Atrocities) Amendment Act, 2015, (hereinafter referred to as the SC/ST Act) is ninety days. The first proviso to section 14A(3) empowers the High Court to entertain an appeal after the expiry of ninety days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of ninety days. The second proviso provides that no appeal shall be entertained after the expiry of 180 days. He submits that section 21 (5) of the NIA Act and section 14A(3) of the SC/ST Act are *para materia*. He submits that like section 14A(3) of the SC/ST Act, the 2nd proviso of section 21(5) also impinges on the right of first appeal, which has been recognised to be an integral facet of fair procedure enshrined in Article 21 of the Constitution. Thus, to save Section 21(5) of the NIA Act from being declared ultra vires the Constitution of India, this Court must read down and interpret the said provision as directory and, as not creating a bar on the power of the Court to condone the delay in filing of an appeal under NIA Act, if sufficient cause is shown.

53. He submits that the High Court can exercise its inherent powers under Section 482 Cr.P.C. *ex debito justiceae.* Even if there is a statutory bar to entertain a particular remedy, it does not exclude the possibility of the High Court exercising its extraordinary powers under Article 226/227, or Section 482 Cr.P.C. In this regard, he places reliance o***n Krishnan v. Krishnaveni***, (1997) 4 SCC 241.

54. Mr. Aggarwal submits that the appellant's access to justice should be protected. He comes from poor strata of society. He has been under incarceration since even before his conviction. He is wholly dependent upon others to enable him to pursue his rights. The strict/ mandatory interpretation to 2nd Proviso to Section 21(5) of the NIA Act would rob him of his statutory right to appeal against the sentence imposed upon him. The delay in the filing of the appeal has to be examined in the context of the prejudice caused to one, or the other, party. The appellant could possibly not have had any reason to deliberately delay the filing of his appeal, since he has nothing to gain there from. He is undergoing his sentence. On the other hand, the delay in filing the appeal has not prejudiced the State, in any which way. The legislative purpose of enacting the 2nd Proviso to Section 21(5) of the NIA Act could not have been to *trip* the appellant before he reached the finishing line. Thus, Mr. Aggarwal argued, that the 2nd Proviso to Section 21(5) of the NIA Act is directory and should be liberally construed to advance the cause of justice. He submits that in the facts of this case, sufficient cause has been put forth by the appellant to justify condonation of delay in filing, and re-filing, of the appeal.

55. We have considered the rival submissions of the parties in the light of the law, including the several decisions relied upon by them.

56. Mr. Sharma has relied upon several decisions such as ***Gopal Sardar*** (supra), ***Patel Brothers*** (supra), ***Fairgrowth Investments*** (supra), ***Hukum Dev Narain*** (supra) and ***Bengal Chemists*** (supra), wherein the Supreme Court held that Section 5 of the Limitation could not be invoked to seek condonation of delay, since the concerned provisions prescribed the maximum period for which the delay in invoking the statutory remedy could be condoned.

57. As noticed hereinabove, ***Gopal Sardar*** (supra) was a case under the West Bengal Land Reforms Act, 1955 and Section 5 of the Limitation Act had been invoked to make an application under Section 8 of the said Act, which vested right of pre-emption. The Court held that right of pre-emption is a weak right and a proceeding under Section 8 is in the nature of a civil suit. In this context, the Supreme Court held that Section 5 of the Limitation Act was not applicable. Pertinently, in the course of its decision in ***Gopal Sardar*** (supra), the Supreme Court noticed ***M/s. Parson Tools and Plants, Kanpur*** (supra). The Supreme Court observed that it is the duty of the Court to give full effect to the intent of the scheme and language of a statute, without scanning the wisdom, or the policy of the legislature and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of the law – giver. It was emphasised that the same is even more true in the case of a taxing statute. In the same decision, the Supreme Court quoted an extract from ***Pearl Berg v. Varty*** (supra), wherein Lord Hailsham observed "*it is true of course that the courts*

will lean heavily against any construction of a statute which would be manifestly fair."

58. In ***Fairgrowth Investments*** (supra), the issue with regard to applicability of Section 5 of the Limitation Act arose in the context of Section 4(2) of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992. Section 4(2) of the said Act permitted any person aggrieved by a notification under Section 3(2) of the Act to file an objection to the notification. Once again, the Supreme Court held that Section 5 to 24 of the Limitation Act were not attracted to the said enactment, since Section 10(3) of the said Act contained an express provision for condonation of delay, and the non-obstante provision in Section 13 stated that the provisions of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Even in ***Fairgrowth Investments*** (supra), Section 5 of the Limitation Act was sought to be invoked in respect of a civil right.

59. ***Patel Brothers*** (supra) is another case where the issue with regard to the application of Section 5 of the Limitation Act arose in respect of a revision petition filed in the High Court under Section 81 of the Assam Value Added Tax Act, 2003. ***Bengal Chemists*** (supra) is another decision relied upon by Mr. Sharma. In this case, the issue was as to whether delay in preferring an appeal before the Appellate Tribunal under the Companies Act, 2013 could be condoned by invoking Section 5 of the Limitation Act. The Supreme Court held that Section 5 could not be invoked since Companies Act itself prescribed the period of limitation as 45 days; it also

prescribed a further period of 45 days within which the appeal may be preferred upon sufficient cause being disclosed. The Supreme Court held that the additional period of 45 days, beyond the initial prescribed period of 45 days for preferring an appeal, was a special inbuilt kind of Section 5 of the Limitation Act.

60. Thus, the aforesaid decisions cited by Mr. Sharma – ***Gopal Sardar*** ((supra)), ***Patel Brothers*** (supra), ***Fairgrowth Investments*** (supra) and ***Bengal Chemists*** (supra), are all decisions in the realm of civil and taxing laws. None of them concern penal statutes.

61. In ***Baburam Upadhyay***, (supra), the Supreme Court held that the directory or mandatory nature of a provision has to be determined by ascertaining the real intention of the legislature on the basis of the entire scope, object, context and, subject matter of the statute. The statute that we are concerned with is the NIA Act. The purpose of the said Act to create the National Investigation Agency and to vest the said Agency with powers of investigation of scheduled offences throughout territories of India. It also empowers the NIA to file complaints in respect of the scheduled offence investigated by it before Special Courts created under the Act.

62. As noticed hereinabove, Section 21 of the NIA Act provides for an appeal from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law. Thus, while interpreting the 2nd proviso to Section 21(5) of the NIA Act, it is the scope; object; context, and; subject matter of the NIA Act, which would have to be kept in view to determine whether the period of limitation prescribed under Section 21(5) Second Proviso is directory or mandatory,

and it would not be wise to lift and apply decisions rendered in the context of civil or taxing statutes.

63. The provisions of Section 21(5) of the NIA Act, cannot be said to be *pari materia* to the provisions contained in the civil/ taxing statutes considered by the Supreme Court in the aforesaid decisions renderd in ***Gopal Sardar*** ((supra)), ***Patel Brothers*** (supra), ***Fairgrowth Investments*** (supra) and ***Bengal Chemists*** (supra). We find support for this conclusion from ***Shah and Co. Bombay***(supra), which has been discussed hereinabove. The subject matter of none of the decisions concern criminal or penal statutes. They did not concern the right to life and personal liberty of the subject/ person concerned. On the other hand, we are concerned with a penal statute, and the right of appeal of an accused/ convict against his conviction and sentence. Thus, the aforesaid decisions relied upon by Mr. Sharma in ***Gopal Sardar*** (supra), ***Patel Brothers*** (supra), ***Fairgrowth Investments*** (supra) and ***Bengal Chemists*** (supra) are of no avail in the determination of the issue at hand.

64. The decision of the Supreme Court in ***Sita Ram*** (supra), in our view, sheds much light on this issue and the wisdom flowing from that decision has shown us the path that we must take in deciding the issue under consideration. In ***Sita Ram*** (supra), the Supreme Court held that a single right of appeal is, more or less, a universal requirement of the guarantee of life and liberty. A full – scale re- examination of the facts and the law is made an integral part of fundamental fairness or procedure. Pertinently, Section 21(1), in terms, states that an appeal shall lie from any judgement, sentence, or an order, not being an interlocutory order of a Special Court, to the High Court "*both on fact and under law*". Thus, when the Parliament

enacted Sub-Section (1) of Section 21, it did so in recognition of the universal requirement of the guarantee of the life and personal liberty of a human being to seek one full fledged review by a higher Court/ Tribunal in respect of the judgement, sentence or order by which he is aggrieved. The provision of appeal – both on facts and law, under Section 21 of the NIA Act, is an integral part of fundamental fairness or procedure.

65. ***Noor Aga*** (supra) and ***Selvi*** (supra) have held that right to fair trial is a vested right under Article 21 of the constitution. The right of appeal, where it exists, is a matter of substance, and not of procedure. An appeal is a remedial right, and if the remedy is reduced to husk by procedural excess, the right becomes a casualty. The Supreme Court in ***Sita Ram*** (supra) ruled against such a state of affairs. Again in ***Dilip S. Dahanukar*** (supra), the Supreme Court expressly held that the right to appeal from a judgement of conviction – affecting the liberty of a person, keeping in view the expansive definition of Article 21 is also a fundamental right. That right of appeal can neither be interfered with or impaired, nor it can be subjected to any conditions.

66. It is in the aforesaid light that we must consider whether Section 5 of the Limitation Act is, by necessary implication, excluded from application of Section 21(5) of the NIA Act.

67. ***Hukum Narain Yadav*** (supra) was a case under the Representation of the People Act, 1951. The Supreme Court expounded on the meaning of Section 29(2) of the Limitation Act. It observed that even in a case where a Special Law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the

Court to examine whether – and to what extent, the nature of those provisions, or the nature of the subject-matter and scheme of the special law exclude their operation. It observed that the applicability of the provisions of the Limitation Act (Section 4 to 24) has to be judged not from the terms of the Limitation Act, but by the provisions of the Act in relation to which the said provisions of the Limitation Act are invoked.

68. When one examines the issue – as to whether Section 5 of the Limitation Act can be invoked while belatedly preferring an appeal under Section 21 of the NIA Act, in the context that the right of appeal of an accused/ convict is a substantive right; is a facet of right of fair trial and substantive due procedure, and; is a right which is protected by Article 21 of the Constitution, the only conclusion that we can draw is that application of Section 5 of the Limitation Act to Section 21(5) of the NIA Act cannot be excluded.

69. Our view is strengthened by the decision of the Supreme Court in ***Mangu Ram*** (supra). Pertinently, ***Mangu Ram*** (supra) was a case where the application to seek Special Leave of Appeal against a judgement of acquittal passed by the learned Judicial Magistrate was filed belatedly with an application under Section 5 of the Limitation Act. The Supreme Court rejected the argument that the time limit of 60 days prescribed under Sub Section (4) of Section 417 of the Code for preferring an application to seek Special Leave under Sub Section (3) of the said Section was mandatory, even though, the provision was couched in a mandatory language – like in the present case. Thus, even in respect of an order or judgement of acquittal, the Supreme Court held that the application to seek Special Leave, even if

filed belatedly, could be entertained with an application under Section 5 of the Limitation Act.

70. Here, we are dealing with the right of an accused/ convict, whose personal liberty stands curtailed by the conviction and the impugned order on sentence passed by the Special Court. In our view, it would lead to travesty of justice if the appellant's substantive appeal is not heard on merits, and is rejected at the threshold only on account of bar of limitation prescribed under Section 21(5) of the Act, particularly, when he has moved the application under Section 5 of the Limitation Act.

71. We must now consider the two decisions – one relied upon by Mr. Sharma in the case of ***Nasir Ahammed*** (supra) and the other relied upon by Mr. Aggarwal in ***In Re Provision Of Section 14A Of SC/ST (Prevention Of Atrocities) Amendment Act,2015*** (supra).

72. ***Nasir Ahammed*** (supra) is a decision of the Division Bench of the Kerala High Court. The Kerala High Court considered the very issue that arises for our consideration, and concluded that Section 5 of the Limitation Act could not be invoked to seek condonation of delay beyond the period prescribed by Second Proviso to Section 21(5) of the NIA Act. After citing several decisions relating to Section 29(2) of the Limitation Act in relation to different statutes, the Division Bench of the High Court held as follows:

> *"The N.I.A. Act is an Act 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 formatters connected therewith or incidental thereto. The*

superintendence of the N.I.A. shall vest in the Central Government, as provided in S. 4 of the N.I.A. Act. S. 6 provides for investigation of scheduled offences. S. 7 provides that the N.I.A. may request the State Government to associate itself with the investigation. S. 9 mandates that the State Government shall extend all assistance and co-operation to the Agency for investigation of the scheduled offences. Special courts are constituted under S. 1 1 for the trial of scheduled offences. S. 15 of the N.I.A. Act provides for appointment of Public Prosecutors and Additional Public Prosecutors. S. 16 provides for the procedure and powers of Special Courts. S. 19 of the N.I.A. Act states that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence oyer the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance. Sub-section (2) of S. 21 states that 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. ***The scope of the provisos to sub-section (5) of S. 21 of the N.I.A. Act has to be considered in the light of the other provisions in the Act. The period of limitation provided under sub section (5) of S. 21 is thirty days. The first proviso to sub-section (5) empowers the High Court to entertain an appeal after the expiry of thirty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of thirty days. The second proviso provides that no appeal shall be entertained after the expiry of the period of ninety days. The first proviso to sub-section (5) of S. 21 itself deals with condonation of delay in filing appeal and the delay up to sixty days (ninety days from the date of order) can be condoned by the High Court. By making a restriction that no appeal shall be entertained after the expiry of the period of ninety days, the application of S. 5 of the Limitation Act is expressly excluded. The High Court has jurisdiction to condone the delay in filing***

the appeal. But that power is restricted under the first proviso to sub-section (5) of S. 21. A further restriction in the second proviso is a clear indication that the High Court cannot exercise the power under S. 5 of the Limitation Act to condone the delay. To that extent, it amounts to an express exclusion of S. 5 of the Limitation Act as contemplated under S. 29(2) of the Limitation Act." *(emphasis supplied)*

73. A perusal of the said judgement of the Kerala High Court shows that the Division Bench, while arriving at its conclusion, as aforesaid, placed reliance on the following decisions.

(i) ***Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker***, AIR 1995 SC 2272 – where the issue was whether Section 5 of the Limitation Act could be invoked to condone delay in filing an appeal before the Appellate Tribunal under the Kerala Buildings (Lease and Rent Control) Act.

(ii) ***Vidyacharan Shukla v. Khubchand Baghel and Ors***, AIR 1964 SC 1099, where in the Supreme Court held that for the purpose of determining the period of limitation prescribed for any application by the special or local law, the provisions contained in Sections 4 to 24 of the Limitation Act shall apply in so far as the application is not expressly excluded by the special or local law. This decision was rendered in the context of Representation of People's Act, 1951.

(iii) ***Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr.***, (2009) 5 SCC 791, wherein the issue considered by the Supreme Court was whether Section 5 of the Limitation Act could be invoked in respect of an application made to the High Court under Section 35H of the Central Excise Act (unamended).

(iv) ***Hukum Narain Yadav*** (supra) –a decision dealing with the issue whether the provisions of Sections 4 to 24 of the Limitation Act are excluded (by virtue of Section 29(2) of the Limitation Act) in the context of Representation of People's Act, 1951.

(v) ***Union of India v. M/s Popular Construction Co***., (2001) 8 SCC 470, where the Supreme Court considered the issue of application of Section 5 of the Limitation Act to an application under Section 34 of the Arbitration and Conciliation Act for setting aside an arbitral award.

(vi) ***Ketan V. Parekh v. Special Director, Directorate of Enforecement & Anr***., (2011) 15 SCC 30, where the issue was whether the High Court could entertain an appeal under Section 35 of the Foreign Exchange Management Act beyond the period of 120 days. The Supreme Court held that the appeal beyond 120 days was barred by limitation and could not be entertained.

(vii) ***Consolidated Engg. Enterprises v. Principal Secretary, Irrigation Department***, (2008) 7 SCC 169, wherein the Supreme Court considered whether Section 5 of the Limitation Act could be invoked in respect of an application under Section 34 of the Arbitration and Conciliation Act.

(viii) ***Chattisgarh State Electricity Board v. Central Electricity Regulatory Commission & ors***, (2010) 5 SCC 23, wherein the issue considered by the Supreme Court was whether Section 5 of the Limitation Act could be invoked while preferring an appeal to the Supreme Court against the order of the Appellate Tribunal for electricity under the Electricity Act, 2003.

We may observe that the jurisdiction of the Appellate Tribunal for electricity relates only to Civil liability and not to criminal liability. So far as offences and penalties are concerned, they are dealt with in Chapter XIV of the Electricity Act, 2003 and the offences are dealt with by Special Courts constituted under Section 153 of the said Act.

74. Thus, it would be seen that the decisions considered by the Kerala High Court, all pertained to civil and taxing statutes, and none of them related to a criminal statute. Even ***Ketan V. Parekh*** (supra), though a decision in respect of an appeal under Section 35 of the Foreign Exchange Management Act, relates only to the civil liability/ penalty and not to a criminal liability entailing curtailment of the right to life and personal liberty guaranteed by Article 21 of the Constitution of India. In this case, the Special Director of Enforcement, Mumbai had imposed penalties on the concerned notices, including the appellant before the Supreme Court. The appellants challenged the penalty by filing appeal under Section 19 of the Foreign Exchange Management Act and moved an application under Section 19(1) of the said Act for dispensing with requirement of pre-deposit of the amount of penalty. The Appellate Tribunal directed the appellant to deposit 50% of the amount of penalty with a stipulation that if they failed to do so, the appeals would be dismissed. That order was challenged before the Delhi High Court and the petition was dismissed on the premise that the order passed by the Appellate Tribunal in the application seeking dispensation of pre-deposit was appealable under Section 35 of the FEMA and, consequently, a writ petition under Article 226 of the Constitution was not maintainable. The appellant then preferred an appeal under Section 35 of the FEMA before the Bombay High Court with an application to seek

condonation of 1065 days delay. That application was dismissed by the Bombay High Court by observing that it does not have the power to entertain the appeal filed beyond 120 days and, therefore, delay in filing the appeal could not be condoned. The Supreme Court held that the appellant was not entitled to the benefit of Section 14 of the Limitation Act. Thus, even though the said decision was rendered in the context of the Foreign Exchange Management Act, it really pertained to a civil/ monetary liability only. It appears that the attention of the Kerala High Court, when it decided ***Nasir Ahammed*** (supra) was not drawn to the several decisions that we have taken note of hereinabove.

75. Thus, with due respect to the Division Bench of the Kerala High Court, we express our disagreement with the said view and reject the reliance placed thereupon by Mr. Sharma.

76. We may now turn to the 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*** (supra). Section 14A of the amending Act, considered by the Full Bench of the Allahabad High Court, reads as follows:

> *"14A. Appeals. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),* ***an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.***
>
> *(1.1) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.*

(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 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) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal." *(emphasis supplied)*

77. Thus, it would be seen that the language of Section 14A is very similar to the language used by the Parliament in Section 21 of the NIA Act, and the two provisions are *para materia*, since they both relate to the right to prefer an appeal against a judgment, sentence or order in a criminal proceeding. They both relate to ventilation of the statutory right to appeal, which has a bearing on the right to life and personal liberty of the accused/convict.

78. The Full Bench of the Allahabad High Court noticed the decision of the Supreme Court ***Madhav Hayawadanrao Hoskot v. State of Maharashtra***, (1978) 3 SCC 544 and ***Dilip Dahanukar*** (supra).

79. In ***Madhav Hayawadanrao Hoskot*** (supra), the Supreme Court, inter alia, observed;

"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.

12. What follows from this appellate imperative? Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional. (In a sense even Article 19 may join hands with Article 21, as the Maneka Gandhi reasoning discloses). Pertinent to the point before us are two requirements: (i) service of a copy of the judgment to the prisoner in time to file an appeal and (ii) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Article 21. Where the procedural law provides for further appeals what we have said regarding first appeals will similarly apply." (emphasis supplied)

80. The Full Bench, after discussing the case law, proceeded to observed as follows:

"We are also for reasons which follow convinced that the provision is liable to be struck down even on the ground of manifest arbitrariness. There appears to be no legal justification for denuding the aggrieved person of the right of establishing before a superior court that there existed sufficient cause which constrained him from being able to exercise his right of preferring an appeal within the period of limitation prescribed under the 1989 Act. *The objective of a "speedy trial" also would not justify the imposition of this fetter. We bear in mind that the right of appeal is not available against interlocutory orders. From the language employed in sub section (2) it is evident that it would cover only judgments,*

sentences and orders albeit those which can be recognised as "intermediate" in character. The only exception in the case of interlocutory orders which the legislation carves out are orders granting or refusing bail. The submission, therefore, that a provision for condonation of delay would negate the principal legislative intent is clearly devoid of substance. The submission that the second proviso to sub section (3) is in furtherance of the primary legislative objective of a speedy trial though attractive at first blush, clearly pales in comparison when we weigh in the balance the chilling consequences which are bound to follow on the curtains falling upon the expiry of 180 days against the avowed legislative policy of a speedy conclusion of proceedings under the 1989 Act. ***Bearing in mind the principles enunciated in Shayara Bano, we are constrained to hold that in failing to preserve the right to seek condonation of delay that too at the stage of a first appeal, the legislature has clearly acted capriciously and irrationally. It has left an aggrieved person without a 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."*** *(emphasis supplied)*

81. It further held:

"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."

82. We are of the considered view that this decision is pertinent, and it resonates with our view in the matter. We are thus, fortified, in our view, by the 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 (supra).

83. The object of the law of limitation is to instil a sense of discipline amongst litigating parties, and to ensure that parties ventilate their grievances and invoke their rights to remedy in a reasonable time. The law of limitation is generally understood to bar the remedy and not extinguish the right itself. At the same time, the law recognises that a party may be prevented by sufficient cause and for good reasons, from invoking his legal remedy within the time prescribed. It is for this reason that the law of limitation generally permits the filing of belated applications and appeals etc. with explanation and disclosure of sufficient cause to enable the Court to consider whether to condone the delay, or not.

84. The Supreme Court in ***N. Balakrishnan v. M. Krishnamurthy***, (1998) 7 SCC 123, inter alia, has observed:

> *"**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 lifespan 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 lifespan 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."

85. The prescription of a limited duration for which the Court may condone the delay– and no more, irrespective of the justification for the delay, is the imposition of a statutory bar upon the power of the Court to exercise its discretion to condone the delay beyond the specified period. This kind of prescription by the legislature has to be viewed in the context of the particular right involved. In our view, if it curtails the most fundamental and basic right i.e., the right to life and personal liberty, the same has to be viewed in a completely different perspective, and it cannot be construed as mandatory.

86. In ***Abdul Ghafoor and Another v. State of Bihar***, (2011) 14 SCC 465, the Supreme Court observed:

*"**3.** The law of limitation is indeed an important law on the statute book. It is in furtherance of the sound public policy to put a quietus to disputes or grievances of which resolution and redressal are not sought within the prescribed time. The law of limitation is intended to allow things to finally settle down after a reasonable time and not to let everyone live in a state of uncertainty. It does not permit anyone to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of the judicial system for correction of the lower court's orders or for redressal of grievances at one's own sweet will. The law of limitation indeed must get due respect and observance by all courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the court must show far greater indulgence and flexibility in applying the law of limitation than in any*

other kind of case. A sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality."

87. Reliance placed by Mr. Sharma on the decision In ***Jayanta Kumar Ghosh*** (supra) is misplaced. That decision does not throw any light, whatsoever, on the issue under consideration.

88. Another aspect on which counsels have advanced their submissions is whether the NIA Act is a complete Code in itself, or not. Firstly, we may observe, that the NIA Act, as a whole, can certainly not be described as a complete Code in as much, as, several provisions thereof show that the said Act has to be read in conjunction with other laws. Section 2(1)(b) defines "Code" to mean the Code of Criminal Procedure, 1973. The schedule to the Act enlists the several enactments which create offences and prescribe punishments. It is those particular offences alone in respect whereof the NIA is authorised to investigate. The Act, itself, has been enacted to constitute an investigation agency at the national level and to prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States, etc.

89. Thus, so far as the constitution of NIA is concerned, it a complete code. However, the same cannot be said about the substantive offences, and the procedural laws which would be applicable for the purpose of investigation and conduct of trial of such offences. To the extent that Section 16 of the NIA Act prescribes powers of Special Courts, the same would prevail. However, in respect of matters not dealt with under the Act

relating procedures, and the substantive offences, it is the provisions of the Code and the substantive laws enumerated in the schedule to the Act, which would be relevant. Even if, the Act is considered to be complete Code in so far as it provides the right of appeal, in the light of the aforesaid discussion, we are inclined to hold 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 application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal. The said application is maintainable.

90. Reference to Section 34 of the POTA, and its comparison with Section 21(5) of the NIA Act, in our view, is of no avail. We have to construe Section 21(5) on its own terms and in the context in which the same is framed, keeping in view the nature of the statutory right of appeal conferred on the accused/ convict. Thus, we reject the objection of Mr. Sharma to the maintainability of the aforesaid two applications under Section 5 of the limitation Act. We hold that these applications are maintainable and application of Section 5 of the limitation Act is not excluded – either expressly or by necessary implication, to the NIA Act.

91. Having held that the applications moved by the appellant to seek condonation of delay are maintainable, we now proceed to consider the same on merits. The appellant seeks condonation of 314 days delay in filing the appeal. The appellant seeks further delay of 44 days in re-filing the appeal. The appeal, itself, is directed against the order on sentence. Pertinently, the appellant was incarcerated when he was sentenced by the Special NIA Court. In that situation, he was heavily dependent on his family and friends to file his appeal. The appellant has explained that when

he learnt of the sentence pronounced against him, he went into depression for about 6 months. Thereafter, he started exploring avenues available to him. He states that he attempted to consult a lawyer but he did not have the relevant documents. He was confined in high security section of the jail and, consequently, it was difficult for him to arrange the documents. Then his uncle from Maharashtra assured him of help. His uncle contacted an NGO who, in turn, put him in touch with Mr. Aditya Wadhwa, Advocate. He also explains that, in the meantime, the special NIA Court was shifted, which also delayed the procurement of documents.

92. To explain the delay in re-filing, he states that when he initially filed the appeal on 30.05.2018, he did not have in his possession, the complete papers relating to the case. The same led to delay in re-filing.

93. We ask ourselves, what is the advantage to be gained by the appellant in delaying the filing of the appeal? At the same time, what is the prejudice suffered by the State on account of this delayed filing of the appeal? The answer to both these questions is "None". The delay in filing the appeal is not so grave that the respondents could claim that it has destroyed its record. That is not even a plea taken by the respondent. It is the appellant, who continues to suffer incarceration. Therefore, it is he, who has suffered prejudice on account of his own delay. The respondent has not suffered any prejudice due to the said delay.

94. It is not difficult to imagine the difficulty that a person, who is incarcerated in a high security prison, faces in either communicating with the outside world or in being able to arrange the necessary documents so that his appeal could be prepared and filed in time. He is wholly dependent on his friends and family and if they take matters lightly, it is he who suffers.

95. Thus, in our view, the appellant has shown sufficient cause for the delay in filing and re-filing the appeal. We are, therefore, inclined to allow the application and condone the delay in filing and re-filing the appeal. The applications are allowed and disposed of in the aforesaid terms. Delay in filing and re-filing of the appeal is condoned.

CRL.A. 871/2018

List the appeal before the Bench as per Roster on 05.08.2019.

(VIPIN SANGHI)
JUDGE

(I.S. MEHTA)
JUDGE

JULY 16, 2019